

The International Comparative Legal Guide to: Gas Regulation 2010

A practical insight to cross-border Gas Regulation work



Published by Global Legal Group in association with Ashurst LLP,
with contributions from:

ÁLEX	Estudio Gálvez Abogados	O'Flynn Exhams
Aguilar, Loera, Cortina & Martínez	Fortunati & Asociados	Pachiu & Associates
Ali Budiardjo, Nugroho, Reksodiputro	Garrigues	Rolim, Godoi, Viotti & Leite Campos Advogados
Allens Arthur Robinson	Guerrero, Olivos, Novoa y Errázuriz	Rosenberg, Hacoen, Goddard & Ephrat - Law Office
Azmi & Associates	Haavind	Schönherr Rechtsanwälte GmbH
Bell Gully	IndoJuris	Studio Legale Bonora e Associati
CMS Cameron McKenna	Janković, Popović & Mitić	Travieso Evans Arria Rengel & Paz
Craies, Urcullo & Antezana	JeanetAssociés AARPI	Uría Menéndez
Denton Wilde Sapte	Lovells LLP	Vellani & Vellani
Dewey & LeBoeuf LLP	Loyens & Loeff N.V.	Wardyński & Partners

Ireland

Irene O'Donovan



Frank M. O'Flynn



O'Flynn Exhams

1 Overview of Natural Gas Sector

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

Upstream

The natural gas sector in Ireland was originally developed as a result of the discovery of the Kinsale Gas Field off the south coast of Ireland. Current operational indigenous gas production in Ireland is from the Kinsale Gas Field (including Ballycotton and South West Kinsale) and Seven Heads Gas Field all of which gas flows are delivered to the onshore transportation system at Inch in County Cork. The gas fields currently delivering at Inch are in decline, and the South West Kinsale field has been developed as a storage facility.

A Petroleum Lease was issued in respect of the Corrib Gas Field off the west coast of County Mayo. The Corrib Gas Field is a medium sized reserve in world terms but has the potential to supply up to 60% of Irish gas needs at peak production.

An onshore terminal and 150 kilometres of pipeline have been developed as part of the required infrastructure to deliver Corrib natural gas to the Irish market and it is currently anticipated that production may be available to market in 2011.

Four new oil and gas Frontier Exploration Licences were awarded in 2008 over areas totalling 4,963 square kilometres.

Downstream

The downstream natural gas industry was substantially developed by Bord Gáis Éireann (Bord Gáis) a State body established pursuant to the Gas Act 1976 (as amended). Bord Gáis was established for the purpose of developing and maintaining an economic and efficient system for the supply of natural gas. Bord Gáis accordingly developed the natural gas transportation and supply business as a vertically integrated undertaking. The Irish natural gas transmission pipeline network developed by Bord Gáis is interconnected with the UK transmission system at Moffat in Scotland via two Interconnector pipelines and the existing natural gas transmission system in Northern Ireland via the recently completed 156 kilometre South/North pipeline. The Irish natural gas transmission and distribution system consist of approximately 2,313 kilometres of high pressure transmission pipelines (including the interconnectors) and approximately 10,062 kilometres of low pressure distribution pipes connecting over 600,000

industrial, commercial and residential customers.

Planning permission has been granted for the construction of a new LNG terminal and associated pipeline by Shannon LNG.

Following third party access and full market opening - there are 16 Licensed Shippers/Suppliers.

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

We understand that approximately 27.3% of the country's total primary energy requirement is met using natural gas. Natural gas accounts for 53.4% of all fuels used for electricity generation in 2008.

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

In 2008/2009, 92.3% of the country's annual gas demand and 84.4% of the peak day demand was sourced in the U.K. and transported to Ireland via the interconnector pipelines. Remaining demand was met by indigenous production and storage delivered to the transportation system at Inch.

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

Ireland does not currently export any of its natural gas production. The South North pipeline facilitates physical export of gas to Northern Ireland, however, a legal and regulatory framework remains to be developed to facilitate such export. Similarly, the Interconnector pipelines between Ireland and the U.K. could potentially (subject to investment in technical solutions and development of appropriate legal and regulatory framework with the operator of the U.K. system) facilitate export of natural gas to the U.K.

