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28 November 2008

Dear Jill & Roisin,

**COMMON ARRANGEMENTS FOR GAS (CAG) – DRAFT CONCLUSIONS ON THE  
OPTIONS FOR THE GAS OPERATIONAL REGIME**

Thank you for this further opportunity to comment and we welcome these draft conclusions as a major step in the right direction towards an optimum all-island harmonisation framework.

It is worth restating that Ireland and Northern Ireland (NI) are facing a period of unprecedented energy market volatility – the challenges are formidable. The key to helping both jurisdictions meet these challenges is by getting the market fundamentals right for both jurisdictions. Indeed, it makes good sense as Europe prepares for greater EU wide harmonisation<sup>1</sup>, including greater transparency, investment, capacity and interoperability. Whilst ensuring an all-island TSO/DSO framework will have the added benefit of enabling a single coherent voice, capable of pressing for RoI and NI network interests from an all-island perspective.

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<sup>1</sup> GTE is moving forward with the creation of ENTSOG (European Network of Transmission System Operators) and a work plan in anticipation of the EU 3<sup>rd</sup> package.

The four CAG strategic initiatives: transmission tariff harmonisation, a single TSO operation, retail process alignment and an all-island gas quality regime, all complement each other perfectly. Reform of this nature thus brings regulatory and operational transparency, legal certainty, market consistency, efficiencies, and an all-island market coherency which are all important prerequisites for an effective competitive market and for raising investor confidence. There is no doubt that compromising on any one of these initiatives would be to lessen the overall effect and benefits that might be achieved.

We therefore recommend the adoption of a single TSO model (CAG TSO) as the right way forward, supported by a Single Unified Code of Operation.

This approach is not only the best solution, but once in place will be less prone to difficulties that might otherwise arise under the SSP model. For example, under the SSP model we note that strategic management will still rest with the four individual TSOs and as a consequence may suffer due to inter-jurisdictional and/or operational conflicts of interest. Furthermore, a single point of governance will be more difficult to achieve with the SSP approach, leading to delays and difficulties enforcing change over an unlicensed SSP body.

With currently three TSO's in the North and one in the South it is essential there should be no room for any conflicts of interest. We therefore encourage the RAs to ensure the CAG TSO is set up as a wholly legally distinct entity in keeping with the electricity industry approach (for Eirgrid and Soni), only then can strong regulatory oversight and governance of the new CAG TSO be properly exercised. Indeed, this approach is consistent with the thrust and sentiment of the EU's 3<sup>rd</sup> package and also meets the last two goals of the workstream, namely it is consistent with EU Legislation, and compatible with present and future developments towards a single market in gas.

If a Corporate JV approach is adopted to underpin the CAG TSO, then it should be constructed in a manner that ensures its complete independence and its full accountability. We look forward to a full disclosure and consultation on the CAG TSO set up, its operational mandate, governance and licensing obligations.

In the attached Annex A we comment against each of the consultation's questions. For good measure, we have also included within an Annex B a matrix highlighting our summary preferences against each of the specific parts of the draft conclusions.



For completeness, please also refer to our supporting cover letter dated 2 July 2008 and do not hesitate to contact us if we can provide further information in support of this response.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Tony Thornton". The signature is stylized with a large initial "T" and a long horizontal stroke extending to the right.

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## Annex A – Questions for Industry

Please also refer to our supporting cover letter dated 28 Nov 2008.

### Section 3 – All Island system operation functions

#### **Q1. Do you have any views on the draft conclusions outlined in this section?**

VPE Response: we agree with the draft conclusions, i.e. the following responsibilities should be managed on an all-island basis:

- (a) longer term management
- (b) day-to-day operations
- (c) system balancing
- (d) capacity trading
- (e) congestion management
- (f) end-of-day allocations

We would also include:

- Transmission Code Modification and Operational Change Management.
- CAG TSO market development in support of competition and efficiency improvement.
- Network Safety Coordination, albeit there will also be localised arrangements.
- Shipper query resolution procedures (unless this is implied within the day-to-day operations).

#### **Q2. For those functions we proposed should be coordinated on an all-island basis, how should responsibility for these functions be divided between the asset owners and the CAG SO?**

VPE Response: it is absolutely critical for the CAG TSO to be fully transparent and accountable in the execution of its responsibilities. The organisational set-up must therefore be legally distinct to avoid any conflicts of interest that might otherwise arise across the two jurisdictions.

At this stage of the CAG development it is difficult to comment more precisely on where the separation should be struck, suffice to say it must be in a manner that ensures the CAG TSO is able to act unhindered and efficiently in all its dealings with market participants.

