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Ireland

Alex McLean, Patrick McGovern and Geraldine Kearney

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Description of domestic sector

- 1 Describe the domestic natural gas sector, including the natural gas production, liquefied natural gas (LNG) storage, pipeline transportation, distribution, commodity sales and trading segments and retail sales and usage.

Approximately 25 per cent of Ireland's current energy needs are met by natural gas. While a slowdown in gas consumption growth patterns is expected over the coming years, gas demand for power generation is forecast to increase steadily until 2020. Historically, indigenous gas production in Ireland has been limited, with only the Kinsale Head gas field (including South West Kinsale and Ballycotton) and the adjacent Seven Heads gas field having reached commercial production. Production in Kinsale Head and the Seven Heads is expected to decline over the next few years. A petroleum lease has been granted in respect of the Corrib gas field off County Mayo. While the offshore development programme for Corrib was completed in September 2009, production has been delayed by ongoing issues with onshore routing.

The transportation and distribution system remains owned by the vertically integrated state-owned Bord Gáis Éireann (BGÉ). Pursuant to the European Communities (Internal Market in Natural Gas) (BGÉ) Regulations 2005, as amended by the European Communities (Internal Market in Natural Gas) (BGÉ) (Amendment) Regulations 2007 and the European Communities (Internal Market in Natural Gas) (BGÉ) (Amendment) Regulations 2008, Gaslink, an independent subsidiary of BGÉ, was established as the independent system operator (ISO) for the BGÉ transportation system (transmission and distribution system) in furtherance of the requirements of Directive 2003/55/EC concerning common rules for the internal market in natural gas (the Directive). The implications of the third energy package and in particular of Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC remain to be seen. However, it is anticipated that decisions in relation to further unbundling will be made in the context of the proposed creation of a single market for natural gas on the island of Ireland through the so-called Common Arrangement for Gas (CAG) project, which is the stated policy objective of the Commission for Energy Regulation (CER) and its Northern Ireland counterpart, the Northern Ireland Authority for Utility Regulation (NIAUR) (collectively the Regulatory Authorities).

Ireland's transportation system is connected to the UK transportation system via two sub-sea interconnectors from Moffat in Scotland, as well as through the North-South pipeline to Northern Ireland which is in turn linked to the UK through a sub-sea interconnector. Ireland is a net importer of gas and is expected to remain so for the foreseeable future.

Competition in the retail gas market for industrial and commercial customers has been in place since 2004, with full market opening of the Irish retail gas market taking place in July 2007. The power

sector share of total gas demand continues to grow and is currently approximately 65 per cent. Recent figures show a decline in total gas demand from the industrial and commercial sector, but a relatively constant total gas demand figure in the domestic sector.

- 2 What percentage of the country's energy needs are met directly or indirectly with natural gas and LNG? What percentages of the country's natural gas needs are met through domestic production and imported production?

Approximately 25 per cent of Ireland's total energy needs are met by natural gas. There is currently no operational LNG facility in Ireland. However, there is an operational gas storage facility in Kinsale and an import terminal for LNG is being developed by Shannon LNG. In 2009, imports from Scotland via the Moffat pipeline accounted for 94 per cent of the gas supply in Ireland. Increases in domestic production are expected from the Corrib gas field, which is expected to supply up to 60 per cent of Ireland's gas needs at peak production.

- 3 What is the government's policy for the domestic natural gas sector and which bodies set it?

Government policy for the gas sector is driven by the requirements of European market liberalisation packages, as well as a desire for greater fuel security by promotion of indigenous fuel sources. Government policy to date can be broadly summarised as the phased introduction of competition in gas supply, promotion of significant investment in new infrastructure and promotion of investment in exploitation of indigenous gas reserves. The current policy focus of the Regulatory Authorities is the CAG project.

Policy is set by the Department of Communications, Energy and Natural Resources (DCENR), which has overall policy responsibility for the gas sector. The gas policy division is responsible for development of policy on security of gas supply, on infrastructure development in the context of the government's objectives of promoting economic and regional development and enhancing social inclusion, and on north-south gas market developments in the context of promoting an all-island energy market.

