PRELIMINARY CERTIFICATION DECISION

GNI’s GAS FOU
CERTIFICATION APPLICATION

30th November 2015
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<td>Bord Gáis Éireann</td>
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<td>BGN:</td>
<td>Bord Gais Networks</td>
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<td>BGTP:</td>
<td>Belfast Gas Transmission Pipeline</td>
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<td>FOU:</td>
<td>Full Ownership Unbundling</td>
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<td>GB:</td>
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<td>GNI:</td>
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<td>GTMS:</td>
<td>Gas Transportation Management System</td>
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<td>ICs:</td>
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<td>IoM:</td>
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<td>ISO:</td>
<td>Independent System Operator</td>
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<td>MCENR:</td>
<td>Minister for Communications, Energy &amp; Natural Resources</td>
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<td>MECLG:</td>
<td>Minister for Environment, Community &amp; Local Government</td>
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<td>MSM:</td>
<td>Majority Shareholding Minister</td>
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<td>NRA:</td>
<td>National Regulatory Authority</td>
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<td>NWP:</td>
<td>North-West Pipeline</td>
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<td>PTL:</td>
<td>Premier Transmission Limited</td>
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<td>SNIP:</td>
<td>Scotland to Northern Ireland Pipeline</td>
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<td>SNP:</td>
<td>South-North Pipeline</td>
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<td>SWSOS:</td>
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<td>TSO:</td>
<td>Transmission System Operator</td>
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<td>UK:</td>
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<td>VIU:</td>
<td>Vertically Integrated Utility</td>
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Executive Summary

Pursuant to the implementation of Directive 2009/73/EC ("the Directive"), each EU Member State’s National Regulatory Authority (NRA) is required (where appropriate) to certify whether an undertaking which owns a gas transmission system is 'effectively unbundled'.

Effective unbundling, as indicated within the Directive, requires the separation of network activities within a Vertically Integrated Utility (VIU) from the activities of energy production and supply. The Directive permits the adoption of various models of effective unbundling, including Full Ownership Unbundling (FOU).

On the 31st of July 2015, the CER, as Ireland’s NRA for energy, received a FOU certification application form Ireland’s gas transmission system operator Gas Networks Ireland (GNI), which is on behalf of GNI and its wholly owned and controlled subsidiary GNI (UK).

GNI and its wholly owned and controlled subsidiary GNI (UK) is an Irish state owned gas network company, which owns gas transmission assets in Ireland, Northern Ireland and Great Britain.

Given that the gas transmission assets of GNI and its subsidiary straddle three jurisdictions (i.e. Ireland, Northern Ireland and Great Britain), the Transmission System Operator (TSO) requires certification from three NRAs (i.e. CER, UREGNI & Ofgem). Consequently, three separate Preliminary Certification Decisions will be issued to the EU Commission regarding GNI and its wholly owned and controlled subsidiary GNI (UK).

Following a review of GNI’s FOU certification application, the CER, as Ireland’s NRA is satisfied that GNI’s is in compliance with the FOU unbundling requirements, as specified in Chapter III of the Directive. Consequently, the CER intends certifying GNI as FOU compliant. Notwithstanding this positive Preliminary Certification Decision, the CER will continue to licence and monitor GNI to ensure its ongoing compliance with the EU’s unbundling requirements.
1.0 Introduction


1.2. On the 31st of July 2015, the CER, as Ireland’s National Regulatory Authority (NRA) for energy, received a certification application from Ireland’s gas TSO Gas Networks Ireland (GNI).

1.3. GNI’s certification application to the CER seeks certification on behalf of GNI and its wholly owned and controlled subsidiary GNI (UK).1 GNI and its wholly owned and controlled subsidiary GNI (UK) is an Irish state owned gas network company.

1.4. The model of unbundling set out in the preliminary certification is Full Ownership Unbundling (FOU), as described in Chapter III of the Directive.

1.5. GNI’s gas transmission assets, which form the Irish gas transmission system consist of:

- the onshore gas transmission assets in Ireland;
- two gas interconnectors (i.e. IC1 and IC2) linking Ireland to Great Britain (GB); &
- South West Scotland Onshore System (SWSOS) assets in GB.2

1.6. GNI’s wholly owned and controlled subsidiary GNI (UK), also owns and operates part of the gas transmission system of Northern Ireland, namely the South-North Pipeline (SNP) and the North-West Pipeline (NWP).3

1.7. Given that the transmission assets owned by GNI and its wholly owned and controlled subsidiary straddle three jurisdictions (i.e. Ireland, Northern Ireland and Great Britain), the TSO requires certification from three NRAs (i.e. CER, UREGNI & Ofgem).

