

**Appendix 2:  
Annex 1 'Charging and Revenue  
Restriction'  
Proposed Modifications**

**LICENCE TO ACT AS SEM OPERATOR**

**granted to**

**SONI LIMITED**

**The Department of Enterprise, Trade and Investment**

# Current Annex 1

## **ANNEX 1 Charging and Revenue Restriction**

1. The Licensee shall, in setting its tariffs in conjunction with the Republic of Ireland Market Operator Licensee, use best endeavours to ensure that, following apportionment of the overall revenue derived from such tariffs between the Licensee and the Republic of Ireland Market Operator Licensee, the revenue (measured on an accruals basis) of the Market Operation Activity in each relevant year (after deduction of value added tax (if any) and any other taxes based directly on the amounts so derived) shall not exceed the amount as is submitted by the Licensee and agreed by the Authority as reasonable in all the circumstances for that relevant year, which amount shall always include, without limitation, provision for the following:
  - a) the operating expenditure of the Single Market Operation Business;
  - b) the pensions costs of the Single Market Operation Business to the extent reasonably approved by the Authority;
  - c) the financing costs of the capital expenditure of the Single Market Operation Business including a reasonable return;
  - d) amounts payable for the provision of any other services approved by the Authority;
  - e) any other amounts requested by the Licensee and approved by the Authority.

Where such tariffs do not recover the revenue that the Authority has determined is reasonable in all the circumstances for the Market Operation Activity, the Licensee shall (subject to the approval of the Authority) be entitled to levy a charge on the Transmission System Operator Business for the balance.

2. If by the date 4 months after SEM Go-Live (or such later date as may be agreed by the Licensee and the Authority) (the "Disapplication Date") the Authority has not made a reference to the Competition Commission under Article 15 of the Order so framed as to at least require the Competition Commission to investigate and report on the question of whether this Annex (or any part or parts of it) operates or may be expected to operate against the public interest, then with effect from the Disapplication Date paragraph 1 shall be amended to read:

“The Licensee shall, in setting its tariffs in conjunction with the Republic of Ireland Market Operator Licensee, use best endeavours to ensure that, following apportionment of the overall revenue derived from such tariffs between the Licensee and the Republic of Ireland Market Operator Licensee, the revenue (measured on an accruals basis) of the Market Operation Activity in each relevant year (after deduction of value added tax (if any) and any other taxes based directly on the amounts so derived) shall not exceed the amount the Licensee determines is reasonable in all the circumstances for that relevant year. Where such tariffs do not recover the revenue that the Licensee determines is reasonable in all the circumstances for the Market Operation Activity, the Licensee shall (subject to the approval of the Authority) be entitled to levy a charge on the Transmission System Operator Business for the balance.”

3. In this Annex, “relevant year” means a financial year of the Licensee.

# Proposed Annex 1

## ANNEX 1

### Charging and Revenue Restriction

#### Section 1

#### Revenue Restriction – The Basic Obligation

1. The Licensee shall use its best endeavours to ensure that, in each relevant year, the regulated revenue does not exceed the maximum allowed revenue.
2. For the purposes of paragraph 1, in any relevant year:
  - (a) the 'regulated revenue' is the regulated revenues obtained by the Licensee during that year; and
  - (b) the 'maximum allowed revenue' is the Licensee's specified proportion of the amount that is specified in, determined under, or otherwise calculated in accordance with an authority revenue decision in respect of that year.
3. For the purposes of paragraph 2(a), the 'regulated revenues' in any relevant year are all revenues obtained by the Licensee by virtue of carrying on the Market Operation Activity during that year, except for any that are to be treated as excluded in accordance with any authority revenue decision.

#### The Decision

4. The Authority may make authority revenue decisions which:
  - (a) specify, provide for the determination of, or otherwise makes provision for calculating the maximum allowed revenue of the Market Operation Activity in any relevant year on any such basis as the Authority considers appropriate;
  - (b) may make provision for the exclusion of certain revenues of the Market Operation Activity from the regulated revenues; and

- (c) may make provision for the setting or approval of the tariffs and charges of the Licensee

and, to the extent that any such decision alters the maximum allowed revenue, the authority revenue decision shall be deemed to be a decision to modify this Annex (a "Modification Decision").

