

# Japan

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## 1 Policy and law

### What is the government policy and legislative framework for the electricity sector?

The electricity sector in Japan is governed by the Electricity Business Act (EBA). Under the EBA, any entity intending to engage in the electricity business (excluding the Specified-Scale Electricity Business defined below) must obtain a licence from the Minister of Economy, Trade and Industry (Minister of ETI).

In the electricity sector, 10 local general electricity utilities basically dominated all generation, transmission and distribution of electricity in their respective service areas before the electricity wholesale business was liberalised in 1995. In 1999, retail electricity sales to consumers with contracts for electricity consumption of 2,000kW or more (specified-scale consumers) were liberalised. In 2003, the scope of specified-scale consumers was expanded to consumers with contracts for electricity consumption of 50kW or more, and an amendment to the regulations required the general electricity utilities to treat other new power generation companies similarly to their own power generation departments with respect to transmission and distribution.

A renewable portfolio standard was introduced in 2003, which required electricity utilities to ensure that certain portions of the electricity supplied to its consumers were generated from renewable energy sources. After the Fukushima accident, feed-in tariffs regulations requiring electricity utilities to purchase electricity generated from certain renewable energy sources at a fixed price for a fixed period were introduced in 2012 in order to facilitate the further development of renewable energy electricity generation.

An amendment to the EBA, which will become effective in April 2016, will fully liberalise the retail electricity business. All entities that are registered as electricity retailers will be able to provide electricity to low-voltage consumers (those with contracts for electricity consumption of less than 50kW) as well. In addition, the Japanese government plans to require general electricity utilities to separate their power generation and retail businesses from their transmission and distribution businesses around 2018 to 2020.

## 2 Organisation of the market

### What is the organisational structure for the generation, transmission, distribution and sale of power?

There are four types of electricity retailers that are allowed to sell electricity to consumers: general electricity utilities, specified-scale electricity utilities, specified electricity utilities, and specified suppliers.

The retail market for low-voltage consumers (those with contracts for electricity consumption of less than 50kW; eg, common households) has not been liberalised, and 10 local general electricity utilities are allowed to dominate the market in their respective service areas. On the other hand, the retail market for consumers with contracts for electricity consumption of 50kW or more has been liberalised, and specified-scale electricity utilities (or power producer and suppliers (PPS)) are allowed to sell electricity directly to such consumers. Specified-scale electricity utilities must make certain filings, but need not obtain a licence to do so. As of the end of July 2014, there were over 300 specified-scale electricity utilities in existence.

Specified electricity utilities are allowed to supply electricity to meet demand at a specified service point, such as a specific building, after

obtaining a licence from the Minister of ETI. As of the end of 2012, four specified electricity utilities were in operation.

A specified supplier is any entity that is allowed to supply electricity, after obtaining an approval from the Minister of ETI, to a recipient with which it has a close association, such as a subsidiary.

In April 2016, the retail market will be fully liberalised, and all entities that are registered as electricity retail will be permitted to provide electricity to low-voltage consumers as well.

The wholesale market has been liberalised, and the following kinds of wholesale suppliers exist:

- wholesale electricity utility: an entity that supplies electricity to a general electricity utility, and that owns one of the two facilities described below. Wholesale electricity utilities are required to obtain a licence from the Minister of ETI. As of the end of 2012, there were only two wholesale electricity utilities, one of which is J-Power (mentioned in question 29). Wholesale electricity utilities own either:
  - an electricity generation facility with more than 2 million kW electricity generation capacity and that supplies electricity to a general electricity utility; or
  - substation, transmission or distribution facilities for providing cross-area wheeling services to general electricity utilities with contracts for over 1,000kW of electricity for 10 years or more or contracts for over 100,000kW of electricity for five years or more;
- wholesale supplier (or an independent power producer (IPP)), which is regulated by the EBA: a supplier of electricity to a general electricity utility of:
  - more than 100,000kW for five years or more; or
  - more than 1,000kW for 10 years or more; or
- other wholesale suppliers that are not regulated by the EBA.