1.8. The CER has been in communication with the Northern Ireland NRA – UREGNI – in preparing this notification. The CER emphasises however that this CER preliminary certification relates only to the Irish system. The CER understands that UREGNI may also be submitting a separate preliminary certification in respect of the transmission assets operated by GNI (UK).

1.9. The CER has also been in communication with OFGEM – the NRA in GB – in preparing this preliminary certification. The CER understands that OFGEM may also be submitting

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1 Apart from its board members, GNI (UK) does not have any employees. GNI operates GNI (UK)’s assets through a GNI and GNI (UK) Services Agreement.

2 The Irish gas transmission system connects to Great Britain’s transmission system at Moffat (Scotland). Currently, the Moffat gas entry point (in Scotland) accounts for approximately 95% of Ireland’s natural gas supplies. Appendix 1 provides an overview of Ireland’s and Northern Ireland’s gas transmission systems.

3 The Northern Ireland gas transmission system consists of the Scotland to Northern Ireland Pipeline (SNIP), the Belfast Gas Transmission Pipeline (BGTP), the North West Pipeline (NWP) and South North Pipeline (SNP). The SNIP and the BGTP are owned and operated by Premier Transmission Limited (PTL) and Belfast Gas Transmission Limited (BGTL) respectively. Both PTL and BGTL are subsidiaries of the ultimate holding company Mutual Energy. The combined SNIP and BGTP are known as the Premier Transmission Pipeline System, (PTPS). The NWP and SNP are owned and operated by GNI (UK), a subsidiary of GNI.
a separate preliminary certification of GNI (UK) in respect of that part of the Irish system, located in GB, to the European Commission.

1.10. The preliminary certification follows on from a notification sent by the CER, on behalf of the three NRAs (i.e. CER, UREGNI & Ofgem) to the European Commission on the 19th of October 2015.

1.11. The documents included in this CER preliminary certification decision comprise:

- This "Preliminary Certification Decision" document, which is structured as follows:
  - Section 1: Introduction;
  - Section 2: Background to GNI’s certification as a gas TSO;
  - Section 3: FOU Certification Requirements;
  - Section 4: CER’s Review of the TSO’s FOU Certification Application;&
  - Section 5: Conclusion.

- **Annex 1**: Completed Questionnaire in format recommended by European Commission.

- **Annex 2**: GNI’s FOU certification application.

- **Annex 3**: GNI & GNI (UK) Services Agreement.

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2.0 Background to GNI’s Certification as a Gas TSO

2.1. Prior to the incorporation of GNI in 2015, GNI and its wholly owned and controlled subsidiary GNI (UK) were previously associated with the state owned Vertically Integrated Utility (VIU) company Bord Gáis Éireann (BGÉ).

2.2. In Ireland, BGÉ had responsibility for the ownership of Ireland’s gas transmission and distribution assets, which were maintained by a division within BGÉ (i.e. Bord Gáis Networks). In order to ensure compliance with the EU Second Package, the operation of Ireland’s gas transmission and distribution assets were undertaken by Gaslink as an Independent System Operator (ISO).

2.3. As a VIU, BGÉ maintained interests in gas supply, electricity supply and electricity generation through its energy business (i.e. Bord Gáis Energy). In addition to BGÉ’s transmission assets, its wholly owned and controlled subsidiary BGÉ (UK) was responsible for two pipelines in Northern Ireland, namely the South-North Pipeline and the North-West Pipeline.

2.4. In July 2010, Ireland’s Minister for Communication, Energy & Natural Resources (MCENR) decided that BGÉ should implement an Independent Transmission Operator (ITO) model in the Irish gas market. Consequently, BGÉ underwent a period of company restructuring to ensure compliance with the Directive’s deadline of March 2012.

2.5. In February 2012, the Irish Government announced its intention to sell Bord Gáis Energy (i.e. BGÉ’s non-network assets) as part of the State’s asset disposal programme, with a view to moving from an ITO model to an FOU model.

2.6. As a result of market uncertainties associated with the sale of Bord Gáis Energy, it was decided that BGÉ should proceed with the submission of an ITO certification application. Consequently, BGÉ submitted an ITO certification application, which resulted in the CER issuing a preliminary certification decision to the EU Commission (28th March 2013).

2.7. Taking utmost account of an EU Commission Opinion (23rd May 2013), the CER certified BGÉ as ITO complaint (19th July 2013), subject to the completion of outstanding ITO work items including full separation of IT systems and completion of company rebranding. As a condition for ITO certification, the CER indicated that BGÉ would have to implement outstanding ITO work items if the sale of Bord Gáis Energy failed to materialise.

