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A practical cross-border insight into Gas Regulation work

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Ireland

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1 Overview of Natural Gas Sector

1.1 A brief outline of Ireland's natural gas sector, including a general description of: natural gas reserves; natural gas production including the extent to which production is associated or non-associated natural gas; import and export of natural gas, including liquefied natural gas (LNG) liquefaction and export facilities, and/or receiving and re-gasification facilities ("LNG facilities"); natural gas pipeline transportation and distribution/transmission network; natural gas storage; and commodity sales and trading.

The Kinsale Head, Ballycotton, South West Kinsale ("SWK") and Seven Heads gas fields, which are now in decline, are sources of indigenous natural gas in Ireland.

The Corrib gas field is currently being developed off the west coast of Ireland. At the Corrib field, five wells are completed and ready for production, while the 83km long offshore pipeline was completed during 2009. Due to issues with onshore routing, first gas from the Corrib field is not expected until 2014.

In February 2011, the Minister awarded Onshore Petroleum Licensing Options to three companies covering the onshore Northwest Carboniferous Basin and the onshore Clare Basin relating to potential shale gas prospects. The Minister also awarded thirteen licensing options to twelve companies in the 2011 Atlantic Margin Licensing Round (an oil and gas exploration licensing round). The 2011 options are for a two-year period with modest work programmes and have the option to be converted into a 15 year Frontier Exploration Licence to undertake seismic and drilling operations. This was the largest number of applications received in any Irish licensing round.

The Irish natural gas transmission pipeline network has a foothold on the Scottish mainland, where it connects to the UK transmission system at Moffat.

Gas supply in Ireland is delivered via a network of circa 13,150 kilometre ("km") of pipelines. The integrated supply network is sub-divided into 2,380km of high pressure sub-sea and cross-country transmission pipe and in excess of 10,750km of lower pressure distribution pipe, connecting customers to the system. The Bord Gáis Éireann ("BGÉ") onshore high pressure transmission network consists of approximately 1,971km of pipe and the sub-sea Interconnectors account for circa 409km of transmission pipeline.

The 156km South-North Pipeline, connecting the natural gas transmission networks of the Republic of Ireland and Northern Ireland, and the 149km Mayo to Galway transmission pipeline, were completed in 2006. In 2007, a €40m project was launched to make gas available to 11 towns along the latter transmission pipeline.

Shannon LNG Limited (backed by Hess Corporation) is proposing to construct an LNG receiving terminal in the west of Ireland (which we understand is expected to be operational in 2017), to be connected to the existing transmission system by circa 26km of pipeline. Work commenced on the project in 2003. Total capital costs for the terminal are expected to be in the region of €600 million. We understand that the LNG terminal will have initial send out capacity of 400 MMcfd (representing about half of Ireland's current total needs).

Shannon LNG has been granted a number of consents with respect to its project, including (in 2008) an exemption from regulated third party access ("TPA") for the LNG terminal pursuant to Article 22 of Directive 2003/55/EC and a consent under section 39A of the Gas Act 1976 (as amended) (the "1976 Act"), to construct a gas pipeline connecting the terminal to the grid.

The only storage facility currently in Ireland is the depleted SWK gas field, which was converted for this purpose. There are also currently proposals for other gas storage facilities (at Larne in Northern Ireland and from the Kish Bank Basin, offshore Dublin).

1.2 To what extent are Ireland's energy requirements met using natural gas (including LNG)?

We understand that approximately 28% of Ireland's total energy needs are met by natural gas. There is currently no operational LNG facility in Ireland (see question 1.1).

1.3 To what extent are Ireland's natural gas requirements met through domestic natural gas production?

We understand that 5% of the country's natural gas requirements are currently met through domestic natural gas production. Imports from Scotland via the Moffat pipeline accounted for approximately 95% of the annual gas supply in Ireland (Source: Section 5.2 (Indigenous Production and Storage) of *Regulator's 2011 National Report to the European Commission August 2011* – published by the Commission for Energy Regulation – www.cer.ie). Increases in domestic production are expected from the Corrib gas field in 2014 (Corrib is expected to on average provide about 50% of all-Island gas demand from 2014 – 2017).

1.4 To what extent is Ireland's natural gas production exported (pipeline or LNG)?

We are not aware of any circumstances in which Ireland's natural gas production is exported.

2 Development of Natural Gas

2.1 Outline broadly the legal/statutory and organisational framework for the exploration and production ("development") of natural gas reserves including: principal legislation; in whom the State's mineral rights to natural gas are vested; Government authority or authorities responsible for the regulation of natural gas development; and current major initiatives or policies of the Government (if any) in relation to natural gas development.

The Petroleum and Other Minerals Development Act, 1960 (the "1960 Act") is the principal legislation governing the development of natural gas in Ireland. The Licensing Terms for Offshore Oil and Gas Exploration, Development and Production 2007 (the "Licensing Terms"), as published by the Department of Communications, Energy and Natural Resources ("DCENR"), are of particular importance to parties applying for a licence under the 1960 Act. The Licensing Terms replace the earlier 1992 licensing terms, and apply to licences awarded from 1 January 2007. We understand that the Licensing Terms have been used in the context of onshore shale gas prospecting. Although the Licensing Terms have no statutory force, they indicate the views of the Minister for Communications, Energy and Natural Resources (the "Minister") in relation to natural gas exploration and exploitation, and they are generally afforded contractual status by incorporation in authorisations. In addition, Rules and Procedures for Offshore Petroleum Exploration Operations apply to all petroleum exploration and development operations in the internal waters of the State, the territorial waters or in the designated areas of the continental shelf under Irish jurisdiction.

