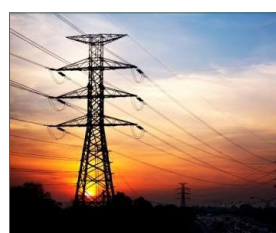


Preliminary decision on certification of GNI (UK) Limited as required under Article 10 of Directive 2009/73/EC

December 2015



About the Utility Regulator

The Utility Regulator is the independent non-ministerial government department responsible for regulating Northern Ireland's electricity, gas, water and sewerage industries, to promote the short and long-term interests of consumers.

We are not a policy-making department of government, but we make sure that the energy and water utility industries in Northern Ireland are regulated and developed within ministerial policy as set out in our statutory duties.

We are governed by a board of directors and are accountable to the Northern Ireland Assembly through financial and annual reporting obligations.

We are based at Queens House in the centre of Belfast. The Chief Executive leads a management team of directors representing each of the key functional areas in the organisation: Corporate Affairs; Electricity; Gas; Retail and Social; and Water. The staff team includes economists, engineers, accountants, utility specialists, legal advisors and administration professionals.

Our Mission

Value and sustainability in energy and water.

Our Vision

We will make a difference for consumers by listening, innovating and leading.

Our Values

Be a best practice regulator: transparent, consistent, proportional, accountable, and targeted.

Be a united team.

Be collaborative and co-operative.

Be professional.

Listen and explain.

Make a difference.

Act with integrity.

Abstract

This paper considers GNI (UK)'s certification application for full ownership unbundling. It includes an assessment of compliance against the criteria set out in *The Gas (Northern Ireland) Order 1996* and *Directive 2009/73/EC*.

The paper provides the rationale behind the Utility Regulator's preliminary decision to certify GNI (UK), in accordance with the European Directive.

Audience

GNI (UK), the European Commission and other regulated companies.

Consumer Impact

Compliance with the legislation avoids undue discrimination. This ensures that the market is operating in a fair and efficient manner.

Preliminary decision on certification of GNI (UK) Limited as required under Article 10 of Directive 2009/73/EC

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Acronyms and Definitions

Term	Description
ACER	Agency for the Co-operation of Energy Regulators.
AoA	Articles of Association.
BGE	Bord Gáis Eireann.
BGE (UK)	Transmission company now know as GNI (UK).
CER	Commission for Energy Regulation – regulatory authority in the Republic of Ireland.
EC	European Commission.
Ervia	A statutory company formerly known as Bord Gáis Eireann.
FOU	Full Ownership Unbundling.
GNI	Gas Networks Ireland – TSO in the Republic of Ireland.
GNI (UK)	Gas transmission company formerly known as BGE (UK).
IGEM	Institution of Gas Engineers and Managers.
IOM	Isle of Mann.
ISO	Independent System Operator.
ITO	Independent Transmission Operator.
MCENR	Minister for Communications, Energy and Natural Resources.
MECLG	Minister for Environment, Community and Local Government.
MSM	Majority Shareholding Minister.
NI	Northern Ireland
NIAUR	Northern Ireland Authority for Utility Regulation – also know as the Utility Regulator (UR).
NWP	North West Pipeline.
RoI	Republic of Ireland.
RPoS	Relevant Producer or Supplies.
SNP	South-North Pipeline.
TSO	Transmission System Operator.
UR	Utility Regulator – regulatory authority in Northern Ireland.
WwTW	Wastewater Treatment Works.

Executive Summary

The 3rd Internal Markets in Gas Directive (*Directive 2009/73/EC*) requires that Transmission System Operators (TSOs) are unbundled from production and supply interests.

The aim is to ensure TSOs make independent decisions. This provides transparency and helps avoid undue discrimination of network users. The Directive provides for three models of unbundling. These include:

1. Full ownership unbundling (FOU);
2. Independent System Operator (ISO); and
3. Independent Transmission Operator (ITO).

GNI (UK) {formerly BGE (UK)} has applied for certification under the grounds of full ownership unbundling (FOU). This means that the transmission system belongs to an undertaking that is independent from any supply or production interests. An application on the same grounds has been made to both Ofgem and the CER (Commission for Energy Regulation)¹.

In order for the company to be certified in Northern Ireland, it must pass five tests. These tests are contained in *The Gas (Northern Ireland) Order 1996*². They consist of the following:

1. **First test** is that the applicant:
 - a) Does not control a relevant producer or supplier (RPoS).
 - b) Does not have a majority shareholding in a RPoS.
 - c) Will not exercise rights it holds in relation to a RPoS.
2. **Second test** is that the applicant is not controlled by a person who controls a RPoS.
3. **Third test** is that the applicant is not controlled by a person who has a majority shareholding in a RPoS.
4. **Fourth test** is that none of the company senior officers has been, or may be, appointed by a person who:

¹ National Regulatory Authorities for Great Britain (GB) and the Republic of Ireland (RoI) respectively.

² <http://www.legislation.gov.uk/nisi/1996/275/article/8G>.

- a) Controls a RPoS other than an electricity generation or supply undertaking.
 - b) Has a majority shareholding in a RPoS other than an electricity generation / supply undertaking.
5. **Fifth test** is that none of the company senior officers is also a senior officer of a RPoS, other than an electricity generation / supply undertaking.

We have assessed the application against the test conditions. Our preliminary decision is that GNI (UK) passes the five tests.

In this report background detail is provided in Section 1. A review against the tests is set out in Section 2. Section 3 highlights specific issues considered for the company. The European Commission's (EC) completed questionnaire is set out in Section 4.

Our preliminary decision is to certify GNI (UK) as Fully Ownership Unbundled, in accordance with the provisions of Directive 2009/EC/73.

We are seeking EC opinion on our preliminary decision in accordance with Article 3 of Regulation 715/2009.

1.0 Assessment of Application

1.1. Company Background

- 1.1.1 In Northern Ireland, GNI (UK)³ is licensed and regulated by the Utility Regulator (UR). In February 2002, GNI (UK) was awarded a gas conveyance licence by the UR. The company is also subject to a network code as approved by the UR.
- 1.1.2 GNI (UK) is a wholly owned subsidiary of Gas Networks Ireland (GNI). GNI is the TSO in the Republic of Ireland and part of the Ervia group. Ervia (previously Bord Gáis Eireann (BGÉ)) is a semi-state company with interests in gas and water infrastructure in RoI.
- 1.1.3 The Irish Minister for Environment, Community and Local Government (MECLG) exercises control over Ervia, and hence GNI (UK). The Minister is responsible for the appointment of the board of Ervia and certain consenting requirements, as set out in Irish legislation.
- 1.1.4 GNI (UK) is responsible for two pipelines in Northern Ireland.
- The South-North Pipeline (SNP) - This runs from Co. Antrim to Gormanstown in Ireland.
 - The North-West Pipeline (NWP) - This runs from Carrickfergus to Coolkeeragh (see figures below).
- 1.1.5 The company further owns and operates the gas interconnector licence. This authorises it to participate in the operation of the interconnectors from Moffat in Scotland to the end of UK territorial waters ("IC1" and "IC2"). Ofgem and CER are responsible for licensing these assets.

³ Formerly known as BGE (UK).

Figure 1.1 – Gas Networks Ireland Pipeline Map



Figure 1.2 – GNI (UK) Pipelines in Northern Ireland



1.2. Certification Process

- 1.2.1 The Directive (*Directive 2009/73/EC*) requires that TSOs are unbundled from production and supply interests.
- 1.2.2 The aim is to ensure TSOs make independent decisions. This provides transparency and helps avoid undue discrimination of network users.
- 1.2.3 The Directive provides for three models of unbundling. These include:
 - 1. Full ownership unbundling (FOU);
 - 2. Independent System Operator (ISO); and
 - 3. Independent Transmission Operator (ITO).
- 1.2.4 A fourth ground for certification exists by way of being granted an exemption under Article 36.
- 1.2.5 GNI (UK) has applied for certification under the grounds of full ownership unbundling (FOU). An application on the same grounds has been made to both Ofgem and the CER for Gas Networks Ireland.
- 1.2.6 Under the NI system, the UR has four months to make a preliminary decision. This assumes all data is supplied to date. The timeline can be extended in the absence of relevant detail. The preliminary decision is then notified to the applicant and the Commission.
- 1.2.7 Article 3 of the Regulation (*EC 715/2009*) requires the EC to provide an opinion on this decision within two months. This may be extended if ACER⁴ is asked for comment. Within a further two months, the UR must publish a final decision on whether to certify or not. The final decision must take utmost account of the EC opinion.