2 Development of Natural Gas

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

The Petroleum and other Minerals Development Act, 1960 (the "1960

Act”) is the primary legislation governing offshore natural gas in Ireland. The 1960 Act prescribes the forms of authorisation required for exploration and production of natural gas (see question 2.2). Licensing terms for offshore oil and gas exploration and development (the “Licensing Terms”) were published in 1992. These Licensing Terms prescribe the application process for the various authorisations and the terms upon which authorisations might issue.

Revised Licensing Terms for offshore oil, gas exploration, development, and production were issued in 2007 as the terms on which the Minister is prepared to issue the various authorisations. The revised Licensing Terms will not apply to existing authorisations; the 1992 Licensing Terms may continue to apply to certain leases or undertakings awarded as a result of discoveries made under licences awarded before May 2007.

The Department of Communications, Energy and Natural Resources (“DCENR”) has responsibility for natural resources.

The Petroleum Affairs Division (“PAD”) of the DCENR administers the State’s (and the Minister’s) rights and obligations with respect to gas exploration and production.

The role of the PAD is to maximise the benefits to the State from exploration for and production of indigenous gas and oil resources while ensuring that activities are conducted safely and with due regard to their impact on the environment and other land/sea users.

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

The following authorisations with respect to the Exploration and Production of natural gas may be granted pursuant to the 1960 Act:

- (i) Petroleum Prospecting Licence (issued under section 9(1));
- (ii) Licensing Option (issued under section 7(1));
- (iii) Exploration Licence (issued under section 8(1));
- (iv) Lease Undertaking (issued under section 10(1));
- (v) Petroleum Lease (issued under section 13(1)); and
- (vi) Reserved Area Licence (issued under section 19(1)).

The Licensing Terms published by the DCENR outline the principal terms of such authorisations.

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

Petroleum Prospecting Licence

Petroleum Prospecting Licence is a non-exclusive licence which confers on the licensee the right to search for petroleum in any part of the Irish offshore which is not the subject of an Exploration Licence, Reserved Area Licence or Petroleum Lease granted to another party.

Prospecting Licences authorise the licensee to do such things as may be necessary or desirable for the purpose of ascertaining the character, extent or value of petroleum under the licensed area to make certain geological, geophysical, geochemical and topographic examination or remove reasonable quantities of petroleum and other minerals for the purpose of analysis, test, trial or experiment. A Petroleum Prospecting Licence may be granted for a period up to

three years and may be surrendered on one month’s notice in writing to the Minister.

Licensing Option

A Licensing Option (or “Licence Undertaking”) confers on the option holder the first right, exercisable at any time during the period of the option to an exploration licence(s) over all or part of the specific areas covered by the option. The duration of Licensing Options are determined by the work programme agreed with the Minister; however, overall duration of any Licensing Option (including any extensions) may not exceed a maximum period of three years. The holder of a Licensing Option must also hold a Petroleum Prospecting Licence.

Exploration Licence

An Exploration Licence operates to vest in the licensee the exclusive right of searching for petroleum in the area to which the Exploration Licence relates.

There are three categories of Exploration Licence: a Standard Exploration Licence; a Deep Water Exploration Licence; and a Frontier Exploration Licence.

A Standard Exploration Licence applies in respect of an area with water depth up to 200 meters and is valid for a period of six years divided into two phases of three years each. During the first phase the licensee must undertake an exploration programme including the drilling of an exploration well agreed with the Minister before the issue of the licence. At least three months before the end of the first phase of a licence the work programme for the second phase must be proposed for the approval of the Minister. At the end of the first phase the licensee surrenders 50% of the licensed area.

A Deep Water Exploration licence applies in respect of an area where the water depth in any part of the area exceeds 200 meters and is for a period of nine years divided into three-year phases. Each of Phase 1 and Phase 2 should include an Exploration Well. At the end of each phase the licensee surrenders 50% of the then licensed area.

A Frontier Exploration Licence - the Minister identifies areas as frontier areas in respect of which such Licences may be granted from time to time. The duration will be determined by the Minister and shall be for a period of not less than 12 years comprising a maximum of four phases.