Other legislation which will need to be considered in the context of exploration and production include:

- the Foreshore Act 1933 (as amended);
- the Petroleum (Exploration and Extraction) Safety Act 2010 (the "2010 Act");
- the Planning and Development Acts 2000 to 2010 (this legislation now include specific provisions in respect of infrastructure deemed to be of strategic importance to Ireland);
- the Continental Shelf Act 1968 (as amended); and
- applicable environmental legislation (including implementing legislation giving effect to the EIA Directive and the Habitats Directive).

The State's mineral rights to natural gas are vested in the Minister for Communications, Energy and Natural Resources (the "Minister"), by virtue of the Communications, Marine and Natural Resources (Delegation of Ministerial Functions) Order 2002.

The Petroleum Affairs division of the DCENR is responsible for maximising the State's benefits from gas exploration and production activities.

2.2 How are the State's mineral rights to develop natural gas reserves transferred to investors or companies ("participants") (e.g. licence, concession, service contract, contractual rights under Production Sharing Agreement?) and what is the legal status of those rights or interests under domestic law?

The 1960 Act provides that the Minister may grant various licences or leases to authorise exploration for and exploitation of "petroleum" in the State (under the 1960 Act "petroleum" includes natural gas). The following authorisations may be granted by the Minister under the 1960 Act:

- petroleum prospecting licence (issued under section 9(1));
- undertaking to grant an exploration licence (issued under section 7(1));
- exploration licence (issued under section 8(1));
- undertaking to grant petroleum lease (issued under section 10(1));
- petroleum lease (issued under section 13(1)); and
- reserved area licence (issued under section 19(1)).

These authorisations are discussed in more detail at question 2.3.

2.3 If different authorisations are issued in respect of different stages of development (e.g., exploration appraisal or production arrangements), please specify those authorisations and briefly summarise the most important (standard) terms (such as term/duration, scope of rights, expenditure obligations).

- **Petroleum prospecting licence**

This licence is a non-exclusive licence, giving the holder the right to search for petroleum in any part of the Irish offshore which is not subject of a petroleum exploration licence, reserved area licence or petroleum lease granted to another party. The holder may undertake examinations, make borings, sink pits, remove water from old workings or move reasonable quantities of petroleum and other minerals for analysis. A prospecting licence may be granted for a period of 3 years from the date of issue. Where a licence has been granted for a period of less than 3 years, the Minister may grant a continuation of the licence beyond the period for which it was issued. However, the overall duration of the licence, including any such extension, may not exceed the maximum period of three years.

- **Licence undertaking**

A licence undertaking or "licensing option" is a non-exclusive licence, giving the holder the first right, exercisable at any time during the period of the option, to an exploration licence over all or part of the area covered by the option. The duration of a licensing option is normally for a period of 12 months but a longer or shorter period may be agreed for particular work programmes. The overall duration and option, including any extension that may be granted by the Minister may not exceed a maximum period of three years. The holder of the licensing option must be the holder of a petroleum prospecting licence during the full period of the licensing option. A fee is payable on the date of issue of the licensing option, and thereafter on the anniversary of the date of issue.

- **Exploration licence**

This licence vests in the licensee the exclusive right of searching for petroleum in the area covered by the licence. It does not confer on the licensee any right to enter the land for the purposes of exploration under the land without the landowner's prior consent. The licensee may do all such things as it considers necessary or desirable for the purpose of ascertaining the character, extent or value of the petroleum in the licensed area, including carrying out examinations, making borings, sinking pits, removing water from old workings and removing reasonable quantities of petroleum and other minerals for testing. There are three categories of offshore exploration licence: a standard exploration licence for water depth up to 200m; a deep water exploration licence for water depths exceeding 200m; and a frontier exploration licence for areas so specified by the Minister. For standard and deep water exploration licences the holder is obliged to carry out a work programme which must include the drilling of at least one exploration well in the first phase. For a frontier exploration licence the holder must commit to at least one exploration well in order to proceed to second phase. A

standard exploration licence is valid for six years, a deep water exploration licence for nine years and the duration of a frontier exploration licence may vary, but shall not be less than 12 years.

- **Lease undertaking**

If the holder of an exploration licence discovers petroleum and if it appears to the licensee that such discovery may be commercial, the Licensing Terms require that the licensee notify the Minister within a period ending no later than six months after the completion of drilling operations on the exploration well that made the discovery. If the licensee is unable to subsequently confirm that the discovery is commercial but is of the opinion that it may become so and the Minister concurs, the Minister shall, following an application from the licensee not later than three months before the expiry of the exploration licence or licensing option (together with an application fee), enter into an undertaking with the licensee to grant a petroleum lease in relation to that part of the licensed area which contains the discovery. The holder of a lease undertaking is required to hold a petroleum prospecting licence, which will govern activities under the lease undertaking.

- **Reserved area licence**

These licences are granted to holders of petroleum leases, in respect of a specified area adjacent to or surrounding the leased area which is not the subject of an authorisation other than a petroleum prospecting licence. The reserved area licence vests in the licensee the same rights as if the licensee were the holder of an exploration licence in respect of the area to which the licence relates. The terms and conditions on which a reserved area licence is granted are identical to those applicable in respect of an exploration licence.

