



Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

**Transmission, Distribution and Supply Licences  
for Natural Gas**

**A Consultation Paper**

**(Incorporating responses to comments received  
in relation to the consultation document  
CER/03/020 “Business Separation and Licensing  
of Bord Gáis**

**16<sup>th</sup> April 2003**

**CER/03/093**

## Table of Contents

<b>1. INTRODUCTION .....</b>	<b>2</b>
1.1. BACKGROUND .....	2
1.2. CONSULTATION ON DRAFT LICENCES .....	4
1.3. RESPONDING TO THIS CONSULTATION.....	5
<b>2. OVERVIEW OF LICENCES.....</b>	<b>6</b>
2.1. INTRODUCTION .....	6
2.2. TERMS OF THE LICENCES.....	7
2.3. TRANSMISSION AND DISTRIBUTION LICENCES.....	8
2.4. SUPPLY LICENCE .....	13
2.5. ISSUES FOR FURTHER COMMENT .....	17
<b>3. RESPONSE TO CONSULTATION ON THE BUSINESS SEPARATION AND LICENSING OF BORD GÁIS ÉIREANN .....</b>	<b>19</b>
3.1. INTRODUCTION .....	19
3.2. COMMISSION’S RESPONSE TO BUSINESS SEPARATION COMMENTS.....	21
3.3. COMMISSION’S RESPONSE TO TRANSMISSION LICENSING COMMENTS.....	30
3.4. COMMISSION’S RESPONSE TO DISTRIBUTION LICENSING COMMENTS .....	35
3.5. COMMISSION’S RESPONSE TO METERING & DATA SERVICES COMMENTS	41
3.6. COMMISSION’S RESPONSE TO SUPPLY LICENSING COMMENTS.....	44
<b>4. NEXT STEPS .....</b>	<b>52</b>

### Referencing Note:

In this document, the following references will apply:

- BGÉ - Bord Gáis Éireann;
- BGS - Bord Gáis Éireann Energy Supply Business Unit;
- BGT - Bord Gáis Éireann Transmission Business Unit;
- BGD - Bord Gáis Éireann Distribution Business Unit;
- GPRO - Gas Point Registration Operator;
- The Commission - The Commission for Energy Regulation;
- The Act - Gas (Interim)(Regulation) Act, 2002;
- The 1976 Act - Gas Act, 1976 (as amended);
- The 1999 Act - Electricity Regulation Act, 1999.

## **1. Introduction**

### **1.1. Background**

Under the Gas (Interim) (Regulation) Act 2002 (“the Act”), the Commission for Energy Regulation (“the Commission”) assumed functions in relation to the regulation of the natural gas market in Ireland. The Commission is charged with the duty to carry out its functions in a manner, which it considers protects the interests of final customers and does not discriminate unfairly between licensees. In carrying out its duties, the Commission is required to have regard to the need:

- to promote competition in the supply of natural gas;
- to secure that licence holders are capable of financing their licensed activities;
- to promote safety and efficiency on the part of natural gas undertakings;
- to secure that there is sufficient capacity in the natural gas system; and,
- to secure the continuity, security and quality of natural gas supplies;

Section 16(1) of the Act provides that the Commission may grant to any person the licences which the Act requires that person to hold in order to carry out the transmission, distribution, storage or supply (including shipping) to certain customers of natural gas. The licensing of entities wishing to engage in such activities allows the Commission to regulate those entities.

This document describes the Commission’s proposals for the licensing regime for natural gas activities, which has been designed with the objective of, among other things, facilitating market opening by regulating the activities of the incumbent, Bord Gáis Éireann (“BGÉ”), as well as those of new entrants.

In aiming to promote competition in the market, the licences for BGÉ will therefore seek to regulate BGÉ’s activities and business units in such a way as to allow for fair and non-discriminatory access to the market by competitors. The licensing regime has taken into account the dominant market position of BGÉ as the vertically integrated incumbent and the need to prohibit practices, which could prevent effective and fair competition developing within the market.

As part of the preparation for the introduction of the licensing regime, the Commission issued a consultation document entitled “Business Separation and Licensing of Bord Gáis Éireann” (CER/03/020) in February 2003. The paper examined to what extent the separation of the different functions within BGÉ was necessary in order to achieve the above objectives and

outcomes. The draft licences now published for consultation seek to give effect to the Commission's proposals for business separation and licensing and have had due regard for the comments received in the previous consultation.

The licences also cover a number of important areas that deal not just with the promotion of competition but also with promoting safety and efficiency on the part of natural gas undertakings; securing that there is sufficient capacity in the natural gas system; securing a licensee's capability to finance their licensed activities and securing the continuity, security and quality of natural gas supplies. These areas are summarised and discussed as appropriate in the document.

## **1.2. Consultation on Draft Licences**

The Act provides for the licensing and regulation of the separate activities of transmission, distribution, storage and supply and establishes rules for important aspects of the conduct of vertically integrated natural gas undertakings. The draft licences seek to provide a detailed set of behavioural rules, in particular recognising the need to prevent the leveraging of monopoly power from gas transmission and gas distribution activities into the competitive activity of gas supply.

For those natural gas undertakings which engage only in the activity of shipping, a simplified supply license is likely to be required. This consultation paper considers the conditions which may be included in such a case, where the shipper requires access to the transportation system but is not engaged in gas supply to final customers.

Furthermore, the Commission is of the view that upstream gas producers will also require a supply licence under the terms of the Act. Such a licence will be subject to a separate consultation process and will contain conditions similar to some of those in the draft supply licence accompanying this paper

If and when a need arises for a storage licence, that will be developed and consulted on at a later date as appropriate.

After consultation on the draft licences, and after consideration of all comments received, the Commission intends to publish final model licences in June/July 2003.

In the interim, the Commission intends to publish for consultation its proposals for the licensing application procedure, assessment criteria and application fees.

This document is set out as follows:

- Section 2 will first give a brief overview of each of the draft licences;
- Section 3 then addresses the main comments received in response to the business separation consultation paper referred to above and details the main policy decisions taken by the Commission with regard to key issues raised in the consultation paper. These decisions are reflected in the draft licences; and,
- Section 4 provides an indication of the next steps arising out of this consultation.

### **1.3. Responding to this consultation**

Comments on the draft licences and related licensing issues should be sent, preferably in electronic format, to Garrett Fitzgerald at the Commission. Comments are to be delivered to the Commission by no later than **5.00pm on Friday, 23rd May 2003**. The contact details are:

Garrett Fitzgerald,  
Commission for Energy Regulation,  
Plaza House,  
Belgard Road,  
Tallaght,  
Dublin 24.

Tel: +353 (01) 4000800  
Fax: +353 (01) 4000850  
Email: [gfitzgerald@cer.ie](mailto:gfitzgerald@cer.ie)

The Commission is planning to make these comments public and would encourage respondents to do the same. Any information that respondents wish to submit in confidence may be submitted separately, clearly marked as such. However, the Commission would prefer public comment wherever practicable.

## 2. Overview of Licences

### 2.1. Introduction

This section gives a brief overview of the key issues addressed in each of the draft licences.<sup>1</sup> The draft licences accompanying this paper are:

- Draft licence for the operation of a transmission pipeline (“Transmission Licence” – document reference CER/03/093-A);
- Draft licence for the operation of a distribution pipeline (“Distribution Licence” – document reference CER/03/093-B); and,
- Draft licence for the supply of natural gas<sup>2</sup> (“Supply Licence” – document reference CER/03/093-C).

The draft licences provide an outline of the conditions which may be contained in any licence issued. However, the Commission does reserve the right to adapt the conditions specified in any licence issued in order that they may suit the particular circumstances of a particular licensee, where the Commission deems such amendments appropriate.

In the case of the Transmission and Distribution Licences, these are intended to be model licences, in that they can be issued to any industry participant applying for such a licence. They do, however, contain a number of provisions for one or more particular licensees to be designated for the purposes of the licences as fulfilling particular functions. For example, some of these functions would only be performed by the appropriate division of BGÉ.

However, the draft Supply Licence now published contains the full set of conditions which could be included in a licensee’s supply licence, but not all conditions would necessarily be included in any licence issued. For example, as noted above, a licensee whose supply activities are limited to shipping would have a simplified licence, and a licensee carrying out only supply activities (i.e. not transmission, distribution or storage) may not need to be subject to the full range of economic regulation imposed on BGÉ.

This section will first give an account of the terms in each of the licences and will then provide an overview of the conditions in each of the transmission distribution and supply licences.

---

<sup>1</sup> The overviews given do not form part of the licences and should not be construed as such, or affect the interpretation of such.

<sup>2</sup> Issued under Section 16(1)(a) of the Act, this licence is for the supply of natural gas to persons of a type mentioned in subsection (1) of section 10A of the 1976 Act (as amended) or to customers of a type mentioned in Article 19 of Directive 98/30/EC

## 2.2. Terms of the Licences

As reflected in the terms of the draft Licences, it is currently proposed that all distribution and transmission licences will be granted for an indefinite period but will be subject to termination on written notice from the Commission, the length of the notice period to be not less than 15 years, in the case of Distribution and Transmission Licences, or 10 years in the case of Supply Licences.

The earliest date on which the terms would allow the Commission to give notice is the fifteenth anniversary of the grant of the licence, so that Licences for transportation activities would continue in force for a minimum period of 30 years, and Supply Licences for a minimum of 25 years, unless revoked in the circumstances set out in the revocation schedule to each Licence. In summary, the circumstances for revocation are where the Licensee:

- agrees to revocation;
- fails to pay sums due under a levy order;
- is in persistent breach of an enforcement order in relation to statutory or licence obligations;
- fails to comply with an order made by the Minister imposing a public service obligation;
- commits a serious breach of a safety requirement;
- is insolvent or about to become so; or
- is subject to a change of control of which it has failed to notify the Commission or to which the Commission has objected.