2.8. In 2013, the Irish Government confirmed that a preferred bidder was selected for the sale of Bord Gáis Energy. In order to facilitate the sale of Bord Gáis Energy, the Irish Government introduced the Gas Regulation Act 2013, which provided the legislative framework for the legal separation and sale of BGÉ’s energy business and the re-organisation of the networks business into a single legal entity.

2.9. During a period of significant company restructuring within BGÉ, the following events occurred:

– **July 2013**: Following an Irish Government decision, BGÉ was designated with responsibility for the provision of water and waste water services in Ireland, which resulted in the establishment of Irish Water as a subsidiary within the BGÉ Group.
- **June 2014**: In accordance with Section 8(1) of the *ESB (Electronic Communications Networks) Act 2014*, the Irish Minister for Communication, Energy and Natural Resources (MCENR) renamed BGÉ as Ervia.

- **June 2014**: Bord Gáis Energy sale was completed.

- **December 2014**: Bord Gais Networks (BGN) business rebranded as GNI.

- **January 2015**: GNI was incorporated as a wholly owned subsidiary of Ervia.

- **April 2015**: BGÉ (UK) changed its name to GNI (UK) Ltd.

2.10. To complete the company restructuring, Ervia and Gaslink transferred assets, licences, rights, liabilities and staff to GNI on the 1st August 2015, as part of their Network Transfer Plan, which was approved by Ireland’s MCENR.

2.11. As a result of the company restructuring, the Government of Ireland determined that FOU certification should be sought in respect of GNI’s natural gas transportation business. Consequently, GNI and its wholly owned and controlled subsidiary GNI (UK) are seeking FOU certification.

2.12. Figure 2.1 provides an overview of GNI’s company structure as a subsidiary within the Ervia Group. The Ervia Group comprises Irish Water and GNI.

**Figure 2.1: Ervia’s Company Group Structure**

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*Ervia: Parent company for the group, statutory corporation formerly called Bord Gáis Éireann.*

*Gas Networks Ireland: New company formed to undertake the transmission and distribution operations and ownership in Ireland.*

*GNI (UK): Owner and operator of certain gas interconnector assets between Scotland and Ireland, owner and operator of gas transmission assets in Northern Ireland, and owner and operator of SNP in ROI.*

*Irish Water: Irish water utility providing water and waste water services in Ireland.*

*Gas Networks Ireland (IOM): Owner of IOM spur pipeline connecting the Isle of Man to the interconnector system.*

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3.0 FOU Certification Requirements

3.1. For the purposes of assessing GNI’s FOU certification application, the CER is assessing GNI’s compliance with Article 9 (Unbundling of transmission systems and transmission system operators) and Article 13 (Task of transmission, storage and/or LNG system operators) of the Directive.

3.2. The core requirements of Article 9 of the Directive are set out in Articles 9(1) and 9(7) of the Directive, and further elaborated upon within the EU Commission’s 2010 Interpretative Note on Unbundling (the “Interpretative Note”).

3.3. Article 9(1) of the Directive states that:

a) each undertaking which owns a transmission system acts as a TSO.

b) the same person\(^4\) or persons are entitled neither:
   i. directly or indirectly to exercise control\(^5\) over an undertaking\(^6\) performing any of the functions of production or supply, and directly or indirectly to exercise any right\(^7\) over a TSO or over a transmission system; nor
   ii. directly or indirectly to exercise control over a TSO or over a transmission system, and directly or indirectly to exercise control or exercise any right over an undertaking performing any of the functions of production or supply.

c) the same person or persons are not entitled to appoint members of the supervisory board, the administrate board or bodies legally representing the undertaking, of a TSO or a transmission system, and directly or indirectly to exercise control or exercise any right over an undertaking performing any of the functions of production or supply; and

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4 The Interpretative Note states that the concept of person in the Directive covers private individual, companies or any other public or private entities. Additionally, the Interpretative Note states that the person referred to in Article 9(1)(a) of the Gas Directive will be either the company having the supply or network operation activity or a parent company having subsidiaries acting as suppliers or network operators.

5 The term ‘control’ as defined in Article 2 of the Directive means any rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by: (a) ownership or the right to use all or part of the assets of an undertaking; (b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.

6 Article 9(3) of the Directive states that for the purposes of paragraph 1(b), the notion ‘undertaking’ performing any of the functions of production or supply shall include undertaking performing any of the functions of generation and supply within the meaning of Directive 2009/72EC.