In April 2016, the wholesale regulation will be abolished, and wholesale entities will be able to supply electricity at terms and conditions determined at their discretion, even when they supply electricity to general electricity utilities.

Since July 2012, suppliers of electricity generated from certain renewable energy sources are entitled to sell the electricity to an electricity utility at a fixed price for a fixed period under feed-in tariff regulations.

Only general electricity utilities are allowed to operate facilities for transmission and distribution to low-voltage consumers. High-voltage transmission lines are largely dominated by general electricity utilities. Specified-scale electricity utilities, specified electricity utilities and specified suppliers are allowed to construct and operate facilities for transmission and distribution of electricity only to the extent necessary for the purposes of their businesses as permitted under the EBA.

## Regulation of electricity utilities - power generation

### 3 Authorisation to construct and operate generation facilities

#### What authorisations are required to construct and operate generation facilities?

With respect to the construction and operation of nuclear plants, the EBA requires approval of the construction plan before construction and the inspection of construction before operation by the Nuclear Regulation Authority and the Minister of ETI. In addition, installation of a nuclear power reactor requires the approval of the Nuclear Regulation Authority.

For construction of power plants other than nuclear plants, prior filing of the construction plan with the Minister of ETI is generally required.

In addition, construction of a thermal power plant, a hydropower plant, a wind power plant or a geothermal plant (of which generating power exceeds certain thresholds) or a nuclear plant requires prior environmental impact assessments.

Generally, the act of operating generation facilities itself does not require obtaining a government licence or approval. An entity that engages in the construction and operation of generation facilities to supply electricity to a general electricity utility must be licensed as a wholesale electricity utility by the Minister of ETI, but only if it owns electricity generation facilities with an electricity generation capacity of more than 2 million kW. Starting in April 2016, all power producers will be required to make certain filings with the Minister of ETI before engaging in the power generation business.

#### 4 Interconnection policies

##### What are the policies with respect to interconnection of generation to the transmission grid?

A general electricity utility must allow interconnection and provide a wheeling service when another general electricity utility, a specified electricity utility, or a specified-scale electricity utility applies for interconnection, unless there are justifiable grounds to refuse it. Examples of justifiable grounds include the non-payment of wheeling service fees by the applicant and the inability of the general electricity utility to provide the service without new construction of transmission facilities that impose a heavy burden on the business operation of the general electricity utility.

An electricity utility must allow an entity that intends to supply electricity generated from renewable energy sources to interconnect with its transmission facilities, unless there are justifiable grounds for refusal. Justifiable grounds include scenarios in which the supplier of electricity generated from renewable energy sources fails to pay the costs necessary for the interconnection, the interconnection is likely to hinder the stable supply of electricity by the electricity utility, or the supplier does not agree to certain provisions required by the Ministry of ETI rules in the interconnection agreement, such as permitting an employee of the electricity utility to enter the site of the power generation facility when necessary for security purposes.

#### 5 Alternative energy sources

##### Does government policy or legislation encourage power generation based on alternative energy sources such as renewable energies or combined heat and power?

In July 2012, a feed-in tariff (FIT) for electricity generated from certain renewable energy sources (renewable energy electricity) was introduced. Under FIT, an electricity utility (ie, a general electricity utility, specified electricity utility or specified-scale electricity utility) must purchase renewable energy electricity from the producer at a fixed price for a fixed period, and general electricity utilities and specified electricity utilities must allow the producer to interconnect with their transmission facilities. Solar PV, wind, small and medium-size hydro, geothermal and biomass are the renewable energy sources eligible for FIT.

The purchase prices and periods differ depending on the type of renewable energy and the scale of the plant and are decided by public notice issued by the Minister of ETI, who takes into consideration the opinion of the Calculation Committee of Purchase Price. The purchase prices and periods are renewed every year, and the set price and period applies to a project as of the later of the date on which the electricity utility receives the application for an interconnection agreement and the date on which the power generation facility is certified as satisfying all the requirements under FIT. From April 2014 to March 2015, the price is between ¥13 and ¥55 (excluding sales tax) and the period is between 10 and 20 years depending on the type of renewable energy and the scale of the generating power.