Liberalisation of the gas sector has also seen the CER vested with powers as independent regulator for the downstream elements of the gas sector. Regulatory responsibility for the upstream elements of the sector remains the responsibility of the Petroleum Affairs Division of the DCENR.

Finally, the Irish legislature (the Oireachtas) is currently considering the Petroleum (Exploration and Extraction) Safety Bill 2010, the purpose of which is to confer statutory responsibility for the safety of oil and gas exploration and production on the CER.

Regulation of natural gas production

- 4 What is the ownership and organisational structure for production of natural gas (other than LNG)? How does the government derive value from natural gas production?

BGÉ was established pursuant to the Gas Act 1976 (the Gas Act) as a vertically integrated monopoly to own and operate the gas transmission and distribution system and undertake natural gas supply. In furtherance of the unbundling requirements of the EU's second energy package, Gaslink, an independent subsidiary of BGÉ, was established in 2008 as the ISO for the BGÉ transportation system. BGÉ owns the gas interconnectors connecting the Irish transportation system to the Transco system at Moffat in Scotland. Since 1999, a third-party access regime has been implemented allowing third parties to ship gas from Moffat and into the Irish system.

Private companies can participate in exploration for and production of natural gas pursuant to a licensing regime established by the Petroleum and Other Minerals Development Act 1960 (as amended; the POMD Act). The first indigenous natural gas produced in Ireland was from the Kinsale Head gas field and subsequently from the adjacent, South West Kinsale and Ballycotton gas fields off the south coast of County Cork. A petroleum lease in respect of the Kinsale Head gas field was granted on 7 May 1970 and the full output of the field was sold to BGÉ.

The only other development to have achieved commercial production in Ireland is the Seven Heads gas field. The petroleum lease in respect of this field was granted on 13 November 2002 and it began production in late 2003. The Seven Heads gas field is also located off the south coast of County Cork adjacent to the Kinsale Head gas field and makes use of the Kinsale Head processing facilities.

Ireland's only other petroleum lease was granted on 15 November 2001 in relation to the Corrib gas field off the west coast of County Mayo. Production at Corrib has not yet commenced owing to ongoing opposition to onshore elements.

The Irish government has sought to promote actively investment in indigenous fuel sources by creating favourable fiscal treatment of exploration and production. Ireland has abolished production-related royalties and has replaced them with a statutory regime for petroleum taxation. Holders of petroleum leases are required to remain tax-resident in Ireland for the duration of the lease.

- 5 Describe the statutory and regulatory framework and any relevant authorisations applicable to natural gas exploration and production.

Natural gas exploration and production activities are subject to a strict regulatory and licensing regime overseen by the DCENR, with the principal legislative framework for the regime set out in the POMD Act (and given practical effect by the Licensing Terms for Offshore Oil and Gas Exploration, Development and Production (2007) (the Licensing Terms)). No person may explore or prospect for petroleum in any area in Ireland unless he or she holds an appropriate prospecting or exploration licence or is a lessee under a petroleum lease. All licences and petroleum leases incorporate licensing terms and conditions, including environmental provisions, stipulated by the DCENR. When a commercial discovery has been established under an exploration licence, the licence holder must notify the minister for communication, energy and natural resources (the minister) and apply for a petroleum lease with a view to its development. Pursuant to 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. Among other things, the plan of development must contain a production profile for the relevant gas field.

Further considerations apply in the context of the ancillary infrastructure necessary to connect gas fields to the network. The regulatory framework in relation to transportation pipelines is set out in

question 7. Other relevant considerations in the context of natural gas exploration and production activities are the potential requirements for a foreshore licence under the Foreshore Act 1933 (as amended), the provisions of the Planning Acts 2000 to 2007 (which now include specific provisions in respect of infrastructure deemed to be of strategic importance to Ireland), the Continental Shelf Act 1968 (as amended) as well as applicable environmental legislation, including local legislation giving effect to the provisions of Directive 85/337/EEC of 27 June 1985 (as amended) (EIA Directive) on the assessment of the effects of certain public and private projects on the environment and Directive 92/43/EEC of 21 May 1992 (as amended) (Habitats Directive) on the conservation of natural habitats and of wild fauna and flora. Foreshore leases and licences are currently granted by the Department of Environment, Heritage and Local Government. Consents under the Continental Shelf Act are granted by the DCENR. Applications for planning permission in respect of developments of strategic importance are made directly to An Bord Pleanála (the Planning Board).

