

INDUSTRIAL COMPETITIVENESS FROM THE LEGAL PERSPECTIVE

Second AIEE ENERGY SYMPOSIUM

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M&A:THE ENERGY DEPARTMENT

TYPE OF NEGOTIATIONS IN THE PV SECONDARY MARKET



SALE AND PURCHASE: ACTORS IN THE SECONDARY MARKET

- **FUNDS AND INVESTORS**
- **BANKS /LENDERS**
- **EPC CONTRACTORS**
- **O&M CONTRACTORS**
- **ASSET MANAGERS**
- **SUPPLIER**
- **OWNERS OF THE LAND**
- **PUBLIC ENTITIES**
- **TRADERS**



THE MAIN IMPACT OF THE LEGISLATION ON THE PV MARKET

From 2010 onwards, the incentives set out in RES sectors, and relevant support schemes have been reduced through several government decrees

- Legislative Decree no. 28/2011
- The Robin Tax (*art. 81 Law Decree no.112/2008*)
- The LAW no. 116/2014
- Ministerial Decree June 23 published in the Italian Official Gazette no.150 on June 29, 2016

Pursuant to article 26(3) of the Law August 11, 2014 no. 116, published in the Italian Official Gazette no.192/2014 on August 20, 2014 from January 1st 2015, the incentive rate for the electricity generated by PV Plants with a power capacity higher than 200 Kwp is reformulated, at the operator's choice, among one of the following options to be communicated to the GSE within November 30, 2014

CLAIMS

- With reference to the RES sector, the most important law case is the judgment of consultation of the constitutionality (*questione di legittimità costituzionale*) of the law 116/2014– which reduces the feed-in tariffs granted, before the date of entering into force of such Law, to photovoltaic plants already connected to the national grid and that were subject to agreements between photovoltaic electricity producers and the GSE– sent by the Administrative Court of Lazio to the Italian Constitutional Court (*Ordinanza TAR Lazio, Sezione Terza Ter, n. 8669/2015; udienza del 19 marzo 2015; deposito del 24 giugno 2015 - no. 15359/2014 Reg.Ric.*).
- The Italian Constitutional Court has declared unfounded the question of constitutionality submitted by the TAR Lazio with the Judgment of the Court n. 16/2017.

PV PLANT TRANSACTION IN THE SECONDARY MARKET

- **SALE AND PURCHASE OF THE PV PLANTS ALREADY CONNECTED TO THE GRID AND RECEIVING FIT ACCORDING TO THE RELEVANT FIT SCHEME**
- **FIT SCHEME** regulates the mechanism of incentives granted by Gestore Servizi Energetici (**GSE**) in connection with the energy produced by the Plants.

- *Ministerial Decree July 28, 2005* I Conto Energia
- *Ministerial Decree February 19, 2007* II Conto Energia
- *Ministerial Decree August 6, 2010* III Conto Energia
- *Ministerial Decree May 5, 2011* IV Conto Energia
- *Ministerial Decree July 5, 2012* V Conto Energia

The V Conto Energia has ceased to be applied on July 6, 2013

EXAMPLE OF LEGAL ACTIVITIES AND CONTRACTS IN A S&P TRANSACTION

- **MOU-LOI**
- **DUE DILIGENCE**
- **SALE AND PURCHASE AGREEMENT**
- **FINANCING/RE-FINANCING CONTRACTS**
- **NEGOTIATION/RE-NEGOTIATION EPC/O&M CONTRACTS**
- **INDEMNITIES/GUARANTEES**
- **FISCAL ACTIVITIES**

**CAN THE LEGAL APPROACH CONSENT TO THE ACTORS OF THE MARKET TO BE
MUCH MORE COMPETITIVE?**

FROM THE BUYER PERSPECTIVE

EXCEPT FOR TECHNOLOGIES, PERFORMANCE, AND OTHER TECHNICAL AND ECONOMICAL ASPECTS THE COMPETITIVENESS FROM THE LEGAL PERSPECTIVE IS REPRESENTED BY :

