



STATUTORY INSTRUMENTS.

S.I. No. 630 of 2011

EUROPEAN COMMUNITIES (INTERNAL MARKET IN NATURAL
GAS AND ELECTRICITY) REGULATIONS 2011

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EUROPEAN COMMUNITIES (INTERNAL MARKET IN NATURAL
GAS AND ELECTRICITY) REGULATIONS 2011

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S.I. No. 630 of 2011

EUROPEAN COMMUNITIES (INTERNAL MARKET IN NATURAL
GAS AND ELECTRICITY) REGULATIONS 2011

I, PAT RABBITTE, Minister for Communications, Energy and Natural Resources, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009¹, save for Articles 3 and 41(1)(o) and (q) and Annex I thereto, and for the purpose of giving effect to Articles 3(4), 7(2)(j) and (k), 26(3), 35(5), 36 and 37 (except paragraph (1)(n) and (p)) of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009², hereby make the following regulations:

PART 1

PRELIMINARY AND GENERAL

Citation and commencement

1. (1) These Regulations may be cited as the European Communities (Internal Market in Natural Gas and Electricity) Regulations 2011.

(2) Chapter 3 of Part 2 and Part 7 come into operation on the transfer date.

(3) Regulation 31 comes into operation on 3 March 2013.

Consent of Minister for Public Expenditure and Reform

2. An approval or consent by the Minister under these Regulations does not take effect until the Minister for Public Expenditure and Reform has concurred with the approval or consent.

Interpretation

3. (1) In these Regulations—

“Act of 1999” means Electricity Regulation Act 1999 (No. 23 of 1999);

“Agency” means the Agency for the Cooperation of Energy Regulators established by Regulation (EC) No. 713/2009 of the European Parliament and of the Council of 13 July 2009³;

“assets” means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any

¹OJ No. L 211, 14.08.2009, p. 94

²OJ No. L 211, 14.08.2009, p. 55

³OJ L 211, 14.08.2009, p. 1

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 9th December, 2011.*

description (including money), and includes securities, choses in action and documents;

“Bord Gáis Networks” means the networks division of BGÉ and includes BGÉ (UK);

“BGÉ” means Bord Gáis Éireann;

“BGÉ Corporate” means the group comprising BGÉ and any subsidiaries of BGÉ from time to time, other than the ITO and any subsidiaries of the ITO from time to time and any undertaking which the Commission determines from time to time does not form part of the vertically integrated undertaking (for the purposes of the Natural Gas Market Directive) of which BGÉ is a member, and includes any part or parts of and any member or members of that group. References in these Regulations to “BGÉ Corporate” shall, with respect to matters prior to the transfer date, include Gaslink and, with respect to matters from the transfer date, exclude Gaslink;

“BGÉ Group” means BGÉ Corporate and the ITO and any subsidiaries of the ITO from time to time;

“BGÉ Group transportation system” means the transmission systems and distribution systems of the BGÉ Group operated by the ITO or its subsidiaries following the transfer date, including any additions or alterations thereto from time to time;

“BGÉ (UK)” means BGE (UK) Limited, a private limited company incorporated in England and Wales (Registered Number: 02827969);

“board of directors”, in relation to the ITO, means the board of directors of the ITO established or required to be established in accordance with Regulation 8;

“Commission” means Commission for Energy Regulation;

“compliance programme”, in relation to the ITO, means a programme established and implemented or required to be established and implemented in accordance with Regulation 23;

“compliance officer”, in relation to the ITO, means a person appointed or required to be appointed under Regulation 22;

“control” means any rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by—

- (a) ownership or the right to use all or part of the assets of an undertaking, or
- (b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking;

- “customers”, in relation to a gas transmission system, means wholesale customers and, where the context so requires, includes final or end customers;
- “distribution system”, in relation to natural gas, means a system for the transport of natural gas through local or regional pipelines with a view to its delivery to customers;
- “Electricity Market Directive” means Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009²;
- “executive management”, in relation to the ITO, means the persons responsible for the management of the day to day activities of the ITO including the management of the transportation system and the activities necessary for the preparation of the ten year network development plan, and whose names and roles from time to time shall be notified in writing to the Commission;
- “financial plan” includes any document in the nature of a financial plan, whether called a financial plan or not;
- “financial and other assistance” includes the provision of funding, guarantees, indemnities, security, assurances, warranties, representations, covenants, undertakings, information and other co-operation as may be required by BGÉ and participation in cash management arrangements for the BGÉ Group;
- “Gaslink” means Gaslink Independent System Operator Limited, a private limited company incorporated in Ireland (Registered Number: 447782), pursuant to Regulation 5 of the Regulations of 2005;
- “Gas Acts” means Gas Acts 1976 to 2009;
- “general meetings of the ITO” means general meetings as that term is used in the Companies Acts;
- “industrial customer” means large industrial and commercial customers with a peak hourly demand greater than 50 Megawatt and a connection pressure of 16 barg or above;
- “ITO” means the company established or required to be established by BGÉ under Regulation 4 as an independent transmission system operator and distribution system operator provided that references to the ITO in the context of an agreement entered into under Regulation 9, as varied under Regulation 10 (if so varied), or a transfer plan may as the context requires include any subsidiary of the ITO specified in that agreement or transfer plan;
- “liabilities” means any liabilities, debts or obligations (whether present or future and whether vested or contingent);
- “LNG’ means liquefied natural gas;
- “LNG facility” has the same meaning as in the Natural Gas Market Directive;

“management team”, in relation to the ITO, means the persons directly reporting to executive management on matters related to the operation, maintenance or development of the transportation system and whose names and roles from time to time shall be notified to the Commission;

“Minister” means Minister for Communications, Energy and Natural Resources;

“Natural Gas Market Directive” means Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009⁴;

“Natural Gas Market Regulation” means Regulation (EC) 715/2009 of the European Parliament and of the Council of 13 July 2009⁴;

“operate” includes maintain and develop;

“ownership”, in relation to an asset, includes proprietary rights arising under a lease, licence or bailment of the asset;

“publish” includes publish on the Internet;

“Regulations of 2005” means European Communities (Internal Market in Natural Gas) (BGÉ) Regulations 2005 (S.I. No. 760 of 2005) as amended by European Communities (Internal Market in Natural Gas) (BGÉ) (Amendment) Regulations 2007 (S.I. No. 377 of 2007) and European Communities (Internal Market in Natural Gas) (BGÉ) (Amendment) Regulations 2008 (S.I. No. 239 of 2008);

“rights” means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent);

“subsidiaries” has the same meaning as in section 155 of the Companies Act 1963 (No. 33 of 1963);

“supervisory body”, in relation to the ITO, means the body established or required to be established under Regulation 6;

“ten year network development plan”, in relation to the ITO, means the plan prepared and submitted or required to be prepared and submitted in accordance with Regulation 25;

“transfer date” means the date fixed by the Minister under Regulation 12;

“transfer plan” means the transfer plan or plans required to be prepared by BGÉ and submitted to the Minister in accordance with Regulation 11;

“transferor” means a person from whom any resources, assets, contracts, rights (including licences) or liabilities are transferred under or pursuant to Regulation 13 or 14;

⁴OJ L 211, 14.08.2009, p. 36

“transferee” means a person to whom any resources, assets, contracts, rights (including licences) or liabilities are transferred under or pursuant to Regulation 13 or 14;

“transmission system”, in relation to natural gas, means a system for the transport of natural gas through a high pressure pipeline, other than an upstream pipeline, with a view to delivering the natural gas to customers;

“transportation system” means such parts of the transmission system and the distribution system owned by BGÉ Corporate as may be designated in the transfer plan prepared in accordance with Regulation 11 and shall, with respect to obligations of the ITO following the transfer date, include any additions or alterations thereto from time to time;

“vertically integrated undertaking” has the same meaning as in the Natural Gas Market Directive.

(2) A word or expression that is used in these Regulations and is also used in the Natural Gas Market Directive has, unless the context otherwise requires, the same meaning in these Regulations as it has in that Directive.

PART 2

SEPARATION OF FUNCTIONS OF BGÉ AND GASLINK AND ANCILLARY MATTERS

Chapter 1

Establishment of ITO

BGÉ to form and register subsidiary company

4. (1) As soon as practicable after the making of these Regulations, BGÉ shall form the ITO which shall comply with this Chapter.

(2) The ITO formed under paragraph (1) shall be a private company limited by shares. BGÉ shall be the sole member of the company.

(3) The member of the ITO shall have such shares in the company formed under paragraph (1) as are specified in the company’s memorandum of association. All of the ITO’s equity share capital shall be held by BGÉ.

(4) BGÉ shall ensure—

- (a) that the memorandum of association of the ITO specifies that the objects of the ITO shall include responsibility for ownership and operation of the transportation system in a manner consistent with these Regulations,
- (b) that the memorandum of association of the ITO specifies that, without prejudice to the powers of the supervisory body under Regulation 6(2) and subject to Regulation 19(1), the ITO shall have the power

to raise money on the capital market, in particular, through borrowing and capital increase, and

- (c) that either the memorandum of association or the articles of association of the ITO prescribes the basis of the relationship between the ITO and BGÉ Corporate and between the ITO and the Minister in a manner consistent with these Regulations, including such that—
 - (i) without prejudice to the powers of the supervisory body under Regulation 6(2), the ITO shall have effective decision making rights independent from BGÉ Corporate in respect of the day to day activities in relation to the operation of the transportation system, and
 - (ii) subject to Regulation 18(8), BGÉ Corporate may not determine, directly or indirectly, the competitive behaviour of the ITO in relation to its day to day activities including in respect of the management of the transportation system or in relation to activities necessary for the preparation of the ten year network development plan submitted to the Commission pursuant to Regulation 25(1).

(5) As soon as practical after the ITO is formed, BGÉ shall, subject to the prior approval of the memorandum and articles of association of the ITO by the Minister, have the ITO registered under the Companies Acts.

(6) In this Regulation, “equity share capital” has the same meaning as in section 155 of the Companies Act 1963 (No. 33 of 1963).

(7) Nothing in section 8A of the Gas Act 1976 (No. 30 of 1976) applies to any action taken under this Regulation.

(8) A subsidiary of BGÉ performing functions of production or supply shall not have any direct or indirect shareholding in the ITO.

(9) The ITO shall not have any direct or indirect shareholding in any subsidiary of BGÉ performing functions of production or supply, or receive dividends or any other financial benefit from such a subsidiary.

(10) BGÉ and Gaslink shall continue to have their respective functions and powers pursuant to the Regulations of 2005 (and the agreements made thereunder) until the transfer date.

Alteration of memorandum or articles not to have effect until approved by Minister

5. An alteration of the memorandum or articles of association of the ITO does not take effect until it is approved in writing by the Minister.

ITO to have supervisory body

6. (1) The ITO shall have a supervisory body.

(2) The supervisory body of the ITO shall be in charge of taking all decisions which may have a significant impact on the value of the assets of the shareholders of the ITO including, in particular, decisions regarding—

- (a) the approval of the annual and longer term financial plans,
- (b) the level of indebtedness of the ITO, and
- (c) the amount of dividends, if any, to be distributed to shareholders.

(3) Subject to Regulation 18(8), the decisions falling under the remit of the supervisory body shall exclude those that are related to the day to day activities of the ITO including those in respect of the management of the transportation system and decisions in relation to activities necessary for the preparation of the ten year network development plan submitted to the Commission pursuant to Regulation 25(1). The supervisory body and its members shall have no responsibility for any such excluded decisions or activities.

Members of supervisory body of ITO

7. (1) The supervisory body of the ITO shall be composed of members representing BGÉ and, if BGÉ so determines from time to time, may include members representing the ITO.

(2) Subject to paragraphs (7), (8) and (9), all decisions regarding the appointment and renewal, working conditions (including remuneration) and termination of the term of office of the members of the supervisory body shall be taken by BGÉ in accordance with this Regulation.

(3) At least half of the members, minus one, of the supervisory body—

- (a) shall not, for a period of 3 years before their appointment, have held any professional position or responsibility, interest or business relationship, directly or indirectly, with BGÉ Corporate,
- (b) shall not, while a member of the supervisory body, have any other professional position or responsibility, interest or business relationship, directly or indirectly, with BGÉ Corporate,
- (c) shall not, while a member of the supervisory body, hold any interest in or receive any financial benefit, directly or indirectly, from BGÉ Corporate,
- (d) after termination of their term of office, shall not, for a period of not less than 4 years from the date of termination, hold any professional position or responsibility, interest or business relationship with BGÉ Corporate, and
- (e) shall have a right of appeal to the Commission for any complaints by them against premature termination of their term of office.

(4) Any entitlement to or benefit whatsoever in, under or pursuant to the pension scheme described in Schedule 2, Paragraph 3 shall not comprise an interest in or be deemed to give rise to a payment of a financial benefit, directly or indirectly, from BGÉ Corporate or comprise or be deemed to give rise to a payment of remuneration in breach of this Regulation, Regulation 8 or Regulation 22.