*There will need to be new/revised Operational Codes struck between the Asset owners and the CAG TSO, with key obligations set out in licence.*

**Q3. Do you have any other views or suggestions?**

*VPE Response: we restate here the need for complete legal and operational independence for the CAG TSO. It must not be allowed to become frustrated in the execution of its responsibilities due to any lack of accountability, or due to ownership. As such, it will require a legally distinct set up and if enshrined under a Corporate Joint Venture model (Corporate JV), must be sufficiently robust to ensure independence and good governance can be exercised.*

Section 4 – Options for system operation

**Q1. Which option for the CAG SO delivers the objectives of CAG most effectively?**

*VPE Response: Fundamentally, we believe securing a wholly independent transmission and distribution system operator(s) is a key requisite to a well functioning market – this approach has been adopted for electricity, and there is no good reason why gas should not follow suit.*

*Our ideal from the outset has been for a single TSO approach, one which embraces the above i.e. maintains a wholly distinct and independent organisational management approach. A Single TSO is therefore our preferred model, which if successfully cast, will undoubtedly deliver the CAG objectives most effectively. If a Corporate JV is deemed to be the most effective approach, then it must ensure the new organisation is legally distinct and robustly constructed to secure the CAG TSO's full independence.*

*Whereas, Dual and multiple TSOs would require significant interaction to make it work, would lack transparency and independence, and would compromise CAG objectives. .*

**Q2. Of the remaining options, the Single TSO and SSP, which do you prefer?**

*VPE Response: as noted above, we fully endorse the Single TSO. This approach is not only the best solution, but once in place will be less prone to difficulties that might otherwise arise under the SSP model. For example, under the SSP model we note that strategic management will still rest with the four individual TSOs and as a consequence may suffer due to inter-jurisdictional conflicts of interest. Furthermore, a single point of governance will be more difficult to achieve with the SSP approach, leading to delays and difficulties enforcing change over an unlicensed SSP body.*

**Q3: Which of the remaining options best meets the criteria set out in section 2?**

VPE Response: all other options (other than a single TSO) would mean a compromise of the CAG criteria. However, the SSP with a Contractual JV is perhaps the next viable option, albeit we have severe reservations with regard its effectiveness.

**Q4: Which of the remaining options best:**

- (a) provides stability and certainty of market structure?**
- (b) Allows flexibility for changing customer needs and market environment?**
- (c) Allows for sufficient regulatory control over costs and services?**

VPE Response: we restate our preference for a Single TSO, albeit the SSP model would be the next only other viable option. However, unless a legally distinct and independent organisation is assured, it will be difficult for any other form of organisation to avoid being tugged in strategically opposing directions. Dual or multiple TSOs would inevitably involve conflicts of interest, and at best would result in wasted time and resources securing compromises that will be less than optimal for customers and the market environment. Even the SSP approach will experience these difficulties, albeit to a lesser extent providing the Contractual JV is sufficiently well struck.

**Q5: Do the different options ensure that the relevant health and safety authorities can enforce their health and safety obligations?**

VPE Response: this is difficult to comment upon until the emergency arrangements for the single TSO model are worked through. In theory, providing the relevant authorities are consulted and fully involved there could be benefits and improvements with regard to health and safety obligations; for example, from better intelligence, sharing of expertise, and more efficient and timely exchanges of emergency information.

**Q6: Are there any variations of the options that could work better?**

VPE Response: None that would meet the CAG criteria and objectives.

**Q7. Is there anything at all in the construction of the CAG operating model that we have missed, or that you think is material and requires further consideration by the RAs?**

VPE Response:

*Throughout our responses, we have maintained the importance of independence and accountability. The RAs suggest that a Corporate JV might be constructed to underpin the Single TSO model, however until we can comment further on its construction, it is difficult to fully assess how effective it will be. Important considerations for a legally struck Corporate JV approach might include (albeit not exhaustive):*

- *Its legal status, including its incorporation as a company in keeping with relevant Company Acts.*
- *Its liability, probably ltd by guarantee.*
- *Shareholder Agreements.*
- *Power sharing approach relative to the respective shareholdings.*
- *Culture and relationship management issues between shareholders (including dispute resolution procedures).*
- *Staffing levels and the quality attracted from all shareholders.*
- *Standards, and regulatory obligations.*
- *Transparency requirements and Reporting.*
- *Accountability, including audit arrangements.*
- *Systems integration.*
- *Strong Governance.*
- *Funding.*

### ANNEX B – SUMMARY POSITION

All Island Approach	RA Draft Conclusion	VPE View	Comment
Single Service Provider, possibly supported by a Contractual JV	Under consideration	Not preferred, doubts over accountability, independence and transparency	SSP not licensed, resulting in loss of control
Single TSO, possibly supported by a Corporate JV	Under consideration	Yes, providing legally distinct and accountable	More complicated to enact
Single Network Code	Under consideration for Transmission Level	Yes, but concerned with the effort it will take	Phase 2 will consider distribution & retail
Single IT Shipper Interface	Yes	Yes	Considered a minimum CAG objective
Consolidated Market Reports	Yes	Yes	
Emergencies	Under consideration	Involve HSE and allow local management	We look forward to participating in the sub-group to be formed
Planning & coordination - All Island basis	Yes	Yes	
Connection Policy, Standards & Agreements agreed - all-island basis	Yes	Yes	
All Island Balancing Point	Under consideration	Yes	Subject to CBA
Facilitating Capacity Transfers on an All-Island basis	Under consideration	Yes	
Regulatory Governance	Possibly via extension of SEM	Agreed, effective governance will be critical	
Single Code Mod Panel	Under consideration	Yes, otherwise a single code will be more difficult to manage.	We look forward to the further consultation
A Single Financial Security Policy	Under consideration	No comment at this stage	
Multiple TSOs, subject to TSO coordination	No	No	
Dual TSOs	No	No	
Multiple Network Codes	No	No	
Dual Network Codes	No	Possibly as an interim step towards a single Code	
Single transmission charge billing	No	Not as a first order measure, but might later evolve.	