1.3. Current Application

- 1.3.1 The company initially applied for certification as an ITO in July 2012. With the sale of their supply business, this was withdrawn. An FOU application was received on 1 April 2014.
- 1.3.2 Since then, the UR has issued a number of information requests. One such question related to ministerial control.
- 1.3.3 The Minister for Communications, Energy and Natural Resources (MCENR) used to exercise control over GNI (UK). This Minister also controls other semi-state companies which engage in supply activities. This was not compliant with the Directive.

⁴ ACER = Agency for the Cooperation of Energy Regulators.

- 1.3.4 The UR queried how this issue might be resolved. An act was subsequently passed in Ireland that provided for the appointment of a Majority Shareholding Minister (MSM). The new MSM does not have a role in other companies which could result in a conflict of interest.
- 1.3.5 However, the MSM was not appointed until 23 November 2015.⁵ This delay resulted in the extended timing of the preliminary decision in Northern Ireland.
- 1.3.6 All outstanding queries and detail was provided to the UR by the 26 November 2015. Under the NI legislation, the UR was then required to submit a preliminary decision to the EC within one month.

⁵ See Annex A – Attachment 13.

2.0 Certification Tests

2.1. First Test

- 2.1.1 In order to be certified, *The Gas (Northern Ireland) Order 1996* requires that five tests be passed. Each test is assessed in the sections below.
- 2.1.2 **The First test** is that the applicant:
- a) Does not control a relevant producer or supplier (RPoS).
 - b) Does not have a majority shareholding in a RPoS.
 - c) Will not exercise rights it holds in relation to a RPoS.
- 2.1.3 For the purposes of paragraph (c), the UR is entitled to think that the relevant person will not exercise any shareholder rights if an undertaking is provided which states that it will not exercise those rights.
- 2.1.4 We consider that the first part of the first test is passed. There are no companies owned or controlled by GNI (UK)⁶. Similarly the second part of the first test is passed as GNI (UK) has no controlling shareholdings⁷.
- 2.1.5 In respect of (c), GNI (UK) has submitted an undertaking that it will not exercise any shareholder rights it holds. This further includes any rights which it may become the holder of in relation to a RPoS. This undertaking is provided at Annex A - Attachment 12⁸.
- 2.1.6 The conclusion is the first test is passed.

2.2. Second Test

- 2.2.1 **Second test in section 8G (4)** is that the applicant is not controlled by a person who controls a RPoS.
- 2.2.2 GNI (UK) is a subsidiary of Gas Networks Ireland (GNI). In turn, GNI is part of the Ervia group. See Figure 2.1 in which the relationships between the companies can be seen.
- 2.2.3 Ervia is a semi-state company in Ireland. This means it is an enterprise owned by the Irish state and which has a sponsor Minister who acts as shareholder. Within GNI (UK)'s application this Minister is referred to as the majority shareholding minister (MSM). It is the MSM who ultimately controls the applicant

⁶ See Annex A – Attachment 3, Figure 1 for company ownership structure.

⁷ See Annex A – Attachment 3, Table 1 for confirmation that the company does not control any relevant producer or supplier.

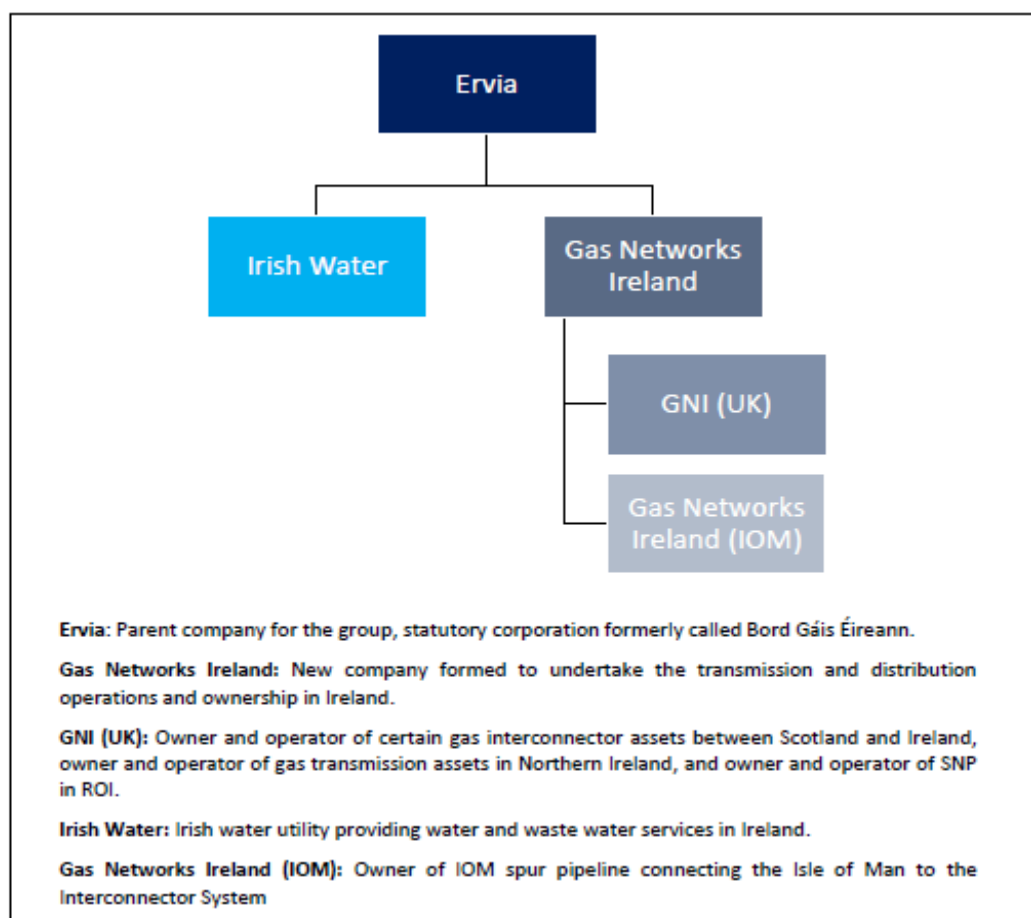
⁸ This was signed when the company was known as BGE (UK), but the undertaking applies equally to GNI (UK).

though the appointment of the board of Ervia. In the case of Ervia the MSM is the Minister for Environment, Community and Local Government (MECLG).

2.2.4 Therefore in order to pass this test, the UR must be assured that:

- a) The MSM does not control a relevant producer or supplier.
- b) Ervia does not control a RPoS.
- c) Gas Networks Ireland does not control a RPoS.

Figure 2.1 – Group Structure from 1st August 2015



2.2.5 The MECLG assumed the controlling role over Ervia from the Minister for Communications, Energy and Natural Resources (MCENR). The order formalising this was made on 23 November 2015. The new MSM does not have a role in relation to any other undertakings which have supply or generation activities.⁹ This situation is compliant with the FOU requirements.

⁹ The link below illustrates the ministerial remit of the new MSM.
<http://www.envron.ie/en/Publications/StatisticsandRegularPublications/StrategyStatements/FileDownload,41001,en.pdf>, p6.

- 2.2.6 Ervia has provided a list of its company shareholdings.¹⁰ The majority of these are either non-trading entities or are not producers / suppliers. Some could be considered to be involved in relevant activities if they commenced trading (e.g. Oisín Power, Platin Power etc). However, the UR notes that these companies are in the process of being wound up or sold to address legacy VIU issues.
- 2.2.7 We have set out in Chapter 3 our assessment in relation to two companies in which Ervia has a shareholding:
- a) Irish Water – The company generates electricity at 23 wastewater treatment works.
 - b) Greener Ideas – Ervia have a 50% interest in a company who has planning permission to develop three 98 MW power plants.
- 2.2.8 In respect of both, our conclusion is that neither of these companies represents a relevant producer of electricity. GNI (UK) has further provided profiles of the board members interests of Ervia.¹¹ The UR is satisfied that none of these interests amount to control of a RPoS.
- 2.2.9 The UR is further satisfied that Gas Networks Ireland does not control any relevant producers or suppliers. The company has confirmed that the shareholdings of GNI are confined to GNI (UK), GNI (IOM) and Gaslink, all of which are transmission companies.¹²
- 2.2.10 Furthermore GNI (UK) has provided profiles of the board members interests of Gas Networks Ireland. The UR is satisfied that none of these interests amount to control of a RPoS.
- 2.2.11 The view of the UR is that GNI (UK) is not controlled by anyone who controls a production, generation or supply company. The second test is therefore passed.