#### 6 Climate change

##### What impact will government policy on climate change have on the types of resources that are used to meet electricity demand and on the cost and amount of power that is consumed?

FIT, which was introduced in July 2012, will facilitate a substantial number of new companies to enter the electricity generation market and is

expected to increase the amount of electricity produced by solar PV, wind, small and medium-sized hydro, geothermal and biomass sources. From April 2012 to April 2014, total capacity expanded by approximately 9.8 million kW from new renewable power plants (approximately 9.5 million kW of such additional capacity comes from solar power plants).

The costs of FIT will be ultimately borne by electricity consumers as a surcharge, but is arranged so that the costs are spread equally throughout Japan by the Surcharge Adjustment Organisation.

#### 7 Government policy

##### Does government policy encourage or discourage development of new nuclear power plants? How?

The Japanese government positioned nuclear power as an important base-load electricity in the Fundamental Energy Plan promulgated in April 2014, and tries to develop an environment that is supportive to electricity utilities restarting existing nuclear plants (all of which stopped operations after Fukushima accident) once the utilities obtain the approval of the Nuclear Regulation Authority. For political reasons after the Fukushima accident, it is difficult to construct new nuclear plants.

#### Regulation of electricity utilities – transmission

#### 8 Authorisations to construct and operate transmission networks

##### What authorisations are required to construct and operate transmission networks?

An entity that intends to construct transmission facilities for high voltages (170,000 volts or more) must file its plan of construction with the Minister of ETI.

An entity that engages in construction and operation of transmission networks to supply electricity for consumers must obtain a licence as a general electricity business or specified electricity business, or an approval on specified supply from the Minister of ETI or must file as a specified-scale electricity business with the Minister of ETI. Specified-scale electricity utilities, which operate transmission lines to supply electricity for consumers, must provide certain information, including the location of the transmission lines, to the Minister of ETI.

An entity that engages in the construction and operation of transmission networks to provide cross-area wheeling services for general electricity utilities (with contracts for over 1,000kW of electricity for 10 years or more or contracts for over 100,000kW of electricity for five years or more) must obtain a licence as a wholesale electricity utility from the Minister of ETI.

From April 2016, 10 general transmission utilities (former transmission department of general electricity utilities) and the transmission utility which provides wheeling services for general transmission utilities (former wholesale electricity utility) will be required to obtain licences from the Minister of ETI. Other entities which provide electricity to their customers by their own transmission and distribution lines will be required to make certain filings with the Minister of ETI.

#### 9 Eligibility to obtain transmission services

##### Who is eligible to obtain transmission services and what requirements must be met to obtain access?

See question 4.

General electricity utilities, specified electricity utilities, and specified-scale electricity utilities are eligible to obtain transmission services (ie, wheeling services) from (another) general electricity utility, in accordance with the tariff that the general electricity utility has filed with the Minister of ETI, unless there are justifiable grounds for refusal.

An entity that intends to supply renewable energy electricity is also eligible to interconnect with and obtain transmission services from an electricity utility's facilities. In order to be eligible, the power generated must be from solar PV, wind, small and medium-sized hydro, geothermal or biomass sources, and the power generation facility must be certified by the Minister of ETI as satisfying certain requirements, such as:

- being capable of reliably and efficiently generating electricity for a guaranteed period of time; and
- being capable of transparently and fairly measuring the amount of the electricity produced from renewable energy sources that is supplied to the electric utility.

## 10 Government incentives

### Are there any government incentives to encourage expansion of the transmission grid?

Under a provision of the EBA, bondholders of a corporation acting as a general electricity utility have priority over other creditors in the right to receive payments from claims on the corporation's property (article 37, EBA), which enables general electricity utilities to obtain the financing necessary for expanding power generation and transmission facilities at lower interest rates on corporate bonds. At this stage, it is unclear whether this preferential treatment for bondholders will be maintained, even after the third step amendment to the EBA becomes effective around 2018 to 2020.

In April 2015, a nationwide grid operator will be established and will prepare development plans of nationwide transmission lines thereafter.

## 11 Rates and terms for transmission services

### Who determines the rates and terms for the provision of transmission services and what legal standard does that entity apply?