(5) The remuneration of the members of the supervisory body to whom paragraph (3) applies shall not depend on activities or results of BGÉ Corporate. References to BGÉ Corporate in this paragraph and in paragraph (3) shall not include a reference to Bord Gáis Networks or Gaslink.

(6) In the case of—

- (a) a proposed member or member of the supervisory body to whom paragraph (3) applies, any decision concerning the appointment of such proposed member or renewal in office of such member (and, in each case, the conditions applicable thereto including conditions regarding remuneration, term and termination), and
- (b) all members of the supervisory body, any decision concerning the termination of office of such members (and the reasons therefor),

shall be notified in writing to the Commission.

(7) A decision or condition referred to in paragraph (6)(a) shall become binding only if, within 3 weeks of notification to it, the Commission has raised no objections to such decision or condition on the basis of doubts as to the professional independence of the nominated person for membership of the supervisory body or if, having raised such objections, the Commission subsequently confirms in writing that its objections have been withdrawn.

(8) A decision referred to in paragraph (6)(b) shall become binding only if, in the case of premature termination of a term of office of a member of the supervisory body, within 3 weeks of notification to it, the Commission has raised no objections to such decision and there has been no appeal under paragraph (9) on the basis of doubts regarding the justification for such early termination or if, having raised such objections, the Commission subsequently confirms in writing that its objections have been withdrawn or, if there is an appeal under paragraph (9), the Commission rejects the appeal.

- (9) (a) In the case of a member of the supervisory body to whom paragraph (3) applies where the term of office of that member has been terminated early, BGÉ Corporate shall notify the Commission in writing within 3 weeks of the decision to prematurely terminate the term of office of the member.
- (b) A member of the supervisory body whose term of office has been prematurely terminated may notify the Commission in writing of his or her intention to appeal such decision within a period of 3 weeks of

the making of the decision. Such notification shall specify the grounds in respect of which the member wishes to appeal the decision.

- (c) The Commission shall request the appellant and BGÉ Corporate to provide all relevant information in support of its actions within a further period of 3 weeks and such information shall be provided.
- (d) A determination as to whether the justification for the decision was inappropriate having regard to Chapter 3 of Part 2, shall be made by the Commission in writing within a period of one month of all relevant information having been received by it and shall be binding on all parties.

(10) The members of the supervisory body shall not be, nor shall they be deemed to be, directors in law, directors in fact or shadow directors or officers of the ITO for the purposes of the Companies Acts by reason only of their membership of and discharge of their functions as members of the supervisory body.

Board of directors, executive management, management team and employees of ITO

8. (1) The supervisory body shall appoint, and may remove, the board of directors and executive management of the ITO in accordance with this Regulation.

(2) Subject to paragraph (5), all decisions regarding the appointment and renewal, working conditions (including remuneration) and termination of the term of office, of the board of directors and executive management of the ITO shall be taken by the supervisory body.

(3) The board of directors of the ITO shall be responsible for taking decisions with respect to the ITO on all matters excluding decisions which the supervisory body is responsible for taking under Regulation 6(2).

(4) The board of directors, executive management and management team of the ITO shall comply with the following requirements:

- (a) at least half, plus one, of the group of persons comprising the members of the board of directors, executive management and management team, shall not, for a period of 3 years before their appointment, have held any professional position or responsibility, interest or business relationship, directly or indirectly, with BGÉ Corporate;
- (b) the members of the board of directors, executive management and management team who are not subject to sub-paragraph (a) shall not, for a period of at least 6 months before their appointment, have exercised management, or other relevant activity giving access to the same information as could have been obtained in a managerial position, in BGÉ Corporate;

- (c) the members of the board of directors, executive management and management team shall not, while holding that office, have any other professional position or responsibility, interest or business relationship, directly or indirectly, with BGÉ Corporate;
- (d) the members of the board of directors, executive management and management team shall not, while holding that office, hold any interest in or receive any financial benefit, directly or indirectly, from BGÉ Corporate;
- (e) after termination of their term of office, the members of the board of directors, executive management and management team shall not, for a period of not less than 4 years after the date of termination, hold any professional position or responsibility, interest or business relationship with BGÉ Corporate.

(5) Any decision concerning the appointment or renewal in office (and, in each case, the conditions applicable thereto, including conditions regarding remuneration, term and termination), and any decision concerning the termination of office (and the reasons for the decision to terminate) of the persons nominated by the supervisory body for appointment or renewal as members of the board of directors and executive management of the ITO shall be notified in writing to the Commission. Those decisions and conditions shall become binding only if the Commission has raised no objections to such conditions and decisions on the grounds set out in paragraph (6) within 3 weeks of notification to it and, in the case of a termination of office, where there has been no appeal under paragraph (8) or if, having raised such objections, the Commission subsequently confirms in writing that its objections have been withdrawn or, in the case of a termination of office where there has been an appeal under paragraph (8), the Commission rejects the appeal.

(6) The Commission may object to the decisions and conditions referred to in paragraph (5) where—

- (a) doubts arise as to the professional independence of a nominated person for membership of the board of directors or executive management, or
- (b) in the case of a premature termination of a term of office, doubts exist regarding the justification of such premature termination.

(7) There shall be a right of appeal to the Commission for any complaints by members of the board of directors, executive management and management team against premature termination of their terms of office.

- (8) (a) In the case where the term of office of a member of the board of directors, executive management or management team has been terminated early, BGÉ Corporate shall notify the Commission in writing within 3 weeks of the decision to prematurely terminate the term of office of the member.

- (b) A member whose term of office has been terminated early may notify the Commission in writing of his or her intention to appeal such decision within a period of 3 weeks of the date of communication of the decision to terminate to him or her. Such notification shall specify the grounds in respect of which the member wishes to appeal the decision.
- (c) The Commission shall request the appellant and BGÉ Corporate in writing to provide all relevant information in support of its actions within a further period of 3 weeks and such information shall be provided.
- (d) A determination as to whether the justification of the decision was inappropriate, having regard to Chapter 3 of Part 2, shall be made by the Commission in writing within a period of one month of all relevant information having been received by it and shall be binding on all parties.

(9) Remuneration of the board of directors, executive management, management team and employees of the ITO shall not depend on activities or results of BGÉ Corporate. References to BGÉ Corporate in paragraph (4) and this paragraph shall not include a reference to Bord Gáis Networks or Gaslink.

(10) The requirements of paragraph (4)(c) and (d) shall apply to the employees of the ITO.

Chapter 2

Agreements and transfer plan

BGÉ and ITO to enter into agreements

9. (1) As soon as practicable after the formation and registration of the ITO, BGÉ and the ITO shall enter into one or more agreements to allow the ITO and BGÉ Corporate to comply with these Regulations.

(2) An agreement made between BGÉ and the ITO under paragraph (1) is subject to prior written approval by the Commission.

(3) Subject to paragraph (2), an agreement entered into under this Regulation takes effect from the transfer date.

(4) An agreement entered into under this Regulation (or the agreement as varied or substituted under Regulation 10) is valid only as far as it is consistent with these Regulations.

Variation of agreements entered into, or taken to have been entered into, under Regulation 9

10. (1) BGÉ and the ITO may, from time to time, and subject to the approval of the Commission, vary an agreement entered into under Regulation 9.

(2) A variation of an agreement entered into under Regulation 9 may provide for the variation, or any particular provisions of the variation, to take effect from a specified date (which may be the transfer date). The date so specified is subject to the approval of the Commission, which may substitute another date if it considers it appropriate to do so.

(3) For the purposes of this Regulation, 'vary', in relation to an agreement, includes replacing the agreement with another agreement that deals with the same matters.

BGÉ and Gaslink to prepare plan for transfer of assets and staff to ITO

11. (1) As soon as practicable after the registration of the ITO under the Companies Acts—

(a) BGÉ and Gaslink shall, following consultation with the Commission, prepare and submit to the Minister for approval a plan for the transfer to the ITO of all such—

(i) human, technical and physical resources of BGÉ Corporate and Gaslink specified in the plan which are necessary to enable the ITO to carry out its responsibility for the operation of the transportation system (including with respect to the performance of all corporate tasks such as legal services, accountancy and information technology services),

(ii) assets, contracts, rights (including licences) and liabilities of BGÉ Corporate and Gaslink specified in the plan which are necessary to enable the ITO to carry out its responsibility for the operation of the transportation system, and

(iii) human, technical and physical resources and assets, contracts, rights (including licences) and liabilities of BGÉ Corporate specified in the plan which are ancillary to the transportation system or otherwise are not included in subparagraphs (i) and (ii) but which BGÉ Corporate and the ITO agree should be transferred to the ITO (other than in respect of any activity which the ITO is prohibited by these Regulations to undertake),

and

(b) BGÉ shall prepare and submit to the Minister for approval a plan for the transfer to such subsidiary or subsidiaries of BGÉ, as BGÉ may consider appropriate, of such human, technical, physical and financial resources and assets, contracts, rights (including licenses) and liabilities specified in the plan with respect to such of the financing and other activities of BGÉ Corporate as BGÉ may consider appropriate.

(2) The transfer plan may specify any consideration (in money or money's worth, including shares) which may be payable by the ITO to BGÉ with respect to the assets to be transferred to it pursuant to the transfer plan and Regulation 30.

(3) Subject to the approval of the Minister, the assets and liabilities (including contracts, rights and licences) to be transferred from BGÉ Corporate to the ITO shall be designated in the transfer plan which shall—

- (a) define the assets, contracts, rights (including licences) and liabilities to be allocated—
 - (i) by specifying or describing the assets, contracts, rights (including licences) and liabilities to be transferred,
 - (ii) by referring to all the assets, contracts, rights (including licences) and liabilities comprised in a specified part of BGÉ Corporate (whether subject to exceptions or otherwise),
 - (iii) by providing that any assets, contracts, rights (including licences) or liabilities specified or described in the transfer plan shall be enforceable either by or against either the transferor or the transferee, or both, or
 - (iv) by any combination of the means referred to in subparagraphs (i) to (iii),

and

- (b) make such supplemental, incidental and consequential provisions as, in the case of a plan for a transfer under Regulation 11(1)(a), BGÉ and the ITO considers appropriate and, in the case of a plan for a transfer under Regulation 11(1)(b), BGÉ considers appropriate (including provision specifying the order in which any transfers or transactions are to be regarded as taking effect).

(4) The Minister shall, following consultation with the Commission, approve the plan or plans.

(5) Nothing in these Regulations shall prevent the transfer at any time or from time to time—

- (a) to the ITO of any assets, contracts, rights (including licences) and liabilities not specified in the transfer plan which BGÉ Corporate and the ITO agree in writing and the Commission and the Minister has approved should be transferred to the ITO (other than in respect of any activity which the ITO is prohibited by these Regulations to undertake), and
- (b) from the ITO of any assets, contracts, rights (including licences) and liabilities transferred to the ITO pursuant to a transfer plan under paragraph 1(a)(i) or (ii) or a transfer under paragraph 5(a) which BGÉ Corporate and the ITO agree in writing, and the Commission and the Minister has approved, may be transferred from the ITO.

Minister to fix date for implementing transfer plan

12. On the certification, approval, designation and licensing of the ITO by the Commission the Minister shall fix a transfer date for a transfer plan to be implemented, notice of which date shall be published in the *Iris Oifigiúil*.

Transfer to ITO of ownership and operation of transportation system and other matters

13. (1) As from the transfer date, the ownership and operation of the transportation system is vested in the ITO.

(2) On the transfer date—

(a) Schedule 1 has effect with respect to the transfer of assets, contracts, rights (including licences) and liabilities of BGÉ Corporate, and

(b) Schedule 2 has effect with respect to the transfer of employees by BGÉ Corporate.

Variation of transfers by agreement

14. (1) At any time before the first anniversary of the transfer date, BGÉ following consultation with the Commission may, with the approval of the Minister, enter into an agreement with the ITO or, as the case may be, a subsidiary or subsidiaries to which Regulation 11(1)(b) applies, providing for assets, contracts, rights (including licences) or liabilities, or, where permissible in accordance with these Regulations, designated employees of BGÉ Corporate, specified in the agreement to be transferred from one of them to the other.

(2) An agreement entered into under paragraph (1)—

(a) must comply with these Regulations and any applicable licence conditions,

(b) must be in writing, and

(c) takes effect, following consultation with the Commission, on the date on which it is approved by the Minister or on such later date as is specified in, or determined in accordance with, the agreement.

(3) An agreement entered into under paragraph (1) does not affect the rights and liabilities arising under a contract of employment unless the relevant employee is a party to the agreement.

(4) Assets, contracts, rights (including licences) or liabilities specified in an agreement entered into under paragraph (1) are, on the date on which the agreement takes effect, transferred and vested in accordance with the agreement.