- **Petroleum lease**

A petroleum lease may be issued by the Minister pursuant to section 13 of the 1960 Act. The Licensing Terms details the conditions in which the Minister is prepared to issue a petroleum lease. However, experience shows that once the Minister and the applicant come to negotiate the petroleum lease, it may contain a number of clauses in addition to those set out in the Licensing Terms. The Licensing Terms provide that the term of the petroleum lease will be determined on a case-by-case basis and regard will be had of the likely production profile of the field. Extension of the lease may be provided for so long as 12 months' notice is given to the Minister. Under the standard-form petroleum lease, a developer is required to obtain the Minister's approval of a plan of development prior to the commencement of commercial production operations and must comply with the plan of development for the duration of the lease. The plan of development must, *inter alia*, contain a production profile for the relevant gas field.

2.4 To what extent, if any, does the State have an ownership interest, or seek to participate, in the development of natural gas reserves (whether as a matter of law or policy)?

The Irish Constitution provides that all natural resources, including all forms of potential energy, within the jurisdiction of the parliament and government established by the constitution and all royalties and franchises within that jurisdiction belong to the State, subject to all the states and interests therein for the time being lawfully vested in any person or body.

As stated above, the 1960 Act (as amended) provides that the ownership of all petroleum in the State is vested in the Minister and the Minister has the exclusive right to search for and extract petroleum in the State.

In terms of policy, the government's view as expressed in the Licensing Terms) is that direct State involvement in this area is not appropriate. The Licensing Terms support the participation of competent private sector operators in the search for natural gas.

2.5 How does the State derive value from natural gas development (e.g. royalty, share of production, taxes)?

In Ireland there are no production-related royalties. It will generally be a condition of all authorisations granted by the Minister, that the applicant be chargeable to tax in accordance with the laws of Ireland in respect of profits, income and capital gains arising from the operation conducted in the offshore area to which the authorisation applies, and that the applicant will continue to be so chargeable for the full period for which the authorisation is held.

Profits and gains arising from petroleum development are subject to corporation tax at a rate of 25%, and to capital gains tax. Any finds made under petroleum leases that follow on from new exploration licences, granted after 1 January 2007, may also be subject to an additional profit resource rent tax of 5-15%, depending on the profit ratio of the field. Irish law does, however, provide a number of tax reliefs.

2.6 Are there any restrictions on the export of production?

The Licensing Terms provide that all petroleum produced shall be sold by, and payment made to, a person resident in Ireland. The sale must be conducted on arm's length commercial basis.

2.7 Are there any currency exchange restrictions, or restrictions on the transfer of funds derived from production out of the jurisdiction?

There are no such restrictions.

2.8 What restrictions (if any) apply to the transfer or disposal of natural gas development rights or interests?

The 1960 Act provides that the lessee under a petroleum lease may, with the consent of the Minister, assign the lessee's interest under that petroleum lease to another person.

The 1960 Act further provides that the licensee under an exploration licence, a petroleum prospecting licensing, or a reserved area licence may transfer the licence to another person with Ministerial consent. The Licensing Terms provides that the assignment or transfer of interests, directly or indirectly, wholly or partly, of any rights under an authorisation will not be permissible without the Minister's prior written consent. In giving his consent, the Minister is entitled to impose such conditions as he considers desirable.

2.9 Are participants obliged to provide any security or guarantees in relation to natural gas development?

The Licensing Terms provide that the Minister may, on granting of any of the relevant authorisations (discussed at question 2.3), or at any time thereafter, direct the authorisation holder to post a performance bond or guarantee.

2.10 Can rights to develop natural gas reserves granted to a participant be pledged for security, or booked for accounting purposes under domestic law?

Petroleum leases issued by the Minister have provided that the lessee must not encumber the lease or any facility without the prior written consent of the Minister.

2.11 In addition to those rights/authorisations required to explore for and produce natural gas, what other principal Government authorisations are required to develop natural gas reserves (e.g. environmental, occupational health and safety) and from whom are these authorisations to be obtained?

It may be necessary to submit an environmental impact statement to the Minister to obtain consent to construct, alter or improve any structure or works or remove any object or material from a designated area, by virtue of section 5(1) of the Continental Shelf Act 1968. Other environmental licences which may be required include an Integrated Pollution Prevention and Control ("IPPC") licence from the Environmental Protection Agency, a dumping at sea permit from the Minister and a work permit for dangerous activities from the Minister for Jobs, Enterprise and Innovation. Shale gas exploration / prospecting is a nascent industry in Ireland but authorisations that would be required for such projects include planning permission, IPPC and an EIS.

The 2010 Act (which has not yet been commenced in its entirety), confers statutory responsibility for the safety of oil and gas exploration and production on the CER. Under the 2010 Act, undertakings engaged in a "designated petroleum activity" will be required to obtain a safety permit issued by the CER and they will be required to prepare a safety case for CER approval. In addition, the 2010 Act prescribes a statutory duty on oil and gas undertakings to ensure that petroleum activities are carried on in such a manner as to reduce any risk to safety to a level that is as low as is reasonably practicable ("ALARP") and that petroleum infrastructure is designed, constructed, installed, maintained, modified, operated and decommissioned in such a manner as to reduce any risk to safety to a level that is ALARP. The Act also contains notification requirements in respect of "petroleum incidents" and the actions the CER may take following such incident.

2.12 Is there any legislation or framework relating to the abandonment or decommissioning of physical structures used in natural gas development? If so, what are the principal features/requirements of the legislation?