7 For the purposes of Article 9 1(b) and 1(c) of the Directive, Article 9(2) of the Directive states that ‘rights’ shall include the power to exercise voting rights, the power to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking, or the holding of a majority share. Therefore, Article 9(2) of the Directive, as indicated by the Interpretative Note, implies that shareholding can only provide financial rights (i.e. the right to receive dividends), but cannot confer any right to take part in the decision-making process of the company or exercise any influence on the company. Additionally, the Interpretative Note states that the concept of voting rights refers to any voting rights, no matter how limited, including voting rights which do not amount to control.
d) the same person is not entitled to be a member of the supervisory board, the administrative board or bodies legally representing the undertaking, of both an undertaking performing any of the functions of production or supply and a TSO or a transmission system.

3.4. Article 9(7) of the Directive states that:

Member States shall ensure that neither commercially sensitive information held by a TSO which was part of a vertically integrated undertaking, nor the staff of such a TSO is transferred to undertakings performing any of the functions of production and supply.

3.5. Article 13 of the Directive details the tasks of a TSO, which includes:

- operating under economic conditions a secure, reliable and efficient transmission facilities to secure an open market;
- refraining from discriminating between system users;
- providing sufficient information to system users;
- building sufficient cross-border capacity; &
- adopting transparent & non-discriminatory rules for balancing the gas system.

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4.0 CER’s Review of TSO’s FOU Certification Application

4.1 Article 9(1) (a): Performing The Functions Of A Gas TSO

4.1.1. In order to perform the functions of a gas TSO and ensure compliance with Article 9(1)(a) of the Directive, the TSO is required to fulfil the tasks as detailed in Article 13 of the Directive.

4.1.2. The Interpretative Note states that compliance with Article 9(1)(a) of the Directive means that the TSO is as a consequence responsible among other things for granting and managing third-party access on a non-discriminatory basis to system users, collecting access charges, congestion charges, and payments under inter-TSO compensation mechanism, and maintaining and developing the network system. As regards investments, the owner of the transmission system is responsible for ensuring the long-term ability of the system to meet reasonable demand through investment planning.

4.1.3. Exhibit 1 (Principles & Certification Paper: Section 5.2) of GNI’s FOU certification application details the various tasks that the TSO fulfils in order to ensure compliance with Article 13 of the Directive.

4.1.4. Having reviewed GNI’s FOU certification application, the CER deems that GNI fulfils the role of a gas TSO and is compliant with Article 13 of the Directive.

4.1.5. The CER’s detailed assessment of GNI’s compliance with Article 13 of the Directive is presented in Appendix 2 of this Preliminary Certification Decision.

4.1.6. The CER notes that GNI, as Ireland’s gas TSO, provides services to its wholly owned and controlled subsidiary GNI (UK) through a GNI and GNI (UK) Services Agreement.

4.1.7. The GNI & GNI (UK) Services Agreement enables GNI to operate parts of Ireland’s gas transmission system (i.e. the ICs and SWSOS), which are owned by GNI (UK).

4.1.8. In accordance with the GNI and GNI (UK) Services Agreement, GNI fulfils its obligations to the standard of a reasonable and prudent operator and in line with its obligations when appointed as a service provider.

4.1.9. The services provided by GNI to GNI (UK) are set out if the first schedule of the GNI and GNI (UK) Services Agreement (See Annex 3).

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4.2 Article 9(1) (b): Person(s) Not Entitled To Control An Undertaking & Exercise Control/Right Over TSO

4.2.1 The Interpretative Note states that compliance with Article 9(1)(b) of the Directive means that the same person is not entitled to exercise control over an undertaking performing any of the functions of production or supply, and to exercise control or exercise right over a TSO or a transmission system.

4.2.2 This section examines whether a public entity (i.e. MCENR), private individual (i.e. TSO’s board members), and companies (i.e. Ervia & GNI) exercise control over an undertaking performing the functions of production/supply, and exercises control/right over a TSO/transmission system.

4.2.3 Public Entity: MCENR’s Control of Undertakings & TSO

- Exhibit 1 (Principles & Certification Paper: Section 3.2.4) of GNI’s FOU certification application confirmed that the MCENR exercises control over Ervia and GNI through the appointment of board members. GNI note that the MCENR performs a similar role for other semi-state companies, which undertake energy supply activities.

- Exhibit 1 (Principles & Certification Paper: Section 3.2.4) of GNI’s FOU certification application confirmed that a new Majority Shareholding Minister (MSM) will be appointed to the Ervia Group in November/December 2015. GNI’s FOU certification application also confirmed that the MSM will not have a role in energy supply activities, thereby ensuring compliance with the Directive.

4.2.4 Private Individuals: TSO Board Members Control of Undertakings

- Exhibit 1 (Principles & Certification Paper: Section 3.2.4) of GNI’s FOU certification application states that no director of the board of GNI or GNI (UK) exerts control over both a TSO and an undertaking engaged in energy production or supply.