(5) This Regulation has effect as if a reference to a transfer or vesting under the transfer plan included a reference to a transfer or vesting under an agreement entered into under this Regulation.

Proof of title by certificate

15. A certificate issued by a transferor or a transferee in a transfer effected under Regulation 13 or 14, with the written concurrence of the other, stating that—

- (a) any asset specified in the certificate, or any interest in, or right over, any such asset, or
- (b) any liability so specified,

is by virtue of these Regulations vested in the issuer of the certificate and is, in the absence of evidence to the contrary, proof of that fact.

Right to production of documents of title

16. Where a person (in this Regulation referred to as the “first person”) under a transfer effected under the transfer plan is entitled to possession of any document relating in part to the title to, or to the management of, any land or other property transferred to another person or persons (as the case may be), under some other transfer effected under that transfer plan, then—

- (a) the first person shall be deemed to have given to the other person or persons (as the case may be) an acknowledgement in writing of the right of that other person or persons to production of the document and to delivery of copies thereof, and
- (b) section 84 of the Land and Conveyancing Law Reform Act 2009 (No. 27 of 2009) shall have effect accordingly.

Chapter 3

*Functions and characteristics of ITO**Purpose of ITO*

17. The ITO shall at all times act so as to ensure that it carries out the activity of gas transmission and distribution properly and efficiently and develops and maintains an efficient, secure and economic transmission and distribution system.

ITO (including Distribution System Operator) to be independent of BGÉ Corporate

18. (1) Without prejudice to the decisions of the supervisory body under Regulation 6(2), the ITO shall have—

- (a) effective decision-making rights, independent from BGÉ Corporate, with respect to assets necessary to operate, maintain or develop the transportation system, and
- (b) the power, subject to Regulation 19(1), to raise money on the capital market in particular through borrowing and capital increase.

- (2) The ITO shall not, in its corporate identity, communications, branding and premises, create confusion in respect of the separate identity of BGÉ Corporate.
- (3) The ITO shall not share information technology systems or equipment, physical premises and security access systems with any part of BGÉ Corporate, nor use the same consultants or external contractors for information technology systems or equipment and security access systems.
- (4) The accounts of the ITO shall be audited by an auditor other than the auditor auditing BGÉ Corporate. Nothing in these Regulations shall prevent the sharing of information as between the auditors of the ITO and BGÉ Corporate where necessary for the purposes of, or arising from, the consolidation of accounts of BGÉ Corporate or the accounts of BGÉ Corporate and the ITO.
- (5) Any commercial and financial relations between the ITO and BGÉ Corporate, including loans from the ITO to BGÉ Corporate, shall comply with market conditions.
- (6) (a) The provision of personnel and rendering of services by the ITO to BGÉ Corporate and by BGÉ Corporate to the ITO shall be prohibited.
- (b) Without prejudice to paragraph (a), the ITO may render services to BGÉ Corporate as long as—
- (i) the provision of those services does not discriminate between system users, is available to all system users on the same terms and conditions and does not restrict, distort or prevent competition in production or supply, and
- (ii) the terms and conditions of the provision of those services are approved in writing by the Commission.
- (7) BGÉ Corporate shall not—
- (a) subject to paragraph (8), determine, directly or indirectly, the competitive behaviour of the ITO in relation to the day to day activities of the ITO including in respect of the management of the transportation system, or in relation to activities necessary for the preparation of the ten year network development plan submitted to the Commission pursuant to Regulation 25(1),
- (b) engage in any conduct that interferes with or is likely to prejudice the ITO as regards its responsibility for the day-to-day operation of the transportation system, or
- (c) take any action impeding or prejudicing the ITO from complying with its obligations under Part 2 and shall not require the ITO to seek permission from BGÉ Corporate in fulfilling those obligations.

(8) The ITO shall not, without the prior written approval of the supervisory body, which may be refused at its absolute discretion, engage in any business activity whatsoever outside the operation of the transmission and distribution system. The supervisory body shall be entitled, at its absolute discretion, to refuse approval, funding or any request for approval of borrowing for any business activity whatsoever outside the operation of the transmission and distribution system. The supervisory body shall approve the discharge by the ITO of any actual liabilities transferred to the ITO under or pursuant to the transfer plan in respect of such a business activity in accordance with the terms of those actual liabilities.

(9) Nothing in this Regulation overrides the powers of the supervisory body pursuant to Regulation 6(2).

(10) Subject to Regulation 6(2), the ITO may, in pursuing the activity of natural gas transmission and with the prior approval of the Minister, set up appropriate joint ventures, including with one or more transmission system operators, gas exchanges, and the other relevant actors pursuing the objective of developing the creation of regional markets or to facilitate the natural gas market liberalisation process.

Obligations of BGÉ and ITO with respect to financing and investments

19. (1) Without prejudice to the decisions and required approvals of the supervisory body, appropriate financial resources for future investment projects and for the replacement of existing assets in respect of the transportation system shall be made available in due time by BGÉ to the ITO in accordance with the agreements entered into under Regulations 9 and 10.

(2) The ITO shall inform the Commission of the financial resources, referred to in paragraph (1), available for future investment projects and for the replacement of existing assets, in respect of the transportation system.

Centralised Funding Arrangements

20. (1) Nothing in these Regulations shall be taken to exclude the establishment of a centralised funding arrangement between BGÉ Corporate and the ITO subject to the approval of the Commission.

(2) A centralised funding arrangement may include the provision by the ITO and its subsidiaries of such financial and other assistance as may be required by BGÉ with respect to the fundraising, borrowing, and other related financing activities to be carried out by BGÉ Corporate for the BGÉ Group.

Chapter 4

Obligations of ITO

Obligations of ITO

21. The ITO shall—

- (a) keep detailed records of its commercial and financial relations with BGÉ Corporate and make them available to the Commission upon request,
- (b) submit for approval by the Commission all commercial and financial agreements with BGÉ Corporate,
- (c) inform the Commission of the financial resources available as required by Regulation 19(2),
- (d) operate, maintain and develop under economic conditions a secure, efficient and economic transmission system and act so as to ensure that it has the resources it needs in order to carry out the activity of transmission properly and efficiently and to develop and maintain an efficient, secure and economic transmission system, and
- (e) in relation to the activity of natural gas transmission—
 - (i) represent the transmission system operator in connection with the transportation system and contacts to third parties and the Commission,
 - (ii) represent the transmission system operator within the European Network of Transmission System Operators for Gas (ENTSOG),
 - (iii) grant and manage third-party access on a non-discriminatory basis between system users or classes of system users,
 - (iv) collect all transmission system related charges including access charges, balancing charges for ancillary services such as natural gas treatment and purchasing of services,
 - (v) plan investment with a view to ensuring the long-term ability of the transmission system to meet reasonable demand and guarantee security of supply, and
 - (vi) comply with its obligations as a distribution system operator under Article 26 of the Natural Gas Market Directive and under the Gas Acts.

ITO to have compliance officer

22. (1) (a) The ITO shall have a compliance officer,
- (b) Nothing in these Regulations shall prevent the appointment of the same compliance officer having responsibilities for the compliance programmes of both the transmission and distribution systems.
- (2) Subject to paragraphs (3) to (5), the supervisory body shall appoint and set the appointment conditions, including remuneration, of the compliance officer. The compliance officer may be a natural person or legal body. The supervisory body may remove the compliance officer from office only following

prior approval by the Commission and shall do so for reasons of lack of professional independence or professional capacity upon request by the Commission.

(3) The identity of, and the conditions of appointment (including the term, duration and the removal from office) of any person nominated by the supervisory body for appointment or renewal as the compliance officer and the reasons for any proposed decision to remove a compliance officer from office shall be subject to the approval of the Commission in accordance with paragraph (4). Any such appointment, renewal, conditions of appointment or removal shall become binding only if the Commission has raised no objections to such matters on the grounds set out in paragraph (4) within 3 weeks of notification to it in writing and, in the case of a removal, there has been no appeal under paragraph (8) or if, having raised such objections, the Commission subsequently confirms in writing that its objections have been withdrawn or, if there is an appeal under paragraph (8), the Commission rejects the appeal.

(4) The Commission may refuse to approve—

- (a) the appointment or renewal of a person as the compliance officer only where doubts arise as to the professional independence or professional capacity of such person, or
- (b) the removal of the compliance officer before the expiry of his or her term of office where doubts exist regarding the justification of such removal.

(5) The conditions of appointment of the compliance officer shall ensure the independence of the compliance officer, including by providing him or her with all the resources necessary to fulfil his or her duties.

(6) The compliance officer shall not—

- (a) for a period of 3 years before his or her appointment, have held any professional position or responsibility, interest or business relationship, directly or indirectly, with BGÉ Corporate,
- (b) during his or her term of office, hold any other professional position or responsibility, interest or business relationship, directly or indirectly, with BGÉ Corporate,
- (c) during his or her term of office, hold any interest in or receive any financial benefit, directly or indirectly, from BGÉ Corporate, and
- (d) after termination of his or her term of office, hold any professional position or responsibility, interest or business relationship with BGÉ Corporate for a period of not less than 4 years after the date of termination.

(7) The compliance officer shall have a right of appeal to the Commission for any complaints with respect to the premature termination of his or her term of office.

(8) (a) In the case of a compliance officer whose term of office has been terminated early, BGÉ Corporate shall notify the Commission in writing within 3 weeks of the decision to prematurely terminate the term of office of the officer.

(b) A compliance officer whose term of office has been prematurely terminated may notify the Commission of his or her intention to appeal such decision within a period of 3 weeks of the decision to terminate being communicated to him or her. Such notification shall specify the grounds in respect of which the said officer wishes to appeal the decision.

(c) The Commission shall request the appellant and BGÉ Corporate to provide all relevant information in support of its actions within a further period of 3 weeks and such information shall be provided.

(d) A determination as to whether the justification for the decision was inappropriate having regard to Chapter 3 of Part 2, shall be made by the Commission within a period of one month of all relevant information having been received by it and shall be binding on all parties.

(9) The remuneration of the compliance officer shall not depend on activities or results of BGÉ Corporate. References to BGÉ Corporate in this paragraph and paragraph (6) shall not include a reference to Bord Gáis Networks or Gaslink.

(10) The compliance officer shall be in charge of the following:

(a) monitoring the implementation of the compliance programme;

(b) elaborating an annual report, setting out the measures taken in order to implement the compliance programme and submitting it to the Commission;

(c) reporting to the supervisory body and issuing recommendations on the compliance programme and its implementation;

(d) notifying the Commission on any substantial breaches with regard to the implementation of the compliance programme;

(e) reporting to the Commission on any commercial and financial relations between BGÉ Corporate and the ITO.

(11) The compliance officer shall submit the proposed decisions on the investment plan or on individual investments in the transportation system to the Commission. This shall occur at the latest when the executive management or the board of directors of the ITO submits them to the supervisory body.

(12) The compliance officer shall report regularly, either orally or in writing, to the Commission, and shall have the right to report regularly, either orally or in writing, to the supervisory body, with respect to those matters for which he has responsibility.

(13) For the purposes of carrying out his or her functions, the compliance officer—

- (a) may attend all meetings of the executive management, the board of directors, the supervisory body and all general meetings of the ITO, and
- (b) shall attend all such meetings that address the following matters:
 - (i) conditions for access to the transmission system (as defined in the Natural Gas Market Regulation), in particular regarding tariffs, third party access services, capacity allocation and congestion management, transparency, balancing and secondary markets;
 - (ii) projects undertaken in order to operate, maintain and develop the transmission system, including investments in new transport connections, in expansion of capacity and in optimisation of existing capacity;
 - (iii) energy purchases or sales necessary for the operation of the transmission system.

(14) The compliance officer shall monitor the compliance of the ITO with respect to the protection of commercially sensitive information from disclosure in a discriminatory manner set out in Article 16 of the Natural Gas Market Directive.

(15) The compliance officer shall have access to—

- (a) all relevant data held by the ITO, whether in manual or electronic format (which shall be taken to include data held in optical format),
- (b) with or without prior announcement, to the offices of the ITO, and
- (c) all the information necessary, in whatever format, for the fulfilment of his or her task to ensure compliance with compliance programme.

ITO to establish and comply with compliance programmes

23. (1) The ITO shall establish and implement a compliance programme for the transmission system and a compliance programme for the distribution system.

(2) A compliance programme shall be subject to approval by the Commission.

(3) Without prejudice to the powers of the Commission, compliance with a compliance programme shall be independently monitored by the compliance officer.

(4) A compliance programme shall be submitted to the Commission within such period as the Commission may specify in writing and shall set out—

- (a) the measures taken in order to ensure that discriminatory conduct is excluded, and ensure that compliance with that programme is adequately monitored, and
- (b) the specific obligations of those persons concerned in the management of, or employment or engagement by, the ITO to meet the objectives in paragraph (a).