The Licensing Terms provide that the authorisation holder is responsible for making provision for and carrying out the abandonment of fixed facilities, as approved by the Minister. The authorisation holder must submit a written plan to the Minister for approval, specifying proposals for the abandonment, after operations in the area have ceased, of all fixed facilities relating to the operations. Ministerial conditions may be attached to the proposal submitted.

Where any operation carried out by an authorisation holder has been abandoned or discontinued, and it appears to the Minister that any bore hole, shaft or outlet used in connection with those operations is in such condition as to be likely to cause an accident, the Minister may (under section 18(1) of the 1960 Act) serve a notice on a licensee or lessee requiring him within a specified time, to cause the top or entrance of the bore hole, shaft or outlet to be covered so as to prevent accidents. Where an authorisation holder fails to comply with such notice, the Minister may take such action as outlined in the notice.

The Dumping at Sea Act 1996 provides that the disposal of offshore installations or any substance or materials from any such installation is prohibited in the maritime area and where such disposal occurs, the person disposing of the installation, any person permitting such disposal, the person in charge of and the owner of the offshore installation concerned shall each be guilty of an offence. The disposal of radioactive substances or material and toxic and/or harmful or noxious substances is also prohibited. The Minister may grant dumping at sea permits to authorise dumping.

The 2010 Act requires the CER to design and implement a risk-based Petroleum Safety Framework, which will describe the system the CER will use to regulate petroleum undertakings with respect to safety. It will describe what activities and infrastructure will be regulated and how these will be regulated and it will include activities related to each stage of the lifecycle of petroleum infrastructure (including decommissioning). It will also include the systems and procedures to be operated by the CER in regulating these activities and infrastructure, including a permissioning regime and an ongoing system for audit and inspection.

2.13 Is there any legislation or framework relating to gas storage? If so, what are the principle features/requirements of the legislation?

Pursuant to section 16(1) of the Gas (Interim) (Regulation) Act 2002 (the "2002 Act"), licences to operate a natural gas storage facility for the purposes of a storage business are granted by the CER. The terms and conditions of the storage licence issued by the CER will also regulate the licensed activity. Pursuant to section 10A of the 1976 Act, arrangements for taking gas from the storage facility are the same as those that apply in respect of all other entry points on the transportation system (see question 4.1).

3 Import / Export of Natural Gas (including LNG)

3.1 Outline any regulatory requirements, or specific terms, limitations or rules applying in respect of cross-border sales or deliveries of natural gas (including LNG).

See question 2.6.

4 Transportation

4.1 Outline broadly the ownership, organisational and regulatory framework in relation to transportation pipelines and associated infrastructure (such as natural gas processing and storage facilities).

Since 4 July 2008 (previously the role was carried out by networks business of BGÉ) Gaslink Independent System Operator Limited ("Gaslink") has been the transmission system operator and distribution system operator, and is responsible for operating, maintaining and developing Ireland's natural gas transmission and distribution systems.

Gaslink has been established as an independent subsidiary of BGÉ, in compliance with the unbundling requirements of Directive 2003/55/EC (which has since been repealed and replaced by Directive 2009/73/EC concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (the "Third Gas Directive")). BGÉ continues to own Ireland's gas transmission and distribution system.

Gaslink is responsible for the continuing development of the contractual framework governing the provision of services on the gas network. This process involves active industry consultation and approval by the CER.

The main contract is the Code of Operations which governs the relationship between Gaslink and the respective natural gas shippers. Shippers wishing to use the system sign up to the Code of Operations and associated agreements by way of a framework agreement. The Code of Operations outlines the rights and responsibilities of each party that haves acceded to the Code and that is involved in the transportation of natural gas through the

transmission and distribution systems, and sets out the working principles relating to (among other things) capacity, balancing, allocations, nominations, measurement and maintenance.

The primary function of Gaslink is to ensure the secure, reliable and efficient operation of the transmission and distribution systems under economic conditions and with due regard to the environment. Gaslink is also responsible for the planning and development of the network, including the preparation of a seven-year development plan and a five-year price control plans.

The 2010 Act will have significant practical implications (once fully implemented) with respect to the processing of natural gas by undertakings involved in the extraction of natural gas (see questions 2.11 and 2.12).

4.2 What Governmental authorisations (including any applicable environmental authorisations) are required to construct and operate natural gas transportation pipelines and associated infrastructure?

Section 39(A)(I) of the 1976 Act provides that a person, including BGÉ, shall not without the consent of the CER, construct a pipeline (other than an upstream pipeline) on, over or under the surface of land or of any seabed that is situated in the territorial seas of the Irish State or a designated area (as defined under the Continental Shelf Act, 1968). Section 40 of the 1976 Act provides that a person must not construct or operate an upstream pipeline without the consent of the Minister.

4.3 In general, how does an entity obtain the necessary land (or other) rights to construct natural gas transportation pipelines or associated infrastructure? Do Government authorities have any powers of compulsory acquisition to facilitate land access?

The 1976 Act provides holders of consents with the right to apply, in the case of transmission and distribution pipelines, to the CER and, in the case of upstream pipelines (see section 32), to the Minister (or, in the case of transportation or storage facilities deemed to be of strategic infrastructure, to An Bord Pleanala (the Planning Board)), for an order to require compulsorily any land or right over land required for the purposes of pipeline construction. The second schedule to the 1976 Act (as amended) sets out the procedures involved in the compulsory acquisition process. The 1976 Act also contains provisions that impose obligations on all persons proposing the construction of pipelines in regard to the submission of EIAs.