A general electricity utility must formulate a wheeling service tariff that sets rates and other supply conditions for the wheeling service and must file the tariff with the Minister of ETI.

The tariff must satisfy certain requirements including the following:

- the tariff will not harm the interests of recipients of electricity supply;
- the recipients of electricity supply under the wheeling service tariff will not experience any difficulty in receiving the wheeling service;
- the rates shall be calculated based on cost plus appropriate profit in accordance with the rule set by the Ministry of ETI, and the rates are clearly set as fixed rates or fixed amounts; and
- nobody will be treated in an unfair and discriminatory manner.

If the Minister of ETI finds that the wheeling service tariff fails to satisfy the requirements above, they may order the general electricity utility to revise the wheeling service tariff.

## 12 Entities responsible for assuring reliability

### Which entities are responsible for assuring reliability of the transmission grid and what are their powers and responsibilities?

At this stage in Japan, there is no independent entity operating the transmission facilities that is comparable to the ISO or RTO in the United States. In Japan, general electricity utilities own and operate transmission facilities, and the general electricity utilities themselves are responsible for assuring the reliability of the transmission grid.

The Electric Power System Council of Japan (ESCJ), which was designated as the only organisation to support electricity transmission and distribution in Japan by the Minister of ETI, also supports the operation of the nationwide power interchange extending beyond the local service area of each general electricity utility.

In April 2015, a nationwide grid operator will be established and will monitor and adjust a nationwide balance between demand and supply beyond each local area dominated by a general electricity utility, with stronger supervisory authority over general electricity utilities than the ESCJ has had.

## Regulation of electricity utilities – distribution

### 13 Authorisation to construct and operate distribution networks

#### What authorisations are required to construct and operate distribution networks?

An entity that intends to construct distribution facilities for 50,000 volts or more must file its construction plan for the distribution facilities with the Minister of ETI.

Other than general electricity utilities and wholesale electricity utilities that have licences from the Minister of ETI, any entity (which constructs and operates distribution networks in order to provide electricity to their consumers) must obtain a licence as a specified electricity business or must receive a specified supply approval from the Minister of ETI, or must file as a specified-scale electricity business with the Minister of ETI.

Specified-scale electricity utilities, which operate distribution lines to supply electricity for consumers, must provide certain information, including the location of the distribution lines, to the Minister of ETI.

From April 2016, any entities that supply electricity to their customers by their own distribution lines (other than general transmission utilities (ie, transmission departments of former general electricity utilities) and the transmission utility (ie, the transmission department of the former wholesale electricity utilities) that have licence from the Minister of ETI) will be required to make certain filings with the Minister of ETI.

### 14 Access to the distribution grid

#### Who is eligible to obtain access to the distribution grid and what requirements must be met to obtain access?

See question 9.

General electricity utilities, specified electricity utilities, and specified-scale electricity utilities are eligible to obtain distribution services (ie, wheeling services) from (another) general electricity utility, in accordance with the tariff that the general electricity utility has filed with the Minister of ETI, unless there are justifiable grounds for refusal.

After April 2016, any companies that are registered as electricity retailer will have access to the distribution grid.

### 15 Rates and terms for distribution services

#### Who determines the rates or terms for the provision of distribution services and what legal standard does that entity apply?

See question 11.

A general electricity utility must determine a wheeling service tariff that sets rates and other supply conditions for the wheeling service (including distribution services) and must file the tariff with the Minister of ETI.

The tariff must satisfy certain requirements including the following:

- the tariff will not harm the interests of recipients of electricity supply;
- the recipients of electricity supply under the wheeling service tariff will not experience any difficulty in receiving the wheeling service;
- the rates shall be calculated based on cost plus appropriate profit in accordance with the rule set by the Ministry of ETI, and the rates are clearly set as fixed rates or fixed amounts; and
- nobody will be treated in an unfair and discriminatory manner.

If the Minister of ETI finds that the wheeling service tariff fails to satisfy the requirements above, they may order the general electricity utility to revise the wheeling service tariff.