(5) The Commission may, from time to time and having regard to the provisions of these Regulations, by written notice given to the ITO, require it—

- (a) to modify a compliance programme to such extent as it considers appropriate, or
- (b) to substitute for a compliance programme a new compliance programme.

(6) If the Commission gives a notice to the ITO in accordance with paragraph (5), the ITO shall comply with the requirement within such period as is specified in the notice, or within such extended period as the Commission may allow in writing.

(7) The ITO shall comply with a compliance programme approved by the Commission.

Reports with respect to network development plan

24. Where BGÉ Corporate, in a general meeting of the ITO or through the vote of the members of the supervisory body, has prevented the adoption by the ITO of a decision with the effect of preventing or delaying an investment which, under the ten year network development plan, was to be executed in the following 3 years, the compliance officer shall report this prevention to the Commission which then shall act in accordance with Regulation 25.

ITO to prepare network development plan

25. (1) The ITO shall, on an annual basis, prepare and submit to the Commission a ten year network development plan with respect to the transmission system based on existing and forecast supply and demand after having consulted all the relevant stakeholders.

(2) The ten year network development plan shall contain efficient measures in order to guarantee the adequacy of the transmission system and security of supply, in particular it shall—

- (a) indicate to market participants the main infrastructure with respect to the transmission system that needs to be built or upgraded over the then forthcoming 10 years,
- (b) contain all the investments already decided and identify new investments which have to be executed in the then forthcoming 3 years, and
- (c) provide for a time frame for all investment projects.

(3) When elaborating the ten year network development plan, the ITO shall make reasonable assumptions about the evolution of the production, supply, consumption and exchanges with other countries, taking into account investment plans for regional networks and networks within the European Union, as well as investment plans for storage and LNG regasification facilities.

(4) The Commission shall consult all actual or potential system users on the ten year network development plan in an open and transparent manner. Persons or undertakings claiming to be potential transmission system users may be required to substantiate such claims. The Commission shall publish the result of the consultation process including, in particular, possible needs for investments.

(5) The Commission shall examine whether the ten year network development plan covers all investment needs identified during the consultation process, and whether it is consistent with the European Union ten year network development plan referred to in Article 8(3)(b) of the Natural Gas Market Regulation. If any doubt arises as to the consistency with the European Union network development plan, the Commission shall consult the Agency. Following such consultation the Commission may require the ITO to amend its ten year network development plan.

(6) The Commission shall monitor and evaluate the implementation of the ten year network development plan.

(7) In circumstances where the ITO, other than for overriding reasons beyond its control, does not execute an investment, which, under the ten year network development plan, was to be executed in the following 3 years, the Commission shall take at least one of the following measures to ensure that the investment in question is made if such investment is still relevant on the basis of the most recent ten year network development plan:

- (a) require the ITO to execute the investment in question;
- (b) arrange for a tender procedure open to any investors for the investment in question to be carried out.

(8) Where the Commission has made use of its powers under paragraph (7)(b), it may oblige the ITO to agree to one or more of the following:

- (a) financing of the investment by any third party;
- (b) construction of the investment by any third party;

- (c) building new assets concerned itself;
 - (d) operating the new asset concerned itself.
- (9) The ITO shall—
- (a) provide the investors referred to in paragraph (7)(b) with all information needed to realise the investment,
 - (b) shall connect new assets to the transmission network, and
 - (c) shall generally make its best efforts to facilitate the implementation of the investment project.
- (10) The relevant financial arrangements referred to in paragraphs (8) and (9) shall be subject to approval by the Commission.
- (11) Where the Commission has made use of its powers under paragraph (7), the network charges approved by the Commission shall cover the costs of the investments in question.

PART 3

TRANSMISSION SYSTEM OPERATORS

Transmission system operators

26. (1) This Part shall apply to all undertakings from time to time, other than the ITO and BGE Corporate, which own or operate a transmission system in the State.

(2) Nothing in paragraph (1) shall, subject to obtaining the Minister's prior consent, prevent BGE and the ITO from complying with this Part instead of Part 2.

(3) From 3 March 2012:

- (a) each undertaking which owns a transmission system shall act as a transmission system operator;
- (b) the same person or persons shall not either—
 - (i) directly or indirectly exercise control over an undertaking performing any of the functions of production or supply or directly or indirectly exercise control or any right over a transmission system operator or over a transmission system, or
 - (ii) directly or indirectly exercise control over a transmission system operator or over a transmission system and directly or indirectly exercise control or any right over an undertaking performing any of the functions of production or supply;

- (c) the same person or persons shall not be entitled to appoint members of the board of directors of a transmission system operator or a transmission system and directly or indirectly to exercise control or any right over an undertaking performing any of the functions of production or supply;
- (d) the same person shall not be entitled to be a member of the board of directors of both an undertaking performing any of the functions of production or supply and a transmission system operator or a transmission system.

(4) The restrictions referred to in paragraph (3)(b) and (c) shall include, in particular:

- (a) the power to exercise voting rights;
- (b) the power to appoint members of the board of directors;
- (c) the holding of a majority share.

(5) For the purpose of paragraph 3(b), the words “undertaking performing any of the functions of production or supply” shall be taken to mean “undertaking performing any of the functions of generation and supply” within the meaning of the Electricity Market Directive and the terms “transmission system operator” and “transmission system” shall include “transmission system operator” and “transmission system” within the meaning of that Directive.

(6) Where an undertaking is not part of a vertically integrated undertaking, the provisions of subparagraphs (b) and (c) of paragraph (3) shall not apply before 3 March 2013.

(7) The obligation set out in paragraph 3(a) shall be deemed to be fulfilled in a situation where 2 or more undertakings which own transmission systems have created a joint venture which acts as a transmission system operator in 2 or more Member States of the European Union for the transmission systems concerned. No other undertaking may be part of the joint venture unless it has been approved under Article 14 of the Natural Gas Market Directive as an independent system operator or as an independent transmission operator for the purposes of Chapter IV of that Directive.

(8) For the implementation of this Regulation, where the person referred to in subparagraphs (b), (c) and (d) of paragraph (3) is a public body, 2 separate public bodies exercising control over a transmission system operator or over a transmission system in one instance, and over an undertaking performing any of the functions of production or supply on the other, shall be deemed not to be the same person or persons.

Prohibition of certain transfers and sharing services

27. (1) The following shall not be transferred to undertakings performing any of the functions of production and supply of natural gas:

(a) commercially sensitive information, which is held by a transmission system operator which was part of a vertically integrated undertaking obtained in the course of carrying out its activities or with respect to its own activities, which may be commercially advantageous if disclosed in a discriminatory manner;

(b) the staff of such a transmission system operator.

(2) Undertakings performing any of the functions of production or supply shall not, directly or indirectly, take control over or exercise any right over undertakings to which Regulation 26 applies.

PART 4

FUNCTIONS OF COMMISSION WITH RESPECT TO BGÉ CORPORATE AND ITO

Commission to resolve disputes between BGÉ and ITO

28. (1) If any dispute arises between BGÉ and the ITO with respect to—

(a) the operation or interpretation of Part 2 (including in particular the effect or implementation of the agreement or agreements to allow the ITO to comply with these Regulations), or

(b) the transfer to the ITO of any assets, contracts, rights (including licences) or liabilities,

either BGÉ or the ITO may make a request, which shall be in writing, to the Commission to make a determination with respect to the dispute.

(2) On receiving a request under paragraph (1), the Commission shall in the first instance attempt to resolve the dispute by conciliation. However, if the attempt by way of conciliation is unsuccessful, the Commission shall, after giving each party an opportunity to state its case, make a determination in respect of the dispute and notify the parties in writing of its determination. The Commission may include in such a determination such directions as it considers appropriate for resolving the dispute.

(3) A determination made under paragraph (2) is binding on BGÉ and the ITO and BGÉ and the ITO shall comply with the directions (if any) contained in the determination.

PART 5

CERTIFICATION AND DESIGNATION OF TRANSMISSION SYSTEM OPERATORS

Requirement for transmission system operators to apply for certification

29. (1) Each transmission system operator shall, prior to commencing any transmission system operations, make an application to the Commission for the certification pursuant to Regulation 30.

(2) Transmission system operators shall notify the Commission of any planned transaction which may require a reassessment of their compliance with applicable requirements of Part 2 or, as the case may be, Part 3.

Certification and designation of transmission system operators

30. (1) The Commission shall, on an ongoing basis, monitor compliance by transmission system operators with the provisions of these Regulations. The Commission shall establish and operate a certification procedure to assess compliance by transmission system operators with the requirements of Part 2 or, as the case may be, Part 3. The certification procedure shall apply in the following circumstances:

- (a) upon notification by a transmission system operator, other than a notification under subparagraph (b) of this Regulation, pursuant to Regulation 29;
- (b) upon a request by BGÉ and the ITO that, with effect from the transfer date pursuant to Regulation 12, the ITO be certified as complying with the requirements of Article 9(8)(b) and Chapter IV of the Natural Gas Market Directive;
- (c) on the Commission's own initiative where it has knowledge that a planned change in rights or influence over transmission system operators may lead to an infringement of Part 2 or 3 (as applicable) or where it has reason to believe that such an infringement may have occurred;
- (d) upon a reasoned request from the European Commission.

(2) The Commission shall adopt a preliminary decision on the certification of a transmission system operator within a period of 4 months from the date of the notification by the transmission system operator or from the date of a European Commission request pursuant to paragraph (1)(d). After expiry of that period, if the Commission has not adopted an explicit preliminary decision, a tacit preliminary decision to grant the Certification shall be deemed to be granted. The preliminary explicit or tacit decision of the Commission shall not become effective until the procedure referred to in paragraphs (3) and (4) has been completed.

(3) The Commission shall notify its preliminary explicit or tacit decision on the certification of a transmission system operator without delay to the European Commission and shall provide the European Commission with all the relevant information with respect to that decision.

(4) Within 2 months of receiving an opinion of the European Commission with respect to its preliminary decision on the certification pursuant to Article 3(1) of the Natural Gas Market Regulation or, if the European Commission has not provided its opinion in the required timeframe set out in Article 3(1) of the Natural Gas Market Regulation, within 2 months of the date of expiry of that timeframe, the Commission shall adopt its final decision on the certification taking the utmost account of that opinion, if provided. The Commission shall

publish its decision on a publically available website along with the European Commission's opinion, if provided.

(5) The Commission and the European Commission may request from transmission system operators and undertakings performing any of the functions of production or supply any information relevant for the fulfilment of their tasks under this Regulation.

(6) Each transmission system operator, BGÉ or the ITO as the case may be, shall provide all such additional information as the Commission or the European Commission may request in writing which is relevant to the fulfilment of the Commission's tasks under this Regulation.

(7) The Commission shall preserve the confidentiality of commercially sensitive information received by it pursuant to this Regulation.

(8) The Commission's final decision to certify the ITO shall apply with effect from the transfer date.

(9) The certification of a transmission system operator by the Commission shall be deemed to be designation. Designation of transmission system operators shall be notified by the Commission to the European Commission in writing and published in the Official Journal of the European Communities.

Certification in relation to third countries

31. (1) Where certification is requested by a transmission system owner or a transmission system operator, which is controlled by a person or persons from a third country or third countries, the Commission shall notify the European Commission in writing and the certification procedure in this Regulation shall apply.

(2) The Commission shall also notify the European Commission in writing, without delay, of any circumstances that would result in a person or persons from a third country or third countries acquiring control of a transmission system or a transmission system operator.

(3) The transmission system operator shall notify the Commission in writing of any circumstances that would result in a person or persons from a third country or third countries acquiring control of the transmission system or the transmission system operator.

(4) The Commission shall adopt a draft decision on the certification of a transmission system operator to which this Regulation applies within 4 months from the date of notification to it by the transmission system operator. It shall refuse the certification if it has not been demonstrated that—

- (a) the entity concerned complies with the requirements of these Regulations, and
- (b) granting the certification will not put at risk the security of energy supply in the State or in the European Union.

In considering this security of energy supply, the Commission shall take into account—

- (i) the rights and obligations of the European Union with respect to that third country arising under international law, including any agreement concluded with one or more third countries to which the European Union is a party and which addresses the issues of security of energy supply,
- (ii) the rights and obligations of the State with respect to that third country arising under agreements concluded with it, insofar as they are in compliance with European Union law, and
- (iii) other specific facts and circumstances of the case and the third country concerned.

(5) The Commission shall notify the draft decision to the European Commission, in writing without delay, together with all the relevant information with respect to that decision.

(6) The Commission shall, before it adopts a decision on the certification to which this Regulation applies, request an opinion from the European Commission on whether—

- (a) the entity concerned complies with the requirements of Article 9 of the Natural Gas Market Directive, and
- (b) granting the certification will not put at risk the security of energy supply to the European Union.