Section 23(1) of the 1960 Act provides that whenever the Minister is of the opinion that it is necessary for the efficient or convenient exploitation of petroleum to acquire any land or any ancillary right, the Minister with the consent of the Minister for Finance may by order compulsorily acquire, either permanently or temporarily, such land or such ancillary rights.

4.4 How is access to natural gas transportation pipelines and associated infrastructure organised?

There is a general obligation on Gaslink to allow TPA to the network. The TPA system is one of regulated access, based on published tariffs.

TPA is available to certain categories of gas customers who have the right to source their own supplies of gas from a supplier of their choice and have it transported by BGÉ on their behalf through the BGÉ network. Persons eligible for TPA to the transportation system include holders of natural gas licences; holders of petroleum leases; a person in respect of whom an order has been made under section 2(1) of the Gas Amendment Act 1987 (i.e., local gas suppliers); operators of gas-fired generating stations; and customers purchasing natural gas not exclusively for their own household use). The suppliers are, in the context of gas transportation, known as shippers. Shippers may operate on behalf of eligible customers or may be eligible customers in their own right (since 1 July 2007 any person may be an "eligible customer" for the purposes of gaining access to the natural gas network in Ireland (section 17(2) Energy (Miscellaneous Provisions) Act 2006).

Section 10(A) of the 1976 Act provides the framework for the granting of such rights of access to the natural gas network in Ireland.

In accordance with section 13 of the 2002 Act, all holders of natural gas licences are obliged, where appropriate, to publish codes of operation for the facilities in respect of which they have been granted a licence. Such codes are subject to the approval of the CER and the CER may issue directions to the licensee regarding the matters to be specified in the code. As outlined in the answer to question 4.1 above, Gaslink is responsible for the development of the contractual framework governing the provision of services on the gas network. The main contract is the Code of Operations which governs the relationship between the Operator and the Shipper. Shippers wishing to use the system sign-up to the Code of Operations and associated agreements through a Framework Agreement. Holders of Shipper licences that have booked capacity under the Code of Operations have a right to inject gas into, or take gas from, the natural gas system.

4.5 To what degree are natural gas transportation pipelines integrated or interconnected, and how is co-operation between different transportation systems established and regulated?

There are two sub-sea interconnector pipelines connecting the Irish and GB systems, and the South-North Pipeline connects the Irish and Northern Irish systems. The interface between the systems is governed by private commercial arrangements.

See question 11.1 in relation to the "Common Arrangements for Gas" project ("CAG") which may involve the cross-border harmonisation of transmission system regulation, and which may affect the interface between the RoI and NI systems.

4.6 Outline any third-party access regime/rights in respect of natural gas transportation and associated infrastructure. For example, can the regulator or a new customer wishing to transport natural gas compel or require the operator/owner of a natural gas transportation pipeline or associated infrastructure to grant capacity or expand its facilities in order to accommodate the new customer? If so, how are the costs (including costs of interconnection, capacity reservation or facility expansions) allocated?

See question 4.4.

By section 10(A)(6) of the 1976 Act, the CER may require a pipeline operator to expand its system in order to accommodate new customers. If an eligible customer applies to the pipeline operator to have the operator transport his or her gas on his or her behalf on the operator's pipeline, the operator may not refuse unless it does not have sufficient capacity and it is uneconomical, or the eligible customer has no connection to the pipeline and the customer is not willing to bear the cost of such connection.

4.7 Are parties free to agree the terms upon which natural gas is to be transported or are the terms (including costs/tariffs which may be charged) regulated?

No. Each pipeline operator must submit a statement of charges to the CER for its approval, under section 10A(17)(a) and (b) of the 1976 Act. The CER may give directions to the relevant operator in respect of those charges and the operator must comply with the direction. Section 10A(3) of the 1976 Act provides that where an eligible customer applies to a pipeline operator to have the operator transport gas on his or her behalf through the operator's pipelines, the operator shall enter into an agreement with that person. An offer made by the operator in these circumstances may include, where connection to the pipeline of the operator is required, any charges for connection.

5 Transmission / Distribution

5.1 Outline broadly the ownership, organisational and regulatory framework in relation to the natural gas transmission/distribution network.

Under the European Communities (Internal Market in Natural Gas) (BGÉ) Regulations 2005 (SI No 760 of 2005) (as amended by the European Communities (Internal Market In Natural Gas) (BGE) (Amendment) Regulations 2007 and the European Communities (Internal Market in Natural Gas) (BGE) (Amendment) Regulations 2008), the Irish Government was required to establish an independent system operator for Ireland to facilitate competition in supply in furtherance of the requirements of Directive 2003/55/EC concerning common rules for the internal market in natural gas (which has since been repealed and replaced by the Third Gas Directive), and in 2008 Gaslink was formally established as the system operator, and BGÉ as the system owner, of the BGÉ transportation system. The networks business unit of BGÉ will continue to carry out the day-to-day operations of the system under the direction of Gaslink. An Operating Agreement between Gaslink and BGÉ sets out the relationship between system operator and system owner. Gaslink's licence includes a requirement to submit a long term development plan to the CER each year which acts as a formal input into the gas capacity statement.

The Transportation business unit of BGÉ provides transportation services on behalf of Gaslink, provides access to gas pipeline system for all shippers on behalf of Gaslink and collects revenues in respect thereof.