Regulation of natural gas pipeline transportation and storage

- 6 Describe in general the ownership of natural gas pipeline transportation and storage infrastructure.

State-owned BGÉ owns the gas transmission and distribution system. Gaslink, a subsidiary of BGÉ, operates the gas transmission and distribution system. As a result of amendments to the Gas Act, it is now open to third parties to construct pipeline infrastructure and gas storage facilities.

- 7 Describe the statutory and regulatory framework and any relevant authorisations applicable to the construction, ownership, operation and interconnection of natural gas transportation pipelines, and storage.

Section 39A of the Gas Act provides that a person must not construct a downstream pipeline without the consent of the CER, and section 40 of the Gas Act provides that a person must not construct or operate an upstream pipeline without the consent of the minister. Most recently, consent under section 39A was granted to Shannon LNG to construct a gas pipeline connecting the LNG regasification terminal that it proposes for the southern shore of Shannon Estuary to the national gas grid at Foynes, County Limerick. A refusal by the CER to consent to the construction of a downstream pipeline may be appealed to a special appeal panel established by the minister on request pursuant to the Electricity Regulation Act 1999, as amended (the ER Act). Decisions of the appeal panel may be challenged by judicial review. A refusal by the minister to consent to the construction or operation of an upstream pipeline may be challenged by judicial review.

The Gas Act makes provision for a person to apply to the minister or, in the case of strategic gas infrastructure, to An Bord Pleanála, for a compulsory acquisition order over land required in connection with the construction of a downstream pipeline or the construction and operation of an upstream pipeline. Furthermore, BGÉ may apply to the minister or An Bord Pleanála for a compulsory acquisition order over land required in connection with the performance of its functions, the provision by a third party of a pipeline for the supply of natural gas to BGÉ or the provision of a gas supply pipeline to a third party by BGÉ. Pursuant to section 16(1) of the Gas (Interim) (Regulation) Act 2002 (as amended) (the GIR Act), a person must not operate a transmission pipeline or engage in the storage of natural gas without a natural gas licence issued by the CER. BGÉ was granted a transmission licence by the CER in 2004, which transferred to Gaslink in 2008 by operation of law. BGÉ was granted a transmission system owner licence in 2008. Upstream pipelines are excluded from the definition of transmission pipelines and therefore require no licence under the GIR Act.

Licences to operate a natural gas storage facility for the purposes of a storage business are granted by the CER pursuant to section 16(1) of the GIR Act. The CER issued a licence in respect of the operation of a storage facility offshore at Inch, County Cork, in May 2006. 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 and are outlined in a Code of Operations agreed between the CER and BGÉ (see question 9).

- 8** How does a company obtain the land rights to construct a natural gas transportation or storage facility?

As noted in response to question 7, the holder of a consent to construct a gas pipeline has the right to apply to the minister or, in the case of transportation or storage facilities deemed to be of strategic importance, to An Bord Pleanála for an order to acquire compulsorily any land or right over land required for the purposes of pipeline construction.

- 9** How is access to the natural gas transportation system and storage facilities arranged? How are tolls and tariffs established?

The statutory framework for third-party access to the gas transportation system is contained in section 10A of the Gas Act. Third-party access to the transportation system is one of regulated access, based on published tariffs, with the CER having the right to approve such tariffs or the methodologies used for their calculation in advance.