2.3. Third Test

- 2.3.1 **Third test in section 8G (6) of the Gas Order** is that the applicant is not controlled by a person who has a majority shareholding in a RPoS.
- 2.3.2 GNI (UK) has submitted evidence of shareholdings for companies in the Ervia group.¹³ This demonstrates that none of the subsidiaries have any shares in companies outside the group. Furthermore as part of the second test we have concluded that neither GNI nor Ervia have majority shareholdings in companies which are relevant producers or suppliers.
- 2.3.3 As part of the application process, the UR sought more detail on the interests of Ervia, Gas Networks Ireland and GNI (UK) board members. The data shows a wide range of interests. However there does not appear to be any majority shareholdings in relevant producers / suppliers.

¹⁰ See Annex A – Attachment 3, Tables 1 and 2 for company shareholdings.

¹¹ See Annex A – Attachment 4 for board member interests.

¹² See Annex A – Attachment 3, Figure 1 for company ownership structure.

¹³ See Annex A – Attachment 3, Figure 1 for company ownership structure.

2.3.4 The third test is considered to be passed.

2.4. Fourth Test

2.4.1 **Fourth test in section 8G (12)** is that none of the company senior officers has been, or may be, appointed by a person who:

- a) Controls a RPoS other than an electricity generation or supply undertaking.
- b) Has a majority shareholding in a RPoS other than an electricity generation/supply undertaking.

2.4.2 GNI (UK) presently has three directors and one alternate. Gas Networks Ireland is responsible for the appointment of the GNI (UK) directors by ordinary resolution. These appointments are notified to the Ervia board. Ervia are also required to approve the appointment if a fee is payable to the director. MSM consent is not required.¹⁴

2.4.3 The declared interests of GNI and Ervia members confirm that they do not control any RPoS. Neither have these members a majority shareholding in any gas production or supply company. Analysis of the second compliance test indicates that Ervia and GNI do not control any RPoS.

2.4.4 The UR has concluded that neither the companies nor any of the appointing members either controls or has a majority shareholding in a relevant producer or supplier. The fourth test is therefore passed.

2.5. Fifth Test

2.5.1 **Fifth test in section 8G (13)** is that none of the company senior officers is also a senior officer of a RPoS, other than an electricity generation or supply undertaking.

2.5.2 Directors have submitted their interests and other appointments.¹⁵ None of the GNI (UK) directors is also a senior officer of a relevant gas producer or supplier. The directors have further provided signed undertakings confirming this to be the case (Annex A – Attachments 7-10¹⁶).

2.5.3 In terms of the interests of directors, Articles of Association 86-87 state that they can have other interests and appointments. The UR will therefore impose a licence condition on GNI (UK) which will require the company to notify the UR of

¹⁴ See Annex A – Attachment 4, p12 for GNI (UK) director appointment process.

¹⁵ See Annex A – Attachment 4, p11 for GNI (UK) director interests.

¹⁶ Some of these undertakings were signed when the company was known as BGE (UK). The UR did not request an updated undertaking if the director did not change.

any change in circumstance that may impact on certification.¹⁷ This follows the approach taken by the UR previously for Premier Transmission.

- 2.5.4 The condition will ensure that where directorships change, the interests of new members will be declared so that they can be considered by the UR.
- 2.5.5 The fifth test is therefore passed.

2.6. Overall Conclusion

- 2.6.1 On the basis of this assessment, the UR has concluded that GNI (UK) meets the five tests as set out in the *Gas (Northern Ireland) Order 1996*. The UR is also of the opinion that Article 9 (*Directive 2009/73/EC*) conditions are fulfilled.

¹⁷ See Annex A – Attachment 11, Condition 2.14.4 (b).

3.0 Detailed Issues Considered

3.1. Irish Water

- 3.1.1 Ervia are the parent company of Irish Water. Irish Water own and operate water and sewage assets in RoI. A company like this would typically not be considered a relevant undertaking.
- 3.1.2 However, Irish Water generates electricity at 23 wastewater treatment works (WwTW). As such, it must be considered under the Article 9 obligations.
- 3.1.3 Although the Minister and Ervia control both GNI (UK) and Irish Water, the UR does not believe that a conflict exists. The ability to unduly influence the TSO in favour of Irish Water is limited by the fact that:
- a) 22 of the 23 WwTWs use all power generated at the relevant site. This generation is not required to be licensed.¹⁸
 - b) Only one generator (3,100 kW) exports to the grid, and then only in rare cases for stability purposes. GNI (UK) estimates the exported volume to be in the order of 0.000008%¹⁹ of RoI annual electricity production.
 - c) If some upgrades are completed, the maximum total generation potential of Irish Water is 10,413 kW. This is equivalent to <0.08% of the annual generation capacity in Ireland (North and South).²⁰
 - d) Irish Water only operates in the Republic of Ireland. Network access or investment decisions made by GNI (UK) for assets in Northern Ireland will have no undue influence on the water company in RoI.
- 3.1.4 Precedent to certify in similar cases exists in Poland and Sweden. In Poland the Ministry of Economy has control over PSE.²¹ The Ministry also has oversight of coal mining companies who generate electricity. This power is used on site with limited volumes sold through the distribution system.
- 3.1.5 In relation to this issue, the EC stated:
- “The Commission agrees for these three companies that given the minor quantities of electricity produced (together amounting to less than 0.05% of Polish generation) and given the fact that the power is generated in isolated systems not connected to PSE’s transmission grid, neither the incentive nor the ability exists for the Ministry of Economy to abuse its influence over PSE in order*

¹⁸ Article 8L(3)(a) & (b) of *The Gas (Northern Ireland) Order 1996*, defines a relevant electricity producer as one who holds a licence or would be required to do so if generation was in NI.

¹⁹ See Annex A – Attachment 1, footnote 4 for calculation.

²⁰ Annual generation capacity for 2015 is calculated as 13,774 MW, as derived from the *All-Island Generation Capacity Statement 2015-2024, Appendix 2, Table A-4, A-5, A-6 and A-9*.

²¹ Polskie Sieci Elektroenergetyczne.

*to favour its interests in these companies to the detriment of users of the PSE network.*²²

- 3.1.6 In Sweden the gas TSO is owned by a company called EQT. EQT also owned a waste treatment company in Denmark who generated electricity as a by-product. This power was sold for guaranteed prices. The EC stated that:

*“Given that the electricity generated is subsequently sold for pre-established prices, these generation activities cannot form an obstacle to certification of Swedegas as an ownership unbundled TSO. Since in the present case it appears impossible to use the transmission activities of Swedegas in a manner so as to favour the electricity generating interests of Kommunekemi A/S, there is no risk of discrimination of network users.”*²³

- 3.1.7 The UR considers the case of Irish Water to be similar to the examples mentioned above. The limited electricity generation should not act as a barrier to GNI (UK) certification.

3.2. Greener Ideas

- 3.2.1 Greener Ideas is a joint venture (50/50) between Ervia and Mountside Partners Limited. The company owns three sites, each with planning approval for 98 MW gas-fired power plants.

- 3.2.2 Greener Ideas was expected to have been sold with the supply business. This did not happen due to uncertainty around project development. Ervia recognise that they cannot retain an interest in the company if GNI (UK) is to be FOU compliant.

- 3.2.3 In relation to Greener Ideas, GNI (UK) has confirmed the following:²⁴

- a) Ervia are already in talks with a third party regarding the sale of its shares in Greener Ideas.
- b) Greener Ideas does not yet perform the function of an electricity producer. GNI (UK) estimate that it could take 36 months before the plants would be operational.
- c) Ervia has provided assurances that Greener Ideas will not act as a producer so long as the company retain rights in the business.

- 3.2.4 The UR is content that Greener Ideas is not a RPoS at present. The fact that it would take 3 years before the plant is operational is significant.

- 3.2.5 Furthermore, a licence condition will be implemented requiring GNI (UK) to inform the UR if anything should change which would impact certification.

- 3.2.6 Given the commitments and issues listed above, the UR does not see Greener Ideas as an impediment to certification.

²² <https://ec.europa.eu/energy/sites/ener/files/documents/2014%20093%20pl%20en.pdf>, p5.

²³ https://ec.europa.eu/energy/sites/ener/files/documents/2012_018_se_en.pdf, p3.

²⁴ See Annex A – Attachment 1, p11-12 for commentary on Greener Ideas.