In 2010, the DCENR decided that BGÉ would adopt the ITO unbundling model, in compliance with the Third Gas Directive (see question 11.1 in relation to the Regulations implanting certain provisions of the Third Gas Directive). As BGÉ own assets in the UK, Northern Ireland and Ireland, they will need to be certified by the regulators in each jurisdiction.

5.2 What Governmental authorisations (including any applicable environmental authorisations) are required to operate a distribution network?

The operator of a distribution network requires a distribution system operation licence, issued by the CER under section 16 of the 2002 Act.

5.3 How is access to the natural gas distribution network organised?

Access to the distribution system is organised on the same basis as for the transmission system (see question 4.4).

5.4 Can the regulator require a distributor to grant capacity or expand its system in order to accommodate new customers?

Yes. CER can require a distributor to expand its system to accommodate new customers (section 10(A)(6) of the 1976 Act).

5.5 What fees are charged for accessing the distribution network, and are these fees regulated?

See question 4.7 above. The CER may issue directions regarding, and review, the tariffs to be applied in respect of TPA to the distribution network.

5.6 Are there any restrictions or limitations in relation to acquiring an interest in a gas utility, or the transfer of assets forming part of the distribution network (whether directly or indirectly)?

There are restrictions relating to anti-competitive practices. There are separate requirements relating to notification of a change of control to the Minister in the standard petroleum lease. Section 8(6) of the 1976 Act (as amended), provides that where BGÉ proposes to transfer to another person any interest in a pipeline or part thereof, the prior consent of the Minister (approved by the Minister for Finance) will be required. The Minister may attach conditions to any such consent.

6 Natural Gas Trading

6.1 Outline broadly the ownership, organisational and regulatory framework in relation to natural gas trading. Please include details of current major initiatives or policies of the Government or regulator (if any) relating to natural gas trading.

The Irish regulatory framework governs physical transportation and delivery of natural gas, rather than "natural gas trading" in the more general sense.

In relation to physical delivery, Bord Gáis Energy (the energy supply business of BGÉ) is the major domestic gas supplier. The natural gas retail market was opened fully to competition on 1 July 2007 (competition in the retail gas market for industrial and commercial customers has been in place since 2004). Other market participants include Airtricity, Electric Ireland, Flogas Energia, Phoenix Energy and Vayu.

The 2002 Act provided for the transfer of certain regulatory functions from the Minister to the CER. A licence to supply gas may be granted by the CER to any person under the 2002 Act. Furthermore, the 2002 Act amended the existing duties and functions of the CER to reflect its extended remit. The CER is obliged under the 2002 Act to advise the Minister on the development of the gas sector, promote competition in the sector and to have regard to ensuring that there is sufficient capacity in the natural gas system to meet expected demand.

Developments to the transmission system by BGÉ are primarily demand-led extensions or reinforcements to the onshore system.

The proposed Shannon LNG terminal and CAG, when developed, are likely to affect the retail market for natural gas in Ireland (see question 1.1 and 11.1).

6.2 What range of natural gas commodities can be traded? For example, can only "bundled" products (i.e., the natural gas commodity and the distribution thereof) be traded?

There are no legal restrictions on the trading of non-bundled products. Customers have the choice of either obtaining a bundled product from suppliers or obtaining TPA to the system and shipping gas purchased at one of the entry points to the Irish system to their own premises (where they are licensed to do so).

7 Liquefied Natural Gas

7.1 Outline broadly the ownership, organisational and regulatory framework in relation to LNG facilities.

The CER may issue a licence to operate an LNG facility (section 16(1) of the 2002 Act). There is no LNG facility currently operating in Ireland.

7.2 What Governmental authorisations are required to construct and operate LNG facilities?

An LNG licence, environmental impact statement, planning permission, IPPC licence, and other environmental consents may be required. Having consulted with the Minister, the CER is obliged to establish and implement a natural gas safety regulatory framework (Section 9 of the Electricity Regulation Act, 1999 (as amended) (the "1999 Act")). That framework shall include a system for the periodic inspection and testing of all LNG facilities (as well as natural gas transmission and distribution pipelines and storage).

7.3 Is there any regulation of the price or terms of service in the LNG sector?

Yes, the Third Gas Directive requires that third parties shall be allowed access to "the transmission and distribution system and LNG facilities", on the basis of published non-discriminatory tariffs approved by the CER. The terms and conditions imposed by the CER in any LNG licence that it issues will also be relevant.

7.4 Outline any third-party access regime/rights in respect of LNG Facilities.

Section 10(A) of the 1976 Act provides the framework for the granting TPA in respect of LNG facilities in Ireland. The TPA regime for LNG facilities is the same as that which applies to transmission pipelines (see question 4.4).

8 Competition

8.1 Which Governmental authority or authorities are responsible for the regulation of competition aspects, or anti-competitive practices, in the natural gas sector?

The Competition Authority (the "Authority") is responsible for the regulation of competition in all sectors of the economy including the natural gas sector. The Competition Act, 2002 (as amended by the Competition Act, 2006) (the "Competition Act") empowers the Authority to study and analyse any practice or method of competition affecting the supply or distribution of goods, to carry out investigations into possible infringements of the competition rules (see question 8.2 below), to initiative civil or criminal proceedings for breach of the Competition Act that has occurred or may be occurring, either of its own initiative or pursuant to a complaint made by any person, to carry out market studies, and to publish guidance notices containing practical guidance, as regards compliance with the competition rules.