- 5. The decisions made by the Authority and set out in the document called "Single Electricity Market Operator (SEMO) revenue requirement Price Control commencing 1 October 2013 – Decision Paper SEM-13-054" dated 06 August 2013, are authority revenue decisions for the purpose of this Annex. This includes but is not limited to the apportionment of regulated revenues between the Licensee and the Republic of Ireland Market Operator Licensee on a 25%/75% basis respectively (converted into pounds sterling at the applicable exchange rate).
- 6. The Licensee must comply with any requirements that are placed on it under or in accordance with the terms of any authority revenue decision.
- 7. Other than authority revenue decisions described in paragraph [5] above, any authority revenue decision:
  - (a) may be made only after taking the steps set out in paragraph [8] (Process);
  - (b) must comply with the requirements of paragraph [9] (Cost Recovery); and
  - (c) without prejudice to the generality of foregoing paragraphs, may in particular include any provisions of the type described in paragraphs [10] and [11] (Form and Content).

### **Process**

- 8. Without prejudice to any other process that the Authority is required to follow under Article 14 of the Order, before making an authority revenue decision, the Authority must:
  - a. consult with the Licensee and such other persons as it considers appropriate; and
  - b. have regard to any information provided and representations made to it by the Licensee,

and for the purposes of the authority revenue decisions described in paragraph [5] above, these requirements may be satisfied by steps that are taken either before or after the coming into the force of this Annex.

### **Cost Recovery**

9. Any authority revenue decision must include provision designed to ensure that the maximum allowed revenue in any relevant year incorporates amounts:
  - a. in respect of the reasonable and efficient operating expenditure likely to be incurred by the Licensee in undertaking the Market Operation Activity during that year; and
  - b. sufficient to enable the Licensee:
    - i. to finance the reasonable and efficient capital expenditure likely to be incurred by it in undertaking the Market Operation Activity during that year; and
    - ii. otherwise to secure a reasonable return on its capital.

### **Form and Content**

10. Any authority revenue decision may, amongst other things, include provisions which:
    - a. specify the period in respect of which the authority revenue decision is to apply;
    - b. provide for the modification of any part of a previous authority revenue decision;
    - c. without limitation, provide for the Authority to have the power to:
      - i. determine any question;
      - ii. grant any consent;
      - iii. give any approval;
      - iv. issue any direction,
- in relation to the maximum allowed revenue determined in that authority revenue decision or any matters relevant to its calculation;

- d. provide for the Licensee to be required to give to the Authority any information of a type specified in or determined under the authority revenue decision;
- e. set out any steps to be taken or any procedure to be followed by the Licensee or the Authority in relation to an authority revenue decision.

11. Also without limitation, any authority revenue decision may in particular include provisions which:

- a. specify any amounts which are to be treated as included within, or excluded from, the calculation of the maximum allowed revenue in any relevant year;
- b. make the calculation of the maximum allowed revenue (or any element of it) conditional on the taking of any action or occurrence of any event, including in particular:
  - i. an election made by the Licensee between any two or more options set out in, or determined in accordance with, an authority revenue decision;
  - ii. the incurring by the Licensee of any specified capital or operating expenditure, or the delivery by the Licensee of any specified measure of output;
- c. make the calculation of the maximum allowed revenue (or any element of it) conditional on the achievement of any standard of performance, or fulfilment of any target, set out in or determined in accordance with the relevant authority decision;
- d. provide for the maximum allowed revenue (or any element of it) to be calculated in any relevant year by reference to any expenditure incurred or revenues obtained in any other relevant year;
- e. provide for the maximum allowed revenue (or any element of it) to be subject in any relevant year to the outcome of an assessment of the efficiency of the Licensee in undertaking the Market Operation Activity during that year;

and shall include provisions which make the maximum allowed revenue (or any element of it) subject to any approval given by the Authority to an application made to it by the

Licensee under paragraph [13], for any further amount to be included within the maximum allowed revenue.

### **Modification and Duration**

#### **Modified and Subsequent Decisions**

12. Any authority decision may:

- a. be modified by the Authority at any time in accordance with any provisions of that authority revenue decision providing for its modification;
- b. be modified by a subsequent authority revenue decision; and
- c. be replaced on the expiry of the period for which it is to apply, by a subsequent authority revenue decision.

provided that any such subsequent authority decisions satisfy the requirements described in paragraph [7].

13. Subject to paragraph [14], the Licensee may make an application to the Authority for any further amount to be included within the maximum allowed revenue which shall include but not be limited to an application for a proportion of the maximum allowed revenue greater than that which is specified in the applicable authority revenue decision.

14. When making an application to the Authority under paragraph [13], the Licensee shall provide the Authority with:

- a. details of the further amount it wishes to be include; and
- b. the reasons why it considers such amount is necessary in order for the maximum allowed revenue to continue to incorporate the amounts described in paragraph [9] (Cost Recovery).