## Regulation of electricity utilities – sales of power

### 16 Approval to sell power

#### What authorisations are required for the sale of power to customers and which authorities grant such approvals?

See question 2.

The retail market serving low-voltage consumers (those with contracts for electricity consumption of less than 50kW; such as common households) has not been liberalised and 10 local general electricity utilities are allowed to dominate the market in their respective service areas.

On the other hand, the retail market for consumers with contracts for electricity consumption of 50kW or more has been liberalised. Specified-scale electricity utilities (or PPS) are allowed to sell electricity directly to consumers subject to a filing requirement; a licence is not required.

Specified electricity utilities are allowed to supply electricity to meet demand at a specified service point (such as a specific building) after obtaining a licence from the Minister of ETI.

A specified supplier is an entity that is allowed to supply electricity (after obtaining approval from the Minister of ETI) to a recipient with which it is closely associated (such as a subsidiary).

In April 2016, the retail business will be fully liberalised, and all entities will be allowed to engage in the retail electricity business including supplying electricity to low-voltage consumers, by registering as electricity retailers; to obtain the registration, an entity must prove its capacity to provide sufficient electricity to meet the demand of its customers.

**17 Power sales tariffs****Is there any tariff or other regulation regarding power sales?**

Yes. Regarding electricity supply to low-voltage consumers (consumers with contracts for electricity consumption of less than 50kW), general electricity utilities must provide a power sales tariff and obtain approval for it from the Minister of ETI, and specified electricity utilities must provide terms and conditions for supplying electricity and file them with the Minister of ETI.

On the other hand, regarding electricity supply to consumers with contracts for electricity consumption of 50kW or more, electricity utilities (including specified-scale electricity utilities and specified suppliers) do not have to provide any tariffs and are able to freely decide the terms and conditions of supply based on negotiations with each consumer.

From April 2016, all retail companies will be able to determine the terms and conditions of electricity supply even when they engage in electricity supply to low-voltage consumers, while certain regulations on the tariff of the electricity supply to low-voltage customers by the former general electricity utilities will continue until around 2018 to 2020. From April 2016, all retail companies will be legally required to explain retail prices and other conditions in writing to its customers.

**18 Rates for wholesale of power****Who determines the rates for sales of wholesale power and what standard does that entity apply?**

Both wholesale electricity utilities and wholesale suppliers must provide rates and other conditions of their wholesale supply and file them with the Minister of ETI. The price must be based on costs, except when the wholesale supply is provided under the conditions set by a successful bidder in a bidding process implemented by a general electricity utility. This regulation will be liberalised in April 2016, and all power generators will be able to sell electricity at their discretionary conditions, even when they engage in electricity supply to the former general electricity utilities.

The rates and terms of supply of renewable energy electricity are provided, depending on the kind of energy and the scale of the facility, by public notice issued by the Minister of ETI, taking into consideration the opinion of the Calculation Committee of Purchase Price. The Minister of ETI considers costs that are ordinarily necessary for supply and appropriate profits when they decide the price and the time period. See question 5.

**19 Public service obligations****To what extent are electricity utilities that sell power subject to public service obligations?**

General electricity utilities bear an obligation to serve and cannot refuse to supply electricity in accordance with their tariff in their respective service areas without justifiable grounds. Justifiable grounds include non-payment of fees by the consumer and danger to residents.

Specified electricity utilities also cannot refuse, without justifiable grounds, to supply electricity to consumers in the specified places (such as a specific building) where they are supposed to supply electricity.

From April 2016, 10 general transmission utilities (former transmission department of 10 general electricity utilities) will be responsible for meeting certain public service obligations (to supply electricity at regulated conditions when certain end users cannot receive such service from any retail companies).

**Regulatory authorities****20 Policy setting****Which authorities determine regulatory policy with respect to the electricity sector?**

The Ministry of ETI (including the Agency for Natural Resources and Energy, an affiliated agency of the Ministry of ETI, and the Advisory Committee for Natural Resources and Energy, a part of the Agency for Natural Resources and Energy) determines regulatory policy with respect to the electricity sector.