The CER is obliged under the terms of the 1999 Act, to promote competition in the supply of natural gas. It is a condition of the CER's standard gas supply licence that the licensee shall not prevent, restrict or distort competition or abuse any dominant market position it may have.

A co-operation agreement between the Authority and the CER has the objectives of facilitating co-operation, avoiding duplication, and ensuring, insofar as practicable, the consistency of decisions made or steps taken by each body.

The National Consumer Agency ("NCA") also monitors anti-consumer practices in retail markets (which includes the gas market). The merger of the NCA and the Competition Authority into a single regulatory authority, with responsibility for both consumer and competition law, is proposed under the Consumer and Competition Bill.

8.2 To what criteria does the regulator have regard in determining whether conduct is anti-competitive?

In determining whether or not conduct is anti-competitive, the Authority has regard to the criteria set out in sections 4 and 5 of the Competition Act, which are based on articles 101 and 102 of the Treaty on the Functioning of the European Union ("TFEU") respectively.

Section 4 of the Competition Act prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition in trade in any goods or services in the State or in any part of the State.

Section 5 of the Competition Act concerns abuse of dominance and prohibits any abuse by one or more undertakings of a dominant position in any market for goods or services in the State or in any part of the State.

8.3 What power or authority does the regulator have to preclude or take action in relation to anti-competitive practices?

The Competition Act provides that the Authority may undertake investigations either of its own initiative or pursuant to the complaint made to it by any person. In this regard, the Authority may carry out "dawn raids", summon witnesses, examine on oath and require the production of documents.

For constitutional reasons, the Authority does not have the power to impose fines directly. However it may bring either civil or criminal proceedings before the Courts, in respect of a breach of sections 4 or 5 of the Competition Act and/or Articles 101 and 102 of the TFEU. Civil sanctions, which may be sought by the Authority, include injunctions, and court declarations and criminal sanctions include fines or, in respect of the most serious "hardcore" (i.e. cartel) competition offences, imprisonment.

Summary criminal proceedings can be brought by the Authority or in more serious cases, proceedings on indictment may be taken by the Director of Public Prosecutions at the request of the Authority. The recently published Competition (Amendment) Bill 2011 will increase the maximum penalties for criminal convictions on indictment to a maximum fine (for either a company or an individual) of EUR 5 million (or up to 10 per cent of worldwide turnover, if greater) and a maximum term of imprisonment (for individuals) of 10 years.

In addition, any person (including third parties) who is aggrieved as a result of a breach of Section 4 or Section 5 of the Competition Act may take a civil action in either the Circuit Court or the High Court for certain prescribed reliefs.

In exercising its statutory functions under either the 1999 Act or the 2002 Act,, authorised officers of the CER also have power to conduct dawn raids on holders of gas licences. Under the 1999 Act, the CER may direct the holder of a licence to take such measures as are necessary to cease the contravention of a condition or to prevent a future contravention. The CER may also apply in a summary manner *ex parte* or on notice to the High Court for an order requiring a licence holder to discontinue or to refrain from specified practices. The High Court may make such order as it thinks fit and may confirm, revoke or vary a direction given by the CER.

8.4 Does the regulator (or any other Government authority) have the power to approve/disapprove mergers or other changes in control over businesses in the natural gas sector, or proposed acquisitions of development assets, transportation or associated infrastructure or distribution assets? If so, what criteria and procedures are applied? How long does it typically take to obtain a decision approving or disapproving the transaction?

Mergers or acquisitions in the natural gas sector are subject to review by the Authority (provided that the EC merger regulation does not apply), pursuant to part 3 of the Competition Act. The Authority has the power to block a transaction or clear it subject to conditions. The Competition Act provides that a "merger or acquisition" occurs where:

- two or more undertakings previously independent of one another merge;
- one or more individuals or other undertakings who or which control one or more undertakings, acquire direct or indirect control of the whole or part of one or more other undertakings;
- the result of an acquisition by one undertaking (the "First Undertaking") of the assets, including goodwill (or a substantial part of the assets) of another undertaking (the "Second Undertaking"), is to place the first undertaking in a position to replace (or substantially to replace) the Second Undertaking in the business or, as appropriate, the part concerned of the business in which that undertaking was engaged immediately before the acquisition; or
- a joint venture is created to perform, on an indefinite basis, all the functions of an autonomous economic entity.

The Authority must be notified of a merger in the following circumstances:

- the worldwide turnover of at least two of the undertakings involved in the transaction is not less than €40 million;
- each of at least two of the undertakings which are involved in the transaction carry on business in any part of Ireland (including Northern Ireland);
- any one of the undertakings turnover in the State is not less than €40 million; and
- the Authority clarified its understanding of the term "carries on business" as including undertakings either which: (a) have a physical presence in the island of Ireland and make sales or supply services to customers in the island of Ireland; or (b) without having a physical presence in the island of Ireland, have made sales into the island of Ireland of at least €2 million in the most recent financial year.

The Competition Act also provides that a merger or acquisition, which does not satisfy the financial thresholds outlined above, may be voluntarily notified by any of the parties (these generally arise in instances where the transaction would give rise to competition issues).

A merger, coming within the ambit of the Competition Act, must be notified to the Authority by each of the undertakings involved, within one month of the conclusion of the agreement or the making of a public bid. The substantive test for review is whether the merger would "substantially lessen competition" in the State.