3.3. Contracting of Services

3.3.1 Article 9(1) (a) of *Directive 2009/73/EC* requires that each system owner acts as a TSO. The tasks of a transmission operator are detailed in Article 13.

3.3.2 Gas Networks Ireland provides a wide range of TSO services to GNI (UK). This activity is conducted pursuant to an agreement from December 2008.

3.3.3 The Service Agreement²⁵ (Annex A - Attachment 6), sets out in detail the tasks which are contracted to Gas Networks Ireland. These include:

- Corporate services (in respect of secretarial, financial, legal and administrative matters).
- Licence services to ensure compliance by GNI (UK) with its Northern Ireland conveyance duties. This includes, financial reporting, tariffs, licence obligations etc.
- Operation and maintenance services including management of sub-contractors and the grid control system.
- Activities in relation to the Moffat Agent.

3.3.4 According to Article 13, each TSO must be responsible for certain actions. These include the following:

- 1) Each TSO shall:
 - a) Operate, maintain and develop a secure and reliable system with due regard to the environment.
 - b) Refrain from discrimination between system users.
 - c) Provide other operators with sufficient detail to ensure efficient transport of gas.
 - d) Provide system users with the information they need for access to the system.
- 2) Each TSO shall build sufficient cross-border capacity to integrate European infrastructure.
- 3) Rules adopted by TSOs for balancing gas shall be objective, transparent and non-discriminatory. Terms and conditions for the provision of TSO services shall be published and compatible with Article 41(6).
- 4) Where required, TSOs must comply with minimum standards for the maintenance and development of the system.
- 5) TSOs shall procure the energy they use in a clear fashion, using market based procedures.

²⁵ This was formerly an agreement between Ervia and GNI (UK). Responsibility transferred to Gas Networks Ireland from Ervia on the 1st August 2015.

3.3.5 GNI (UK) has provided responses to each of these in the table below (See Annex A – Attachment 1, Table 1).

Figure 3.1 – How GNI (UK) meets the Article 13 duties

Article 13 Requirement	GNI (UK) Actions to Meet Requirements
1a	<p>The Services Agreement sets out in detail the manner in which the GNI (UK) transmission assets in Northern Ireland are operated, maintained and developed and how GNI (UK) service providers interact in relation to such operation, maintenance and development.</p> <p>In particular, access to the GNI (UK) assets is made available to the market pursuant to the GNI (UK) Transportation Network Code (available at the following link: http://www.gasnetworks.ie/en-IE/Gas-Industry/Northern-Ireland/Transportation-services/Network-Codes/) approved by NIAUR on 30 May 2014.</p> <p>Any system user who intends to transport gas through the GNI (UK) Interconnector Assets are required to accede to the GNI (UK) Transportation Network Code by signing an Accession Agreement (available at the following link: http://www.gasnetworks.ie/en-IE/Gas-Industry/Northern-Ireland/Transportation-services/).</p>
1b	<p>GNI (UK) assets are made available to the market pursuant to the GNI (UK) Transportation Network Code approved by NIAUR which aims not to discriminate unfairly between Shippers or classes of Shippers.</p>
1c	<p>Such information in respect of the GNI (UK) assets is made available to the relevant transmission system operators in accordance with the Northern Ireland Network Operators Agreement and various other ancillary agreements with the relevant parties.</p>
1d	<p>Such information in respect of the GNI (UK) assets is made available to system users through the Gas Transportation Management System in Northern Ireland (GTMS (NI)). 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.</p>
2	<p>GNI (UK) has invested GB £200 million in the Northern Ireland network, with the construction of gas networks linking 10 towns to the upstream network in Scotland.</p> <p>In February 2002, GNI (UK) was awarded a Gas Conveyance Licence by NIAUR to build, own and operate two natural gas transmission pipelines in Northern Ireland.</p> <p>The North-West gas pipeline, from Carrickfergus to Londonderry, serves Coolkeeragh power station in Derry and enabled the development of gas networks along the route.</p> <p>The South-North gas pipeline runs from Gormanston in County Meath to Ballyclare, Co. Antrim, where it links into the North-West pipeline. This pipeline created an all-island gas transmission network, connecting the grids North and South for the first time.</p>

3	Rules in relation to balancing the system are contained in the GNI (UK) Transportation Network Code in respect of the GNI (UK) assets in a non-discriminatory and cost-effective manner.
4	<p>As the transmission system operator in Northern Ireland, GNI (UK) complies with the Institution of Gas Engineers & Managers (IGEM) Technical Standards 1 and 13.</p> <p>These are recognised as trusted industry Standards, used to assist in compliance with national legislation and official approved codes of practice and guidance. The Standards are drafted by expert panels representing a cross section of the relevant parts of the gas industry. The professional status of IGEM ensures its standards reflect the best possible levels of safety, practice and quality within reasonable cost.</p> <p>The routine operations, maintenance and emergency response for the GNI (UK) assets is put out to competitive tender every 5 years by Ervia. The tender package gives a significant weighting to the Technical and Safety elements of the proposal. The tender details all the relevant Design and Operation standards that must be complied with by the Contractor.</p> <p>GNI (UK) has a statutory requirement to prepare and submit a Safety Case and a Major Accident Prevention Document (MAPD) to the Health and Safety Executive of Northern Ireland.</p>
5	GNI procure the energy they use for the carrying out of their functions on the entire Transmission System including the GNI (UK) assets 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.

- 3.3.6 As part of the review of this application, the UR has considered the compatibility of sub-contracting with Articles 9 and 13 of the Directive.
- 3.3.7 The UR believes that acting as the operator of the system does not mean GNI (UK) has to carry out all, or any of the tasks of system operation. The Directive does not prevent it from exercising its right to sub-contract the physical tasks to a third party.
- 3.3.8 It is extremely common for a TSO to contract for certain services, most commonly maintenance. Even large TSOs in Europe such as National Grid Gas do so. GNI (UK) is not unique in this regard.
- 3.3.9 The TSO is however required to retain responsibility for such activities. In Northern Ireland, the licence held by GNI (UK) is the vehicle by which this is achieved.
- 3.3.10 The EC Opinion on Premier Transmission Ltd raised the issue of sub-contracting. It was stated that:

“The Commission considers that the contracting out of core transmission system operator functions can only be acceptable either if the transmission system is operated jointly as part of a wider transmission system or if a fully resourced

*transmission system operator makes an independent commercial decision to sub contract services on efficiency grounds.*²⁶

- 3.3.11 In terms of the opinion extract above, GNI (UK) is covered by the first scenario as it is part of a wider transmission system, that of GNI.
- 3.3.12 In addition, it is clear from the Services Agreement that Gas Networks Ireland has no authority unless given it by GNI (UK). If the company sub-contracts, it must have the prior consent of GNI (UK). Gas Networks Ireland will remain primarily liable for the performance of the services in line with the agreement.
- 3.3.13 The UR concludes that GNI (UK) sub-contracting of TSO services is compatible with the requirements of the Directive.

3.4. Conclusions and Additional Measures Proposed

- 3.4.1 The UR proposes two new licence requirements on GNI (UK). Where they contract for services, the licensee must put contractual measures in place to ensure the security of the licensee's information and to provide ongoing compliance with the Directive.
- 3.4.2 Secondly, a licence requirement is proposed for the TSO to inform the UR if anything relevant to their certification changes.²⁷

²⁶ https://ec.europa.eu/energy/sites/ener/files/documents/2013_073_uk_en.pdf, p5.

²⁷ See Annex A – Attachment 11, Conditions 2.14.3 & 2.14.4.

4.0 EC Questionnaire

4.1. Question Responses

- 4.1.1 The following chapter provides responses to the Commission questionnaire on ownership unbundling.

4.2. General information

1. **Name and address of undertaking to be certified as TSO.**

GNI (UK)
5th Floor
6 St Andrew Street,
London,
EC4A 3AE,
United Kingdom.

2. **Internet address of the website of the TSO.**

<http://www.gasnetworks.ie/en-IE/Gas-Industry/Northern-Ireland/>

3. **Name, address, telephone number, fax number and e-mail address of, and position held by, the appropriate contact person in the TSO.**

Mr Brian Murphy
Regulatory & European Affairs Manager
GNI (UK)
P.O. Box 51,
Gasworks Road
Cork, Ireland.

Telephone: +353 21 453 4870
Fax: +353 21 453 4387
Email: Brian.Murphy@gasnetworks.ie

4. **Address of the National Regulatory Authority to which Commission decision shall be delivered.**

Northern Ireland Authority for Utility Regulation (UR)
Queens House,
14 Queen Street,
Belfast,
BT1 6ED,
Northern Ireland.