The Nuclear Regulation Authority, which is an affiliated agency of the Ministry of the Environment, has the authority to supervise nuclear power plants.

**21 Scope of authority****What is the scope of each regulator's authority?**

The Ministry of ETI has the authority to:

- issue licences to electricity utilities;
- order general electricity utilities and specified electricity utilities to improve their operations;
- require an electricity utility to supply electricity to a general electricity utility, specified electricity utility or specified-scale electricity utility in the event of a disaster or other emergency;
- order a general electricity utility to provide a wheeling service;
- determine the purchase price and the contract period for renewable energy electricity; and
- warn and order an electricity utility to enter into a purchase agreement or an interconnection agreement with a renewable energy electricity producer.

The Nuclear Regulation Authority has the authority to:

- approve the installation of a nuclear power reactor; and
- inspect nuclear plants periodically.

**22 Establishment of regulators****How is each regulator established and to what extent is it considered to be independent of the regulated business and of governmental officials?**

The Ministry of ETI is one of the ministries of the Japanese government. Staff members of the Ministry of ETI are public officials who are not allowed to have another job while serving in the Ministry in order to maintain independence from the regulated business.

The Nuclear Regulation Authority was established in 2012 after the Fukushima accident as an affiliated agency of the Ministry of the Environment. To achieve the nuclear regulatory authority's independence from the owners and operators of nuclear plants, staff members of the Nuclear Regulatory Agency, the administrative agency of the Authority, are discouraged from moving to other governmental departments that may promote nuclear plants and also from being hired by owners or operators of nuclear plants even after retirement from the agency.

**23 Challenge and appeal of decisions****To what extent can decisions of the regulator be challenged or appealed, and to whom? What are the grounds and procedures for appeal?**

All decisions and orders of the Minister of ETI can be challenged by an administrative appeal at the Ministry of ETI or by a lawsuit at a judicial court. Valid grounds for a challenge include the claim that the content or the procedures of a certain decision or order violates the EBA or other laws.

**Acquisition and merger control - competition****24 Responsible bodies****Which bodies have the authority to approve or block mergers or other changes in control over businesses in the sector or acquisition of utility assets?**

Mergers and demergers involving a corporation acting as an electricity utility that result in the takeover of an entire electricity business are not effective unless approved by the Minister of ETI. In addition, an assignment and acceptance of the entirety of an electricity business is not effective unless approved by the Minister of ETI. Transfers of shares of an electricity utility and acquisitions of a part of a utility's assets are not subject to the approval of the Minister of ETI.

For mergers, stock acquisitions and business acquisitions that meet certain thresholds, the parties involved must file a pre-merger notification or a pre-acquisition notification with the Fair Trade Commission, and the transaction cannot be completed until 30 days has passed from the date that the commission accepted the notification. If the commission believes that the transaction will substantially restrain competition in a particular market, it can order the entity concerned to dispose of all or a part of its stock, to transfer a part of its business, or to take any other measure necessary to remedy the situation.

## 25 Review of transfers of control

### What criteria and procedures apply with respect to the review of mergers, acquisitions and other transfers of control? How long does it typically take to obtain a decision approving or blocking the transaction?

When the Minister of ETI examines the application for a merger or acquisition of electricity utilities, he or she considers the same items considered when granting a licence to a newcomer, such as whether the successor has sufficient financial resources and the technical capability to operate the electricity business properly. The Minister of ETI, however, does not consider whether the transaction will affect the level of competition in the electricity market. It is not clear how long it would take to obtain a decision approving or blocking the transaction, because there has been no previous example of an application submitted for a merger or similar transaction under the current EBA.

On the other hand, the Fair Trade Commission considers whether the transaction will affect competition in the electricity market. The commission is generally expected to decide whether it approves the transaction within 30 days after it receives the filing. If the commission cannot decide within that period, it may extend the consideration period to the final date of 120 days that has passed since it received the filing and the final date of 90 days that has passed since it received any additional reports the commission ordered the applying party to submit.

## 26 Prevention and prosecution of anti-competitive practices

### Which authorities have the power to prevent or prosecute anti-competitive or manipulative practices in the electricity sector?