The Competition Act provides for a two-tiered mode of assessment. The first phase provides that the Authority may within one month of the notification determine that the result of the merger or acquisition will not substantially lessen competition in markets for goods and services in Ireland. Where the parties submit proposals aimed at ameliorating the merger's effect on competition, the one-month time limit is extended to 45 days.

If the merger or acquisition raises substantial competition concerns, then the Authority may conduct a full investigation. In this instance, the Authority has four months from the date of notification to determine whether the proposed merger should be cleared, blocked or put into effect, subject to conditions.

9 Foreign Investment and International Obligations

9.1 Are there any special requirements or limitations on acquisitions of interests in the natural gas sector (whether development, transportation or associated infrastructure, distribution or other) by foreign companies?

The Licensing Terms provide that where the holder of an authorisation (these authorisations are discussed in question 2.3) is a foreign company, it must have a permanent representation in Ireland which is fully authorised to act for such company and to enter into binding commitments in its name. The authorisation holder must also be chargeable to tax in accordance with Irish tax law in respect of profits, income and capital gains arising from its operations in the offer area to which the authorisation relates. This position is the same for Irish and foreign companies.

9.2 To what extent is regulatory policy in respect of the natural gas sector influenced or affected by international treaties or other multinational arrangements?

Ireland (as a member of the European Union) is bound by European Union law. The main EU directive relevant to the Irish gas industry is the Third Gas Directive.

Ireland is also a signatory to the 1992 OSPAR Convention (1992 OSPAR Convention for the Protection of the Marine Environment of the North East Atlantic), the 1972 London Dumping Convention (1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter), UNCLOS (The United Nations Convention on the Law of the Sea 1982), two gas interconnector treaties with the United Kingdom and the Kyoto Protocol (Kyoto Protocol to the United Nations Framework

Convention on Climate Change). Accordingly, any decisions made by the Irish Government must comply with those conventions.

On 14 February 2008, the CER and NIAUR entered into a 'memorandum of understanding' on the development of the CAG project (see question 11.1).

10 Dispute Resolution

10.1 Provide a brief overview of compulsory dispute resolution procedures (statutory or otherwise) applying to the natural gas sector (if any), including procedures applying in the context of disputes between the applicable Government authority/regulator and: participants in relation to natural gas development; transportation pipeline and associated infrastructure owners or users in relation to the transportation, processing or storage of natural gas; and distribution network owners or users in relation to the distribution/transmission of natural gas.

The Licensing Terms provide that any dispute arising out of or in connection with the authorisation will be settled by arbitration, unless the authorisation holder and the Minister succeed in resolving the dispute among themselves. The arbitration proceedings will determine the measures which should be taken by the parties to end or remedy the damage caused by any breach of the terms of an authorisation. A party, wishing to institute arbitration proceedings must give notice to the other party of the disputed matter and of his intention to institute arbitration proceedings, unless the parties reach agreement within 30 days. If the matter is not settled within 30 days, then within 10 days thereafter, each party will appoint an arbitrator. The arbitrators must within 21 days of the appointment, appoint an umpire. The umpire and arbitrator sit together and the parties are bound by the majority's decision.

10.2 Is Ireland a signatory to, and has it duly ratified into domestic legislation: the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards; and/or the Convention on the Settlement of Investment Disputes between States and Nationals of Other States ("ICSID")?

Ireland is a signatory to and has ratified those conventions, both of which have been given effect in Irish law by the Arbitration Act 2010, subject to the provisions of that Act.

10.3 Is there any special difficulty (whether as a matter of law or practice) in litigating, or seeking to enforce judgments or awards, against Government authorities or State organs (including any immunity)?

No, there is not.

10.4 Have there been instances in the natural gas sector when foreign corporations have successfully obtained judgments or awards against Government authorities or State organs pursuant to litigation before domestic courts?

None that we are aware of, but there is no reason why a successful claim could not be made where the merits of the case so dictate.

11 Updates

11.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in Gas Regulation Law in Ireland.

On 14 February 2008, the CER and Northern Ireland Authority for Utility Regulation (together the "RAs") agreed a memorandum of understanding, in which they stated their objective of working together to establish "all-island" Common Arrangements for Gas whereby all stakeholders can buy, sell, transport, operate, develop and plan the natural gas market in Ireland and Northern Ireland effectively on an all-island basis. This followed the RAs' successful implementation of another all-island initiative, the Single Electricity Market, in November 2007.

The following key objectives were identified:

- operation of the gas transmission systems in Ireland and Northern Ireland on a single all-island network;
- a single approach to security of supply and a single approach to storage, LNG and system entry points;
- a common framework for regulation of retail markets including single supplier codes, a single change of supplier process, and single retail processes and systems;
- the purchase and sale of gas at the wholesale and retail levels in competitive markets; and
- benefits for end customers.

On 1 December, 2011, the Minister made the European Communities (Internal Market in Natural Gas and Electricity) Regulations 2011 (S.I. 630 of 2011) (the "Regulations") to give effect to:

- the Third Gas Directive (save for Articles 3, 41(1)(o) and (q) and Annex I to the Directive); and
- Articles 3(4), 7(2)(j), 7(2)(k), 26(3), 35(5), 36 and 37 (save for Article 37(n) and (p)), and Article 38, of EU Directive 2009/72/EC concerning common rules for the internal market in electricity.

The Regulations provide for the establishment of an Independent Transmission System Operator for gas, the enhancement of the CER's function in regard to the regulation of the electricity and gas markets and the imposition of obligations on transmission system operators, in compliance with the above Directives.

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