On 25 February 2005, the CER approved a new Code of Operations (the Code) for the Irish gas market for publication by BGÉ. The Code incorporates transmission and distribution operations and provides increased flexibility with a change from a point-to-point to an entry and exit gas transportation regime. The Code deals with nomination and allocation arrangements, balancing and shipper registration, as well as gas specification and quality. The types of capacity available to a shipper pursuant to the Code are entry capacity, back-up entry capacity, exit capacity ((LDM) (Large Daily Metered) DM (Daily Metered) NDM (Non-daily Metered) exit capacity) in the transmission system and supply point capacity (LDM, DM and NDM Supply Point Capacity) in the distribution system. The shipper may reserve primary capacity directly from the transporter. Exit capacity may be booked for a duration that is long-term or short-term. The transporter is obliged to ensure the physical balance of the transportation system. Shippers defray the cost of balancing gas pursuant to the Code and are liable to pay balancing charges where they fail to balance their daily inputs and offtakes. A version 2.0 updating the Code to include all approved Code modifications to 1 October 2007, including modifications to facilitate the introduction of short-term capacity products on the transmission network, has been published.

Persons eligible for third-party access 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 (ie, local gas suppliers); operators of gas-fired generating stations; and customers purchasing natural gas not exclusively for their own household use. The Energy (Miscellaneous Provisions) Act 2006 (the 2006 Act) expands the definition of such eligible customers to include any person.

Historically Ireland has not had storage facilities. However, in 2005, the CER approved a Code modification permitting certain shippers to make use of interconnector linepack by injecting gas on weekends and withdrawing it during the following week. In 2006, the CER issued a storage licence for a storage facility at the South West Kinsale field, the first such facility in Ireland. A Code modification established Inch as a bi-directional connected systems point and an Inch connected systems agreement was executed. This facility has been available to third parties since 1 June 2006. Flows from the Shannon LNG project are planned to commence in 2012 to 2013.

- 10** Can customers, other natural gas suppliers or an authority require a pipeline or storage facilities owner or operator to expand its facilities to accommodate new customers? If so, who bears the costs of interconnection or expansion?

Pursuant to section 10A of the Gas Act, the CER can require a pipeline operator to expand its system to accommodate new customers. If eligible customers apply to the pipeline operator to have the operator transport their gas on their behalf in the operator's pipeline, the operator may not refuse unless the operator has insufficient capacity and it is not economical for the operator to carry out the necessary enhancements, or the eligible customers have no connection to the pipeline and are not willing to bear the cost of such a connection.

- 11** Describe any statutory and regulatory requirements applicable to the processing of natural gas to extract liquids and to prepare it for pipeline transportation.

There are no statutory requirements for the processing of natural gas. Part G, section 1.1 of the Code, however, contains provisions dealing with quality of natural gas to be delivered to the Irish transportation system. The 2006 Act amends the ER Act to empower the CER to regulate the activities of natural gas undertakings and natural gas installers with respect to safety (see question 23). It is also a condition of existing system owner and operator licences that the licensee comply with requirements relevant to the safe operation of the relevant business.

- 12** Describe the contractual regime for transportation and storage.

Pursuant to section 10A of the Gas Act, the CER may direct the matters to be specified in an agreement for third party access, including terms and conditions relating to price. These terms are reflected in the Code and shippers are bound to comply with such terms by execution of a pro forma framework agreement. The CER has directed that the operational gas storage facility in Kinsale was not 'technically or economically necessary for providing efficient access to the natural gas system for the supply of customers', as set out in section 10A of the Gas Act 1976 (as amended) and therefore not subject to regulation of third-party access. The CER is currently consulting on an application made by Shannon LNG for an exemption from regulated third-party access, pursuant to the Directive.

In 2007, the CER decided that a contractual relationship should exist between the transporter and end-user at large daily metered and daily metered sites, following which the transporter provided customers with a final draft CER approved agreement.

Regulation of natural gas distribution

- 13** Describe in general the ownership of natural gas distribution networks.

Pursuant to section 2(1) of the Gas (Amendment) Act 1987, functions relating to the transmission, distribution and supply of gas in a specific area may be conferred on a person by an order issued by the CER. Such orders conferred these functions on BGÉ only until 2004, following which rights were also conferred on Flogas in respect of certain parts of Galway, Mayo, Roscommon, Westmeath and Offaly by a series of statutory instruments.

- 14** Describe the statutory and regulatory structure and authorisations required to operate a distribution network. To what extent are gas distribution utilities subject to public service obligations?