(7) The Commission shall, within a period of 2 months of receiving an opinion of the European Commission with respect to its draft decision on the certification pursuant Article 3(1) of the Natural Gas Market Regulation or, if the European Commission has not provided its opinion in the required timeframe set out in Article 3(1) of the Natural Gas Market Regulation, within 2 months of the date of expiry of that timeframe, adopt its final decision on the certification. In adopting its final decision, the Commission shall take utmost account of the European Commission's opinion (if provided). The Commission shall have the right to refuse certification where granting the certification puts at risk Ireland's security of energy supply or the security of energy supply of another Member State of the European Union.

(8) The Commission's final decision and the European Commission's opinion shall be published together. Where the final decision diverges from the European Commission's opinion, the Commission shall provide and publish, together with that decision, the reasoning underlying such divergence.

(9) Nothing in this Regulation shall prevent the Commission or the Minister from exercising, in compliance with European Union law, national legal controls to protect legitimate public security interests.

(10) In this Regulation, a “third country” means a country which is not at the relevant time a member of the European Union.

PART 6

ENFORCEMENT OF THESE REGULATIONS AND CERTIFICATION REGULATIONS

Functions of Commission

32. (1) In this Part—

“Certification Regulations” means the European Communities (Internal Market in Electricity) (Certification and Designation of the Transmission System Operator) Regulations (S.I. No. 570 of 2011);

“transmission system operator”, in relation to gas, means a transmission system operator designated pursuant to Part 3;

“electricity transmission system operator” means the transmission system operator designated pursuant to the Certification Regulations;

“transmission system owner”, has the same meaning as in the European Communities (Internal Market in Electricity) (Certification and Designation of the Transmission System Operator) Regulations 2011 (S.I. No 570 of 2011).

(2) The Commission shall ensure that—

- (a) BGÉ Corporate and the ITO comply with the requirements of these Regulations and the Natural Gas Market Directive,
- (b) transmission system operators comply with the requirements of Part 3 and of the Natural Gas Market Directive, and
- (c) the electricity transmission system operator and electricity transmission system owner, comply with the requirements of these Regulations, the Certification Regulations and the Electricity Market Directive.

(3) The Commission shall monitor the operations of—

- (a) BGÉ Corporate and the ITO,
- (b) transmission system operators to which Part 3 applies, and
- (c) the electricity transmission system operator and the electricity transmission system owner.

(4) In performing its monitoring obligations under paragraph (2), the Commission shall ascertain the following:

- (a) whether the ITO is conducting its operations in a manner consistent with Regulation 18;

- (b) whether the ITO engages in discriminatory behaviour, in particular as regards other entities that are part of, or are related to, BGÉ Corporate;
 - (c) whether BGÉ Corporate engages in behaviour as regards the ITO that is not consistent with Regulation 18;
 - (d) whether transmission system operators are conducting their operations in a manner consistent with Part 3;
 - (e) whether the electricity transmission system operator is conducting its operations in a manner consistent with its designation under the Certification Regulations.
- (5) If the Commission forms the opinion that—
- (a) the ITO or BGÉ Corporate is not conducting its operations in a manner consistent with Regulation 18,
 - (b) the ITO or BGÉ Corporate is engaging in discriminatory behaviour,
 - (c) a transmission system operator is not conducting its operations in a manner consistent with Part 3,
 - (d) the electricity transmission system operator is not conducting its operations in a manner consistent with the Certification Regulations, or
 - (e) the electricity transmission system owner is not conducting its operations in a manner consistent with Article 9 of the Electricity Market Directive,

the Commission shall, by notice in writing given to the relevant party, require it to take such measures to rectify the situation as the Commission specifies in the notice.

(6) A notice under paragraph (5) may include a requirement directing a relevant party to modify its operations and, in the case of the ITO, the compliance programme, to such extent, and in such respects, as are specified in the notice.

(7) A relevant party to whom a notice under paragraph (5) is given shall comply with a requirement, if any, imposed on it in accordance with paragraph (6).

(8) The Commission may, subject to the protection of the confidentiality of any information which the Commission considers confidential, publish, in such manner as it thinks fit, any notification given by it under this Regulation.

Complaints to Commission

33. (1) Any party having a complaint against a gas transmission, storage, LNG or distribution system operator in relation to that operator's obligations

under these Regulations may refer the complaint to the Commission in accordance with section 9(1D) of the Act of 1999.

(2) Any party having a complaint against the electricity transmission system operator, and a person as respects matters specified in section 9(1B) in relation to electricity, may refer the complaint to the Commission in accordance with section 34(b) of the Act of 1999.

Powers of Commission in enforcing Part 2

34. The Commission shall have the following powers in enforcing Part 2 with respect to BGÉ Corporate and the ITO following the certification, designation, approval and licensing of the ITO:

- (a) to monitor communications between the ITO and BGÉ Corporate so as to ensure compliance of the ITO and BGÉ Corporate with their respective obligations under these Regulations;
- (b) to act as a dispute settlement authority between BGÉ Corporate and the ITO in respect of any complaint submitted pursuant to Regulation 33;
- (c) to monitor commercial and financial relations including loans between BGÉ Corporate and the ITO so as to ensure compliance of the ITO with obligations under these Regulations;
- (d) to approve all commercial and financial agreements between BGÉ Corporate and the ITO which comply with market conditions;
- (e) when notified by the compliance officer in accordance with Regulation 24, to request justification from BGÉ Corporate and such justification shall, in particular, require the inclusion of evidence that no discriminatory behaviour to the advantage of BGÉ Corporate has occurred;
- (f) to carry out inspections, including unannounced inspections, on the premises of BGÉ Corporate and the ITO so as to ensure compliance of the ITO and BGÉ Corporate with its respective obligations under these Regulations;
- (g) to assign all or specific tasks of the ITO to an independent system operator appointed in accordance with Article 14 of the Natural Gas Market Directive where there has been a persistent breach by the ITO of its obligations under these Regulations, in particular, in the case of repeated discriminatory behaviour to the benefit of BGÉ Corporate.

Commission may apply to High Court for compliance order

35. (1) Without prejudice to its functions under Regulation 32, if the Commission is of the opinion that a person to whom this Part applies has contravened, is contravening or is about to contravene, or has failed, is failing or is about to fail to comply with—

- (a) a provision of these Regulations,
- (b) a determination, requirement or direction imposed or given under such a provision, or
- (c) a provision of the Certification Regulations,

it may apply to the High Court for a compliance order against the person.

(2) An application under this Regulation shall be in writing and shall specify—

- (a) the provision, determination, requirement or direction that has been, is being or is about to be contravened or has not been, is not being or is about not to be complied with; and
- (b) the acts or omissions that, in the Commission's opinion, constitute or would constitute the contravention or failure to comply.

(3) An application under this Regulation may not be heard unless the High Court is satisfied that the person concerned has been served with a copy of the application. On being served with a copy of the application, that person becomes the respondent to the application and is entitled to appear and be heard at the hearing of the application.

(4) The High Court may, as it thinks fit, on the hearing of the application referred to in subsection (1) make an order compelling compliance with the provision, requirement, determination or direction or refuse the application. An order of the High Court compelling compliance may stipulate that the provision, requirement, determination or direction must be complied with immediately or may specify a reasonable time limit for compliance and may also stipulate appropriate and proportionate measures aimed at ensuring compliance.

(5) An application for an order under subsection (1) shall be by motion on notice and the High Court when dealing with the matter may make such interim or interlocutory orders as it considers appropriate.

(6) The High Court shall not deny any interim or interlocutory relief referred to in paragraph (5) solely on the basis that the Commission may not suffer any damage if such relief were not granted pending conclusion of the action.

(7) (a) An application for an order under subsection (1) may include an application for an order to pay to the Commission such amount not exceeding—

- (i) 10 per cent of the annual turnover of either the ITO, a transmission system operator to which Part 3 applies or the electricity transmission system operator, or
- (ii) 10 per cent of the annual turnover of either BGÉ or the electricity transmission system owner,

by way of financial penalty, as the Commission may propose as appropriate in the light of the non-compliance.

- (b) In deciding on such an application, the High Court shall decide the amount, if any, of the financial penalty which should be payable and shall not be bound by the amount proposed by the Commission.
- (c) Any financial penalty ordered by the High Court to be paid by a person under this paragraph shall be paid to and retained by the Commission as income.
- (d) In deciding what amount, if any, should be payable, the High Court shall consider the circumstances of the non-compliance, including—
 - (i) its duration,
 - (ii) the effect on other electricity or natural gas undertakings,
 - (iii) the submissions of the Commission on the appropriate amount,
 - (iv) the amount of any fine imposed by a court in respect of a prosecution relating to the same matter,
 - (v) any undue hardship which the penalty may cause to the business of the person, and
 - (vi) any excuse or explanation for the non-compliance.

PART 7

REVOCATIONS AND CONSEQUENTIAL AMENDMENTS TO NATURAL GAS LEGISLATION IN RESPECT OF ITO

Revocations

36. The following provisions are revoked with effect from the transfer date:

- (a) the European Communities (Internal Market in Natural Gas) (BGÉ) Regulations 2005 (S.I. No. 760 of 2005);
- (b) the European Communities (Internal Market in Natural Gas) (BGÉ) (Amendment) Regulations 2007 (S.I. No. 377 of 2007); and
- (c) the European Communities (Internal Market in Natural Gas) (BGÉ) (Amendment) Regulations 2008 (S.I. No. 239 of 2008).

Amendment of Gas Act 1976

37. (1) Section 2 of the Gas Act 1976 (No. 30 of 1976) is amended—

- (a) by inserting after the definition of “harbour authority” the following:
 - ‘ “ITO” has the meaning given to it in the Natural Gas Market Regulations;’, and

(b) by inserting after the definition of “natural gas” the following:

‘ “Natural Gas Market Regulations” means European Communities (Internal Market in Natural Gas and Electricity) Regulations 2011 (S.I. No. 630 of 2011);’

(2) Section 8 of the Gas Act 1976 (No. 30 of 1976) is amended by substituting for subsection (3A) (inserted by Regulation 23 of the European Communities (Internal Market in Natural Gas) (BGÉ) Regulations 2005 (S.I. No. 760 of 2005)) the following:

“(3A) From the transfer date fixed under the Natural Gas Market Regulations—

- (a) the ITO has such of the functions of the Board under or pursuant to this or any other Act as are necessary to enable it to carry out its responsibilities under those Regulations, and
- (b) the Board continues to have all such functions as are conferred on it under or pursuant to this or any other Act other than functions that are necessary with respect to the ownership and operation of the ITO.”.

(3) A pension scheme that complies with paragraph 3 of Schedule 2 shall be deemed to be a scheme permitted by section 18 of the Gas Act 1976 (No. 30 of 1976).

Certain References to BGÉ and Gaslink in legislation

38. (1) A reference in any Act, statutory instrument or other document to BGÉ, Gaslink or Bord Gáis Networks to the extent that it relates to assets or liabilities that are vested in or transferred to the ITO by the operation of Regulation 13 and Schedule 1 are to be read as, or as including as the case may be, a reference to the ITO.

- (2) (a) Without prejudice to the generality of paragraph (1), in construing the Gas Act 1976 (No 30 of 1976):
 - (i) section 8(4) shall apply also to the ITO to the extent that it subscribes or guarantees money for charitable or benevolent objects or to, or for, any institution or for any public, general or useful object;
 - (ii) section 20 shall apply also to the members and officers of the Commission and to the servants, advisors or consultants of the ITO;
 - (iii) section 26 shall apply also to officers of the ITO or any other person appointed in writing by the ITO to be an authorised officer of the Commission for the purposes of that section;

- (iv) references to the “Board” in sections 8(6), 27, 30, 31, 32, 33, 39, 39A and 42 shall be read instead to refer to the ITO;
- (v) references to the “Board” in sections 21(3), 28, 29, 38 and 41 shall be taken to include the ITO;
- (b) Without prejudice to the generality of paragraph (1), reference to the “Board” in section 72(4) of the Registration of Title Act 1964 (No. 16 of 1964) shall be taken to include the ITO.

(3) No subscription or purchase of shares in the ITO by any member of BGÉ Group shall be or be deemed to be a purchase or subscription for the purposes of section 60 of the Companies Act 1963 (No. 33 of 1963).