Lease Undertaking

A Lease Undertaking is an undertaking by the Minister to grant a Petroleum Lease to the holder of an Exploration Licence in relation to part of the License Area which contains a petroleum discovery. A Lease Undertaking does not grant exploration or production rights. Lease Undertakings are subject to such terms and conditions as the Minister may prescribe, including an undertaking that the holder of the Lease Undertaking use best endeavours to establish commerciality, the furnishing of an annual report to the Minister and in the event of commerciality that the holder apply for a formal Petroleum Lease within the time scales prescribed.

Petroleum Lease

A Petroleum Lease is issued by the Minister pursuant to section 13 of the 1960 Act. A Petroleum Lease is granted on the application of the holder of the Exploration Licence (or Lease Undertaking) when a commercial discovery has been established. A Petroleum Lease authorises the commercial development of the discovery in accordance with the terms of the lease. While the Licensing Terms prescribe certain of the terms and conditions which apply with respect to a lease, including provision for submission of a plan of development and otherwise, terms will be negotiated on a case by case basis and may include additional conditions to those in the Licensing Terms. The period of a Petroleum Lease will be such period as the Minister shall decide having regard to the likely production profile.

The period of the lease may be extended on application provided twelve months prior notice is given to the Minister.

Reserved Area Licence

This is a form of licence granted to the holder of a Petroleum Lease in respect of an otherwise unlicensed area contiguous with the Petroleum Lease. The authorisation is on terms and conditions identical to those applicable in respect of an Exploration Licence and is subject to the payment of the annual rental fee identical to that for an exploration licence.

All licences generally include work programme commitments, restrictions on assignment or transfer and an indemnity in favour of the Licensor against any claims or demands arising out of or the exercise of the rights conferred by the Licence. Fees are payable in connection with the grant of Licence and in respect of Petroleum Leases. Holders of Frontier Exploration Licences may be required to pay annual contributions to Petroleum research programmes as directed by the Minister.

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

The Irish Constitution provides that all natural resources belong to the State. The 1960 Act provides that the ownership of all petroleum in the State is vested in the Minister and the Minister has the exclusive right to search for and extract petroleum in the State.

The government's policy is to promote exploration and investment in indigenous petroleum and direct State involvement is not appropriate. Licensing Terms are structured towards the participation of private sector operators, with appropriate financial and technical and other relevant competencies in the search for natural gas.

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

No production related royalties are imposed in respect of natural gas production. The Licensing Terms provide that authorisations (other than a Prospecting Licence) will only be granted to an entity chargeable (in accordance with the laws of Ireland) to tax in Ireland in respect of profits and gains arising from or connected with exploration or exploitation activities to which the authorisation applies. The authorisation holder must continue to be so chargeable for the full period of the authorisation.

Corporation tax arising from petroleum development is currently set at 25%.

A profit resource rent tax was introduced in 2007 which may apply to finds made under licences issued on or after 1 January 2007.

2.6 Are there any restrictions on the export of production?

The Licensing Terms provide that all petroleum produced shall be sold by and payment made to a person resident in Ireland. Sales of petroleum produced are required to be on an arm's length commercial basis; in the case of the sale to an affiliated or connected company the arrangements shall be such as if the sale is to an independent company.

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

There are no such restrictions.

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

The Licensing Terms require that the prior written consent of the Minister is obtained in respect of assignment or transfer of an interest in a Petroleum Lease and the Minister may, in giving any required consent, impose any such conditions as the Minister considers desirable.

The Licensing Terms also provide that authorisations are granted to an applicant on the basis of its charter or constitution at the time of issue; any subsequent alterations in them must be notified in writing to the Minister addressing what (if any) impact the change would have on the ability of the authorisation holder to discharge the responsibilities under the authorisation. The Minister must be notified of any change in control.

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

The Licensing Terms provide that the Minister may, on granting an authorisation or at a later date direct the authorisation holder to post a performance bond or guarantee to ensure fulfilment of the obligations to be undertaken as well as to cover any liability which may be incurred relating to the activity of the authorisation holder.

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

The terms of the individual Petroleum Lease must be considered; however, leases may include a provision that the lessee must not encumber the lease or any facility without the prior written consent of the Minister.