The Minister of ETI has the authority to approve the tariffs of general electricity utilities. If an electricity utility assesses inappropriate charges to consumers in its tariff by taking advantage of its dominant position in the retail market, the Minister can refuse to approve the tariff. The Minister also has the authority to order a general electricity utility to provide wheeling services to specified electricity utilities and specified-scale electricity utilities. If a general electricity utility takes advantage of its dominant position in the transmission and distribution market and refuses to provide wheeling services to a specified electricity utility or a specified-scale utility, the Minister can order the general electricity utility to provide the wheeling service.

The Fair Trade Commission has the power to prevent anti-competitive or manipulative practices in the electricity sector as well. The commission can issue a cease-and-desist order or an order for payment of a surcharge, if it decides that an electricity utility is engaging in anti-competitive practices that violate provisions of the Anti-Monopoly Act.

## 27 Determination of anti-competitive conduct

### What substantive standards are applied to determine whether conduct is anti-competitive or manipulative?

The Minister of ETI uses the following standards:

- when deciding whether to approve the tariff of a general electricity utility, the Minister considers whether:
  - the rates reflect fair costs incurred as a result of efficient management and fair profits;
  - the rates are clearly set as fixed rates or fixed amounts by type of supply; and
  - certain persons are not treated in an unfair and discriminatory manner; and
- when deciding whether to order a general electricity utility to provide wheeling services, the Minister considers whether there are justifiable grounds for refusing the service, such as non-payment of wheeling service fees.

The Fair Trade Commission provides guidelines for what constitutes appropriate electricity sales. (The latest amendments to the guidelines were made in 2011.) The guidelines provide that the following behaviours engaged in by a general electricity utility may violate the Anti-Monopoly Act:

- behaviour that hinders the business of a newcomer in the retail market (such as a specified-scale electricity utility); such as:
  - offering substantially lower rates to consumers who may enter into an agreement with a newcomer;

- offering higher rates to consumers who intend to purchase electricity both from the general electricity utility and a newcomer; and
- offering higher rates to consumers who have purchased electricity from a newcomer; and
- behaviour that hinders the business of a newcomer in the wholesale market (such as an IPP), such as:
  - offering a purchase price much higher than the market value for an electricity generation facility that a newcomer in the wholesale market intends to purchase; and
  - refusing to provide continuous back-up services to a newcomer in the wholesale market.

## 28 Preclusion and remedy of anti-competitive practices

### What authority does the regulator (or regulators) have to preclude or remedy anti-competitive or manipulative practices?

The Minister of ETI has the authority to do the following:

- order a general electricity utility to amend its tariff if it sets high rates for regulated consumers who have contracted for electricity of less than 50kW in order to set low rates for consumers who have contracted for electricity of 50kW or more, which allows it to more easily compete with newcomers in the retail market;
- order a general electricity utility to stop using or providing another person with information concerning electricity suppliers and users, which the general electricity utility has obtained in the course of providing wheeling services, for purposes other than for the provision of wheeling services;
- order a general electricity utility to stop treating any particular electricity supplier in an unreasonably preferential or disadvantageous manner or giving any other benefits or causing any other hindrances to such an electricity supplier in the course of providing a wheeling service;
- order a general electricity utility to amend its wheeling service provisions, if it sets unreasonably high rates for imbalance services without an appropriate cost basis, or if it sets unreasonable rates for imbalance services that vary depending on season or time; and
- order a general electricity utility to revise its rates or supply conditions, or both, for wholesale supply, if the rates do not reflect fair costs incurred as a result of efficient management and fair profits.

The Fair Trade Commission has the authority to do the following, if it decides that certain behaviour of a general electricity utility violates the Anti-Monopoly Act:

- issue a cease-and-desist order;
- issue an order for payment of a surcharge; and
- file a formal notification with the prosecutor general.

## International

### 29 Acquisitions by foreign companies

#### Are there any special requirements or limitations on acquisitions of interests in the electricity sector by foreign companies?