- **DUE DILIGENCE PROCESS**
- **CORRECTNESS OF THE AUTHORIZATION PROCEEDING**
- **COMPLETENESS OF THE DOCUMENTATION**
- **RE-FINANCING TRANSACTIONS**
- **GUARANTEES, INDEMNITIES**
- **FISCAL ASPECTS (FOREIGN INVESTORS)**

IN REGARD TO THE DD PROCESS, PLEASE NOTE THAT ONE OF THE CRITICAL ISSUE AS OF TODAY IS REPRESENTED BY **“THE CONTIGUITY RISK”**, ALSO PURSUANT TO THE PROVISIONS SET FORTH ART. 29 OF THE MINISTERIAL DECREE JUNE 23, 2016, RELATING TO THE **“ARTATO FRAZIONAMENTO”**

FROM THE BUYER PERSPECTIVE

IN CONNECTION WITH THE ARTATO FRAZIONAMENTO, PLEASE NOTE THAT A PRELIMINARY DD RELATING TO THE FOLLOWING ISSUE ALLOWS THE BUYER TO GO ON OR TO ABORT THE POTENTIAL DEAL

- **THE LOCALIZATION OF THE PLANT**
- **THE LOCALIZATION OF THE CONNECTION INFRASTRUCTURES AND IF THE PLANT SHARES THE CONNECTION WITH OTHER PLANTS CLOSE**
- **THE INFORMATION RELATING NOT ONLY TO THE OWNER OF THE PLANT AND THE PREVIOUS OWNER BUT ALSO RELATING TO THE DEVELOPER OF THE PROJECT.**

FROM THE BUYER PERSPECTIVE

IN ADDITION:

- THE CORRECTNESS OF THE AUTHORIZATION PROCEEDING
- THE COMPLETNESS OF THE DOCUMENTATION

ALLOWS THE BUYER TO ANALISE THE RISK DUE TO THE GSE INSPECTIONS ACCORDING TO DM JANUARY 31, 2014 (“DM CONTROLLI”) AND IF THE CASE TO NEGOTIATE INDEMNITIES OR GUARANTIEES TO MANAGE THIS RISK

FROM THE SELLER PERSPECTIVE

EXCEPT FOR TECHNOLOGIES, PERFORMANCE AND OTHER TECHNICAL AND ECONOMICAL ASPECTS, THE COMPETITIVENESS FROM THE LEGAL PERSPECTIVE IS REPRESENTED BY :

- **CORRECTNESS OF THE AUTHORIZATION PROCEEDING**
- **COMPLETENESS OF THE DOCUMENTATION**
- **RE-FINANCING TRANSACTIONS**
- **RE-NEGOTIATION OF THE CONTRACTS, (SUPPLY, SPARE PARTS, O&M)**
- **GUARANTEES, INDEMNITIES**

FROM THE SELLER PERSPECTIVE

IN ADDITION:

- THE RE-FINANCING
 - THE RE-NEGOTIATION OF THE CONTRACTS, (SUPPLY, SPARE PARTS, O&M)
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- **ALLOWS THE SELLER AN EFFICIENT RECOVERY OF COSTS DUE TO THE CHALLENGES OF THE MARKET ALSO RELATING TO THE CUT OF THE FIT PURSUANT TO THE MENTIONED ARTICLE 26 (3) OF THE LAW AUGUST 11, 2014 N. 116**

FROM THE SELLER AND THE BUYER PERSPECTIVE

EITHER THE BUYER, EITHER THE SELLER, THROUGH A DIFFERENT LEGAL APPROACH AND THROUGH DIFFERENT LEGAL INSTRUMENTS HAVE THE OPPORTUNITY TO BE OR NOT COMPETITIVE AND ABOVE ALL TO NEGOTIATE THE KEY ELEMENT OF THE TRANSACTION

THE PRICE

WHERE ARE WE GOING: LOOKING FOR NEW TECHNOLOGIES

- ARTIFICIAL INTELLIGENCE
- ENERGY EFFICIENCY
- SMART GRID
- BLOCKCHAIN



CONCLUSIONS

- **NEW ACTORS**
- **NEW EMERGING MARKETS**
- **NEW OBLIGATIONS**
- **NEW LEGAL PERSPECTIVE**

• **THANK YOU!**



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