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

Depending on the location of a proposed activity and other applicable factors additional requirements may apply e.g.:

1. Planning approvals or permissions (issued by the applicable Local Authority or by an Bord Pleanála) (where the exploration involves development on or under land).
2. Integrated Pollution Prevention and Control Licence (issued by the Environmental Protection Agency).
3. A Dumping at Sea Permit from the Minister.
4. A Work Permit for dangerous activities from the Minister of Employment.

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

The Licensing Terms provide that it is the responsibility of the authorisation holder to make provision for and to carry out abandonment of fixed facilities as approved by the Minister. Abandonment means the removal, part removal or leaving in place of any installation or facility following completion of operations involving such installation or facility.

Where petroleum operations by a licensee (or a former licensee) under a licence issued under the 1960 Act or the lessee of a Petroleum Lease have been abandoned or discontinued the Minister may require that person within a specified time to cause the top or entrance of a bore hole shaft or outlet to be covered or fenced so as to prevent accidents.

Provision for abandonment of fixtures and fittings may also be a condition of planning approval.

The Dumping at Sea Act 1996 provides that a person who dumps or disposes of *inter alia* an offshore installation at sea without a relevant permit or authorisation shall be guilty of an offence.

3 Import / Export of Natural Gas (including LNG)

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

As outlined in question 2.6 above the Licensing Terms provide that all petroleum produced shall be sold by, and payment made to, a person resident in Ireland. Subject to that there is no regulatory restriction on cross-border sales or deliveries of natural gas. There is currently no regulatory or contractual framework which would facilitate physical export of natural gas.

4 Transportation

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

Transportation pipelines are, for the purpose of this question, upstream pipelines.

Upstream pipelines are defined as any pipelines operated or constructed as part of a gas production project, or used to convey natural gas from one or more such projects to a processing plant or terminal or final coastal landing terminal.

Such pipelines and infrastructure can accordingly include onshore pipelines, terminals and processing facilities.

A Petroleum Lease (as referred to in section 2) is part of the ownership and regulatory framework in respect of the development of offshore facilities and pipelines and the regulatory framework within the remit of the Minister and PAD.

Onshore aspects of upstream transportation pipelines are also regulated by the Minister (as opposed to the CER) including the construction of and access to such pipelines.

Storage facilities require a licence issued by the CER (or an exemption from the requirement to hold such a licence).

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

The required authorisations may include some or all of the following:

1. a Petroleum Lease (this is required to develop a commercial discovery and may extend to the associated pipelines). A Plan of Development must be prepared pursuant to the

Petroleum Lease and approved by the Minister in order to allow development proceed;

2. an authorisation pursuant to Section 40 of the Gas Act 1976 (as amended);
3. Continental Shelf Act authorisation pursuant to Section 5 of the Continental Shelf Act 1968 (as amended);
4. a Foreshore Licence under Section 3 of the Foreshore Act 1933 (as amended);
5. Planning Permission for onshore terminal or associated processing or infrastructure pursuant to the Planning and Development Acts 1963 to 2006 (as amended); and
6. an integrated pollution, prevention and control licence (IPPC Licence) from the Environmental Protection Agency Act 1992 (as amended).

The Operator of offshore pipelines is also required to comply with Health and Safety Regulations with respect to offshore installations.

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

Access to land can be facilitated by way of compulsory acquisition pursuant to the provisions of the Gas Act 1976 (as amended) or through the Planning and Development Acts 1963 to 2006 (incorporating the Strategic Infrastructure Act) where the relevant pipeline constitutes a strategic natural gas development.

Access to land which constitutes foreshore or offshore can be through the Foreshore Licence or Lease, Continental shelf authorisation or the Petroleum Lease.

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

An upstream pipeline operator is obliged pursuant to the provisions of Section 10(b) of the Gas Act 1976 (as inserted pursuant to the Gas (Interim) (Regulation) Act 2002) to offer terms for access to an upstream pipeline subject to terms and conditions specified in regulations made by the Minister from time to time. No such regulations have of yet been promulgated. Parties entitled to third party access include holders of Petroleum Leases for the purpose of carrying out any activity connected with the lease.

There are statutory grounds for using any such application for access and disputes with respect of such access or offers of access are referred to the Minister which is the relevant competent authority for such issues. Currently there are only two such upstream facilities (i.e. facilities upstream of Inch, Co. Cork and the facilities currently under development with respect to the Corrib Gas Field).