When a foreign company intends to obtain a share of a non-listed company or 10 per cent or more of issued shares of a listed company operating in the Japanese electricity sector, the company must report the business purpose, amount and timing, among other items, of the investment to the Minister of Finance and the Minister of ETI beforehand. When examining the report, these ministers take into consideration whether the investment by the foreign company may impair Japanese national security, disturb the maintenance of public order, obstruct the protection of public safety, or have a significant adverse impact on the effective management of the Japanese economy. Although the period for the examination of the report is generally set at 30 days, the ministers may extend the period for up to five months.

In 2008, when the Children's Investment Fund Management Ltd (the TCI Fund), a UK-based activist fund, tried to obtain up to 20 per cent of the shares of J-Power, a wholesale electricity utility, the Minister of Finance and the Minister of ETI decided not to allow the investment. The primary reason for the decision was that the TCI Fund had made certain

### Update and trends

The first step amendment to the EBA will become effective in April 2015. By this amendment, a nationwide grid operator will be established and will strive to maintain nationwide grid stability beyond each area's grid operated by each general electricity utility.

The second step amendment to the EBA will become effective in April 2016. By this amendment, the retail regulation will be fully liberalised and newcomers will be able to supply electricity to low-voltage consumers (consumers who have contracted for electricity of less than 50kW), which has been regulated. Also, the regulations on wholesale will be fully liberalised, and power generators will be able to freely set terms and conditions even when they engage in electricity supply to general electricity utilities (which has been regulated). All

retail companies will be required to register as electricity retailers by proving their capacity to provide sufficient electricity to meet their customers' demand.

A draft of the third step amendment to the EBA will be submitted to the Diet in 2015. The government plans to obligate the general electricity utilities to operate transmission and distribution businesses through a separate legal entity from the entity (entities) which engage in generation and/or retail business, from around 2018 to 2020. By this amendment, the government intends to make sure that all electricity companies (including both the former general electricity utilities and newcomers) will compete under equal access to the transmission grid and pursuant to equal conditions.

shareholder requests with respect to the management of J-Power, which was planning to construct a new type of nuclear plant, and the ministers were concerned that the activist nature of the investment would affect Japan's policy regarding the stable supply of electricity, atomic power and the nuclear fuel cycle.

Acquisitions of interests in renewable power generation by foreign companies are active since the introduction of the feed-in tariff in 2012, because the ministers generally do not become concerned about such acquisitions.

### 30 Cross-border electricity supply

#### What rules apply to cross-border electricity supply, especially interconnection issues?

Because Japan is an isolated island country, cross-border electricity supply does not exist at this stage and there are no rules relating to it.

### Transactions between affiliates

#### 31 Restrictions

#### What restrictions exist on transactions between electricity utilities and their affiliates?

Under the EBA, general utility companies are prohibited from giving preferential treatment or conferring other benefits to their affiliates when they provide wheeling services. General utility companies are also prohibited from providing affiliates with information concerning other electricity

suppliers and electricity users, which they have gathered in the course of providing wheeling services, for purposes other than the provision of the wheeling service.

If a general utility company gives preferential treatment to its affiliates, such as charging its affiliates rates unreasonably lower than those provided in the tariff, it will also be deemed to be in violation of the Anti-Monopoly Act, which prohibits discriminatory consideration.

### 32 Enforcement and sanctions

#### Who enforces the restrictions on utilities dealing with affiliates and what are the sanctions for non-compliance?

If, in the course of providing a wheeling service, a general electricity utility gives unreasonable preferential treatment or benefits to its affiliates or if a general electricity utility provides its affiliates with information concerning other electricity suppliers or consumers that it has gathered in the course of providing wheeling services, the Minister of ETI may order the general electricity utility to discontinue or correct such behaviour. If the utility violates the order, the utility is subject to a fine of up to ¥3 million. The minister of ETI also has the authority to cancel the utility's licence if the utility has violated the EBA or any order issued under the EBA, and he or she finds such violation to be harmful to the public interest.

If a general utility company gives preferential treatment to its affiliates, such as charging its affiliates a rate that is unreasonably lower than those provided in the tariff, the Fair Trade Commission may issue a warning, cease-and-desist order or an order for payment of a surcharge.

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