Pursuant to section 16(1) of the GIR Act, the CER may license a person to operate a natural gas distribution system. The CER granted BGÉ a distribution licence that came into force on 7 October 2004. This licence transferred to Gaslink by operation of law in 2008.

Pursuant to section 21 of the GIR Act, the minister may direct the CER to impose on such classes of natural gas undertakings as may be specified in the order in the general economic interest, public service obligations which may include security, including security of supply and technical or public safety, regularity, quality and price of supplies and environmental protection.

- 15** How is access to the natural gas distribution grid organised? Describe any regulation of the prices for distribution services. In which circumstances can a rate or term of service be changed?

Since the implementation of the new Code on 1 April 2005, access to the distribution system is organised on the same basis as access to the transmission system (see question 9).

Pursuant to section 10A(17)(a) and (b) of the Gas Act, each pipeline operator must submit a statement to the CER for approval setting out the basis for its charges for the transportation of natural gas and for connection to its pipeline. The CER may give directions to a pipeline operator in respect of the basis for these charges and the operator must comply with the direction.

Section 10A(3) of the Gas 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.

To change its statement setting out the basis for its charges, the pipeline operator must obtain the prior approval of the CER in accordance with section 10A(17)(a) above.

- 16** May the regulator require a distributor to expand its system to accommodate new customers? May the regulator require the distributor to limit service to existing customers so that new customers can be served?

Pursuant to section 10A of the Gas Act, the CER can require a distributor to expand its system in order to accommodate new customers. If an eligible customer applies to the pipeline operator to have the operator transport gas on his or her behalf, the operator may not refuse unless the operator has insufficient capacity and it is not economical for the operator to carry out the necessary enhancements, or the eligible customer has no connection to the pipeline, and the customer is not willing to bear the cost of such a connection.

The CER has no express power to require a distributor to limit service to existing customers to serve new customers.

- 17** Describe the contractual regime in relation to natural gas distribution.

Since the implementation of the new Code on 1 April 2005, access to the distribution system is organised on the same basis as access to the transmission system. See question 12.

Regulation of natural gas sales and trading

- 18** What is the ownership and organisational structure for the supply and trading of natural gas?

Full market opening in the Irish natural gas market took place on 1 July 2007. BGÉ continues to be the dominant domestic gas supplier, although Flogas has been appointed to supply gas to domestic customers in a number of newly connected towns. New market entrants in the non-domestic sector include Airtricity, ESB Independent Energy, Energia, a subsidiary of Viridian Group, the largest independent electricity supplier in Ireland, Gazprom, Phoenix Energy and Vayu. Having been appointed in 2006 as a supplier of last resort for the gas retail market on a transitional basis for a period of two years

or until the introduction of an all-island energy market, Bord Gáis Energy Supply (BGÉS) was appointed by the CER as supplier of last resort pursuant to section 21A of the GIR Act (as amended), such appointment taking effect in February 2008 and to continue until such time as the CER decides otherwise.

- 19** To what extent are natural gas supply and trading activities subject to government oversight?

By virtue of the GIR Act, the CER has been vested with responsibility for independent regulation of the gas sector. The CER has responsibility for licensing an individual or organisation to supply or ship gas or both. Shippers under the Code must hold a licence.

Pursuant to section 9(4)(a) of the ER Act, the minister and the CER have a specific obligation to promote competition in the supply of natural gas in accordance with that Act.

- 20** How are physical and financial trades of natural gas typically completed?

There is no formal market for gas trading in Ireland. Since the introduction of a third-party access regime, 'shadow' trading has taken place at the GB National Balancing Point for all gas brought into Ireland from outside or for gas purchased in Ireland from third parties. With the introduction of entry-exit capacity under the Code, an Irish Balancing Point (IBP) has been introduced. The IBP is a notional point on the gas system where shippers may trade entry-paid gas. The introduction of entry-exit balancing means that shippers may now balance on a portfolio basis, rather than on the previous basis of individual contracts.