5. Name, telephone number and e-mail address of a contact person at the National Regulatory Authority.

Ms Roisin McLaughlin
 Telephone: +44 (0)28 9031 6350
 Fax: +44 (0)28 9031 1740
 Email: roisin.mclaughlin@uregni.gov.uk

4.3. Ownership of the transmission system by the TSO

1. Regarding the ownership of the transmission systems present the analysis:

- a) Specifying all transmission systems owned by the TSO in the Member State concerned (also those under construction or not constructed before 3 of September 2009), including interconnectors and separated transmission networks.
- b) Specifying transmission systems, which the TSO owns (fully or partially) in other Member States of the EU.
- c) Indicating all other owners of the given transmission system specifying the shares of each owners, in case the TSO owns the transmission system only partially.

Introduction

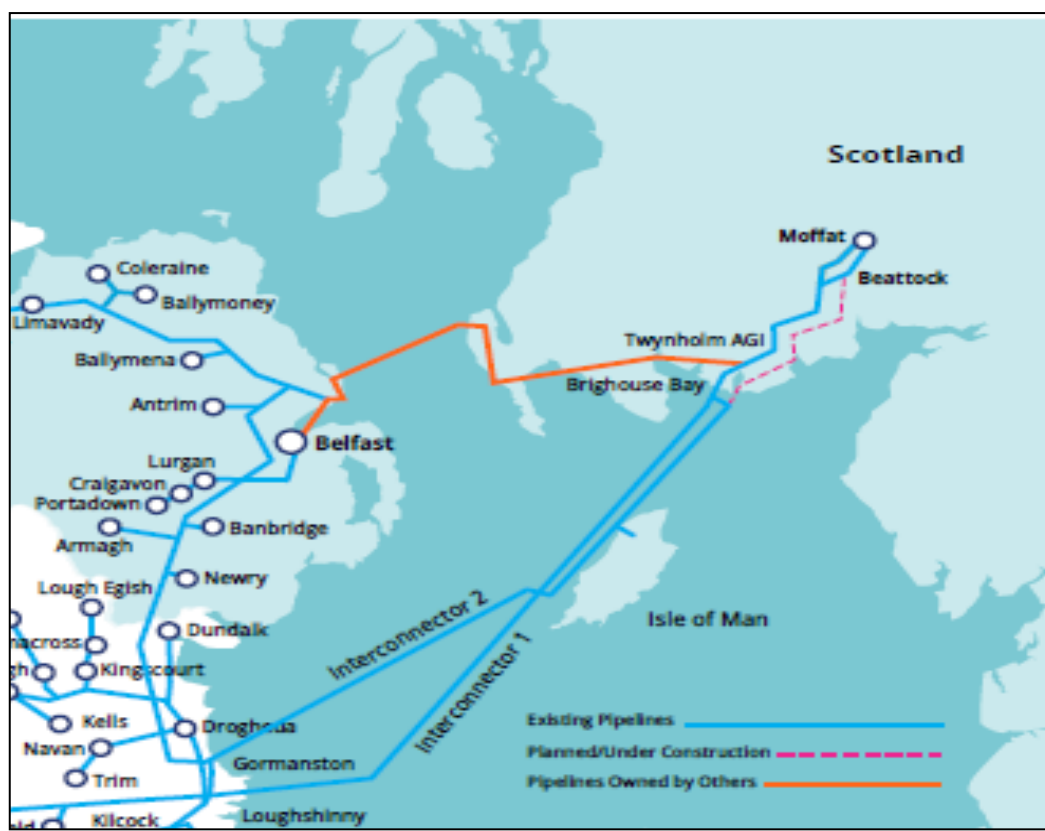
The entity seeking certification and to whom this preliminary decision relates is GNI (UK). In February 2002 GNI (UK) was awarded a Gas Conveyance Licence by the UR to transmit gas in Northern Ireland.

GNI (UK) owns and operates two transmission pipelines in Northern Ireland. These are shown in Figure 4.1 below.

The North West Pipeline (NWP) is 112 kilometres long and runs from Carrickfergus in Co. Antrim to Coolkeeragh in Co. Londonderry.

The South North Pipeline (SNP) is 156 kilometres long and runs from Ballyclare in Co. Antrim to Gormanstown in Co. Meath, Ireland where it links into the NWP.

Figure 4.1 – GNI (UK) transmission pipelines in NI.



1 a) All systems owned by the TSO in the Member State concerned.

GNI (UK) owns the North West (NWP) and South North (SNP) pipelines. From the map above it can be seen that these pipelines are situated within Ireland (North and South).

That part of the SNP situated in Northern Ireland is regulated by the UR. The part of the SNP pipeline situated in RoI is regulated by the CER. The company also owns gas interconnector assets between Scotland and Ireland.

GNI (UK) has no transmission network under construction or not constructed before 3 September 2009.

1 b) Transmission systems, which the TSO owns (fully or partially) in other Member States of the EU.

GNI (UK) does not own a transmission system in another member state, with the exception of the part of the SNP situated in RoI.

1 c) Indicate all other owners of the given transmission system.

Not applicable – GNI (UK) is the sole owner of the SNP and the NWP.

2. **Inform if the TSO leases or rents any transmission systems from or to any other parties.**

GNI (UK) does not rent any transmission system asset.

3. **In case the TSO is a joint venture that belongs to two or more undertakings which own transmission systems in different Member States inform if all parts of this joint venture are TSO approved under an ISO or ITO model. Please name these companies and indicate the TSO status (article 9(5)).**

Not applicable – GNI (UK) is not a joint venture.

4.4. **Control and ownership over the TSO**

4. **Article 9(1)-(3) of Electricity and Gas Directives requires that the TSO is not controlled by any person involved in the production or supply of gas and electricity. In order to establish the ownership and control over the TSO it is required to establish list of all undertakings belonging to the same group. Therefore the following information is requested:**

- a) **List of all undertakings or persons controlling the TSOs, directly or indirectly;**
- b) **List of all undertakings active in any reportable market that are controlled, directly or indirectly:**
 - **by these parties;**
 - **by the TSO.**
- c) **List all companies performing any of the functions of generation or supply in case the same person directly or indirectly exercises control or any right over the TSO and such companies.**

For each entry listed above in points (a)-(c) the nature and means of control should be specified (e.g. voting rights, veto rights, holding of a majority share, powers to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking, de facto and de-jure control, sole control or joint control).

The information sought in this section may be illustrated by the use of organisation charts or diagrams to show the structure of ownership and control of the undertakings. Please include the relevant legal provisions and indicate which information is confidential.

4 a) **List of undertakings controlling the TSO**

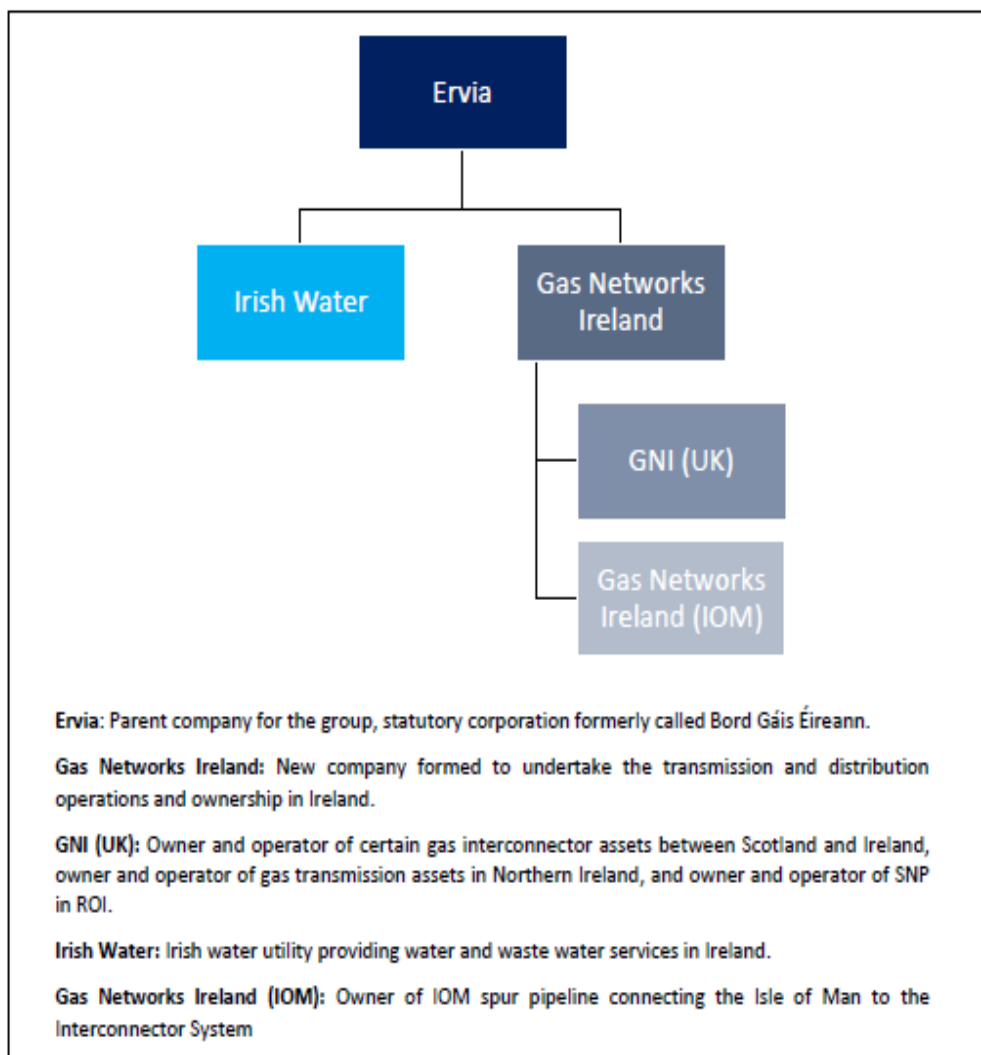
GNI (UK) is a wholly owned subsidiary of Gas Networks Ireland, which is part of the Ervia group. Ervia is a statutory corporation and group parent company.