## **2.3. Transmission and Distribution Licences**

Pursuant to Section 16(1)(b) of the Gas (Interim) (Regulation) Act, 2002, the Commission may license a person to operate transmission or distribution pipelines.

The Draft Transmission and Distribution Licences each contain many conditions which are either identical, or have equivalent effect, to their counterparts in the other Licence. The Licences cover the following broad areas.

### **2.3.1. Connection to and use of the Licensee's system**

- Condition 2 of both Licences requires the Licensee to comply with the obligations imposed on him in relation to connection to and use of system under the relevant statutes or by the terms of a pipeline consent. Condition 3 requires the Licensee to ensure, before providing a connection, that the gas fittings to be used on the relevant premises have been installed by a competent person, or are otherwise safely installed. Condition 10 of the Distribution Licence requires the Licensee, if so directed, to maintain an impartial register of such competent persons. BGD will be directed to do this.
- Condition 11 of both Licences requires the Licensee, on direction by the Commission, to produce a statement of how the Licensee envisages its system developing over the next ten years, with a view to enabling users to assess the opportunities for connection to and use of the Licensee's system. This includes in the case of Distribution the Licensee's plans for extending its network.

### **2.3.2. Development and operation of the system**

This group of conditions chiefly concerns how each Licensee is to design and operate its system in the future multi-operator environment that is expected to develop with existing and with further market opening.

- Conditions 4, 5 and 6 of both Licences require the Licensee to procure efficiently, and to keep a register of, the assets forming part of its system; and not to dispose of, or allow to be used for other purposes, material parts of its system without the Commission's consent, so that the physical integrity of the system and its availability to users may be ensured.
- Condition 7 of both Licences requires the Licensee to take all reasonable steps to detect and prevent theft of gas and damage to equipment, and to have in place a code of practice on revenue protection.

- Condition 12 requires the Licensee, if designated for the purpose by the Commission, to establish a set of system planning standards designed to reflect best practice. It is envisaged that BGÉ would initially be designated to do this. BGÉ and any other transmission and distribution licensees will also be obliged by this condition to design, build and maintain their system(s) in accordance with these standards.
- Condition 13 of the Transmission Licence requires the Licensee, in consultation with other industry parties, to establish operating security standards by which the Licensee's system is to be operated in order to meet any network performance standards set under Condition 17. It is likely that the Commission would expect the standards so established by BGÉ to be applied by any other transmission licensees (to the extent relevant).
- Condition 15 of the Transmission Licence and Condition 14 of the Distribution Licence require the Licensee to codify, in a Safety Framework document, its arrangements for ensuring that all aspects of the design, construction and maintenance of its system meet the standards achieved by a prudent natural gas undertaking. If so directed by the Commission, the Licensee must procure an expert audit of its arrangements for compliance with the framework, the results of which are to be reported to the Commission.
- Condition 31 of the Transmission Licence and Condition 30 of the Distribution Licence require the Licensee, if so directed by the Commission, to produce a code for the technical operation of its system, designed to ensure inter-operability with others' systems.

### **2.3.3. Intra-industry arrangements**

This group of conditions reflects the commercial arrangements which will need to be put in place in a multi-operator environment in which full supply competition can develop.

- Condition 8 of the Transmission Licence requires the designated Licensee (in this case it will initially be BGÉ that is so designated) to establish and operate a Gas Point Registration Operator (GPRO) system. This new system will lie at the heart of the competitive market as it will constitute the means for identifying each point at which final gas customers take supply; for matching points (and thus customers) to suppliers; and for matching meter readings to customers and suppliers. The GPRO will also engineer the logistical process by which changes of supplier are effected. Condition 9 of the Transmission Licence and Condition 8 of the Distribution Licence will require the Licensee to co-operate with and supply data to the GPRO.

- Condition 10 of the Transmission Licence and Condition 9 of the Distribution Licence require the Licensee to offer standard terms for the provision of metering and meter reading services. Whereas in the environment of vertically integrated non-competitive supply, the provision of these services was simply done by whichever entity was responsible for both pipes and gas supply, in the new environment of competitive supply suppliers will be responsible for procuring these services from transmission licensees (in the case of those relatively few final customers directly connected to the transmission system) or from distribution licensees (in respect of the great majority of customers who are connected at distribution level).
- Condition 14 of the Transmission Licence establishes another new function, that of network emergency manager. BGE will initially be designated as fulfilling this role also, which will involve the co-ordination of responses by the industry generally to emergency situations. Condition 13 of the Distribution Licence requires the designated licensee (also BGE) to provide an emergency response service for dealing with gas escapes.
- Condition 16 of the Transmission Licence and Condition 15 of the Distribution Licence provide more generally for an efficient and co-ordinated approach, by each Licensee concerned, to the operation and inter-operability of the various pipeline systems, including in emergency conditions; and for licensees to contribute to the reasonable costs of the emergency response service provider.

#### **2.3.4. Performance and service standards**

- Condition 17 of the Transmission Licence and Condition 16 of the Distribution Licence require the Licensee to draw up a set of measures by which its overall network performance (in relation to, e.g., numbers of days of interruption) may be judged and to report performance against these measures. The Distribution Licence additionally requires the Licensee to compensate customers for failures of performance in individual cases in accordance with the code required under Condition 18 (see below).
- Condition 19 of the Transmission Licence and Condition 18 of the Distribution Licence require the Licensee to set out in a Code of Practice the services, service levels and compensation it promises to its users and final customers, including its policy on disconnection; and to establish a procedure for handling complaints by them. Condition 20 of the Transmission Licence and Condition 19 of the Distribution Licence set out the procedure to be followed by the Licensee in the preparation, revision and publication of the various documents which the licence requires him to produce.

- Condition 21 of the Transmission Licence and Condition 20 of the Distribution Licence require the Licensee to keep adequate records of, and to report to the Commission on, various of its licence obligations.

### **2.3.5. Ring-fencing**

This group of conditions has two purposes: it serves on the one hand to ensure that the network provider has the necessary resources available to it to ensure that customers and users who depend on the network will have security and continuity of supply; and on the other hand, to ensure that any Licensee with market power, especially one that is vertically integrated as is BGÉ, does not exploit its position to the detriment of competition.

- Condition 22 of the Transmission Licence and Condition 21 of the Distribution Licence require the Licensee to keep its Transmission Business and its Distribution Business, as the case may be, managerially and operationally separate from any other Separate Business (e.g. supply), and in particular not to use information acquired in the course of a network business to confer commercial advantage on those other Businesses. Condition 23 of the Transmission Licence and Condition 22 of the Distribution Licence require the Licensee to appoint a compliance officer to oversee the Licensee's compliance with its obligations under the Licence and any specified obligations under the Act.
- Condition 24 of the Transmission Licence and Condition 23 of the Distribution Licence require the Licensee to certify annually (the certification to be audited), by board resolution, that it expects to have sufficient resources available to it to continue to carry on the licensed business. In circumstances where the Licensee were a company within a larger group this would force the board to focus on, for example, whether its dividend policy is consistent with its licence obligations. It also has a role where a licensee accounts for almost all the licensed activity nationally.
- Condition 25 of the Transmission Licence and Condition 24 of the Distribution Licence require the Licensee to use all reasonable endeavours to maintain an investment grade credit rating. This is a protection against the essential network being subjected to certain forms of financial engineering involving, say, excessive gearing of the assets.
- Condition 26 of the Transmission Licence and Condition 25 of the Distribution Licence require the production of separate accounts for the Licensee's Separate Businesses. This reflects and fleshes out an existing requirement of the Act in relation to vertically integrated businesses. Its purpose is to underpin with audited financial accounts the Licensee's compliance with other economic regulatory rules, for example that on cross-subsidy (see below). The Licensee is to draw up regulatory

accounting guidelines, for approval by the Commission, on the relevant accounting methods and principles.

- Condition 27 of the Transmission Licence and Condition 26 of the Distribution Licence prohibit the transfer of cross-subsidy between one business, or part of a business, and another business or part of a business of the Licensee. The Commission may determine what constitutes a business for these purposes. Condition 28 of the Transmission Licence and Condition 27 of the Distribution Licence prohibit unfair discrimination between persons and classes of persons, including system users. It is envisaged that these two conditions would be applied only where the Licensee has market power. Condition 32 carries into the Licence the principal provisions of European Union and Irish Competition Law prohibiting anti-competitive behaviour and abuse of a dominant position. These provisions will only have effect where a licensee is able to prevent, restrict or distort competition or has a dominant position in a relevant market.

### **2.3.6. Miscellaneous**

These conditions require the Licensee to comply with any levy order made by the Commission under the Act; to furnish information required by the Commission; to enunciate its policy on meeting its environmental obligations; to obtain the Commission's consent to assign the Licence or transfer the licensed business; and to notify the Commission of any change of control (which, if it proceeds in the face of an objection from the Commission on fitness and properness grounds can lead to revocation of the licence).

## 2.4. Supply Licence

Under Section 16(1)(a) of the Act, the Commission may issue a licence for the supply of natural gas to persons of a type mentioned in Section 10A(1) of the Gas Act, 1976 or to customers of a type mentioned in Article 19 of the Directive 98/30/EC. Under the Act, the definition of the supply activity includes the activity of shipping natural gas. The customers supplied under such a licence are defined as “Eligible Customers” in the draft Licence. The “Eligible Supply Business” is the business of the Licensee consisting of the supply of natural gas as authorised by the Licence. As the Eligible Customer market base expands to full market opening, the Licence will therefore eventually authorise and regulate the supply of gas to all customers.