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

All relevant upstream facilities are connected to the pipeline network operated by Gaslink as referred to in section 5. Connections and co-operation between the upstream system operators and the downstream system operator is generally through Connected System Agreements negotiated between relevant operators.

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

See response to question 4.4 with respect to access to upstream. See response to section 5 with respect to downstream access.

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

Transportation is currently subject to negotiation subject to the right of a party to refer any disputed terms to the Competent Authority (the Minister) and to the Minister's right to prescribe regulations.

5 Transmission / Distribution

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

The downstream natural gas transmission and distribution networks (the Network) were developed and owned by Bord Gáis. The Network was operated by Bord Gáis up to 4 July 2008. The Commission for Energy Regulation ("CER") is the regulatory body having responsibility for, *inter alia*, downstream natural gas transmission and distribution pursuant to the Gas (Interim) (Regulation) Act 2002 (the "2002 Act").

The European Communities (Internal Market in Natural Gas) (BGE) Regulations 2005 (S.I. No. 760 of 2005) were implemented to give further legal effect to Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas by further clarifying the arrangements for unbundling the transmission systems and distribution systems operated by Bord Gáis. Pursuant to S.I. No. 760 of 2005 Gaslink Independent System Operator Limited ("Gaslink") was established and became the independent system operator for the network with effect from 4 July 2008. Bord Gáis retained ownership of the Network. The networks business units of Bord Gáis continue to provide operational services to Gaslink with respect to the day to day operation of the network. The arrangements between Bord Gáis and Gaslink are outlined in an Operational Agreement, a regulated document concluded between the parties. Gaslink holds (as it is required by law to hold) a Transmission System Operator licence and a Distribution System operator licence in connection with the operation of the Network.

Bord Gáis is licensed to own the distribution system and the transmission system.

The Network is operated pursuant to a Code of Operations (the Code) published by Gaslink pursuant to a direction of the CER issued pursuant to legislation and pursuant to its licence obligations. The CER is established to issue directions to licence holders as to terms of its Code including any modification to it. All parties wishing to access the Transportation System (Shippers) must adhere to the Code which also prescribes the rights and obligations of Shippers. The current major regulatory initiatives with respect to gas transmission and distribution include:

(i) arrangements for an all island gas transmission operation (the

common arrangements for gas);

- (ii) implementation of the Third Package (which could extend to physical and virtual gas export from Ireland to the U.K.) (see response to question 11.1); and
- (iii) security of supply.

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

A licence, issued by the CER under section 16 of the 2002 Act (as amended) is required to operate a transmission system or a distribution system. It is an offence to operate a system without the requisite licence.

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

Physical access to the Network is as outlined in the Connection Policy published by Gaslink with the approval of the CER. The operator of a natural gas transmission system or a natural gas distribution system has statutory obligations with respect to providing connections.

The Network is subject to full third party access. Access to use of the natural gas Network is through the Code referred to under question 5.1 which provides for an Entry/Exit System of Gas Transportation; capacity in the system is made available through the Code of Operations which also prescribes certain of the rights and obligations of Shippers and the Transporter including the day to day use of the system by Shippers holding capacity. Shippers nominate quantities of gas to be delivered to and off-taken from the System in respect of each Gas Day. Daily balancing applies.

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

Yes, the CER can require a Licensed Operator of a transmission system or a distribution system to expand its system to accommodate new customers by section 10(a)(vi) of the Gas Act 1976 (as amended).

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

Regulated tariffs apply with respect to access to the transmission system and/or distribution system. Tariff comprises both a capacity and commodity component.

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

Bord Gáis requires the consent of the Minister given with the approval of the Minister for Finance in order to transfer to another person any interest in a pipeline or part of it.

The Minister may attach conditions to any such consent.

Each of the Transmission System Operator licence and the Distribution System Operator licence prohibit the licensee from disposing of or relinquishing operational control over any relevant asset if the disposal or relinquishment of control or use would adversely affect its ability to discharge its obligations under natural gas legislation or the carrying out of its licensed activities. The holder of

the licence is obliged to notify the CER of any change of control.

The CER may withdraw or revoke a licence as a result of a change of control in certain circumstances and where the Regulator is satisfied that as a result of the change in control the shareholder does not have adequate technical, financial or managerial strength taking into account the size of its shareholding in the licensee and subject as otherwise provided in the applicable licence.