PART 8

OTHER REPEALS AND CONSEQUENTIAL AMENDMENTS TO NATURAL GAS AND ELECTRICITY LEGISLATION

Further amendment of Gas Act 1976

39. (1) Section 10A (inserted by section 2(1) of the Energy (Miscellaneous Provisions) Act 1995 (No. 35 of 1995)) of the Gas Act 1976 (No. 30 of 1976) is amended—

- (a) in subsection (1), by substituting for the definition of “Directive” the following:

“Directive” means Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009¹;

- (b) in subsection (2), by substituting “Article 36 of the Directive” for “Article 22 of the Directive”,
- (c) in subsection (4)(e), by substituting “operator;” for “operator; and”,
- (d) in subsection (4), by substituting for paragraph (f) the following:

“(f) publication by a storage operator of information on the specific storage facility, or the parts of the storage facility, or the ancillary services to which access is offered;

(g) publication by an operator of information on the access procedure proposed; and

(h) any other matters which the Commission considers necessary or expedient for the purpose of making an offer for third party access, or connection to a facility.”,

- (e) by inserting after subsection (4) the following:

“(4A) The Commission shall—

¹OJ No. L 211, 14.08.2009, p. 94

- (a) define the non-discriminatory criteria according to which access to a storage facility may be determined,
 - (b) determine, based on non-discriminatory criteria, what constitutes ‘circumstances where the Commission considers that it is technically or economically necessary for providing efficient access to the natural gas system for the supply of customers’ referred to in paragraph (c) of the definition of third party access in subsection (1) of section 10A, and
 - (c) ensure that the non-discriminatory criteria at paragraphs (a) and (b) are published.”,
- (f) in subsection (7) by substituting “Subject to subsection (7A), an operator may refuse” for “An operator may refuse”,
- (g) by inserting after subsection (7) the following:

“(7A) The transmission system operator shall not be entitled to refuse the connection of a new storage facility, LNG facility or industrial customer on the grounds of possible future limitations to available network capacities or additional costs linked with necessary capacity increase. The said operator shall ensure sufficient entry and exit capacity for the new connection within a reasonable timeframe.”,

- (h) by substituting for subsection (19) the following:

“(19) (a) Notwithstanding the generality of subsections (3) and (17), the Commission may, on a case by case basis, following an application in writing by an operator of an interconnector to another Member State, an LNG or a storage facility, constructed after the making of these Regulations, grant an exemption on such terms and conditions as the Commission considers appropriate to an operator from the provisions of those subsections in relation to the terms, conditions and charges for access to the facilities under the control of that operator.

- (b) An operator that proposes to expand or modify existing infrastructure to provide for a significant increase of capacity may also apply for an exemption under paragraph (a) of this subsection.
- (c) Any request under paragraph (a) or (b) shall be transmitted to the European Commission, in writing.
- (d) When granting an exemption under paragraph (a), the Commission shall ensure that—
 - (i) the investment enhances competition in gas supply and enhances security of supply,

- (ii) the level of risk attached to the investment is such that the investment would not take place unless an exemption was granted,
 - (iii) the infrastructure referred to at paragraph (a) is owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose systems that infrastructure will be built,
 - (iv) charges are levied on users of the infrastructure referred to at paragraph (a),
 - (v) the exemption is not detrimental to competition or the effective functioning of the internal market in natural gas or the efficient functioning of the natural gas network to which the infrastructure is connected, and
 - (vi) it acts in accordance with the rules and mechanisms for the management and allocation of capacity at (e).
- (e) Before granting any exemption under paragraph (a), the Commission shall decide rules and mechanisms for management and allocation of capacity, in particular—
- (i) that all potential users of the infrastructure shall be invited to express their interest in contracting capacity in the infrastructure,
 - (ii) that no capacity allocation shall occur prior to receipt by the Commission of expressions of interest being sought, and
 - (iii) that any unused capacity shall be offered on the market with users of the infrastructure being entitled to trade their contracted capacities.
- (f) In making a decision in regard to an exemption at paragraph (a) the Commission shall follow the procedures laid down in Article 36(8)(a) to (e) of the Directive.
- (g) On completion of the review procedure under Article 36 of the Directive referred to in paragraph (f), the Commission shall publish its decisions in respect of any application made to it pursuant to paragraph (a).
- (h) Any decision by the Commission in regard to an application under paragraph (a) shall be subject to review by the European Commission in accordance with the review procedure laid down at Article 36(9) of the Directive.

- (i) Where an application under paragraph (a) is from an operator located in the territory of more than one Member State, the Commission shall comply with the procedures at Article 36(4) of the Directive.
- (j) An operator that makes an application under paragraph (i) is also bound by the procedures at Article 36(4) of the Directive.
- (k) The Commission, shall by direction, provide for the procedures and conditions under which access to the storage facility under the control of the operator shall be negotiated.
- (l) The holder of an exemption under paragraph (a) shall negotiate the terms, conditions and charges for access to the storage facilities under the control of that operator in good faith and in accordance with the procedure and conditions referred to in paragraph (k).
- (m) The Commission shall direct the holder of an exemption under paragraph (a) to publish, on a publically available website, the main commercial conditions for the use of the facilities under his or her control within 6 months of the grant of that exemption and on an annual basis thereafter.
- (n) The Commission shall determine, in its sole determination, that which constitutes the ‘main commercial conditions’ referred to in paragraph (m).”.

(2) Section 10B (inserted by section 14 of the Gas (Interim) (Regulation) Act 2002 (No. 10 of 2002)) of the Gas Act of 1976 (No 30 of 1976) is amended—

- (a) in subsection (1)(a), by substituting “Article 36 of the Directive” for “Article 22 of the Directive”,
- (b) in subsection (8), by substituting “Article 36 of the Directive” for “Article 20 of the Directive”, and
- (c) in subsection (19), by substituting for the definition of “Directive” the following:

‘ “Directive” means Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009¹;’.

Amendment of Electricity Regulation Act 1999

40. (1) Section 2(1) of the Act of 1999 is amended—

- (a) by inserting before the definition of “authorisation” the following:

¹OJ No. L 211, 14.08.2009, p. 94

“Agency” means the agency set up under the Regulation (EC) 713/2009 of the European Parliament and of the Council;”,

(b) by inserting after the definition of “electric plant” the following:

‘ “Electricity Market Directive” means Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009¹;

“Electricity Market Regulation” means Regulation (EC) 714/2009 of the European Parliament and of the Council of 13 July 2009;’,

(c) by inserting after the definition of “licence” the following:

‘ “linepack” means the storage of gas by compression in gas transmission and distribution systems, but not including facilities reserved for transmission system operators carrying out their functions;’,

and

(d) by inserting after the definition of “Minister” the following:

‘ “ natural gas exchange” means a virtual trading location for the purchase and sale of natural gas;

“Natural Gas Market Directive” means Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009;

“Natural Gas Market Regulation” means Regulation (EC) 715/2009 of the European Parliament and of the Council of 13 July 2009;’.

(2) Section 9 of the Act of 1999 is amended—

(a) by substituting for subsection (1)(*da*) and (*db*) the following:

“(*da*) to monitor the level and effectiveness of market opening and the development of competition in the supply of electricity and gas to final customers, which shall include but is not limited to monitoring—

(i) final tariffs charged to domestic customers including those on prepayment systems,

(ii) rates of customer switching between licensed electricity and gas suppliers,

(iii) disconnection and de-energisation rates,

(iv) charges for, and the execution of, maintenance services,

¹OJ No. L 211, 14.08.2009, p. 94

- (v) complaints by domestic customers,
 - (vi) any distortion or restriction of competition in the supply of electricity and gas to final customers,
 - (vii) whether the development and operation of competition in the supply of electricity and gas is benefitting final customers, and
 - (viii) the level of market opening and of competition on natural gas exchanges,
- (db) to take any actions which the Commission, on foot of the monitoring in paragraph (da), has determined to be necessary in order to—
- (i) prevent a distortion or restriction of competition in the supply of electricity and gas to final customers, or
 - (ii) ensure that final customers are benefitting from competition in the supply of electricity and gas,”

(b) by inserting after subsection (1)(di) the following:

- “(dj) to publish recommendations, at least annually, in relation to compliance of supply prices with Article 3 of the Natural Gas Market Directive and Article 3 of the Electricity Market Directive,
- (dk) to monitor the implementation of rules relating to the roles and responsibilities of transmission system operators, distribution system operators, suppliers and customers and other market parties pursuant to the Electricity Market Regulation and the Natural Gas Market Regulation,
- (dl) to respect contractual freedom with regard to interruptible supply contracts as well as with regard to long-term contracts provided that they are compatible with European Union law and consistent with European Union policies,
- (dm) to monitor the occurrence of restrictive contractual practices, including exclusivity clauses which may prevent large non-household customers from contracting simultaneously with more than one supplier or restrict their choice to do so and, where appropriate, to inform the Competition Authority of such practices,
- (dn) where applicable, to monitor technical cooperation between electricity transmissions system operators and third-country electricity transmission system operators.”

(c) by substituting for subsection (1)(f) the following:

“(f) to contribute to the development of the internal market and to the development of compatible regulatory frameworks between regions of the European Union, by engaging, co-operating and consulting with other national regulatory authorities, the Agency and with the European Commission in regard to cross-border issues,

(fa) to share information, as necessary for the fulfilment of its functions, with other national regulatory authorities and the Agency,

(fb) to co-operate with other regulatory authorities, at least at a regional level, to—

(i) foster the creation of operational arrangements in order to enable optimal management of the electricity and gas networks,

(ii) promote joint electricity and gas exchanges and the allocation of cross-border capacity,

(iii) co-ordinate the development of network codes for electricity and gas transmission system operators and electricity and gas undertakings,

(iv) develop rules on access to cross border infrastructure including allocation of capacity and congestion management,

(v) foster operational arrangements to enable an adequate level of interconnection capacity within the region and between regions to allow the development of effective competition and improvement of security of supply,

(vi) foster non-discriminatory operational arrangements in regard to supply undertakings, and

(vii) contribute to safeguarding secure electricity and gas supplies on the internal market by co-operating with, and keeping other national regulatory authorities informed of any co-operation measure which the Commission takes pursuant to this section. Such cooperation shall cover situations resulting or likely to result in the short-term in a severe disruption of supply and shall include—

(I) co-ordination of national emergency measures referred to in Article 8 of Directive 2004/67/EC of 26 April 2004 of the European Parliament and of the Council⁵,

(II) identification and, where necessary, development or upgrading of electricity and natural gas interconnections, and

(III) conditions and practical procedures for mutual assistance,

(*fc*) to engage with transmission system operators in order to—

(i) promote and facilitate co-operation between transmission system operators at a regional level on cross-border issues,

(ii) foster the consistency of legal, regulatory and technical frameworks,

(iii) facilitate the integration of isolated systems forming electricity and gas islands in the European Union, and

(iv) create competitive internal electricity and gas markets,

(*fd*) to ensure that electricity and gas transmission system operators have one or more integrated systems at regional level covering 2 or more Member States for capacity allocation and for checking the security of the network,”

(*d*) by substituting for subsection (1)(*j*) the following:

“(*j*) to comply with and implement relevant legally binding decisions of the Agency and of the European Commission.”,

(*e*) by substituting, in subsection (1)(*k*), “Part VIB,” for “Part VIB.”,

(*f*) by inserting after subsection (1)(*k*) the following:

“(*l*) ensure compliance by electricity and gas undertakings, including transmission system operators, distribution system operators and system owners, with their obligations under the Natural Gas Market Directive, the Electricity Market Directive including as regards cross-border issues in accordance with their statutory functions,

(*m*) to carry out investigations into the functioning of the electricity and gas markets, and

⁵OJ No. L 127, 29.04.2004, p.92

(n) to decide upon and impose effective and proportionate measures to promote effective competition.”,

(g) by substituting for subsection (1A) the following:

“(1A) For the purposes of this Act, the functions of the Commission under the Electricity Market Directive and under the Natural Gas Market Directive and any regulations made under either, shall be deemed to be functions of the Commission under this Act.”,

(h) by substituting for subsection (1B) the following:

“(1B) The Commission shall be responsible for ensuring non-discrimination, effective competition and the efficient functioning of the electricity and gas markets, by monitoring in particular—

- (a) the rules on the management and allocation of interconnection capacity in conjunction with the regulatory authority or authorities of those Member States with which the interconnection exists,
- (b) mechanisms to deal with management of congestion capacity within the electricity and gas systems,
- (c) the time taken by transmission and distribution system operators to make connections and repairs,
- (d) the publication of appropriate information by transmission and distribution system operators concerning interconnectors, grid usage and capacity allocation to interested parties, taking into account the need to treat non-aggregated information as commercially confidential,
- (e) effective unbundling of accounts to ensure that there are no cross-subsidies between generation, transmission, distribution, storage, LNG and supply activities,
- (f) conditions of access to storage facilities, linepack and to other ancillary services in relation to gas,
- (g) the application by storage operators of the criteria relating to storage facilities that fall under Article 33 of the Natural Gas Market Directive,
- (h) the extent to which transmission and distribution system owners and operators fulfil their functions in accordance with statutory requirements,
- (i) the level of competition and transparency in respect of wholesale prices,

- (j) ensuring compliance of transmission and distribution system owners and operators with transparency obligations,
- (k) ensuring compliance by transmission system operators with recommendations of the Commission in regard to amendment or modification of investment plans of transmission system operators,
- (l) compliance with, and review of, past performance of network security and reliability rules, and
- (m) the terms, conditions and tariffs for connecting new producers of electricity to guarantee that these are objective, transparent and non-discriminatory, in particular taking full account of the costs and benefits of the various renewable energy sources technologies, distributed generation and combined heat and power.”,

(i) subsection (1BA) is deleted,

(j) by substituting for subsection (1C) the following:

“(1C) The Commission shall in its annual report, under paragraph 25(c) of the Schedule include details on the carrying out and fulfilment of its duties under Article 37 of the Electricity Market Directive, and Article 41 of the Natural Gas Market Directive and subsection (3) of section 9BA.”,

(k) by substituting for subsection (1D) the following:

“(1D) (a) Any dispute between a gas transmission, gas distribution, LNG or gas storage system operator and a person regarding—

- (i) (I) the matters specified in section 9(1B), in relation to gas,
- (II) the terms and conditions for the provision of balancing services or the methodologies used to calculate such terms and conditions,
- (III) the terms and conditions, including tariffs or the methodologies used to calculate or establish such terms and conditions for connection and access to the national networks,

or

- (ii) any dispute between Bord Gáis Éireann and the ITO in respect of their obligations under the Natural Gas Market Directive,

shall, upon the application of such person, be determined by the Commission, and the Commission shall issue a direction regarding its determination and the system operator shall comply with and be bound by any such determination.