As distinct from the other draft Licences accompanying this paper, not all licence conditions in the draft Supply licence will appear in every supply licence issued. Rather, the conditions detailed in the draft licence shall apply as follows:

- **Section A** contains conditions of general application. These conditions will apply to all Licensees. Where a Licensee’s only supply activity is to be shipping (i.e. the Licensee acquires gas upstream of the transportation system, pays for transportation but then sells only to other natural gas undertakings authorised under the Act), these will be the only conditions attaching to their licence. The authorisation contained in the terms of their licence would be correspondingly limited.

In the instance of an entity which is engaged exclusively in the supply of natural gas to its own premises (‘self-supply’), the Commission envisages that such entities will only be subject to those conditions contained in Section A of the Supply Licence and other such conditions which the Commission may deem appropriate.

- **Section B** contains conditions which are concerned with the economic behaviour of the Licensee, which will apply only to entities which are vertically-integrated and/or possess market power. It is the Commission’s intention that BGÉ will initially be the only entity to which these conditions will apply.
- **Section C** contains conditions which will apply to licensees engaged in the supply of natural gas to final customers. Some of these conditions only are applicable only in respect of the activity of supply to domestic customers and accordingly will not be operative as licence conditions until full market opening. In the meantime, however, it is intended to impose such obligations under orders conferring supply functions under Section 2(1) of the Gas (Amendment) Act, 1987.

There now follows a more detailed examination of the main conditions contained in each section of the Supply Licence.

#### **2.4.1. Conditions contained in Section A**

This group of Conditions constitutes not only the minimum set of requirements for a “shipper only” licensee (as discussed above) but will also be common to all supply licensees.

- Condition 2 (Codes of operations), Condition 4 (Co-operation with the GPRO), Condition 5 (Provision of information to the Commission), Condition 7 (Payment of levy), Condition 8 (prohibition of anti-competitive behaviour), Condition 9 (Assignment of licence and transfer of Eligible Supply Business) and Condition 10 (Change in control of Licensee) all have the same effect as their equivalents in the Transmission and Distribution Licences.
- Condition 3 imposes certain general requirements on the Licensee in relation to ensuring that it can respond to legitimate requests from transporters with a view to safeguarding the safety of the transportation system.
- Condition 6 requires the Licensee to prepare a Safety Framework in all aspects similar to those required of transportation licensees, but with the omission only of those matters which relate solely to the operation of pipelines.

#### **2.4.2. Conditions contained in Section B**

- Condition 11 will appear only in the licence granted to BGÉ and will require BGÉ to supply Eligible Customers in accordance with the terms set in a direction issued by the Commission.
- Condition 12 on regulatory accounts is identical to the corresponding conditions in the Distribution and Transmission Licences, save that the supply condition extends the requirements so as to require accounting for the Eligible Supply Business and any business supplying to Franchise Customers (pursuant to Section 2(1) orders) as separate businesses.
- Condition 13 imposes substantially the same requirements in relation to the independence of the Licensee’s supply business and restrictions on the use of information as are imposed in the Transmission and Distribution Licences; and Condition 14 is identical to the condition relating to the appointment and role of the Compliance Officer in those other Licences.
- Condition 15, which prohibits cross-subsidies to or from the Eligible Supply Business, has equivalent effect to the corresponding conditions in the Transmission and Distribution Licences.

- Condition 16 requires the Licensee to purchase gas at the best effective price reasonably obtainable.
- Condition 17 prohibits the Licensee from showing undue preference or exercising undue discrimination between any customers or classes of customer, including as between Eligible Customers and Franchise Customers. It also prohibits predatory or exploitative pricing to final customers.

### **2.4.3. Conditions contained in Section C**

Conditions 23, 24, 26 and 28 will not be operative as licence conditions until domestic customers become Eligible Customers.

- Condition 18 will initially appear only in BGE's licence and imposes a general obligation to offer terms for supply to all Eligible Customers save where circumstances provide objectively justifiable reasons for not doing so.
- Condition 19 requires the Licensee to comply with any Section 2(1) order which confers supply functions on the Licensee.
- Condition 20 requires the Licensee to ensure that its customers will be kept informed of the emergency response service which a designated holder of a Distribution Licence will be required to provide, pursuant to Condition 13 of the Distribution Licence.
- Condition 21 reflects the proposed policy that supply licensees should be required to procure metering and data services from the transporter to whose system its customer is connected.
- Condition 23 requires the Licensee to supply domestic customers under a standard form contract approved by the Commission.
- Condition 24 requires the Licensee to prepare and submit to the Commission for approval a code of practice on its policies and practices for dealing with domestic customers who have difficulty in paying for their gas supply.
- Condition 25 requires the Licensee to prepare and submit to the Commission for approval a code of practice for handling complaints from final customers.
- Condition 26 requires the Licensee to maintain a register of vulnerable customers, and to prepare and submit to the Commission for approval a

code of practice setting out the special services which the Licensee offers to such customers.

- Condition 27 requires the Licensee to prepare and submit to the Commission for approval a code of practice on disconnection.
- Condition 28 requires the Licensee to prepare and submit to the Commission for approval a code of practice on marketing to domestic customers in order to avoid inappropriate or misleading marketing practices.
- Condition 29 prohibits the Licensee from making its supply of gas to final customers conditional on procurement of another service or product.
- Condition 30 on preparation, review of and compliance with codes of practice, etc. is identical to the corresponding conditions in the Transmission and Distribution Licences.
- Condition 31 requires the Licensee to co-operate with other natural gas undertakings and the GPRO with a view to assisting the GPRO to fulfil the requirement in its Transmission Licence to establish a means by which Eligible Customers may change from one supplier to another. It also prohibits the Licensee from preventing one of its customers from changing supplier other than on grounds that the customer owes the Licensee money or otherwise remains contractually bound to the Licensee.
- Conditions 32 to 34 concern the supplier of last resort arrangements. Condition 32 provides for the Licensee to be directed by the Commission to supply the customers of a failing supplier for a period of no more than six months. In those circumstances, the Licensees will be obliged to send a notice to the customers in question in a form approved by the Commission, setting out the terms of supply (including as to charges). The Commission cannot require the Licensee to charge these customers less than the Licensee charges comparable existing customers, nor can the Licensee be required to supply at charges which will not cover its reasonable costs of supply to those customers. Condition 33 requires the Licensee to comply with directions given by the Commission in relation to transportation arrangements to be made in respect of customers of a supplier of last resort. Condition 34 requires the Licensee to include in a contract for supply of gas provision for its termination in the event of a last resort supply direction coming into effect in relation to the relevant premises.

## 2.5. Issues for Further Comment

The Commission now invites the market to provide comment on the key policies reflected in the draft licences and other issues under consideration by the Commission, which include the following:

- *Policy Issues*
  - The consultation document on business separation raised questions concerning the integration of the transmission and distribution business units of BGÉ. The licences for each activity are drafted in such a way that either an integrated model or a separated model could be adopted for the treatment of these entities. As can be seen from the business separation comments, detailed in Section 3 of this paper, the Commission has received a number of views from the market as to the extent of separation to be imposed upon the units within BGÉ. The Commission has decided upon strict business separation of BGS from the transportation units, as reflected in the draft licences. However, subject to satisfaction on key principles, such as non-discrimination and the protection of the interests of final customers, the Commission is considering the adoption of the integrated model for BGÉ’s transportation businesses, provided that appropriate ring-fencing can be achieved (for example, with regard to separation of accounting and proper cost allocation).
  - The Commission invites comment on the methodology for and the principle of “Supplier of last resort” (Conditions 32-34 of the Supply Licence), as set out in the Supply Licence;
  - The Commission invites comment on the appropriateness of the measures contained in licences concerning the Investment Grade Rating, having regard for the particular circumstances of the Irish market. (Condition 25 of the Transmission Licence and Condition 24 of the Distribution licence);
  - The Commission invites comment on the provisions of the licence relating to the change of supplier process (Condition 31 of the Supply Licence).
- *Other Issues under consideration*
  - The Commission is currently considering the appropriate licensing regime to be applied to upstream natural gas producers. Such a licence is required under Section 16(1)(a) of the Act. The Commission invites comment on conditions it would be appropriate to impose on such activities through any such licence;
  - The Commission invites comment on the structure of the supply licence accompanying this paper – in particular, comment is invited on the set of conditions which should apply to each class of activity

(those conditions for general application, those to apply to BGÉ in the immediate term and those to apply to all licensees engaged in the supply of natural gas to final customers).

Section 1.3 specifies the format and deadline for submissions on the above issues (and on all other matters concerning the draft licenses).

### **3. Response to Consultation on the Business Separation and Licensing of Bord Gáis Éireann**

#### **3.1. Introduction**

This section addresses the comments received by the Commission from the market on its recent consultation document “Business Separation and Licensing of Bord Gáis Éireann”<sup>3</sup> which was published in February 2003. These comments were published on the Commission’s website on 7<sup>th</sup> March 2003.

As explained in the Natural Gas Policy Framework document (CER/02/52), the Commission believes that the promotion of competition in gas shipping and supply in Ireland requires:

- the separation of the potentially competitive elements of the gas business from the monopoly elements, principally gas transportation;
- that all market participants have access to gas transportation networks on an open and non-discriminatory basis.

The Commission published the business separation consultation document referred to above in order to provide an indication to the market of its intentions in that regard, and to invite comments as appropriate. The responses from the industry addressed the key considerations outlined in the consultation document.

The Commission’s proposals detailed in the draft licences are aimed at extending and formalising the requirements for separation through the conditions set out in each of the licences. The conditions contained in the draft licences and the powers given in the Act, will enable the Commission to monitor and, where necessary, enforce appropriate business separation and where necessary to modify the licence conditions in response to changing circumstances.