6 Natural Gas Trading

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

The regulatory framework in Ireland is primarily focused on gas transportation so that open and non-transparent gas transportation will facilitate competition in gas trading. A licence issued by the CER is required to engage in the supply of natural gas; currently there are 16 supplier's licences in issue. The current major initiatives which may impact on natural gas trading include the CAG and the implementation of the Third Package (see response to question 11.1).

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

There are no legal restrictions as such on trading of natural gas commodities. In terms of bundled products however, trading in the capacity required to transport gas is subject to the Code of Operations. There is a straight forward Change of Shipper process with respect to capacity on the distribution system, although distribution capacity cannot be traded as such as between Shippers.

7 Liquefied Natural Gas

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

There are currently no LNG reception facilities operating in Ireland. Shannon LNG (a joint venture of Hess Corporation and Poten & Partners) has plans to construct a regasification terminal on the Shannon Estuary in Co. Kerry with an initial capacity of 17mcsmd and expansion capacity of 28.3mcsmd. Shannon LNG is expected to commence commercial operation of the initial phase of the project in 2014 at the earliest.

Under the 2002 Act, a LNG Operating Licence would be required to operate the LNG terminal.

Given that Ireland is a net importer of natural gas, there are no plans to establish LNG liquefaction or export facilities.

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

The LNG Operating Licence is the only LNG specific authorisation required. However, for the construction and operation of the LNG terminal facility, the following key authorisations would be required: Foreshore Licence; Planning Permission; Integrated Pollution Prevention Control Licence (IPPC); and Environmental Impact Statement.

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

Yes, the EU Gas Directive 2003/55/EC (Article 18) requires that third parties shall be allowed access to "the transmission and distribution system and LNG facilities" on the basis of published non-discriminatory tariffs approved by the CER i.e. Regulated TPA.

However, an application under Article 22 of the Directive may be made for exemption from Regulated TPA for major new gas infrastructure developments which:

- enhance competition in gas supply and enhance security of supply;
- would not take place unless the exemption was granted;
- is not in the ownership of the TSO;
- charges are levied on users of LNG terminal; and
- the exemption is not detrimental to competition or the effective functioning of the Transmission System.

Where an application has been made to the CER under Article 22, and the CER is satisfied that the relevant conditions have been met, it must notify the European Commission which, in turn, has two months within which it may request that the proposed exemption be amended or withdrawn.

Shannon LNG has applied for a full exemption for both the initial planned capacity of the terminal of 17mcsmd and expanded capacity of 28mcsmd. The view of the CER is that an exemption should be granted to Shannon LNG subject to certain conditions, particularly relating to (i) the developer not achieving pivotal supplier status and (ii) a maximum duration of 25 years. The consultation process is ongoing.

8 Competition

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

The Competition Authority (the "Authority") is the national agency responsible for enforcing Irish & European competition law. Irish competition law is embodied in the Competition Act, 2002 (the "Competition Act"). As the general competition requirements of articles 81 and 82 of the EC Treaty are directly effective (implemented in Irish law pursuant to Sections 4 and 5 of the Competition Act), they apply concurrently with the legislative sector-specific rules.

The CER has a statutory obligation to promote competition in the supply of natural gas and gas supply licensees are obliged pursuant to their licences not to prevent, restrict, or distort competition or abuse any dominant position they may have.

The Authority and the CER have concluded a cooperation agreement for the purpose of: (a) facilitating co-operation in the performance of their respective functions in so far as they relate to issues of competition between undertakings; (b) avoiding duplication of activities; and (c) ensuring consistency between decisions made or other steps in so far as any part of those decisions or steps consists of or relates to a determination of any issue of competition between undertakings.

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

Section 4 of Competition Act prohibits all agreements or concerted practices which have the effect of preventing, restricting or

distorting competition in any part of the State. The standard applied under article 81(1) of the EC Treaty requires, as an additional criterion to be met, the effect on intra-Community trade.

Transactions involving dominant players may be assessed under Section 5 of the Competition Act with a view to establishing whether they reflect abusive exploitation in any relevant market. In the EC Treaty, article 82 provides the normative standard.