(b) The Commission shall issue a binding determination referred to in paragraph (a) within 2 months from the date of receipt of the complaint. This 2 month period may be extended by a further 2 months (and such further extension as may be consented to by the applicant) where the Commission seeks additional information in the matter.

(c) This subsection does not apply to a dispute between a final customer and a system operator where the dispute concerns a refusal to offer to enter into a third party access agreement within the meaning of section 10A or 10B of the Gas Act 1976.”,

(l) by substituting for subsection (1E) the following:

“(1E) The Commission when carrying out its monitoring at paragraph (k) of subsection (1B) may make recommendations in its reporting obligations under section 9(1C) to amend or modify those investment plans to ensure consistency with the network development plan referred to in Article 8(3)(b) of the Electricity Market Regulation and Article 8(3)(b) of the Natural Gas Market Regulation.”,

(m) by substituting for subsection (4) the following:

“(4) (a) In carrying out the duty imposed by subsection (3), statutory functions in Article 37 of the Electricity Market Directive and Article 41 of the Natural Gas Market Directive, the Minister and the Commission shall have regard to the need—

(i) to promote competition in the generation and supply of electricity and in the supply of natural gas in accordance with this Act,

(ii) to secure that all reasonable demands by final customers of electricity for electricity are satisfied,

(iii) to secure that licence holders are capable of financing the undertaking of the activities which they are licensed to undertake,

(iv) to promote safety and efficiency on the part of electricity and natural gas undertakings,

(v) to promote the continuity, security and quality of supplies of electricity,

- (vi) to promote the use of renewable, sustainable or alternative forms of energy,
 - (vii) to secure that there is sufficient capacity in the natural gas system to enable reasonable expectations of demand to be met, and
 - (viii) to secure the continuity, security and quality of supplies of natural gas.
- (b) In carrying out its duties under paragraph (a) of this subsection, the Commission shall also have regard to the following objectives:
- (i) to integrate large and small scale production of electricity and gas from renewable resources and distributed production in both transmission and distribution networks in the most cost effective way;
 - (ii) to develop competitive and properly efficient and reliable functioning regional electricity and gas markets;
 - (iii) to eliminate restrictions on trade in electricity and gas between Member States, including developing appropriate cross-border transmission capacities to meet demand and enhancing the integration of national markets which may facilitate electricity and gas flows across the European Union;
 - (iv) to promote system adequacy;
 - (v) to facilitate access to the network for electricity generation and for gas production, in particular removing barriers that could prevent access for new market entrants and of electricity and gas from renewable energy sources;
 - (vi) in fixing and approving tariffs or methodologies and the balancing services, to ensure that system operators and system users are granted appropriate incentives, in both the short and long term to—
 - (I) increase the efficiencies in system performance,
 - (II) to foster market integration,
 - (III) to foster security of supply, and
 - (IV) to support research activities.”,

and

(n) by substituting for subsection (6)(b) the following:

“(b) any decisions taken by it shall be fully reasoned and justified and shall be publically available while preserving the confidentiality of commercially sensitive information.”.

(3) Section 9A (inserted by Regulation 12(2) of the European Communities (Internal Market in Natural Gas) (No. 2) Regulations 2004 (S.I. No. 452 of 2004)) of the Act of 1999 is amended by substituting the following:

“Approval of terms and conditions

9A. (1) The Commission shall be responsible for the following:

- (a) determining or approving prior to their entry into force, at least the methodologies used to calculate the terms and conditions for the provision of balancing services in relation to electricity and gas systems;
- (b) providing in the most economic manner balancing services, with the appropriate incentives for network users to balance the input and off-take of gas in the system;
- (c) providing balancing services in a fair and non-discriminatory manner and based on objective criteria.

(2) The Commission shall publish the methodologies or the terms and conditions referred to in 9A(1) on a publically available website.”.

(4) Section 10A (inserted by section 7 of the Energy (Miscellaneous Provisions) Act 2006) (No 40. of 2006)) of the Act of 1999 is amended by inserting after subsection (7) the following:

“(8) Nothing in this section shall allow the Commission to seek or take instructions from any natural or legal person in relation to a decision on a matter which is set out in Article 37 of the Electricity Market Directive or in Article 41 of the Natural Gas Market Directive.”.

(5) Section 14 of the Act of 1999 is amended by inserting after subsection (2F) the following:

“(2G) A licence under paragraphs (b), (c) or (d) of subsection (1) may include conditions to ensure that where the holder of the licence is registered in another Member State, the holder of the licence shall comply with—

- (a) the conditions of the licence, and
- (b) the requirements of this Act.”.

(6) Section 18(2) of the Act of 1999 is amended—

- (a) in paragraph (h), by deleting “and”,

(b) in paragraph (i), by substituting “under section 39, and” for “under section 39.”, and

(c) by inserting after paragraph (i) the following:

“(j) the contribution of the generating capacity to assisting in ensuring that the renewable share in the year 2020 is at least the national overall target of 16 per cent as provided for in paragraph A of Annex 1 to Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009⁶, and

(k) the contribution of generating capacity to reducing emissions.”.

(7) Section 34 of the Act of 1999 is amended by substituting for paragraph (b) the following:

“(b) Any dispute between a transmission system operator or a distribution system operator in regard to duties under the Electricity Market Directive and a person as respects matters specified in section 9(1B) in relation to electricity shall, upon the application of such person, be determined by the Commission, and the Commission shall issue a direction regarding its determination and such direction shall be binding on all parties concerned.”.

(8) Schedule 1 to the Act of 1999 is amended—

(a) in paragraph 1 by substituting “not less than five” for “not less than three”,

(b) by substituting for paragraph (3) the following:

“3. A member of the Commission whose term of office expires by effluxion of time shall be eligible for re-appointment to serve a second term.

3A. In appointing a member of the Commission under paragraph 1 or re-appointing a member of the Commission under paragraph 3, the Minister shall seek to ensure an appropriate rotation of Commission members so that terms of office do not all end within the same 12 month period.”.

Amendment of Gas (Interim) (Regulation) Act 2002

41. The Gas (Interim) (Regulation) Act 2002 (No. 10 of 2002) is amended—

(a) in section 2(1)—

(i) by inserting after the definition of “functions” the following:

⁶OJ No L 140, 05.06.2009, p.16

‘ “ITO”, has the same meaning as in the European Communities (Internal Market in Natural Gas and Electricity) Regulations 2011 (S.I. No. 630 of 2011);

- (ii) by inserting after the definition of “natural gas licence” the following:

‘ “Natural Gas Regulation” means Regulation 715/2009 of the European Parliament and of the Council of 13 July 2009⁴;’,

- (iii) by substituting for the definition of “Directive” the following:

‘ “Directive” means Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009¹;’,

- (iv) by substituting for the definition of “natural gas undertaking” the following:

‘ “natural gas undertaking” has the same meaning as in the Directive;’,

- (v) by substituting for the definition of “transmission” the following:

‘ “transmission” in relation to natural gas, means the transport of natural gas through a high pressure pipeline, other than an upstream pipeline with a view to delivering the gas to customers;’,

- (b) in section 16 by substituting for subsections (1), (1A), (1B) and (1C) the following:

“(1) The Commission may grant or refuse to grant to a person a licence to undertake in the State all or any of the following activities:

- (a) the supply of natural gas;
- (b) the shipping of natural gas;
- (c) the ownership of a transmission system;
- (d) the operation of a transmission system;
- (e) the ownership of a distribution system;
- (f) the operation of a distribution system;
- (g) the operation of a natural gas storage facility;
- (h) the operation of a LNG facility.

⁴OJ L 211, 14.08.2009, p. 36

¹OJ No. L 211, 14.08.2009, p. 94

(1A) A licence granted under subsection (1) is subject to such conditions as are specified in the licence.

(1B) Subject to security of supply requirements, it shall be a duty of the Commission to ensure that all customers are entitled to be supplied with gas by a supplier, subject to the supplier's agreement, regardless of the Member State in which the supplier is registered, on condition that the supplier follows the applicable trading and balancing rules.

(1C) For the purposes of the Directive—

- (a) the holder of a licence for the ownership and operation of a transmission system is approved and designated as a transmission system operator,
- (b) the holder of a licence for the operation of a natural gas storage facility is designated as a storage facility operator, and
- (c) the holder of a licence for operation of a LNG facility is designated as a LNG facility operator.

(1D) For the purposes of Article 24 of the Directive, the holder of a licence for the operation of a distribution system is designated as a distribution system operator.”,

(c) in section 16(13)—

(i) by substituting for paragraph (a) the following:

“(a) in the case of a holder of a licence under paragraph (1)(c), (1)(e) or (1)(f), operate, maintain and develop under economic conditions a secure, reliable, economic and efficient transmission, storage or LNG facilities (as the case may be having regard to the activity for which it is licensed) to secure an open market, with due regard to the environment and public safety and ensure adequate means to meet service obligations,

(aa) in the case of a holder of a licence under paragraph (1)(d), ensure the long-term ability of the system to meet reasonable demands for the distribution of natural gas, and for operating, maintaining and developing under economic conditions a secure, reliable and efficient system in its area, with due regard for the environment and energy efficiency;

(ab) in the case of a holder of a licence under paragraph (1)(a), (1)(b) or (1)(d), operate, maintain and develop under economic conditions such facilities or systems as required for the purpose of carrying out the activity for which it is licensed with due regard to the environment and public safety.”,

(ii) by substituting for paragraph (e) the following:

“(e) in the case of the holder of a licence under paragraph (1)(c) or 1(d), take steps to prevent the disclosure in a discriminatory manner of commercially advantageous information about its own activities and not disclose any commercially sensitive information to the remaining parts of the undertaking of which it is part, unless this is necessary for carrying out a business transaction,

(ea) in the case of the holder of a licence under paragraph (1)(c), without prejudice to its obligations to protect commercially sensitive information, make public all information necessary for effective competition and the efficient functioning of the market,”

(iii) by substituting for paragraph (f) the following:

“(f) in the case of a holder of a licence under subsection (1)(c), (e) or (f), provide users of the system or facility with sufficient information to enable them to access the system or facility,

(fa) in the case of a holder of a licence under subsection (1)(d), provide system users with the information they need for efficient access to, including use of, the system,”

(iv) in paragraph (h)(ii), by substituting “Article 41(6)” for “Article 25(2)”, and

(v) by inserting after paragraph (j) the following:

“(k) in the case of the holder of a licence under subsection (1)(c)—

(i) build sufficient cross-border capacity to integrate European transmission infrastructure accommodating all economically reasonable and technically feasible demands for capacity and taking into account security of natural gas supply, and

(ii) establish and publish transparent and efficient procedures and tariffs for non-discriminatory connection of storage facilities, LNG regasification facilities and industrial customers to the transmission system. Those procedures shall be subject to approval by the Commission,

and

(l) in the case of a licence granted to the ITO under subsection (1)(c), in performing its obligations pursuant to Articles 13

and 17(2) of the Directive, and in complying with Articles 13(1), 14(1)(a), 16(2), (3) and (5), 18(6) and 21(1) of the Natural Gas Market Regulation, refrain from discriminating against different persons or entities and shall not restrict, distort or prevent competition in production or supply;”.

Amendment of European Communities (Internal Market in Electricity) (Electricity Supply Board) Regulations 2008

42. The European Communities (Internal Market in Electricity) (Electricity Supply Board) Regulations 2008 (S.I. No. 280 of 2008) are amended by inserting after Regulation 6 the following:

“6A. (1) The Board shall ensure that any licensed supplier owned by it is separately identifiable from the distribution system operator.