- Exhibit 4 (Administrative Bodies & Board Members) of GNI’s FOU certification application lists the current board members within Ervia, GNI and GNI (UK), and provides a profile of each board member including their interests in other companies.

- Exhibit 4 (Administrative Bodies & Board Members: Section 7.0) of GNI’s FOU certification application states that members of GNI’s board will sign a declaration confirming they have no other roles, which conflict with the requirements of Article 8.

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8 Exhibit 4 (Administrative Bodies & Board Members: Section 6.0) of GNI’s FOU certification application states that ministerial consent is not required for the appointment of Directors of GNI (UK). However, the fees payable to Directors are approved by the Minister. GNI (UK)’s Board Members are therefore appointed by an ordinary resolution of the company’s member(s), currently GNI. If GNI’s Board appoints external directors to whom a fee is payable, the GNI Board will require approval from the Ervia Board.
9 of the Directive, and have confirmed that GNI (UK)’s board have signed declarations of compliance with Article 9 of the Directive.9

4.2.5 Company: Parent Company (i.e. Ervia) Control of Undertakings

- Exhibit 1 (Principles & Certification Paper: Section 3.2) of GNI’s FOU certification application confirms that the energy production/supply business within Ervia (formerly BGÉ) has been sold, and that there are no active energy supply activities within the Ervia Group (with the exception of Irish Water’s 23 micro-chp units).

- Exhibit 1 (Principles & Certification Paper: Section 3.2.4) of GNI’s FOU certification application notes that the electricity generated at Irish Water’s micro-chp units is predominately for on-site consumption, with only 1 micro-chp exporting onto the grid as an emergency generator (approximately 30-40 minutes per annum, when required to stabilise the grid).

- Exhibit 3 (Group Shareholdings: Section 1) of GNI’s FOU certification application identifies all trading and non-trading companies within the Ervia Group. GNI has confirmed that such companies are not directly or indirectly involved in electricity and/or gas production, generation or supply.

- Exhibit 3 (Group Shareholdings: Section 1.2) of GNI’s FOU certification application confirmed that it has a number of non-trading energy production/supply related non-trading company within the Ervia Group (i.e. Conservation Engineering Ltd, Natural Gas Finance, Ervia Energy Trading, Platin Power Trading Ltd), which will be wound up in 2015. Furthermore, GNI notes that other non-trading companies will either be transferred to a separate legal entity (i.e. Aurora Telecom), divested (i.e. Greener Ideas Ltd) or wound up subject to agreement with Joint Venture Partners (i.e. Ervia Holdings Ltd & Oisin Power Generation Ltd).

4.2.6 Company: GNI’s Control over GNI (UK)

- Exhibit 1 (Principles & Certification Paper: Section 4.0) confirms that GNI is a 100% shareholder of GNI (UK), which entitles GNI to exercise control by means of:

  - the exercise by GNI of all voting rights at any general meeting of GNI (UK);
  - the right of GNI to appoint and remove the board of directors of GNI (UK);
  - the right to change the Memorandum and Articles of Association of GNI (UK);&
  - the inclusion of provisions within GNI (UK)’s Memorandum & Articles of Association that set out rules as to how GNI (UK) will operate and the procedures for acquiring relevant consents from GNI.

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9 Exhibit 4 (Administrative Bodies and Board Members) of GNI’s FOU certification application stated that Ervia’s board member declarations are not being submitted as Ervia is not a TSO.
4.2.7 Having reviewed GNI’s FOU certification application regarding GNI’s compliance with Article 9(1)(b) of the Directive, the CER notes the following:

- The Irish Government has recently approved an **MSM Commencement Order**, which divests the MCENR control of Ervia. As a result of the MSM Order, Ministerial control of the Ervia Group is now vested with the Minister for Environment, Community and Local Government (MECLG). The MECLG has no role in relation to any undertakings, which have energy production/supply activities. Consequently, the CER is of the view that the MECLG has no possibility of exercising decisive influence on an energy undertaking in production/supply.

- GNI and GNI (UK)’s Board Members do not exercise control over undertakings that are involved in energy production/supply activities. Therefore, the CER is of the view that GNI/GNI (UK)’s Board of Directors don’t have the possibility of exercising decisive influence on an undertaking engaged in energy production/supply.

- With the exception of Irish Water’s micro-chp units, Ervia’s trading companies are not involved in energy production or supply activities following the sale of Bord Gáis Energy. The CER does not consider Irish Water to be involved in energy production/supply (despite its retention of micro-chp units) on the basis that the majority of electricity is consumed on site, with only 1 micro-chp unit exporting to the grid for a limited period of time (as emergency backup, circa 30-40 minutes per annum). The unit which exports to the grid is 3,100 kW, which if exporting in 2014 for 40 minutes would have equated to 0.000008% of the annual electricity generation in Ireland. The CER also notes of a similar cases existing in Poland (Polskie Sieci Elektroenergetyczne), and that there is precedent to certify GNI as FOU compliant.