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

Where the Authority has concerns relating to competition in the natural gas sector, it may initiate investigations, carry out dawn raids and initiate proceedings before the national courts against any person to ensure that competition concerns are addressed. The Authority has the statutory right to pursue criminal proceedings against any person whom it believes has infringed the substantive provisions of the Competition Act. It also has the right to seek all appropriate relief from the national courts to ensure that infringements of the Competition Act are brought to an end. The remedies available through the courts include criminal and civil sanctions and remedies.

The CER may direct the holder of a licence to take such measures as are necessary to cease the contravention of a condition or to prevent a future contravention. In order to ensure compliance with a direction, the CER may apply to the High Court for an order requiring the holder of a licence to discontinue or refrain from certain practices.

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

The Authority reviews mergers over a specified threshold. In addition, the Competition Act prohibits agreements which prevent, restrict or distort competition or which constitute an abuse of a dominant position in Ireland or a substantial part thereof, regardless of the consideration involved.

All qualifying mergers must be notified to the Authority. A qualifying merger is one where the worldwide turnover of each of two or more of the undertakings involved in the merger (not including the vendor) is more than €40 million, two or more of the undertakings involved carry on business in any part of the island of Ireland (i.e. including Northern Ireland) and the turnover in Ireland of any one of those undertakings is more than €40 million. Notification must be made within one month of conclusion of the agreement or the making of the public bid.

If, within one month of notification of a qualifying merger, the Authority cannot conclude whether the transaction will substantially restrict competition in goods or services in the State, it shall carry out a full investigation which may take a further three months.

9 Foreign Investment and International Obligations

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

The only special requirements apply in respect of undertakings participating in the upstream natural gas sector. See response to question 2.5.

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

All regulation in Ireland is constrained by the requirements of EU law.

Ireland is a signatory to the 1992 OSPAR Convention for the Protection of the Marine environment of the North East Atlantic as well as the Kyoto Protocol to the United Nations Framework Convention on Climate change. Accordingly, any regulatory decisions of the Irish government must be made in compliance with those conventions.

10 Dispute Resolution

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

Disputes in respect of terms of connection to the Network may be referred for determination by the CER under the 2002 Act. The CER aims to resolve disputes within a two-month period. The 2002 Act provides that only Gaslink shall be bound by the decision of the CER. In order to ensure compliance with a determination made by the CER, it may apply to the High Court for an order requiring Gaslink to comply with the determination.

Disputes between Gaslink and the holders of Supply/Shipping licences are resolved pursuant to the dispute resolution provisions of the Code of Operations which provides for disputes to be reconciled or determined through mediation, the CER (at the option of the CER), an expert (technical disputes) or an arbitrator in accordance with the Institute of Engineers of Ireland Arbitration Procedure (2000). Decisions of the CER/expert/arbitrator, as appropriate, are final and binding.

In the upstream natural gas sector, the Licensing Terms provide that any dispute arising out of or in connection with the authorisation will be settled by arbitration, unless the authorisation holder and the Minister succeed in resolving the dispute among themselves.

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

Yes, both were given effect in Irish Law by Parts III and IV of the Arbitration Act 1980.

In practical terms, however, the New York Convention has been overtaken in Irish law by the UNCITRAL Model Law on International Commercial Arbitration which was given the force of law by the Arbitration (International Commercial) Act 1998. A party may now seek recognition and enforcement of an arbitration award under Articles 35 and 36 of the Model Law.

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

There is no special difficulty in litigating, or seeking to enforce judgments or awards against Government authorities or the State. Public bodies enjoy no immunity against litigation and are subject to the rule of law on the same basis as individuals, non State-owned corporations and other entities.

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

We are not aware of any cases specific to the natural gas sector. There is no reason, however, why a successful claim could not be made where the merits of the case so dictate.

11 Updates

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

Third Package of EU Legislation

On 25 June 2009, the Council of the European Union formally approved the third legislative package on EU electricity and gas markets, the "Third Package". The Third Package is a set of legislative measures that continues the programme of liberalisation of the European gas market. The Third Package requires, among other things, the effective separation of supply and production activities, harmonisation of the powers of national regulators, better cross-border regulation and effective transparency. The Third Package entered into force on 2 September 2009 and Ireland has 18 months in which to comply with most requirements of the legislation, although extended deadlines apply to the unbundling requirements due to the structural changes that may be necessary. The immediate effect of the Third Package is likely to be confined to the relatively small number of energy undertakings that own and/or operate transmission and/or distribution networks for electricity or natural gas.