The licences do not deal just with business separation but also include all the other important terms and conditions necessary to enable licensees to operate in the new market environment. Section 2 has summarised the main conditions for each of the draft licences being published for consultation. Where relevant, we discuss comments received on those conditions that are not strictly related to business separation in so far as they were referred to in the earlier Business Separation paper.

In the following sections, the Commission has summarised the main responses received. These have been grouped according to the main issues

---

<sup>3</sup> Consultation Document CER/03/020 (3<sup>rd</sup> February 2003)

which they address. Please note that the summaries provided do not necessarily cover all comments received but do attempt to set out the most important areas covered by the comments received.

The next sections will first address comments received in relation to business separation in general and then deal with transmission, distribution, metering and data services and supply activities separately. Each section gives a summary of the Commission's policy stance on the relevant issue (where appropriate). There then follows a summary of the consultation comments received together with the Commission's response to the points raised, referring to the relevant draft licence condition(s) and other relevant documents where appropriate<sup>4</sup>.

---

<sup>4</sup> The overviews and responses given do not form part of the licences and should not be construed as such, or affect the interpretation of such.

### **3.2. Commission's Response to Business Separation Comments**

The earlier consultation paper on business separation set out three different types of separation model:

- Separate accounts for separate businesses;
- Separate business units within a single corporate structure; and
- Separate legal entities for separate businesses (though these may still exist in the same corporate group).

BGE has so far implemented managerial and a degree of accounting separation of its business units. The Commission's intention is to extend this separation through the conditions set out in the licences issued to BGE.

As the Commission made clear in the earlier consultation paper, it does not have the powers to require legal separation. However, it should be noted that the proposed amendments and additions to the 1998 EU Gas Directive will make it a requirement for Member States to require that there is legal separation between entities involved in the operation of gas transportation and in other competitive activities in particular gas supply.

In its consultation paper, the Commission invited particular comment on the organisation of gas transportation within BGE as to which of the two "organisation options" presented were preferable. The alternatives presented were:

- Allowing BGE to organise gas transmission and gas distribution as a single business unit (with separate licences for each activity but with less stringent requirements as regards ring-fencing between the two activities); or,
- Requiring BGE to set up separate business units, each with a separate licence with stricter ring-fencing but allowing the sharing of some common services, where a case could be made for doing so.

The following provides a summary of the comments received on the above considerations and the response from the Commission. These comments have been divided into three broad categories:

- Business Separation Methodology;
- Organisational Options and Extent of Business Separation (to be applied to BGE); and,
- Licence Considerations (in the context of Business Separation).

### 3.2.1. Business Separation Methodology

***In its adoption of an appropriate business separation methodology, the Commission has considered its duties under the Act and measures have been weighed against the Commission's duties with regard to the promotion of competition within the market and those of protecting the interests of final customers and promotion of efficiency in natural gas undertakings.***

***The following are the comments received and the Commission's response:***

One respondent felt that it is critical that the Commission ensures that regulation policies are weighed against the possibility that they may reduce customer benefits (through the elimination of economic efficiencies and the imposition of additional compliance costs). The respondent commented that any requirements for and the extent of measures for business separation must be cost effective, but must not impact negatively on the ability of gas to compete while ensuring that customer benefits are achieved. The respondent also stated that there should be an emphasis on arrangements, which facilitate downward pressure on tariffs (with specific consideration given to Irish market environment where there is clear competition from other fuels).

*CER Response:*

*The Commission, in carrying out its duties (including policy formation and adoption), as established under the Act, must act in a manner which protects the interests of final customers. The proposals for business separation and regulation put forward in the draft licences are considered by the Commission to be appropriate and proportionate. Experience in other energy markets would indicate that a high level of business separation between competitive and monopoly activities is necessary to bring about effective and fair competition. The benefit to final customers of new and effective competition must be weighed against the cost of introducing such competition to customers. It is felt that the business separation to be imposed through the licences on BGÉ will allow for adequate separation to facilitate such competition and it is felt that such measures will not impact negatively on the ability of gas to compete in the energy market place.*

One respondent commented that while they agree that separation of the competitive and monopoly businesses of BGÉ is necessary, any ring-fencing requirements should be replicated in a licence for other integrated undertakings.

*CER Response:*

*BGÉ is in the unique position of being a vertically integrated incumbent gas utility. This position, as it presently stands, means that the combination of the monopoly activities with competitive supply of gas confers the potential for leveraging of market power. The imposition of strict ring-fencing conditions in*

*the licences on BGÉ is necessary in order to facilitate competition in the supply of gas, by ensuring access to the transportation network on terms that are open, fair and non-discriminatory for all market players and which ensures equal and non-discriminatory treatment. The Commission will monitor and where necessary enforce ring-fencing measures to ensure that effective business separation is achieved.*

*At this stage, it is not expected that any other licensed undertaking would be subject to all the provisions relating to business separation. However, should the introduction of such measures be deemed necessary in the future, the Commission would seek to modify the licence, as appropriate, under the provisions of the Act.*

One respondent expressed concern that the consultation document on business separation did not set out a long-term vision of the industry (post-restructuring).

*CER Response:*

*The Commission set out its vision for the gas industry in its Natural Gas Policy Framework document (CER/02/52). The Commission is presently finalising its strategic plan and this will help extend its original vision and present its long-term strategy for the industry.*

### **3.2.2. Organisation Options and Extent of Separation**

***The Commission is implementing the business separation methodology for the incumbent through the licensing of the three core activities of transmission, distribution and supply.***

***Through this licensing regime, the Commission will impose certain ring-fencing restrictions on the activities of BGÉ. Such restrictions will relate to the transfer of information, of costs, of assets and of employees.***

***Stringent ring-fencing will be imposed on BGÉ through licence conditions that are designed to ensure that BGS is managed and operated independently of the other business units. Anti-competitive practices are prohibited- including cross-subsidies, disclosure of certain information and other business practices which lead, or may lead, to an unfair competitive advantage for BGS.***

***The Commission, however, reserves the right for the time being to consider to what extent such separation shall apply to the separation of the distribution and transmission businesses units, taking into account the need to maintain, at a minimum, separate accounts and cost allocation methodologies between the two activities. Additionally,***

***the requirement for each licensable activity to be undertaken in a verifiably non-discriminatory manner is vitally important, particularly in the context where either BGT or BGD may face significant competition in their two respective markets.***

***The following are the comments received and the Commission's response:***

One respondent commented that their preference is for an unbundling of the business units within a single corporate structure with further separation measures enforced through licences.

*CER Response:*

*The Commission agrees with this comment, and subject to the issues addressed in relation to the possible integration of the transmission and distribution units, this is reflected in the methodology which the Commission has adopted with regard to the business separation of BGÉ.*

The Commission received comments concerning the objectives which should be achieved through business separation – specifically, the separation of natural monopoly elements (transportation from supply). One respondent commented that BGÉ should not remain as one vertically integrated entity due to the potential this model would offer for cross-subsidisation. It is felt that, while tariff regulation would assist in preventing such abuses, vertical integration would always confer other informal advantages over other market participants. The respondent feels that there is no economic justification for the continuation of a vertically integrated BGÉ.

*CER Response:*

*The Commission intends to separate the monopoly businesses from those of supply, as set out in the draft licences. In addition, the Commission has proposed the imposition of stringent ring-fencing requirements upon the incumbent which aim at ensuring that the gas transportation businesses of BGÉ do not confer a competitive advantage on the supply business.*

One respondent commented that there are strong benefits to be achieved from continued integration of gas transmission asset operation and ownership. Others argued that there should be separation of system operation from ownership of assets.

*CER Response:*

*The Commission does not believe that separation of BGT's role as system operator and asset ownership is an efficient solution (as previously set out in the Commission's Natural Gas Policy Framework document (CER/02/52)).*

Several comments were received on the issue of separation of BGE Eligible Supply and Franchise Supply elements. One respondent felt that BGE should not be exempt from the requirement that the monopoly business does not operate a related competitive business. One comment stated that there should be complete separation of these businesses and measures should include ring-fencing to ensure the Eligible Business is prevented from accessing the Franchise Business' customer database (as this would provide a significant advantage to the competitive business over other market participants). The respondent expressed concern over the possibility of BGS "locking in" franchise customers as they approach eligibility.

Other concerns were raised over opportunities for the incumbent to cross-subsidise the eligible market by offsetting costs in the franchise market.

CER Response:

*The Supply licence allows that the Commission can direct the terms that BGS can offer to supply gas to eligible customers. Thus the Commission has directed that BGS offer to supply gas to all eligible customers, using less than 25 million cubic metres a year, under the terms and conditions of a Regulated Tariff Formula ("RTF").*

*The RTF means that BGS can only offer to supply gas on the regulated terms set out in the formula and may not counter-offer against any tenders for supply from other suppliers.*

*The Commission is satisfied that the measures proposed in the Supply Licence remove the requirement to further separate BGS into the businesses supplying gas to Franchise customers and to Eligible customers (as is proposed in the above comment) in order to achieve the objectives of full and effective competition. The draft licence specifically prohibits the Eligible Supply Business from giving or receiving any cross-subsidy from any other part of the business.*

*The Commission does acknowledge the potential issue of "locking in" arising in the case of further market opening where franchise customers who become eligible customers have the right to opt for an alternative supplier. It is essential that information on market opening is available to all suppliers at the same time and that BGS cannot approach such customers with eligible customer contracts prior to that notice on further lowering of the eligibility threshold. With the implementation of the RTF, BGS can only contract eligible customers coming off an existing contract for maximum period of 12 months. All franchise customers coming off contract will be transferred to a tariff (if not already on one).*

*The issue of inappropriate access to databases will be considered in the context of the IT separation consultation.*

### 3.2.3. Licence Considerations

***The Commission believes that the principles of business separation adopted by it and to be applied to BGÉ are reflected in the draft licences accompanying this document.***

***In the absence of full legal separation, the Commission's proposals are designed to ensure that the provisions relating to BGÉ's activities will enable the Commission effectively to monitor and, where necessary, enforce appropriate business separation.***

***The following are the comments received and the Commission's response:***

- *General Comments*

One respondent commented that prevention measures are more effective than punishment.