Ervia has control over the following companies (see schematic below).

- **Irish Water – Utility providing water and waste services in Ireland.**
- **Gas Networks Ireland – Transmission and distribution system operator in Republic of Ireland.**

- GNI (UK) – Owner and operator of gas interconnector assets between Scotland and Ireland. Owner and operator of gas transmission assets in Northern Ireland.
- Gas Networks Ireland (IOM) – Transmission owner in the Isle of Man.

Figure 4.2: Ervia schematic



In all cases above, Ervia's control is established by means of ownership of the entire share capital of the company involved.

The following table outlines the shareholding of companies within the Ervia Group. All companies are within the same group as GNI (UK). Their activities and equity/voting interests are highlighted below.

The companies in Figure 4.2 are the trading companies of the Ervia Group. The tables below include both trading and non-trading entities.

Figure 4.3: Ervia group company shareholdings – Trading subsidiaries

Company	Equity / Voting Interests	Comments	Function	Status	Production/Control
Ervia	Parent Company	Owned by Govt of ROI	Natural gas and water utility	Trading	The company is not directly or indirectly involved in electricity and/or gas production, generation or supply. The company is not directly or indirectly in control of or controlled by a relevant producer or supplier
Gas Networks Ireland	100% of Shares	Held by Ervia.	Transmission System and Asset Owner / Operator in Ireland.	Trading	The company is not directly or indirectly involved in electricity and/or gas production, generation or supply. The company is not directly or indirectly in control of or controlled by a relevant producer or supplier
GNI (UK) Ltd	100% of Shares	Held by GNI.	Transmission Asset Owner / Operator in Northern Ireland and the GB.	Trading	The company is not directly or indirectly involved in electricity and/or gas production, generation or supply. The company is not directly or indirectly in control of or controlled by a relevant producer or supplier
Gas Networks Ireland (IOM) Ltd	100% of Shares	Held by GNI.	Transmission Asset Owner / Operator in the Isle of Man.	Trading	The company is not directly or indirectly involved in electricity and/or gas production, generation or supply. The company is not directly or indirectly in control of or controlled by a relevant producer or supplier
Irish Water ²⁸	33.33% Ervia, 33.33% MECLG, 33.33% MOF ²⁹	All voting shares held by Ervia. All economic value shares held by the Ministers.	National water utility that is responsible for providing and developing water services throughout Ireland.	Trading	The company is not directly or indirectly involved in electricity and/or gas production, generation or supply. The company is not directly or indirectly in control of or controlled by a relevant producer or supplier

²⁸ See Chapter 3 discussion as to why Irish Water is not a relevant energy producer.

²⁹ Minister of Finance.

Figure 4.4: Ervia group company shareholdings: Non-trading subsidiaries

Company	Equity / Voting Interests	Comments	Function	Status	Production/Control
Conservation Engineering Limited	100% of Shares	Held by Ervia.	This was an Energy related entity that did not transfer as part of the sale. The entity is no longer trading and from an accounting perspective this will be wound up in 2015 subsequent to settlement of an intercompany payment on its Balance Sheet.	Non-trading	The company is not directly or indirectly involved in electricity and/or gas production, generation or supply. The company is not directly or indirectly in control of or controlled by a relevant producer or supplier
Natural Gas Finance Limited	100% of Shares	Held by Ervia.	This was an Energy related entity that did not transfer as part of the sale. The entity is no longer trading and from an accounting perspective this will be wound up in 2015 subsequent to settlement of the Interco receivable on its Balance Sheet.	Non-trading	The company is not directly or indirectly involved in electricity and/or gas production, generation or supply. The company is not directly or indirectly in control of or controlled by a relevant producer or supplier
Ervia Energy Trading Limited	100% of Shares	Held by Ervia.	This was an Energy related entity that did not transfer as part of the sale. The entity is no longer trading and from an accounting perspective this will be wound up in 2015 subsequent to settlement of the Interco receivable on its Balance Sheet.	Non-trading	The company is not directly or indirectly involved in electricity and/or gas production, generation or supply. The company is not directly or indirectly in control of or controlled by a relevant producer or supplier
Ervia Finance Public Limited Company	100% of Shares	Held by Ervia.	This is a special purpose finance entity set up originally as a financing vehicle. There are no immediate plans for this entity to commence trading. However, to retain flexibility on the potential use of this entity we will not be winding this entity up.	Non-trading	The company is not directly or indirectly involved in electricity and/or gas production, generation or supply. The company is not directly or indirectly in control of or controlled by a relevant producer or supplier
Ervia ESOP Trustee Limited	100% of Shares	Held by Ervia.	This is the corporate trustee of the Ervia Employee Ownership Trust (ESOT), Ervia Approved Profit Sharing Scheme (APSS) and the Ervia 2014 Trust (2014 Trust). Ervia ESOP Trustee Limited cannot be wound up until 2017 at the earliest.	Non-trading	The company is not directly or indirectly involved in electricity and/or gas production, generation or supply. The company is not directly or indirectly in control of or controlled by a relevant producer or supplier

Company	Equity / Voting Interests	Comments	Function	Status	Production/Control
Platin Power Trading Limited	100% of Shares	Held by Ervia.	This entity is non-trading and from an accounting perspective will be wound up in 2015.	Non-trading	The company is not directly or indirectly involved in electricity and/or gas production, generation or supply. The company is not directly or indirectly in control of or controlled by a relevant producer or supplier
Aurora Telecom Limited	100% of Shares	Held by Ervia.	Networks related non-trading entity. To be transferred to a separate legal entity as part of a separate exercise after the transfer of GNI. A separate project later in 2015, or early 2016 will see the Aurora business de-coupled from the gas network	Non-trading	The company is not directly or indirectly involved in electricity and/or gas production, generation or supply. The company is not directly or indirectly in control of or controlled by a relevant producer or supplier
Ervia Holdings Limited	100% of Shares	Held by Ervia.	Ervia Holding holds the investment in Oisín Power Generation Ltd. It is non-trading and from an accounting perspective this can be wound up in 2015 subject to the wind up of the below Oisín Power Generation Limited.	Non-trading	The company is not directly or indirectly involved in electricity and/or gas production, generation or supply. The company is not directly or indirectly in control of or controlled by a relevant producer or supplier
Sudanor Limited	100% of Shares	Held by Ervia.	Networks related non-trading entity utilised for Barclay's interconnector transition. Sudanor Limited will be retained for the immediate future due to legacy agreements.	Non-trading	The company is not directly or indirectly involved in electricity and/or gas production, generation or supply. The company is not directly or indirectly in control of or controlled by a relevant producer or supplier
Greener Ideas Limited	50% of Shares	Held by Ervia	JV with planning permission for 3 * 98 MW Open Cycle Gas Turbines. Ervia will not be developing these sites and intends to divest its shareholding as soon as possible (see exhibit 1, section 3.2.4 for further details)	Non-trading	The company is not directly or indirectly involved in electricity and/or gas production, generation or supply. The company is not directly or indirectly in control of or controlled by a relevant producer or supplier
Oisín Power Generation Limited	50% of Shares	Held by Ervia Holdings Limited	This entity was established for a proposed JV between Ervia (formerly BGE) and International Power Ltd. The company is non-trading and from an accounting perspective can be wound up in Q1 2016 subject to approval from our JV partner.	Non-trading	The company is not directly or indirectly involved in electricity and/or gas production, generation or supply. The company is not directly or indirectly in control of or controlled by a relevant producer or supplier