- Ervia has **non-trading** companies (e.g. Oisin Power, Platin Power & Greener Ideas) which could be considered as being involved in energy production/supply activities, if the companies commenced trading. However, the CER notes these non-trading companies are either in the process of being wound up or being sold by Ervia in order to address any outstanding legacy issues from being a VIU. Therefore, the CER does not currently view Ervia’s stake in companies such as Greener Ideas, Oisin Power & Platin Power as an impediment to FOU certification, as these non-trading companies are not performing the functions of energy production/supply. GNI has stated that Ervia is committed to winding up and divesting their interests in the majority of its non-trading companies.

- The CER is of the view that Ervia’s control of undertakings (trading & non-trading) doesn’t confer it with the possibility of exercising decisive influence on an undertaking engaged in energy production/supply.

- The CER is of the view that GNI’s control of GNI (UK) doesn’t confer it with the possibility of exercising decisive influence on an energy undertaking in production/supply.

4.2.8 In summary, having reviewed GNI’s FOU certification application, the CER deems that GNI is compliant with Article 9(1)(b) of the Directive. However, as a condition for certification, the CER will require that:
- GNI provide copies of signed declarations from GNI's current board members to the CER (prior to the end of December 2015) stating that they are in compliance with Article 9 of the Directive.

- GNI provide copies of signed declarations from all new members that are appointed to GNI and GNI(UK)'s board to the CER, which confirms that the relevant board member is compliant with Article 9 of the Directive.

- GNI immediately notify the CER regarding the potential and actual appointment of members to the Ervia board, and advise whether members of Ervia board have interests in an undertaking that is involved in energy production/supply.

- GNI immediately notify the CER regarding the potential and actual establishment of any new companies within the Ervia Group.

- GNI immediately notify the CER regarding the potential and/or actual activation of any dormant/non-trading company with the Ervia Group.

- GNI notify the CER if Irish Water substantially escalates its energy production/supply, such that it could be reasonably deemed to be an undertaking that actively participates in energy production/supply.

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4.3 Article 9(1) (c): Person(s) Not Entitled To Appoint TSO Board & Exercise Control/Right Over Undertaking

4.3.1 The Interpretative Note states that Article 9(1)(c) aims to avoid a situation where a parent company having some influence over a supplier, even minimal, can appoint board members of a TSO. As a consequence, a parent company (or other entity) that holds a majority share, or has the power to appoint board members or exercise voting rights in a supplier, cannot appoint board members of a TSO.

4.3.2 Exhibit 1 (Principles & Certification Paper: Section 3.2.2) of GNI’s FOU certification application confirmed that Ervia is the ultimate parent company of Ireland’s gas TSO.

4.3.3 Section in 4.2.8 of this Preliminary Certification Decision confirmed that Ervia’s control of undertakings involved in energy production/supply (trading & non-trading) doesn’t confer it with the possibility of exercising decisive influence (including appointment of board members) on an energy undertaking, particularly given the sale of Bord Gáis Energy. Therefore, the CER is of the view that Ervia cannot appoint board members or exercise voting rights in an undertaking engaged in energy production or supply.

4.3.4 With reference to Ministerial appointments, Section 4.2.1 of this Preliminary Certification Decision indicated that the MCENR exercises control over Ervia and GNI through the appointment of Board Members, and noted that the MCENR has a similar role over other semi-state companies, which undertake energy production/supply activities. As indicated in Section 4.2.8 of this Preliminary Certification Decision, the CER notes that the Irish Government has recently passed an MSM Commencement Order, which divests the MCENR control of the Ervia Group.

As a result of the MSM Order, Ministerial control of the Ervia Group is now vested with the Minister for Environment, Community and Local Government (MECLG). The MECLG has no role in relation to any undertakings, which have energy production/supply activities. Consequently, the CER is of the view that the MECLG has no possibility of exercising decisive influence (including the appointment of board members) on an undertaking in energy production/supply. Therefore, the CER is of the view that GNI is compliant with Article 9(1)(c) of the Directive.

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10 Exhibit 4 (Administrative Bodies & Board Members: Section 6.0) of GNI’s FOU certification application states that ministerial consent is not required for the appointment of Directors of GNI (UK). However, the fees payable to Directors are approved by the Minister. GNI (UK)’s Board Members are therefore appointed by an ordinary resolution of the company’s member(s), currently GNI. If GNI’s Board appoints external directors to whom a fee is payable, the GNI Board will require approval from the Ervia Board.
4.4 Article 9(1) (d): Person Not Entitled On Board Of Undertaking & TSO

4.4.1 The Interpretative Note states that Article 9(1)(d) addresses the issue of conflict of interest for board members by prohibiting the same person from being a member of the board of both a supplier and a TSO.