*CER Response:*

*The Commission agrees with this point and it has proposed measures in the licences to reflect this.*

There should be a consultation on generic licences prior to drafting of the BGÉ-specific licences.

*CER Response:*

*The Commission has decided to publish the model licences for consultation, which contain certain conditions which will only apply to BGÉ.*

One respondent proposed that the licensing regime should provide security for new entrants through defining operating conditions and acceptable performance standards in addition to removing barriers to entry.

*CER Response:*

*The Commission agrees with this point and it has proposed the necessary measures in the licences to reflect this.*

One respondent proposed that an industry-wide forum be established, consisting of working groups charged with the task of drafting industry codes and standards relating to business separation and ring-fencing arrangements.

CER Response:

*In drafting the licences, the Commission has identified those codes which are most appropriate for industry consultation (such as the GPRO Code of Practice) as distinct to those which are more appropriate for preparation by the Licensee and which are to be approved by the Commission (such as Codes of Practice on marketing, complaint handling, etc). In all cases the industry can make suitable representations to the Commission.*

One respondent commented that it is essential to have monitoring processes in place to report on compliance. They proposed that audits are conducted each year (it was also proposed that these would be funded by the industry and would report to the Commission).

CER Response:

*Provisions addressing the above proposals have been included in the licences that are expected to apply to BGÉ. The conditions relating to the appointment of and duties of the Compliance Officer within BGÉ are contained in each of the licences, though it is envisaged that only one such officer is appointed to serve all of BGE's licensed activities. These conditions provide that the Commission can monitor compliance with licence conditions as set out and other relevant obligations placed on the Licensee under the Act.*

*The relevant conditions also require the Compliance Officer to produce a report on all activities with respect to the compliance function for the Commission on an annual basis. Such monitoring is also supported by other obligations imposed by the licences concerning the provision of information to the Commission, in addition to it having the powers of investigation under the Act.*

- *Comments on Ring-fencing*

One respondent felt that a prescriptive approach should be adopted with regard to ring-fencing measures and that the Commission, independently of BGÉ, should prepare ring-fencing guidelines. It was proposed that ring-fencing measures should focus on the definition of appropriate practices and the prevention of abuses. The respondent proposed that significant penalties should be paid for non-compliance of such measures.

CER Response:

*The Commission has set out in the licences the provisions it considers necessary to ensure that there are the appropriate ring-fencing measures in place between the business units (governing use of assets, transfer of information, etc.). While there is no provision for financial penalties for non-compliance, the Commission can ultimately revoke the licence for failure to comply with a licence condition or an enforcement direction.*

*The legislation does not provide for the imposition of fines by the Commission. Should BGS breach conditions relating to the terms of supply to eligible*

customers, the Commission would refer to its powers under the legislation and the licence.

- *Comments on Cross-Subsidisation*

One respondent proposed that there is a need for accounting rules for cost allocation to be put in place. These should focus on the identification and allocation of costs, the definition and appropriate transfer pricing of distribution activities and the ability to secure that appropriate transfer pricing is used in practice.

*CER Response:*

*The condition requiring the preparation of regulatory accounts in each of the licences specifies the requirement for the Licensee to draw up implement and publish its Regulatory Accounting Guidelines (in consultation with and for approval by the Commission). Under the condition, the Licensee will be required to agree the accounting principles in relation to cost attribution*

- *Comments on Preferential Treatment*

One respondent expressed concern over the ability of BGS to gain preferential access to distribution services. Such discriminatory behaviour by BGD could include the lack of provision of services to competing suppliers, active preferential treatment of BGS and circumstantial preferential treatment (preferential treatment of BGS due to the integrated nature of organisation and the close association between business units).

*CER Response:*

*The licence conditions for BGÉ's business units impose a duty of non-discrimination and prohibit anti-competitive behaviours and prohibit any such abuse by BGÉ in the delivery of its services to customers including suppliers. In particular, one of the key obligations placed on BGÉ with respect to BGD will be to ensure that it provides equal treatment to all gas suppliers.*

- *Comments on Joint Marketing*

One respondent expressed their grave concerns over BGÉ's use of combined marketing resources. They commented that such resources could be used to assist BGS in a variety of ways which result in unfair competitive advantage being bestowed upon BGS by virtue of it being part of the BGÉ "umbrella organisation". This is compounded by BGS sharing the same brand name as BGD.

*CER Response:*

*The Commission acknowledges the above concerns. In its consideration of all the issues to be addressed in the licensing regime for BGÉ, the Commission is*

*of the opinion that a more appropriate approach for ensuring fair and effective competition would be achieved through the proper application of powers relating to tariff controls, cost allocation accounting and ring-fencing arrangements.*

*Furthermore, the Commission is of the view that the prohibition proposed in the Licence whereby BGS can only supply gas on terms set out in a regulated tariff or regulated formula means that BGS is, in effect, the Public Gas Supplier and removing the 'brand' from BGS may not be in the overall best interests of consumers.*

*The Commission proposes that the licence conditions relating to ring-fencing would be exercised to ensure that inappropriate joint-marketing between the separate businesses of BGÉ would not be permitted.*

- *Comments on Information Sharing*

One respondent commented that anti-competitive practices with regard to the sharing of information between BGD and BGS should be prevented. Such anti-competitive practices include the sharing of general customer and customer-specific information, BGD system information and information on other market participants.

*CER Response:*

*The Commission agrees with the comment. The licence conditions relating to the ring-fencing of the separate businesses and the restriction on the use of certain information impose the requisite obligations on the Licensee to prevent such abuse.*

- *Other Issues*

One entity proposed that BGD be split up into several different regional companies.

*CER Response:*

*The Commission does not have the powers under the legislation to split BGD as proposed above and therefore, such separation could not be enforced through the licences.*

### **3.3. Commission's Response to Transmission Licensing Comments**

In its consultation paper, the Commission set out the key responsibilities and activities of BGT. Comment was invited on the proposed licence conditions to implement any ring fencing provisions. The following provides a summary of the comments received on the above considerations and the response from the Commission.

***The Commission is including conditions in BGT's licence obligations concerning behaviour that is expected to be fair and non-discriminatory between shippers.***

Many respondents welcomed a statement that BGÉ Transmission (BGT) should carry out its business in a way that does not discriminate between shippers, especially in favour of Bord Gáis Energy Supply (BGS). Three respondents particularly mentioned non-discrimination between entry points, with one pointing out that any incentive to discriminate would derive from the regulatory price/control arrangements etc. Respondents also advocated non-discrimination in Standard Transportation Agreements, in access to line-pack, and in access to storage. One respondent said that existing arrangements already cover the requirement for non-discrimination, so a licence condition would give no additional advantage. The respondent also said that issues regarding specific new connections (entry or exit) should be an issue for regulatory oversight, and could not be addressed by separation.

*CER Response:*

*A duty of non-discrimination is included in the draft transmission licence in Condition 28. The Commission feels that the duty concerning non-discrimination is fundamental to the behaviour of any transmission business. Furthermore, the condition is additional to existing statutory provisions dealing with terms and conditions for third party access to the transporter's pipelines.*

***The Commission is including licence conditions requiring new assets to be procured economically by BGT and are subject to rigorous competitive tenders to ensure efficient procurement of new capacity.***

One respondent said that BGT already uses competitive tenders and faces public procurement rules, so specific licence conditions with additional obligations concerning procurement are of questionable value. Another respondent implied that the transporter should take some risks for investments it makes.

CER Response

*The Commission believes that even if BGT already uses competitive tenders and faces public procurement rules, the licence condition requiring efficient procurement is still necessary. Current practice and public procurement rules may change, while the licence condition will be enduring. An obligation to incur costs efficiently is an important obligation on licensees to complement price controls.*

***The Commission said in its consultation paper that as part of the business separation arrangements BGT would have to occupy separate premises from Bord Gáis Energy Supply.***

One respondent thought that there should be a requirement for BGT (and BGD) to occupy separate premises from BGS. Another, however, said that BGT and BGD should share the same premises, while separating them physically would have significant cost implications. The respondent said that BGÉ already has strict physical access controls (i.e. the prevention of BGS staff entering the BGT floor) and the configuration of IT systems for BGT will prevent access to confidential network business information. Additionally, the commercial and regulatory constraints within which BGS will operate (e.g. the Regulated Tariff Formula for eligible customers) will leave little incentive for them to seek information from BGT or BGD.

CER Response:

*Separation of business premises is dealt with in Condition 22 of the draft licence. The Commission is of the opinion that BGS should be physically separated from the transportation businesses and this is reflected in the draft Supply Licence (Condition 13).*

*Furthermore, the Transmission and Distribution Licences provide for similar separation of these activities (as discussed earlier in this paper)– with the provision that the Commission may allow derogations (e.g. with respect to sharing common services) where stringent regulatory requirements are met and where it can be demonstrated that any such derogation is appropriate.*

***The Commission said in its consultation paper that there would be a quarantine period for staff transferring between BGÉ business units.***

Two respondents said that quarantine for staff transfers should apply for transfers from BGT to BGS, but did not feel that the reverse is necessary. One of the respondents said that BGÉ already have quarantine processes and a Code of Conduct for staff in place. The respondent said that any quarantine requirements must only affect those staff who had access to competitively advantageous information, and there must be a proportionate nature and duration for any such quarantine. Also, any changes to practices will require consultation with employee representatives.