- 21** Must wholesale and retail buyers of natural gas purchase a bundled product from a single provider? If not, describe the range of services and products that customers can procure from competing providers.

Franchise customers continue to have to purchase a bundled product from BGÉ. Nevertheless, eligible customers have the choice of obtaining a bundled product from another supplier or obtaining third-party access to the system and shipping gas purchased at one of the entry points to the Irish system or arranging gas to be delivered to their own premises using their transportation rights. To facilitate full market opening by July 2007, the 2006 Act expands the definition of eligible customers to mean 'any person'.

Regulation of LNG

- 22** What is the ownership and organisational structure for LNG, including liquefaction and export facilities and receiving and regasification facilities?

Section 16(1) of the GIR Act (as amended) provides that the CER may grant a licence for the operation of an LNG facility or storage facility. There is no legal requirement for the separation of ownership and operation of gas storage facilities. The third-party access regime in respect of LNG facilities and natural gas storage facilities is the same as that which applies to transmission and distribution pipelines. The CER is currently consulting on an application made by Shannon LNG for an exemption for regulated third-party access pursuant to the Directive.

- 23** Describe the regulatory framework and any relevant authorisations required to build and operate LNG facilities.

See question 22. In addition, under section 9 of the ER Act, the CER, having consulted with the minister, is obliged to establish and implement a natural gas safety regulatory framework to include a system for the periodic inspection and testing of all natural gas transmission and distribution pipelines, storage and LNG facilities.

24 Describe any regulation of the prices and terms of service in the LNG sector.

See above.

Mergers and competition

25 Which government body may prevent or punish anti-competitive or manipulative practices in the natural gas sector?

Competition law in Ireland is contained in the Competition Act, 2002 as amended by the Competition (Amendment) Act 2006 (together the Competition Act) and enforced through proceedings in the Irish courts. Proceedings may be taken by the Irish Competition Authority (the Competition Authority), the Director of Public Prosecutions and private parties.

The Competition Authority may undertake investigations into suspected infringements of the Competition Act, either on its own initiative or following a complaint. The Competition Authority may not make a binding decision of its own establishing an infringement of the Competition Act; rather, the Competition Authority must take either civil or criminal proceedings in the courts to establish an infringement of the Competition Act.

Under the ER Act, the CER must have regard to the need to promote competition in the supply of natural gas. The CER must also monitor licensees to ensure that they conform to all conditions and requirements of their licences, including obligations not to prevent, restrict or distort competition or abuse a dominant position.

The Competition Authority has entered into a cooperation agreement with the CER. The stated purposes of the agreement are to facilitate cooperation between the Competition Authority and the CER in the performance of their respective functions insofar as they relate to issues of competition between undertakings; to avoid duplication of activity by the Competition Authority and the CER; and, to ensure, as far as is practicable, consistency between decisions made or other steps taken by the Competition Authority and the CER. The National Consumer Agency monitors anti-consumer practices in retail markets including the gas market. On 14 October 2008, the minister for enterprise, trade and employment announced plans to merge the Competition Authority and the National Consumer Agency.

26 What substantive standards does that government body apply to determine whether conduct is anti-competitive or manipulative?

Irish competition law is modelled on European Community competition law. In particular, the competition rules contained in sections 4 and 5 of the Competition Act are based on articles 81 and 82 of the EC Treaty.

Section 4(1) of the Competition Act prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices that have as their object or effect the prevention, restriction or distortion of competition in Ireland. Section 6 of the Competition Act provides that an undertaking that enters into or implements an agreement or decision or engages in a concerted practice that is prohibited by section 4(1) or article 81(1) of the EC Treaty shall be guilty of a criminal offence. An agreement falling within section 4(1) but satisfying certain conditions set out in section 4(5), which are the same as criteria set out in article 81(3) of the EC Treaty, is not prohibited, however.

There is no longer a notification procedure for negative clearance or an exemption under article 81(3) of the EC Treaty or under the Competition Act. Section 4(3) provides that the Competition Authority may declare that certain categories of agreements, decisions or concerted practices comply with the conditions set out in section 4(5) and therefore are not prohibited under section 4(1). In addition to making declarations, the Competition Authority may publish notices containing practical guidance as to how the provisions of the Competition Act may be complied with.