All-Island Gas Market

In February 2008, the CER and the Northern Ireland Regulator, NIAUR, agreed a Memorandum of Understanding in which they stated their objective of working together to establish "all-island" Common Arrangements for Gas (the "CAG") whereby all stakeholders can buy, sell, transport, operate, develop, and plan the natural gas market in Ireland and Northern Ireland. The Memorandum of Understanding identifies the following as being key:

- establishment of a single: (a) transmission tariff methodology; (b) transmission operational regime; (c) connection policy for transmission; (d) transmission planning regime; and (e) a single approach to security of supply;
- a common framework for regulation of retail markets including single: supplier codes, change of supplier process, and retail processes and systems;
- the purchase and sale of gas at the wholesale and retail levels in competitive markets; and
- benefits for end customers.

**Irene O'Donovan**

O'Flynn Exhams
58 South Mall
Cork
Ireland

Tel: +353 21 4277788
Fax: +353 21 4272117
Email: iod@oflynnexhams.ie
URL: www.oflynnexhams.ie

Irene O'Donovan is a Partner in the corporate department working primarily in the areas of energy, natural resources and regulatory affairs.

Irene has over 15 years' experience in providing advice to Transportation Division of Bord Gáis Éireann and, more recently, Gaslink, the independent TSO. Irene was Bord Gáis Éireann's lead lawyer in the production of the Code of Operations, the Moffat trading arrangements and Corrib gas downstream transportation arrangements. Irene recently advised Circle Oil plc on a number of international upstream acquisitions and various financings.

According to the Chambers & Partners, she is "*a dedicated energy lawyer and holds her own against the biggest players in Dublin and London*"... "*no one holds a candle to her at what she does*", "*she's thorough, puts in the hours and gets to the bottom of every issue*" and PLC Which Lawyer "*well-regarded corporate and commercial law expert with notable strengths in the oil and gas sector*".

**Frank M O'Flynn**

O'Flynn Exhams
58 south Mall
Cork
Ireland

Tel: +353 21 4277788
Fax: +353 21 4272117
Email: fmof@oflynnexhams.ie
URL: www.oflynnexhams.ie

Frank M O'Flynn is a Partner in corporate department with particular experience in energy law having nearly 15 years' experience advising clients in gas, electricity and power markets in Ireland and internationally. Recently, Frank advised Bord Gáis Networks and Gaslink, the independent TSO on transportation system expansion, transportation and regulatory issues and Centrica plc in relation to a proposed upstream acquisition.

Prior to rejoining O'Flynn Exhams in 2004, Frank spent several years in London, firstly with CMS Cameron McKenna and later, with New York firm, Cadwalader Wickersham & Taft. At various stages during his career, Frank worked with, or was seconded to, the Energy Directorate of the European Commission in Brussels, BP Exploration in Aberdeen and Bord Gáis Éireann in Cork.

Frank is dual qualified in Ireland and England and Wales and is a member of the Energy Institute, Society of Construction Law and Association of International Petroleum Negotiators.

O'FLYNN EXHAMS

SOLICITORS

O'Flynn Exhams is a leading Irish law firm in the energy sector with particular expertise in natural gas development, transportation, storage and trading with experience of the Irish and International gas markets.

Our lawyers offer a comprehensive range of services in the energy sector including:

- | | |
|-------------------------------|---------------------------------|
| ■ Gas Transportation | ■ Gas Sales / Tolling / Trading |
| ■ LNG | ■ Gas Storage |
| ■ Network Development | ■ Interconnection |
| ■ Upstream A&D | ■ Joint ventures, JOAs and UOAs |
| ■ Market Restructuring | ■ Wind |
| ■ IPP Development / Financing | ■ Power Purchase Agreements |

O'Flynn Exhams is particularly well known for its work within the energy sector. The firm '*thrives on complex energy projects*' and is praised for being '*partner led*' and '*seeped in industry knowledge*', Legal 500, 2009 Edition.