(2) The Board shall endeavour in its branding and communications to avoid confusion in respect of the separate identity of such licensed suppliers owned by it.

(3) For the purposes of introducing a new brand to comply with its obligations under paragraphs (1) and (2), the Board may, subject to the agreement of the Commission, use both the ESB brand and the new brand for a transition period.

(4) The duration of the transition period mentioned in paragraph (3) shall be determined by the Commission.

(5) Brand for the purposes of this Regulation may be deemed to include slogan, symbol or sign.”.

SCHEDULE 1

TRANSFER OF ASSETS, CONTRACTS, RIGHTS AND LIABILITIES OF BGÉ CORPORATE

Transfer of ownership of the Certain assets of BGÉ Corporate

1. (1) The assets of BGÉ Corporate referred to in Regulation 11(1)(a) and 11(2) become the assets of the ITO without the need for any conveyance, transfer, assignment or assurance.

(2) All legal proceedings relating to those assets begun before the transfer date by or against BGÉ Corporate and pending immediately before that date are taken to be legal proceedings pending by or against the ITO.

(3) Any act, matter or thing done or omitted to be done in relation to those assets before the transfer date by, to, or in respect of, BGÉ Corporate is (to the extent that that act, matter or thing has any effect) taken to have been done or omitted by, to, or in respect of, the ITO.

Transfer of the Certain rights and liabilities of BGÉ

2. (1) The rights (including licences) and liabilities of BGÉ Corporate specified in the transfer plan under Regulation 11(1)(a) and (3) become the rights (including licences) and liabilities of the ITO.

(2) All legal proceedings relating to those rights or liabilities begun before the transfer date by or against BGÉ Corporate and pending immediately before that date are taken to be legal proceedings pending by or against the ITO.

(3) Any act, matter or thing done or omitted to be done in relation to those rights or liabilities before the transfer date by, to, or in respect of, BGÉ Corporate is (to the extent that that act, matter or thing has any effect) taken to have been done or omitted by, to, or in respect of, the ITO.

Change of ownership of asset not to be regarded as giving rise to remedy

3. Change in the legal or beneficial ownership of any asset, right (including licences) or liability because of the operation of Regulation 13 or 14 and this Schedule becomes binding on all persons even if, apart from these Regulations, the consent or concurrence of any other person would have been required. Such a change is not to be regarded as giving rise to any remedy by a party to any document.

No attornment required in respect of the certain leased land

4. If any member of BGÉ Corporate is the lessor under any lease of land that becomes vested in the ITO by virtue of this Schedule, the lessee is not required to attorn to the ITO.

Apportionment of assets, contracts, rights and liabilities

5. (1) Any asset, contract, right (including licences) or liability (other than under or with respect to any contract of employment) which relates to more than one activity of the BGÉ Group shall, where the nature of the asset, contract, right or liability permits, be divided or apportioned between in the case of an asset, contract, right (including licences) or liability to which Regulation

11(1)(a) applies, BGÉ Corporate and the ITO in such proportions as BGÉ considers appropriate.

(2) Where any estate or interest in land falls to be divided or apportioned by virtue of subparagraph (1)—

(a) any rent payable under a lease in respect of that estate or interest, and

(b) any rent charged on that estate or interest,

shall be correspondingly apportioned or divided so that each part is payable in respect of, or charged on, only the relevant part of the estate or interest so apportioned.

(3) Any asset or liability to which subparagraph (1) relates, the nature of which does not permit its division or apportionment, may be transferred to the relevant member of the BGÉ Group according to—

(a) in the case of an estate or interest in land, whether on the transfer date the relevant member of the BGÉ Group appears to be in greater need of the security afforded by that estate or interest or, where no such member appears to be in greater need of that security, whether on that date the relevant member of the BGÉ Group appears likely to make use of the land to the greater extent, and

(b) in the case of any other asset or liability (including choses-in-action), whether on the transfer date the relevant member of the BGÉ Group appears likely to make use of, or as the case may be, to be affected by, the asset or liability, to the greater extent, subject (in either case) to such arrangements for the protection of the other relevant members of the BGÉ Group as may be agreed between them.

(4) It shall be the duty of BGÉ and the ITO whether on or after the transfer date, so far as practicable, to arrive at such written agreements and to execute such other instruments as are necessary or expedient to identify or define the assets and liabilities transferred to the ITO as will—

(a) afford to the ITO and BGÉ as against one another such rights and safeguards as they may require for the carrying on of their respective undertakings, and

(b) make as from such date, not being earlier than the transfer date, as may be specified in the agreement or instrument, such clarification and modifications of the division of the BGÉ Corporate's undertaking as will best serve the carrying on of the respective undertakings of the ITO and BGÉ.

(5) Any agreement under subparagraph (4) shall, so far as it is expedient, provide for the granting of indemnities in connection with the severance of leases and other matters.

(6) If the ITO or BGÉ represents to the Commission, or if it appears to the Commission without such a representation, that it is unlikely in the case of any matter on which agreement is required under subparagraph (4) between them that such agreement will be reached, the Commission may—

(a) give a direction determining that matter, and

(b) include in the direction any provision which might have been included in an agreement under subparagraph (4).

(7) Any assets or liabilities required by a direction under subparagraph (6) to be transferred to the ITO shall be regarded as having been transferred by these Regulations to, and by virtue of the transfer, vested in the ITO accordingly.

(8) A transaction of any description which, under paragraph (4) or a direction under paragraph (6), is effected between BGÉ and the ITO shall be binding on all persons notwithstanding that it would, apart from this paragraph, have required the consent or concurrence of any other person.

(9) If any transaction is effected under paragraph (4) or a direction under paragraph (6), BGÉ or the ITO (as appropriate) shall notify any person who has rights or liabilities which thereby become enforceable as to part by or against one or more of BGÉ and the ITO.

(10) If, within 28 days from being notified, such a person as is mentioned in paragraph (9) applies to, and satisfies the Commission that the transaction operated unfairly against him or her, the Commission may give such directions to BGÉ or the ITO (as appropriate) as appear to the Commission appropriate for varying the transaction.

(11) If in consequence of 2 or more transfers effected under the transfer plan or anything done under the provisions of this paragraph—

(a) the rights or liabilities of any person other than BGÉ or the ITO which were enforceable against or by BGÉ become enforceable against or by more than one of BGÉ and the ITO, and

(b) the value of any property or interest of that person is thereby diminished,

such compensation as may be just shall be paid to that person by BGÉ or the ITO, as appropriate.

(12) Any dispute as to whether and, if so, how much compensation is payable under subparagraph (11) or as to the person to, or by, whom it shall be paid shall be referred to the Commission. The Commission shall issue directions regarding its decision, as it sees fit, regarding the matter in dispute, and BGÉ or the ITO, as appropriate, shall comply with such directions.

Restrictions on dealing with the certain land

9. (1) Where 2 or more transfers are effected under the transfer plan and the Commission is satisfied, on the representation of BGÉ or the ITO (as appropriate), that—

- (a) in consequence of those transfers, different estates in land, whether the same or different land, are held by BGÉ or the ITO, and
- (b) the circumstances are such that this paragraph should have effect to any transfer concerned,

then the Commission may direct that this paragraph shall apply to such of that land as may be specified in the direction. While the direction remains in force this paragraph shall have effect accordingly.

(2) Neither BGÉ nor the ITO shall dispose of any estate to which they may respectively be entitled in any of the specified land except with the consent of the Commission.

(3) If, in connection with any proposal to dispose of any estate of BGÉ or the ITO in any of the specified land, it appears to the Commission to be necessary or expedient for the protection of either of them, the Commission may—

- (a) direct BGÉ or the ITO (as appropriate) to dispose of any estate to which it may be entitled in any of the specified land to such person and in such manner as may be specified in the direction,
- (b) direct BGÉ or the ITO (as appropriate) to acquire from the other party any estate in any of the specified lands to which that other or others are entitled, or
- (c) consent to the proposed disposal subject to compliance with such conditions as the Commission may see fit to impose.

(4) A person, other than BGÉ or the ITO, dealing with BGÉ or the ITO, shall be under no obligation to see or to enquire into—

- (a) whether or not this paragraph applies or has applied in relation to any land to which the dealing relates, or
- (b) whether or not the provisions of this paragraph have been complied with in connection with that or any other dealing with that land,

and no transaction between persons, other than between BGÉ and the ITO (as appropriate), shall be invalid by reason of any failure to comply with those provisions.

SCHEDULE 2

TRANSFER OF CERTAIN BGÉ EMPLOYEES

Certain BGÉ employees transferred to ITO or the relevant subsidiary on transfer date

1. The employment of those employees of BGÉ Corporate who are designated in the transfer plan is transferred to the ITO (as specified in the transfer plan) by virtue of this Schedule.

This Schedule not to affect the Certain matters relating to staff members

2. (1) Subject to this Schedule, each person whose employment is transferred in accordance with paragraph 1 is employed by the ITO on terms and conditions no less favourable to that person than those on which the person was employed by BGÉ immediately before the transfer date.

(2) Nothing in this Schedule has the effect of breaking a person's contract of employment or continuity of employment for the purpose of applying to the person any other law relating to employment that would, apart from this Schedule, apply to the person. In particular, this Schedule does not affect a person's accrued rights that the person had immediately before the transfer date in respect of any kind of leave.

Special pension arrangements for officers and servants of BGÉ Corporate and ITO

3. The ITO shall establish jointly with BGÉ a pension scheme for such of the respective officers and employees of BGÉ Corporate and the ITO as each of them sees fit subject to the prior written consent of the Minister. Such scheme shall contain provisions compatible with the requirements of Chapter IV of the Natural Gas Market Directive and shall be in a form acceptable to the Commission.

Variation of terms and conditions of transferred employees and contractors

4. (1) It is a term of employment of each transferred employee that the terms and conditions of that employment may be varied to the extent to which, and in the manner in which, the terms and conditions of the employee's employment could, immediately before the transfer date, be lawfully varied.

(2) Nothing in this Schedule prevents the terms and conditions of a transferred employee's employment after the transfer date from being varied—

(a) in accordance with those terms and conditions, or

(b) by or under an applicable law or agreement.

(3) In this paragraph—

“terms and conditions” includes a term existing because of paragraph 1;

“vary”, in relation to terms and conditions, includes vary by—

- (a) omitting any of those terms and conditions,
- (b) adding to those terms and conditions, or
- (c) substituting new terms or conditions for any of the first-mentioned terms and conditions.



GIVEN under my Official Seal,
1 December 2011.

PAT RABBITTE,
Minister for Communications Energy and Natural Resources.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations give legal effect to—

- (a) EU Directive 2009/73/EC concerning common rules for the internal market in natural gas, save for Articles 3, 41(1)(o) and (q) and Annex I to the Directive, and
- (b) 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 (ITO) for gas, in line with the gas unbundling rules as set out in Directive 2009/73/EC. The operation and ownership of the gas transmission system will be carried out by a legally independent ITO, a subsidiary of Bord Gáis Éireann (BGÉ), subject to stringent requirements to ensure it is ring fenced from the supply business of BGE. Included in the ring fencing arrangements is a requirement for the ITO to have its own Board of Directors.

Other provisions provide for—

Commission for Energy Regulation (CER) Functions and Powers

- Enhancement of the CER's market monitoring function in regard to the electricity and gas markets to align with the Directives,
- Provision for the appointment of CER Commissioners for a period of between 5 and 7 years,
- Prohibition on the CER taking instruction from the Minister in relation to functions set out in Article 37 of the Electricity Directive or Article 41 of the Gas Directive,
- Assignment of powers to the CER to monitor the operations of electricity and gas transmission system operators and enforce compliance,
- Assignment of powers to the CER to make applications to the High Court for Compliance Orders and to recommend to the court, in the case of non-compliance with unbundling provisions, fines up to a level of 10% of annual turnover of the TSO or the VIU as appropriate,
- Assignment of a dispute resolution function to the CER in the event of disputes between TSOs and a third party (including disputes between BGÉ and the ITO) and disputes between DSOs, gas storage operators, LNG operators, gas undertakings and third parties,

- Obligations on TSOs to draft 10 Year Network Investment Plans and to report annually to EU Commission on certain matters, and
- Obligations on TSOs to report on certain matters to the CER.

Other Provisions

- Consequential repeals and/or amendment of the Gas Act 1976, the Electricity Regulation Act 1999, the Gas (Interim) (Regulation) Act 2002 and other electricity and gas legislation to align with Third Package requirements in regard to electricity and gas TSOs,
- Amendment of the Gas (Interim) (Regulation) Act 2002 in regard to the licensing of the gas TSO and distribution system operator (DSO) and gas suppliers,
- Obligations on VIU/DSO to ensure that there is no confusion in regard to the identity of the DSO and a supplier owned by the VIU.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
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TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
nó tríd an bpost ó
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,
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