CER Response:

*The issue is dealt with in Condition 22 of the draft licence. The Commission is to consider the amendment of the provision as drafted and which following amendment would allow the transfer of staff from BGS to BGT or BGD without the need for a quarantine period.*

**The Commission said in its consultation paper that business separation arrangements would include ensuring that information flows between business units are closely monitored, and designed to ensure fairness between all parties.**

Two respondents agreed with arrangements to ensure there are no inappropriate information flows between BGÉ business units, with one saying a compliance warning should be attached to all internal emails/correspondence between units. The other said that the codification and interpretation of any condition is important as it would have the potential to result in significant compliance/monitoring processes and costs.

CER Response:

*Information flows are dealt with in Condition 22 of the draft licence. A key element in the effective ring-fencing of BGÉ's business units is the practice and procedure put in place with regard to restrictions placed on the flow of information. To this end, Condition 22 requires formalisation of such procedures, subject to the approval of the Commission.*

*The Commission agrees with the above proposal concerning compliance warnings and it will be considered as part of the policies and procedures which are submitted to the Commission for its approval, as required under the draft licence.*

**The Commission said in its consultation paper that arrangements will ensure that IT systems are separated so as to not allow inappropriate access by other business units.**

One respondent said that logical separation of IT systems is the optimal solution given the relative costs. Any separation would need to distinguish between those IT systems that are dedicated to particular business units and "corporate" systems that support all staff. The latter should remain available to all business units to avoid costly duplication of functions.

CER Response:

*The issue of information flow is dealt with in Condition 22 of the draft licence. The particular issue of IT separation is dealt with elsewhere in this paper.*

**The Commission considers that the licences will contain conditions requiring publication of certain information.**

One respondent recommended the inclusion of condition requiring BGT to provide operators of upstream systems with information to ensure interoperability. Two other respondents made comments about the publication of information by BGT. Comments included that system information should be made available (such as the approach to pressure regulation, and daily information on entry and exit volumes, and line-pack), and that capacity information given should be more certain.

CER Response:

*The Commission is concerned that BGT cooperate with operators of connected systems to ensure the coordinated development and operation of the natural gas system.*

*The Commission is consulting with industry as part of its review of the Code of Operations on the information that BGT should be obliged to publish. It will seek to amend the Code if necessary. Such a requirement to publish appropriate information is underpinned by Condition 16. Condition 30 also deals with information, requiring BGT to publish such information as required by the Commission.*

***The Commission said in its consultation paper that separation arrangements would require separate accounts to be kept.***

One respondent believes that accounts should not just be separated internally, but also published.

CER Response:

*The separation of accounts is dealt with in Condition 26 of the draft licence. This provides for publication of regulatory accounts of licensees as well as statutory accounts.*

***The Commission did state in its Natural Gas Policy Framework that it did not consider the separation of the roles of system operator (SO) and asset owner (AO) as being economically efficient.***

Two respondents suggested separating BGT's roles as system operator (SO) and asset owner (AO), with separate licences for each. The separation would remove from the SO any incentive to discriminate as its revenue would be based upon efficient, short-term system management rather than a rate of return.

CER Response:

*The Commission does not believe that separation of BGT's roles as SO and AO is an efficient solution.*

***The Commission said in its consultation paper that licence conditions could include requirements to develop new transmission capacity services to ensure efficient use of the pipeline system.***

Two respondents said that BGT should be incentivised to operate the system efficiently and offer capacity services that encourage greater use of the transmission system.

*CER Response:*

*The Commission agrees that BGT should be incentivised to operate the system efficiently. The discussions on possible amendments to the Codes of Operations are intended to deal in detail with ways to improve the efficiency of operating the system. The Commission is at the same time considering the structure and level of transmission tariffs.*

### **3.4. Commission's Response to Distribution Licensing Comments**

***The Commission stated in the consultation paper that BGD would be expected to develop its system by procuring additional capacity via rigorous competitive tendering.***

One party believes that new investment being subject to competitive tenders is already part of the BGÉ procurement process - large investments are subject to public procurement rules and smaller investments follow similar guidelines. Therefore, whilst it has no objection to this condition in principle, it does question its value given the existing practice and the fact that (procurement) legislation is in place.

CER Response:

*This issue was dealt with previously in this section.*

***The Commission referred in the consultation paper to its policy that BGD does not discriminate between Shippers.***

One respondent stated that as current arrangements cover this requirement, for example third party access is offered to Shippers in a fair and non-discriminatory manner via regulated tariffs, there is no additional advantage in such a licence condition.

CER Response:

*This issue was dealt with previously in this section.*

***The Commission stated in the consultation paper that BGD may not trade commodity gas***

One respondent stated that though this may seem like a sensible condition, the restriction should be cognisant of situations where distribution may need to procure gas for purposes relating to the operation of the system.

CER Response:

*The Commission believes that BGD should concentrate on its role as Transporter and in this regard does not consider it appropriate for it to be involved in trading gas. However this should not prevent the Transporter procuring gas as and when gas is needed to maintain the security of the system.*

***The Commission stated that it is envisaged that BGD will be responsible for all emergency planning and for provision of a national emergency centre and service***

One party stated that the Distribution Licence must place obligations on BGÉ to provide a national emergency response and recommended that the Commission examine Transco system and cost allocation of same in UK. In the event of a national emergency, BGÉ would have control of all pipelines and are to provide a national emergency number. They would respond to all calls relating to emergencies in a neutral and non-discriminatory manner.

Another party noted that the Commission is yet to consult on the provision of services associated with network ownership and certain ambiguities about the treatment of emergency service situations must be clarified. In its view the obligation to operate an emergency call centre can be interpreted as:

- Operating the call centre and liaising with other network businesses (who have the responsibility for resolving the situation), or;
- Operating the call centre and taking responsibility for emergency procedures on assets (raises issue of consequential liability), or;
- Operating the call centre and carrying out consequential emergency procedures and taking proactive responsibility for safety management for third party networks.

The party believes that consideration needs to be given as to whether or not any third party distributors wish to fulfil the obligations themselves by providing this (and other services such as metering data services) or whether they wish to enter into commercial arrangements for provision of same with other providers, one of which it is prepared to be. It commented that a clear delineation of responsibilities is critical and urged the Commission to consult on this prior to finalising the relevant Licence conditions. In addition, clarification is sought on the responsibility for emergencies downstream of the meter (issue should be addressed separately).

CER Response:

*The Distribution Licence obliges the Licensee to provide an emergency response service, where so designated by the Commission, with the Licensee responsible for the maintenance of a call centre and responding to and making safe all natural gas escapes. The Commission envisages BGÉ being the licensee responsible for this service (Condition 13). BGD will be allowed to recover the costs of the service from other distribution licensees.*

*At the same time, where an emergency occurs, the Transmission Licence provides that a single licensee, to be designated by the Commission, will assume the role of Network Emergency Manager, with control over all transportation assets as regards any network emergency. It is envisaged that BGT will be obliged to act as the Network Emergency Manager. Such a role recognises the fact that BGT's network and operations covers a large part of Ireland and is best placed to act in emergency situations.*

*Condition 3 is designed to deal with safety of gas fittings in, or in connection with, premises and contains an obligation on the Licensee to not connect to any gas fitting unless a registered gas technician has installed it or the Licensee is satisfied that the gas fitting has been safely installed.*

***The Commission referred in the consultation paper to its policy that BGD ring-fence all its activities within BGÉ, including occupation of a separate premises from other business units***

One respondent doesn't believe that separate premises for BGD is a proportionate requirement, given that:

- The majority of Distribution staff are already in separate buildings/locations from Bord Gáis Energy Supply;
- Controls may be put in place preventing physical access to areas occupied by Distribution;
- The configuration of IT systems for BGD will prevent access to confidential network business information. Given the commercial and regulatory constraints within which BGS will operation will leave little incentive for them to seek information from the networks business (as this would have little competitive benefit),
- Physically separated location would have significant cost implications.

In addition the party does support Bord Gáis Transmission and BGD sharing the same premises.

*CER Response:*

*This issue was dealt with previously in this section.*

One respondent stated that separation of BGD operations and BGD asset ownership is required, together with separate licenses for the two activities (the comment included explicit reference to BG CoGen and requested assurances that preferential connection or usage charges will not be applied to them).

*CER Response:*

*This issue was dealt with previously in this section.*

Another party requested that a compliance warning be attached to all internal emails/correspondence between business units.

*CER Response:*

*The Commission agrees with the above proposal concerning compliance warnings and it will be considered as part of the policies and procedures which are submitted to the Commission for its approval, as required under the draft licence.*

***The Commission stated in the consultation paper that BGD will be required to operate a Code of Conduct for all employees that ensures compliance with separate business units, including a period of quarantine for all staff transferring between business units***

In relation to this issue one party stated that:

- BGÉ already have processes in place to ensure staff transferring between networks and supply do not continue to have access to inappropriate materials and cannot transfer data;
- BGÉ has in place a Code of Conduct for staff;
- Any quarantine requirements will need careful interpretation. Any such requirements must be in one direction only, must only affect those staff who had access to competitively advantageous information and there must be a proportionate nature and duration for any such quarantine;
- Any changes to practices will require consultation with employee representatives and will have implications regarding the Industrial Relations Guidelines and Procedures.

CER Response:

*This issue was dealt with previously in this section.*

***The Commission stated in the consultation paper that BGD must ensure that information flows between business units are closely monitored and designed to ensure non-discrimination***

One party stated that it agrees with the principle that BGD information flows are monitored but commented that the way in which it is to be codified in the licence is important as some interpretations of the principle could result in a significant compliance/monitoring process that would add significantly to the operating costs of the business units. Therefore a proportionate interpretation is required.