Section 5(1) of the Competition Act prohibits the abuse by one or more undertakings of a dominant position in trade for any goods or services in Ireland or any part of Ireland. Section 7(1) provides that an undertaking that acts in a manner prohibited by section 5(1), or by article 82 of the EC Treaty, shall be guilty of a criminal offence. Examples of an abuse of a dominant position are set out in section 5(2)(a) to (d). Dominance has also been interpreted by the Irish High Court, which has applied the test developed by the courts of the European Communities.

27 What authority does the government body have to preclude or remedy anti-competitive or manipulative practices?

Competition rules are enforced through proceedings in the Irish courts. The proceedings may be taken by the Competition Authority, the Director of Public Prosecutions and private litigants. The Competition Act introduced a distinction between certain types of agreements that may be taken to infringe section 4(1). What is known as a 'hard-core' offence (eg, cartel-type activity) can attract the imposition of prison terms of up to five years, thus making such an offence arrestable, together with significant financial penalties. All other types of infringements of sections 4(1) and 5(1) could result in criminal or civil proceedings – or both – and, in this context, the imposition of significant financial penalties, but may not result in arrest or the imposition of prison terms.

To undertake an investigation, the Competition Authority may issue a witness summons to examine witnesses on oath and to obtain documentation. It may also undertake 'dawn raids' to enter premises (including vehicles and private dwellings by force if necessary) where it has first obtained a district court warrant. Authorised officers of the CER also have power to conduct dawn raids on holders of gas licences for the purposes of the CER exercising its functions under the ER Act or the Gas (Interim) (Regulation) Act, 2002.

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. To secure compliance with a direction, the CER may apply in a summary manner *ex parte* or on notice to the High Court for an order requiring the holder of a licence 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.

28 Does any government body have authority to approve or disapprove mergers or other changes in control over businesses in the sector or acquisition of production, transportation or distribution assets?

From 1 January 2003, mergers or acquisitions involving companies that carry on business on the island of Ireland and that fall within the terms of the merger provisions contained in the Competition Act must be notified to the Competition Authority and may only be implemented following clearance from the Authority.

The Competition Act provides that a merger or acquisition occurs if two or more undertakings, previously independent of one another, merge or one or more undertakings or individuals controlling an undertaking acquire control of another undertaking. The Competition Act also applies to certain asset acquisitions. The first two tests are modelled on the EC Merger Control Regulation. In addition, a full-function joint venture – namely, a joint venture that will perform on an indefinite basis all the functions of an autonomous economic entity – constitutes a merger or acquisition under the Competition Act. A merger or acquisition is notifiable where in the most recent financial year the worldwide turnover of each of two or more of the undertakings involved is not less than €40 million, each of two or more of the undertakings involved in the merger or acquisition carries on business in any part of the island of Ireland and the turnover in Ireland of any one of the undertakings involved is not less than €40 million. Special jurisdiction rules apply to media mergers and

Update and trends

The third energy package, and in particular Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC may well result in structural changes to the gas sector in Ireland.

Policy focus of the CER and NIAUR (the Regulatory Authorities) remains on the creation of a single market for natural gas on the island of Ireland through the so-called Common Arrangement for Gas (CAG) project. The Regulatory Authorities have consulted extensively on aspects of CAG, including the functions, structure and scope of work of the CAG systems operator. The Regulatory Authorities issued a joint capacity statement for 2009 and have formulated a single approach to gas quality for CAG. The final arrangements for CAG will

depend in part on the manner in which the unbundling obligations in the third energy package are implemented in Ireland and Northern Ireland. Pending these decisions, it is not yet clear when the CAG project will be substantially completed.

The Regulatory Authorities continue to work together on security of supply issues and a collective response to the forthcoming European Regulation concerning measures to safeguard security of gas supply and repealing Directive 2004/67/EC is anticipated.