4.4.2 Exhibit 1 (Principles & Certification Paper: Section 3.2.4) of GNI’s FOU certification application states that no director of the Board of GNI or GNI (UK) exerts control over a TSO and a company engaged in energy production/supply.

4.4.3 Exhibit 4 (Administrative Bodies & Board Members) of GNI’s FOU certification application lists the current board members within Ervia, GNI and GNI (UK), and provides a profile of each member including their interests in other companies.

4.4.4 Exhibit 4 (Administrative Bodies & Board Members: Section 7.0) of GNI’s FOU certification application states that members of GNI’s Board will sign a declaration confirming they have no other roles, which conflict with the requirements of Article 9 of the Directive, and have confirmed that GNI (UK)’s Board have signed declarations of compliance with Article 9 of the Directive.

4.4.5 Having reviewed GNI’s FOU certification application, the CER deems that GNI is compliant with Article 9(1)(d) of the Directive. However, as a condition for certification, the CER will require that GNI provide signed copies of declarations, as stipulated in Section 4.2.8 of this Preliminary Certification Decision.

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4.5 Article 9(7): Transfer of Commercially Sensitive Information

4.5.1 The Directive imposes an obligation on EU Member States to ensure that commercially sensitive information held by a TSO, which was part of a VIU is not transferred to undertakings performing any of the functions of production and supply.

4.5.2 As Ireland’s NRA, the CER licences GNI through transmission and distribution licences, which contain provisions regarding ringfencing and restriction on use of certain information. These provisions prevent the disclosure of information by the TSO that could be used for the benefit of any other separate business.
5.0 Conclusion

5.1. The CER has examined in detail the proposed arrangements submitted by GNI for an FOU model of unbundling, as provided for in Chapter III of the Directive.

5.2. The CER is satisfied that GNI’s is in compliance with the FOU unbundling requirements as specified in Chapter III of the Directive, and therefore intends certifying GNI as FOU compliant.

5.3. As a requirement for continued FOU compliance, the CER will impose the following obligation on GNI:

   i. GNI provide copies of signed declarations from GNI’s current board members to the CER (prior to the end of December 2015) stating that they are in compliance with Article 9 of the Directive.

   ii. GNI provide copies of signed declarations from all new members that are appointed to GNI and GNI(UK)’s board to the CER, which confirms that the relevant board member is compliant with Article 9 of the Directive.

   iii. GNI immediately notify the CER regarding the potential and actual appointment of members to the Ervia board, and advise whether members of Ervia board have interests in an undertaking that is involved in energy production/supply.

   iv. GNI immediately notify the CER regarding the potential and actual establishment of any new companies within the Ervia Group.

   v. GNI immediately notify the CER regarding the potential and/or actual activation of any dormant/non-trading company with the Ervia Group.

   vi. GNI notify the CER if Irish Water substantially escalates its energy production/supply, such that it could reasonably be deemed to be an undertaking that actively participates in energy production/supply.
Appendix 1: Overview of GNI/GNI (UK)’s Gas Transmission Assets

Overview of GNI’s Transmission Assets

Breakdown in Ownership of Transmission Assets Between GNI and GNI (UK)
### Appendix 2: GNI’s Performance of TSO Tasks