CER Response:

*This issue was dealt with previously in this section.*

***The Commission stated in the consultation paper that BGD must operate separate IT systems and other business systems that do not allow access by other business units***

One respondent commented that logical separation is the optimal solution and will fully meet the requirements of market participants. It considers that the leveraging of systems and data structures presently in place is the only means by which the supporting functionality for the non-daily meter market is viable. Separated systems would be needed to distinguish between those IT systems and business processes which are dedicated to gas

transportation and/or energy supply activities, and “corporate” systems/services that support all staff. The respondent expects that corporate systems remain available across all activities to avoid the costs associated with establishing duplicate functions.

CER Response:

*This issue was dealt with previously in this section.*

**Other comments made in response to the consultation paper include the following:**

- *Distribution Asset Management*

One party proposed that a Licence requirement be that BGD has in place an asset management system to ensure efficient and economic operation of licensed distribution system (includes data on acquisition, identity, accountability, performance, accounting treatment and disposal of assets). The contents of this asset management system should be independently audited annually to ensure no over-recovery.

CER Response:

*The Commission will incentivise BGD to operate efficiently principally through the allowed revenue formula.*

- *Annual Information Returns*

In addition to regulatory accounts, one party stated that BGE should make annual returns detailing:

- Amount of gas transported;
- Actual peak demand;
- Number of Distribution exit points (of various specified classifications);
- Amount of unaccounted for or lost gas;
- Distribution exit points per kilometre of mains and percentage change from previous year;
- Other statistics (such as unplanned interruptions, reported breaks and response time, length of mains installed and decommissioned, etc.).

CER Response:

*This issue was dealt with previously in this section.*

- *Interoperability*

One respondent commented that the BGD licence should contain an obligation to allow interconnection of other gas distribution networks.

*CER Response:*

*The proposed Distribution Licence requires the Licensee to offer terms for the connection of other systems.(Condition 2)*

- *Connection*

One respondent commented that there is a requirement for a public consultation on any proposed connections policy.

*CER Response:*

*The issue of policy for connection to a consumers' premise will be dealt with by the Commission as part of its distribution tariff review. This will be subject to public consultation.*

### **3.5. Commission's Response to Metering & Data Services Comments**

***In its consultation paper on business separation and licensing of BGÉ, the Commission stated that it considered it most appropriate for the GPRO to reside within BGT, together with ring-fencing measures to prevent the sharing of commercially confidential information between BGÉ's transportation activities and BGS.***

#### **3.5.1. Business Separation**

One respondent commented that they had serious concerns over the extent of ring-fencing currently in place with regard to the GPRO. They commented that, contrary to BGÉ's claims, this represents a significant barrier to entry and requested publication and enforcement of present GPRO ring-fencing arrangements.

Another felt that if the GPRO resides within BGT this therefore implies separation from BGD. In addition, a number of GPRO activities are core activities required under the distribution licence and would therefore sit with BGD. Also the information is "owned" by BGD. Changing the present arrangements would result in the necessity for large volumes of data to be exchanged between separate units. It is felt that BGD is more experienced than BGT in processing details of large numbers of customers. Locating the GPRO in BGT would add significantly to the operation costs without any great benefit.

#### *CER Response:*

*Condition 8 of the Transmission Licence requires the designated Licensee (in this case it will initially be BGÉ that is so designated) to establish and operate a Gas Point Registration Operator (GPRO) system. This new system will lie at the heart of the competitive market as it will constitute the means for identifying each point at which final gas customers take supply; for matching points (and thus customers) to suppliers; and for matching meter readings to customers and suppliers. The GPRO will also engineer the logistical process by which changes of supplier are effected. Condition 9 of the Transmission Licence and Condition 8 of the Distribution Licence will require the Licensee to co-operate with and supply data to the GPRO.*

*The GPRO will be required to prepare a code of practice for metering and data services.*

*In consultation with other natural gas undertakings and with the approval of the Commission, the GPRO will be required to publish details of the process for the efficient and expeditious means by which final customers may change from one supplier to another.*

*It is intended that all GPRO activities will be transparent and fair and there will be no discrimination between users of the service (including suppliers and other potential transmission and distribution undertakings ). The information collected and retained by the GPRO will available to those licensees that need it for the carrying out of their activities, including the operation of the change of supplier process.*

Third party distributors argue that they would prefer to establish their own processes for meter data services and therefore the location of the GPRO within BGÉ would not be of any concern to them.

*CER Response:*

*Condition 10 of the Transmission Licence and Condition 9 of the Distribution Licence require the Licensee to offer standard terms for the provision of metering and meter reading services.*

*Whereas in the environment of vertically integrated non-competitive supply the provision of these services was simply done by whichever entity was responsible for both pipes and gas supply, in the new environment of competitive supply suppliers will be responsible for procuring these services from transmission licensees (in the case of those relatively few final customers directly connected to the transmission system) or from distribution licensees (in respect of the great majority of customers who are connected to the distribution system).*

One respondent felt that the combined network businesses should be permitted to integrate GPRO functions to a level which is operationally efficient and which minimises the cost of provision (GPRO costs would be separately identified to facilitate their appropriate apportionment). Another respondent felt that the GPRO needs to be separately managed, licensed and separately located from all other units.

*CER Response:*

*The GPRO will be established, operated and maintained by the designated Transmission Licensee. The functions and obligations of the GPRO are set out in Condition 8 of the Transmission Licence. A code of practice will be drawn up that will set out clearly the process for the change of supplier and which will be the subject of consultation with other natural gas undertakings and any other party designated by the Commission.*

### **3.5.2. MDS services**

A respondent noted that incentives should be utilised to provide for the issue of timely billing information to market participants. It was pointed out that the Commission has not yet consulted on the provision of meter data services for third party distributors. Directions should be issued on issues

such as treatment of metering errors, processes for meter disconnections, etc. There should be the opportunity for market participants to have input into the development strategy for metering in the future and the provision for users to pole meters directly. The Commission should establish an independent metering and data code to which all licensees would be signatories.

CER Response:

*As stated above, the GPRO will be monitored in its activities. This monitoring will extend to ensuring that billing data is issued to Shippers/Suppliers on a timely basis.*

*The Commission will in due course be consulting on the provision of metering and data services for suppliers and this consultation will include the issues of errors, connections/disconnections, meter polling, etc..*

### **3.6. Commission's Response to Supply Licensing Comments**

Section 6 of the consultation document dealt with specific proposals relating to the restrictions and ring-fencing requirements to be imposed on BGÉ through the Supply Licence.

A separate consultation on the proposed "Regulated Tariff Formula" was carried out by the Commission and responses to that paper are dealt with in a separate response paper.

#### **3.6.1. General Considerations and Restrictions on the Business Activities of BGS**

***The Commission, in its business separation licensing consultation paper, proposed imposing certain obligations with regard to the supply of small fuel users and vulnerable customer groups. Such obligations will only apply to those licensees supplying domestic customers.***

***In addition, the Commission has included provisions for direction of a supplier to be the supplier of last resort. This issue will also be subject to a further consultation which will detail the process for direction by the Commission of a supplier of last resort together with the rights and obligations of such a supplier.***

***The following are the comments received and the Commission's response:***

- *Protection of Vulnerable Gas Customers*

Several respondents agreed in principle with the Commission's proposal to impose certain obligations with regard to the supply of vulnerable customers through the supply licence. Some respondents proposed that the obligation should be applied equally to all licensed suppliers, together with enforcement of the Commission's proposal to require the preparation of a Code of Practice for dealing with such groups of customers.

**CER Response:**

*Section C of the Licence deals with the obligations to be imposed on all licensees engaged in the supply of natural gas to final customers. Condition 26 establishes the requirement for the licensee to prepare and maintain a register of all vulnerable customers of the supply business and the requirement to notify details of such customers to the appropriate transporter to whose system such customers are connected. Furthermore, this condition requires the licensee to submit, for the Commission's approval, a Code of*

*Practice on the provision of such services which will be made available to vulnerable customers. The licence also defines the term “vulnerable customer” and Condition 30 imposes obligations with regard to the preparation, review of and compliance with Codes of Practice.*

*Condition 26 will not be operative as a licence condition until domestic customers become eligible customers.*

- *Universal Service Obligation*

One respondent requested clarification from the Commission as to whether any universal service obligation will be imposed upon BGÉ.

*CER Response:*

*Condition 18 of the licence deals with the obligations placed upon a licensee (in this case BGÉ) with regard to making an offer to enter into a supply contract upon receipt of request for same from a final customer. The Condition specifies under what circumstances this obligation shall apply. It is the Commission’s intention that BGÉ will initially be the only entity to which these conditions will apply. In addition, Conditions 17 (Prohibition of Discrimination), Condition 32 (Supplier of Last Resort) and Condition 26 (Vulnerable Customers) are also of relevance to this issue.*

- *Supplier of last resort*

Several respondents commented on the Commission’s proposal, as set out in the consultation paper, to appoint BGÉ as the designated supplier of last resort. One respondent agreed that BGÉ should be the designated body as this would assist in new market participants overcoming customer concerns in changing of supplier and would assist in the development of a competitive market. Other respondents commented that it was not clear why BGÉ should necessarily be the (only) designated supplier of last resort and proposed that suppliers other than BGÉ may be interested in fulfilling such a role.