The promotion of competition in the retail gas sector is a priority for the CER. The CER is currently conducting a review of the future of the Regulated Tariff Formula (RTF) offered by Bord Gáis Energy (BG Energy).

mergers of particular financial institutions. The Competition Act also provides that mergers or acquisitions that do not satisfy the financial thresholds may nonetheless be notified to the Competition Authority voluntarily by any of the parties involved.

The obligation to notify arises when a merger or acquisition is agreed or will occur if a public bid that is made is accepted. If the transaction is notifiable, each of the undertakings involved must notify the Competition Authority within one month after the conclusion of the agreement or the making of the public bid. The Competition Authority encourages joint notifications, although this is not required under the Competition Act. Failure to notify a transaction within the specified time limit is an offence and the persons in charge of an undertaking are guilty of an offence and could be fined. A licensee requires prior consent of the CER to transfer all or part of its business to another person.

29 In the purchase of a regulated gas utility, are there any restrictions on the inclusion of the purchase cost in the price of services?

No.

30 Are there any restrictions on the acquisition of shares in gas utilities? Do any corporate governance regulations or rules regarding the transfer of assets apply to gas utilities?

The only restrictions on the acquisition of shares in gas utilities are merger control provisions (see question 27) and consents to changes of control under the relevant licences and authorisations issued by the CER or the minister (as the case may be).

International

31 Are there any special requirements or limitations on foreign companies acquiring interests in any part of the natural gas sector?

The Licensing Terms for Offshore Oil and Gas Exploration and Development require any party applying for an authorisation under the POMD Act to be tax-resident in Ireland for the purposes of the profit, income and capital gains arising from such operations (see question 4).

32 To what extent is regulatory policy affected by treaties or other multinational agreements?

Ireland is a member of the European Union and, as such, all national regulation is limited by the requirements of European law, in particular the Directive. Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC is also expected to have a significant impact on future domestic legislation. Ireland is also a party to two gas interconnector treaties with the United Kingdom and is a signatory to the OSPAR Convention for the Protection of the Marine Environment of the North East Atlantic. Therefore, any regulatory decisions being made by the Irish government, particularly in relation to offshore exploration and production of natural gas, must be made in compliance with Ireland's obligations under the convention.

On 14 February 2008, the Regulatory Authorities entered into a 'memorandum of understanding' on the development of the CAG project. CAG is intended to enable all stakeholders to buy, sell and transport gas and operate, develop and plan the natural gas network in the Republic of Ireland and Northern Ireland on an all-island basis. Gas transmission systems are to be operated on an all-island

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network basis, with a harmonised transmission tariff methodology, operational regime, connection policy and planning regime to apply. A harmonised approach to security of supply incorporating a single security standard, a joint capacity statement and a common approach to storage, LNG and system entry points is to be adopted. A common framework for regulation of retail markets is also to be established.

33 What rules apply to cross-border sales or deliveries of natural gas?

The only interconnection with the Irish gas transportation system is to the Transco system in the UK at Moffat in Scotland. A number of agreements exist in relation to the Moffat Entry Point including a Connected Systems Agreement, an OPN Agency Agreement and the Moffat Administration Agreement. These agreements contain the administrative arrangements governing interconnection of the systems and nominations and allocations at the Moffat Entry Point.

Transactions between affiliates

34 What restrictions exist on transactions between a natural gas utility and its affiliates?

Under the terms of its current natural gas shipping and supply licence, BGÉ is prevented from giving or receiving any direct

or indirect cross-subsidy to or from any affiliate or related undertaking. It is also prevented from discriminating in supply.

In light of the full opening of the Irish natural gas market to competition on 1 July 2007 and the provisions of the European Communities (Internal Market in Natural Gas) (BGÉ) Regulations 2005 (as amended), the CER proposes granting separate amended licences to a person undertaking the supply of natural gas and the shipping of natural gas. Draft licences published by the CER for consultation purposes contain similar prohibitions of cross-subsidisation and duties of non-discrimination.

General competition principles relating to transactions between dominant companies and affiliates will also be relevant. Gas shipping and supply licences contain a prohibition of anti-competitive behaviour.

35 Who enforces the affiliate restrictions and what are the sanctions for non-compliance?

See questions 25 to 27.

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