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<tr>
<th>Ref</th>
<th>Tasks of the TSO – Article 13 Requirements</th>
<th>Confirmation</th>
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<tbody>
<tr>
<td>1</td>
<td>Each transmission, storage and/or LNG system operator shall:</td>
<td>GNI operates, maintains and develops under economic conditions secure, reliable and efficient transmission network in Ireland and Scotland. GNI is compliant on the basis that:</td>
</tr>
<tr>
<td></td>
<td>a</td>
<td>operate, maintain and develop under economic conditions secure, reliable and efficient transmission, storage and/or LNG facilities to secure an open market, with due regard to the environment, ensure adequate means to meet service obligations;</td>
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<td>b</td>
<td>refrain from discriminating between system users or classes of system users, particularly in favour of its related undertakings;</td>
<td>GNI has published a Code of Operations. The Code of Operations governs the relationship between GNI and the Shippers/System Users on Ireland’s Transportation System. The Code does not discriminate between system users or classes of system users. The Code of Operations can be found at the following link. GNI is compliant on the basis that:</td>
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|     |   | GNI is compliant on the basis that: | - The requirements of Article 13 have been fully implemented into Irish Law by Section 16(13) of the Gas (Interim) (Regulation) Act 2002, as amended. <br> - Article 13(1b) is captured in GNI’s TSO licence (including Condition 26: Duty of non-discrimination), which is issued, monitored and enforced by the CER as Ireland’s NRA. <br> - CER approves GNI’s Code of Operations.
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| c   | provide any other transmission system operator, any other storage system operator, any other LNG system operator and/or any distribution system operator, sufficient information to ensure that the transport and storage of natural gas may take place in a manner compatible with the secure and efficient operation of the interconnected system; | Such information is made available to the relevant transmission system operators in accordance with Transportation Agreements which are entered into with the relevant parties. GNI is compliant on the basis that:  
• The requirements of Article 13 have been fully implemented into Irish Law by Section 16(13) of the Gas (Interim) (Regulation) Act 2002, as amended.  
• Article 13(1c) is captured in GNI’s TSO licence (including Condition 3: General Function), which is issued, monitored and enforced by the CER as Ireland’s NRA. |
| d   | provide system users with the information they need for efficient access to the system. | Such information in respect of the GNI assets is made available to system users through the Gas Transportation Management System (GTMS) in Ireland. GTMS is an IT based solution which allows system users to log on and source the information they need for efficient access to the system. GNI is compliant on the basis that:  
• The requirements of Article 13 have been fully implemented into Irish Law by Section 16(13) of the Gas (Interim) (Regulation) Act 2002, as amended.  
• Article 13(1d) is captured in GNI’s TSO licence (including Condition 3: General Function), which is issued, monitored and enforced by the CER as Ireland’s NRA. |
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| 2   | Each transmission system operator shall build sufficient cross-border capacity to integrate European transmission infrastructure accommodating all economically reasonable and technically feasible demands for capacity and taking into account security of gas supply. | GNI, and through its wholly owned and controlled subsidiary GNI (UK), owns the interconnectors which provides cross-border capacity to facilitate the integration of UK and Irish gas transmission infrastructure. GNI (UK) is also a project sponsor for an EU Project of Common Interest which involves twinning their pipeline in Scotland, thereby increasing cross-border capacity and improving security of supply. GNI is compliant on the basis that:  
- The requirements of Article 13 have been fully implemented into Irish Law by Section 16(13) of the Gas (Interim) (Regulation) Act 2002, as amended.  
- Article 13(2) is captured in GNI’s TSO licence (including Condition 3: General Function), which is issued, monitored and enforced by the CER as Ireland’s NRA. |
| 3   | Rules adopted by transmission system operators for balancing the gas transmission system shall be objective, transparent and non-discriminatory, including rules for the charging of system users of their networks for energy imbalance. Terms and conditions, including rules and tariffs, for the provision of such services by transmission system operators shall be established pursuant to a methodology compatible with Article 41(6) in a non-discriminatory and cost-reflective way and shall be published. | The Code of Operations governs the relationship between GNI and the Shippers/System Users on Ireland’s Transportation System. The CER is of the view that the rules in relation to balancing the system in a non-discriminatory and cost-effective manner are contained with the Code of Operations. GNI is compliant on the basis that:  
- The requirements of Article 13 have been fully implemented into Irish Law by Section 16(13) of the Gas (Interim) (Regulation) Act 2002, as amended.  
- The CER, as Ireland’s NRA, approves GNI’s Code of Operations. |
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| 4   | The regulatory authorities where Member States have so provided or Member States may require transmission system operators to comply with minimum standards for the maintenance and development of the transmission system, including interconnection capacity. | As the TSO, GNI comply with the Institution of Gas Engineers & Managers (IGEM) Technical Standards 1 and 13. These are recognised as industry standards. GNI is compliant on the basis that:  
  - The requirements of Article 13 have been implemented into Irish Law by Section 12 (Construction of Pipelines) of the Gas (Interim) (Regulation) Act 2002, as amended.  
  - Article 13(4) is captured in GNI’s TSO licence (including Condition 12: Transmission System Standards), which is issued, monitored and enforced by the CER as Ireland’s NRA.  
  - GNI has a statutory requirement to prepare and submit a Safety Case to the CER for approval. |
| 5   | Transmission system operators shall procure the energy they use for the carrying out of their functions according to transparent, non-discriminatory and market based procedures. | GNI procures the energy it uses for the carrying out of their functions on the entire Transportation System through an annual tender based competition process. The disbursement cash out in relation to the procured energy is audited by an external firm to ensure full transparency. GNI is compliant on the basis that:  
  - Article 13(5) is captured in GNI’s TSO licence (including Condition 3: General Function), which is issued, monitored and enforced by the CER as Ireland’s NRA. |