Company	Equity / Voting Interests	Comments	Function	Status	Production/Control
Gaslink Independent System Operator	100% of Shares	Held by Ervia.	Gaslink was the Independent System Operator, responsible for the development and maintenance and operation of the gas distribution and transmission Networks. The assets Gaslink transferred to GNI on the Networks Transfer Date and Gaslink will be retained as a non-trading subsidiary of GNI for tax purposes.	Non-trading	The company is not directly or indirectly involved in electricity and/or gas production, generation or supply. The company is not directly or indirectly in control of or controlled by a relevant producer or supplier

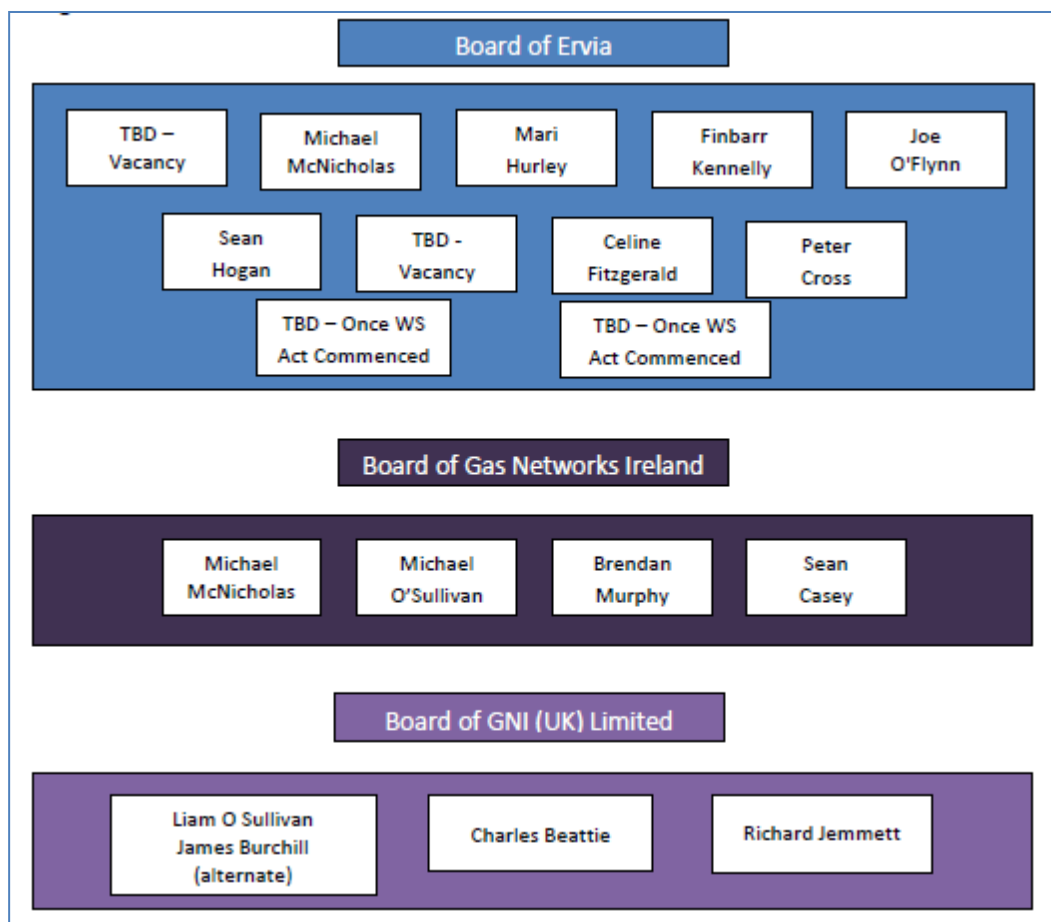
4 a) List of persons controlling the TSO

The board of Ervia currently consists of the Chief Executive and seven non-executive members (including the Chairman). It is anticipated that the number of members will increase when the relevant sections of the *Water Services Act 2014* is implemented.

The directors of GNI (UK) have provided signed declarations to confirm they have no other roles which conflict with the requirements of the Directive.

- Board members of Ervia – Michael McNicholas, Joe O'Flynn, Sean Hogan, Mari Hurley, Finbarr Kennelly, Peter Cross, Celine Fitzgerald.
- Directors of Gas Networks Ireland – Michael McNicholas, Michael O'Sullivan, Brendan Murphy and Sean Casey.
- Directors of GNI (UK) - The directors are Charles Beattie, Richard Jemmett, Liam O'Sullivan and James Burchill (alternate).
- Some members of the board of GNI (UK) are trustees for the shareholdings of Sudonor and Ervia Finance.

The membership of the Ervia board, Gas Networks Ireland and GNI (UK) is illustrated below.

Figure 4.5: Board Members of Ervia, Gas Networks Ireland and GNI (UK)

The board consists of directors who are responsible for managing the business of the company and may exercise the powers of the company. The directors of GNI (UK) are responsible for taking decisions relating to the financing, operation and maintenance of South-North and North-West pipelines.

The directors of Ervia are in control of the management and governance of the Ervia group of companies. They are ultimately responsible for taking strategic and operational decisions.

Our overall conclusion is that none of the board members / directors is also a senior officer of a relevant gas producer or supplier.

4 b) List of all undertakings active in any reportable market

Ervia controls all other companies in the Ervia group (see Figures 4.3 and 4.4 above). These include undertakings active and dormant in the gas market. None of these undertakings perform any of the functions of gas production or supply.

GNI (UK) does not control, either directly or indirectly, any undertakings active in any reportable market.

4 c) List all companies performing any of the functions of generation or supply

Two companies controlled by Ervia also perform or have the potential to perform generation functions, Irish Water and Greener Ideas.

Irish Water has electricity generation capacity at 23 wastewater treatment works (WwTWs). This is not considered to be a conflicting interest due to the fact that:

- a) 22 of the 23 WwTWs use all power generated at the relevant site. This generation is not required to be licensed.
- b) Only one generator (3,100 kW) exports to the grid, and then only in rare cases for stability purposes. GNI (UK) estimates the exported volume to be in the order of 0.000008% of RoI annual electricity production.
- c) If some upgrades are completed, the maximum total generation potential of Irish Water is 10,413 kW. This is equivalent to <0.08% of the annual generation capacity in Ireland (North and South).
- d) Irish Water only operates in the Republic of Ireland. Network access or investment decisions made by GNI (UK) for assets in Northern Ireland will have no undue influence on the water company in RoI.

Greener Ideas has planning permission to develop three electricity generation sites. The UR does not believe this to be a barrier to certification. The conclusion is reached by virtue of the fact that:

- a) Ervia has confirmed they are already in talks with a third party regarding the sale of its shares.
- b) Greener Ideas does not yet perform the function of an electricity producer. GNI (UK) estimate that it could take 36 months before the plants would be operational.
- c) Ervia has provided assurances that Greener Ideas will not act as a producer so long as the company retain rights in the business.

Conclusions in respect of Articles 9(1)-(3):

From the discussion above, we conclude that the requirements of Articles 9(1-3) of the Gas Directive are met in respect of GNI (UK) because:

- GNI (UK) does not control an undertaking performing any of the functions of production, generation or supply.
- GNI (UK) is not controlled by anyone who controls a RPoS which could result in a conflict of interest.
- GNI (UK) is not controlled by anyone who has a majority shareholding in a relevant producer or supplier.
- None of GNI (UK)'s senior officers have been or may be appointed by a person who controls or has a majority shareholding in a RPoS.
- None of GNI (UK)'s senior officers is also a senior officer of an undertaking performing any of the functions of production, generation or supply.