*CER Response:*

*Condition 32 of the licence sets out the circumstances in which the Commission would direct a supplier to be the supplier of last resort and the general obligations imposed on the directed supplier. The provisions set out in the draft licence do not preclude any entity from being directed as the supplier of last resort. Note, however, that it is the Commission’s intention that, in the first instance, it is likely that BGÉ will be the directed supplier of last resort. The condition is also designed so that it includes provision that the directed supplier may recover the cost of supply under the supplier of last resort direction. Condition 34 requires all suppliers to enter into supply contracts which allow for the termination of such a contract in the instance of a supplier of last resort direction coming into effect for the supply subject to the contract.*

*A separate consultation will be held with regard to the process for direction of a supplier of last resort and other issues relevant to this mechanism (recovery of any losses incurred in complying with a supplier of last resort direction given by the Commission, time limits, etc.).*

### **3.6.2. Ring-fencing of BGS Business Activities**

***The Commission, in its business separation consultation paper, proposed imposing certain ring-fencing conditions which would ensure that BGS could not use its market position to cross-subsidise the supply of gas to eligible customers (e.g. from franchise customers) or to benefit from its continuation as part of BGÉ through access to information that might not necessarily be available to other gas suppliers and shippers and thereby gain an unfair competitive advantage.***

***The draft licence reflects the Commission's intentions in that regard and proposes the imposition of stringent ring-fencing measures on BGÉ, including the requirement for BGS to occupy premises separate from any other business of BGÉ.***

***The following are the comments received and the Commission's response:***

- *Separate Premises*

One respondent considered that any requirement for BGS to occupy separate premises from all other BGÉ business units was not proportionate. Another respondent made the general statement that BGS should not be burdened with any appreciable costs relative to their competitors and specified that the requirement to occupy separate premises was not a requirement for other licensees and therefore should not be imposed upon BGS.

*CER Response:*

*It is the view of the Commission that BGÉ will be required to occupy separate premises in addition to the other stringent ring-fencing provisions set out in the licence (please refer to Condition 13). It is through such stringent ring-fencing measures that other market participants may have confidence in the degree of effective business separation imposed upon BGS. The key consideration for the Commission with regard to any ring-fencing measures imposed upon market participants other than the incumbent is to ensure that effective competition can develop in the market.*

- *Separation of Information Technology Systems.*

**The consultation paper stated that one ring-fencing measure to be imposed on BGÉ would be the requirement to operate physically separate IT systems (together with other business systems).**

One respondent provided a detailed comment on this issue and proposed that the extent of IT separation should be limited to logical separation. This respondent feels that adequate ring-fencing can be achieved to a satisfactory level through logical IT separation which would allow for controlled access to data. This would achieve the objective of ring-fencing whilst allowing for lower implementation costs together with an implementation timetable which would allow for the necessary measures to be in place in time to meet market opening.

*CER Response:*

*Condition 13 does provide for separation of IT systems but it is yet to be determined how precisely this separation will be implemented.*

*The Commission is currently examining proposals for the separation of IT systems within BGÉ. The decision as to whether a scheme for “logical” separation or a scheme for physical separation of IT systems is adopted will be made having regard to the key principle of ensuring non-discrimination between entities using services of the various BGÉ business units in addition to adopting measures which will provide for equal access to and confidentiality of data relating to each shipper/supplier.*

- *Staff Quarantine and Code of Conduct*

The consultation paper proposed ensuring a period of quarantine for all staff transferring between BGS and all other BGÉ business units. In addition, it was proposed that a Code of Conduct would be put in place for all employees to assist in ensuring compliance with the separation of business units. One respondent provided detailed comments and suggested that the present quarantine measures in place within BGÉ are adequate ring-fencing provisions in this regard. Several comments received proposed that any quarantine measure with regard to transfer of staff need only be necessary in the instance of transfer of staff from a networks business into BGS and that any reverse quarantine measures need not be applied.

*CER Response:*

*Condition 13 imposes the necessary quarantine conditions with regard to the transfer of staff between business units (for a period of three months). The Commission is to consider the amendment of the provision to allow for the transfer of staff from BGS to BGT or BGD without the need for a period of quarantine.*

*In addition, the Commission is to consider the requirement for BGÉ to prepare and enforce a Code of Conduct for employees, as described in its consultation paper. This would be required under Condition 13 and the Commission now welcomes further comments on the proposition.*

- *Monitoring of Information Flows*

***The consultation paper proposed that the licence would ensure that close monitoring of the information flows (both between BGS and other units and with outside parties) are monitored closely and are designed to ensure fairness and non-discrimination.***

One respondent agreed in principle with this proposal but did express concern that the extent to which this was to be implemented could result in a significant compliance cost. It proposed that proportionate interpretation and implementation of this obligation be considered.

*CER Response:*

*This issue was dealt with previously in this section.*

- *Compliance Officer*

***The consultation paper proposed that the licence would require BGS to appoint a Compliance Officer to monitor (and enforce) the necessary compliance procedures as imposed under the Licence and the Acts.***

One respondent felt that it was not necessary or appropriate for BGS to be required to appoint a Compliance Officer as it was felt that the main requirement for compliance issues is related to the networks businesses. They proposed that a more appropriate arrangement would be for compliance requirements to be addressed at the corporate level where BGÉ already has a Compliance Officer in place.

*CER Response:*

*This issue was dealt with previously in this section.*

### **3.6.3. Other Comments**

- *Financial Support for BGS*

One respondent proposed that BGS should be provided with the necessary financial support to enable them to perform their duties – a parent company guarantee or some other form of asset back was suggested as being necessary in order to ensure BGS' ability to secure competitive supplies of natural gas into the future

CER Response:

*The Commission is of the view that this issue does not arise as BGS is not a separate legal entity from BGÉ.*

- *Regulated Tariff Formula*

Although the Regulated Tariff Formula (“RTF”) was subject to a separate consultation process, some comments were received by the Commission regarding the licence obligations pertaining to the RTF. Some respondents voiced their support for the RTF. One respondent proposed that BGS should be subject to strong financial penalties should they breach any provisions relating to the RTF.

CER Response:

*The RTF was the subject of a separate consultation process – please refer to the published document for details of the Commission’s decision (document reference CER/03/078). The licence does contain, in Condition 11, the requirement for BGS to adhere to directions issued by the Commission for the supply of eligible customers (presently, this is applied through the direction for BGÉ to adhere to the RTF and to only offer terms to Eligible Customers (with annual consumption of less than 25 million standard cubic metres) which comply with the RTF terms). This RTF, for the time-being, is the method by which BGS is permitted to supply natural gas to the eligible market. Condition 11 of the Supply/Shipping Licence states that the Commission has jurisdiction over what form of regulated tariff model will continue to apply.*

*The legislation does not provide for the imposition of fines by the Commission. Should BGS breach conditions relating to the terms of supply to eligible customers, the Commission would refer to its powers under the legislation and the licence.*

- *Market Review*

One respondent proposed that the Commission should establish some benchmarks/criteria against which it will conduct its competitive market review. These can be used to determine in an objective way the need to strengthen or relax measures designed to promote competition.

CER Response:

*At an appropriate point in the future, the Commission will carry out a review of the gas market to ascertain whether effective competition exists in the market. A set of appropriate criteria will be developed prior to this.*

- *Separation of Licensable Activities*

The Commission received a comment on the need for the separation of regulated activities for the supply of franchise customers from the unregulated activities of supply of gas or acting as shipper for non-franchise customers.

CER Response:

*While BGS operate as a single business unit in the supply of natural gas to franchise and eligible customers, they will nonetheless be subject to direction and oversight as to the tariffs to be applied to both sectors, the separation of accounts, the appropriate allocation of costs and the avoidance of cross subsidies.*

One respondent proposed that gas shipping and gas supply, as distinct activities, should be licensed separately. They proposed that both activities are potentially competitive activities and BGS should operate under special licence conditions for each (which should include restrictions on discriminatory pricing and cross-subsidy within the supply licence).

CER Response:

*The Commission does not have the power to licence natural gas shipping separately from gas supply. Under the Act, gas supply is defined as a set of activities, which includes shipping. Therefore, the two activities cannot be separated for the purposes of licensing. Section 16(1)(a) of the Act empowers the Commission to grant only a supply licence (which, by definition, would cover shipping activities also).*

*However, the Supply Licence has been drafted in such a way that allows a degree of flexibility to those entities which seek to bring gas into the Irish gas system but only sell to another authorised natural gas undertaking, to be subject only to the conditions in Section A of the Supply Licence. The activities of shipping gas are regulated in a way that does not require the licensee to be subject to the same detailed conditions that apply to a licensee supplying gas to final customers and set out in Section B (which applies to BGE) and Section C that applies to all licensees supplying gas to final customers. The issue of self-supply was addressed earlier in this paper.*

One respondent proposed the requirement for a separate regulatory activity to be defined where BGS is supplying gas or acting as shipper for another business, subject to regulatory control (such as supplying/shipping for ESB Power Generation).

CER Response:

*The Commission is of the opinion that appropriate measures for the regulation of accounting and cost allocation can be enforced through the licence.*

One respondent raised specific concerns about the ability of BGS to procure lower cost supplies at Inch. This may allow for BGS to dedicate such lower cost supplies to very large customers whilst using more expensive supplies for non-eligible customers. This presents an unfair advantage to BGS with regard to competing for the supply of very large customers.

CER Response:

*The Commission considers that this issue is addressed in its decision regarding the BGS supply tariff.*

One respondent proposed that BGÉ be obliged to attach a “compliance warning” to all internal correspondence exchanged between business units.

CER Response:

*The Commission agrees with the above proposal concerning compliance warnings and it will be considered as part of the policies and procedures which are submitted to the Commission for its approval, as required under the draft licence.*

## **4. Next Steps**

The Commission has invited comment on specific issues, as detailed in Section 2.4 of this paper, in addition to welcoming comment on any aspect of the draft licences accompanying this paper.

After considering all comments received out of this consultation, the Commission will publish the model gas licences for each activity together with its response to those comments received.

In the interim, the Commission intends to publish, for consultation, the details of the process envisaged for licence applications. This will include the draft application forms, guideline notes for applicants, assessment criteria and fees associated with licence application.