- 5. In case a public body is exercising the rights described in paragraph (b), (c) and (d) of Article 1 of the Electricity and Gas Directives, the unbundling provisions require ensuring independence between the public body exercising those rights over transmission and over generation, production or supply activities. Therefore in case one or different central, regional or local governmental bodies (e.g. Ministries) exercise those rights, it is necessary to introduce mechanisms ensuring such independence. In this respect please answer the following questions:**

- a) Please describe briefly if public bodies directly or indirectly exercise control or any right over transmission, production and supply.**
- b) In case the central, regional or local governmental bodies exercises those rights for undertakings involved in transmission systems, generation, production and supply, please:**
 - Describe in detail which part of the governmental bodies exercises those rights over which undertakings.**
 - Describe briefly the constitutional (legal, financial) interdependences between those parts of the governmental bodies.**
 - Describe briefly how it is ensured that the rights described in paragraph (b), (c) and (d) of Article 1 of the Electricity and Gas Directives respectively in respect to transmission systems are exercised independently from generation, production or supply activities.**

- 5 a) Brief description of whether public bodies directly or indirectly exercise control or any right over transmission, production and supply.**

GNI (UK) is a wholly owned subsidiary of Ervia. Ervia is a semi-state company owned by the Irish Government. The Minister for the Environment, Community & Local Government (MECLG) can therefore exercise control over GNI (UK)'s transmission system.

- 5 b) Further detail in cases where public bodies directly or indirectly exercise control or any right over transmission, production and supply.**

To ensure compliance with Directive 2009/73/EC, the Irish MCENR is no longer the majority owner of Ervia. The MECLG became the Majority Shareholding Minister (MSM) of Ervia on 23 November 2015.

The MECLG has no control or rights over companies involved in energy transmission, production and supply (with the exception of Irish Water's micro-CHP units). The Minister's role in relation to Irish Water is not considered a barrier to certification given our conclusion above that Irish Water is not a RPoS.

6. In case the TSO was part of a vertically integrated undertaking in line with Article 9(7) it needs to be ensured that no commercially sensitive information is transferred to the production, generation or supply undertakings and that the TSOs staff is not being transferred to those undertakings. In view of this provision please describe briefly procedures which ensure that no commercially sensitive information is being transferred to the production, generation or supply undertakings. Please submit the relevant provisions.

The UR proposes a number of licence conditions which will ensure ongoing FOU compliance. These cover:

- Independence of the authorised business.
- Other businesses not having access to systems, premises, or confidential information of the TSO.
- Restrictions around transfer of employees to other energy businesses.
- Undertaking from holding company that they will not cause GNI (UK) to breach their licence etc.³⁰

4.5. Tasks of the TSO - Article 13 of the Gas Directive

7. The TSO is required to operate the network in line with Article 13 of the Gas Directive. Please:
- a) Describe briefly all tasks the TSO fulfils and conclude on compliance with Article 13 (gas). Submit all relevant parts of all relevant regulatory provisions (laws, network codes, agreements between companies, statutes) showing that the TSO has the full responsibility to fulfil the above listed tasks and clearly mark the relevant parts supporting the analysis.
 - b) Show on the basis of applicable regulation that the NRA concerned is equipped with powers, including ability to impose dissuasive fines which it is able to apply when the TSO is not fulfilling or not fully fulfilling the tasks and obligations specified in Article 13 of the Gas Directive.

7 a) Brief description of the tasks fulfilled by the TSO

GNI (UK) is licensed to convey gas in Northern Ireland under article 8(1)(a) of the Gas (Northern Ireland) Order 1996. A person is said to convey gas if he:

- Co-ordinates, and directs, the flow of gas into and through a pipeline by means of which the conveyance of gas takes place; or
- Makes the pipeline available for use for the purposes of such conveyance.

The licence requires GNI (UK) to put in place arrangements for the conveyance of gas. This will facilitate the achievement of the relevant objective which is:

³⁰ See Annex A – Attachment 11, Condition 2.12 for independence conditions.

‘The secure, safe, reliable, efficient and economic development and operation and maintenance of the Network with due regard to the environment’ (Condition 2.4.1)

The network code sets out arrangements for the conveyance of gas. The code also includes provisions related to balancing the network. This includes the methodology which GNI (UK) will use to procure balancing gas and how balancing charges to be levied on users will be determined.

GNI (UK) is also responsible for managing connections to its network as set out in condition 2.3 of its licence.

The table below sets out the tasks of the TSO in Article 13. This is cross-referenced with GNI (UK)’s licence obligations.

GNI (UK) currently subcontracts out certain tasks to third parties such as maintenance and grid control. We have given careful consideration to the compatibility of this practice with the directive requirements. Our analysis is set out in the section ‘Detailed Issues Considered’.

Our conclusion is that the arrangements GNI (UK) currently has in place for maintenance and grid controls are not in conflict with the Directive.

Figure 4.6: GNI (UK) licence obligations mapped against Gas Directive Article 13

Article 13 Requirement	GNI (UK) Licence Obligations
1a	<p>Article 13(1)(a) is covered by the relevant objective in condition 2.4.1 of the licence.</p> <p>References to securing an open market are covered by condition 2.15 of the licence.</p> <p>In respect of the obligation to ‘ensure adequate means to meet service obligations’ this would be encapsulated in the network code. This is the contract between the TSO and the system users. The UR approves the code.</p>
1b	<p>The requirement not to discriminate is reflected in the following licence conditions:</p> <ul style="list-style-type: none"> • 2.2.12(b) not to show any undue preference or undue discrimination towards any gas supplier in the conveyance charges made or other terms for the conveyance of gas. • 2.3.6 not to show any undue preference or undue discrimination towards any person seeking a connection. • 2.4.11 not to show any undue preference or discrimination towards any person seeking to become a party to the network code. • 2.5.3 covers undue discrimination in the provision and/or installation of a gas meter.

	<ul style="list-style-type: none"> • 2.6.2(b) covers undue discrimination in the disclosure of information.
1c	Article 13(1)(c) is covered by 2.6A . This covers the obligation to provide relevant information.
1d	This is covered by provision of the network code and requirement for it to be published. See condition 2.4 in general and 2.4.8 for the requirement to publish the code.
2	Cross-border integration is reflected in condition 2.11 of the GNI (UK) licence.
3	<p>Rules around balancing are covered by the existing licence conditions at 2.4.2.</p> <p>The measures in place for balancing, the methodology to procure the gas, and the methodology by which charges will be levied on system users for balancing the network are required to be set out in the network code.</p> <p>This is required to be approved by UR providing the mechanism to ensure the methodology is compatible with Art. 41(6). The code is published.</p>
4	<p>No minimum standards have been specified. However, GNI (UK) is obliged by its licence (condition 2.16) to act as a reasonable and prudent operator.</p> <p>This means that it will act with the intention of performing its obligations with a comparable amount of skill, diligence and foresight as others.</p> <p>Such diligence applies to the Article objective of maintaining and developing the network.</p>
5	TSOs procure gas for balancing. The methodology to procure this gas is contained in the network code (Section 5) and approved by the UR. The requirement for such a methodology is provided for in condition 2.4.2(b)(ii) of the licence.

Conclusion in respect of Article 13

We conclude that GNI (UK) fulfils all the tasks of a TSO set out in Article 13.

- 7 b) **Show on the basis of applicable regulation that the NRA concerned is equipped with powers, including ability to impose dissuasive fines which it is able to apply when the TSO is not fulfilling or not fully fulfilling the tasks and obligations specified in Article 12 of the Electricity Directive and 13 of the Gas Directive**

The powers of the UR in relation to enforcement and financial penalties are set out in The Energy (Northern Ireland) Order 2003 (Part VI – Enforcement).³¹

Article 42(1) provides that the UR may make an Order for the purposes of achieving compliance where it is satisfied that a regulated person:

“is contravening, or is likely to contravene, any relevant condition or requirement, it shall by a final order make such provision as is requisite for the purpose of securing compliance with that condition or requirement.”

GNI (UK) is a regulated person, as the term includes anyone who is a licence holder. A ‘relevant condition’ in relation to a licence holder includes any relevant condition of the licence.

The UR will provide new or amended licence conditions as necessary for the Directive obligations. These will be enforceable under the Energy Order.

In relation to the imposition of fines, where the UR is satisfied that a regulated person has contravened any relevant condition, a penalty may be imposed. The penalty can be *“of such amount as is reasonable in all the circumstances of the case”* (**Energy Order Article 45(1)**). No penalty may exceed 10% of the turnover of the regulated person (**Article 45(9)**).

³¹ <http://www.legislation.gov.uk/nisi/2003/419/part/VI>.