#### **Duration**



15. Where the period in respect of which an authority revenue decision is expressed to apply has expired, and where a subsequent authority revenue decision does not apply such that there would be no authority revenue decision in place during a relevant year, the maximum allowed revenue in the relevant year immediately following the expiry of the period or such further relevant years or parts of relevant years as the Authority may specify, shall be calculated in accordance with paragraph [16].
16. Where this paragraph applies, the maximum allowed revenue in a relevant year shall be calculated in accordance with the following formula:

$$\text{MAR}_t = \text{MAR}_{t-1} * (\text{RPI}_t / \text{RPI}_{t-1})$$

Where:

$\text{MAR}_t$  means the maximum allowed revenue in any relevant year (t),

$\text{MAR}_{t-1}$  means the maximum allowed revenue in the immediately preceding relevant year (t-1) and, where relevant year t is the first relevant year after the expiry of any period in respect of which an authority revenue decision applied, shall be equal to the maximum allowed revenue in respect of the final relevant year of that period,

$\text{RPI}_t$  means the Retail Prices Index (1987=100) published or determined in December in each relevant year (t),

$\text{RPI}_{t-1}$  means the Retail Prices Index (1987=100) published or determined in December in the immediately preceding relevant year (t-1).

### **Tariffs and Charges**

17. The Licensee shall ensure that in any relevant year its tariffs and charges:
- a. have been approved by the Authority before they come into effect;

- b. are consistent with any requirements of an authority revenue decision in respect of that relevant year; and
- c. are designed to secure that the Licensee complies with its obligation at paragraph 1.

## **Section 2**

### **Duration of Authority Revenue Decisions**

18. For the purposes of this section 2, references to the Annex mean the Annex as modified from time to time by virtue of a Modification Decision.
19. This Annex other than this section 2 shall apply so long as this Licence continues in force but shall cease to have effect (in whole or in part, as the case may be) if the Licensee delivers to the Authority a request (a "Disapplication Request") made in accordance with paragraph [21] and:
- a. the Authority agrees in writing to the request; or
  - b. the application of this Annex (or any part(s) of it) is terminated by a notice (a "Disapplication Notice") given by the Licensee in accordance with paragraph [22] and not withdrawn.
20. Save where the Authority otherwise agrees, no disapplication following delivery of a Disapplication Request pursuant to this section 2 shall have effect earlier than the date (the "Disapplication Date") which is the later of:
- a. the date occurring 18 months after delivery of the Disapplication Request; and
  - b. 30 September 2016.
21. A Disapplication Request pursuant to this paragraph [21] shall:
- a. be in writing addressed to the Authority;
  - b. specify this Annex or any part(s) of it to which the request relates (excluding in either case this section 2); and

- c. state the date from which the Licensee wishes the Authority to agree that this Annex or the specified part of it shall cease to have effect.

22. A Disapplication Notice pursuant to this paragraph [22]:

- a. may be given in the circumstances described in either paragraph [23] or paragraph [24];
- b. may be withdrawn by the Licensee at any time prior to the Disapplication Date; and
- c. where it is given, shall:
  - i. be in writing addressed to the Authority;
  - ii. specify this Annex, or any part of it (which shall comprise only such part as was specified in the Disapplication Request) to which the notice relates; and
  - iii. state the date from which the Licensee wishes the notice to take effect, which shall not be earlier than the Disapplication Date.

23. The circumstances described in this paragraph are that, by the beginning of the period of six months which will end with the Disapplication Date, the Authority has not in response to the Disapplication Request published a decision under Article 14(8) of the Order to modify:

- a. this Annex, or any part of it to which the request relates; or
- b. this section 2, so as to remove the right of the Licensee to give to the Authority a Disapplication Notice in respect of the relevant Disapplication Request.

24. The circumstances described in this paragraph are that:

- a. by no later than the beginning of the period of six months which will end with the Disapplication Date, the Authority has in response to the Disapplication Request published a decision of a type referred to in paragraph [23];

- b. the Licensee has exercised its right to appeal to the Competition and Markets Authority (“CMA”) against that decision in accordance with Article 14B of the Order;
- c. the CMA has, in respect of the provisions to which the Disapplication Request relates:
  - iv. quashed the decision of the Authority under Article 14E(2)(a) of the Order; and
  - v. neither remitted the matter back to the Authority under Article 14E(2)(b) of the Order nor substituted its own decision for that of the Authority under Article 14E(2)(c) of the Order; and
- d. no more than 30 days has elapsed since the date on which the CMA quashed the decision of the Authority.

### **Definitions and Interpretation**

25. In this Annex, unless the context otherwise requires:

<b>Authority</b>	means the Northern Ireland Authority for Utility Regulation, including its Single Electricity Market Committee;
<b>authority revenue decision</b>	means any decision made by the Authority of the type described in paragraphs 4 or 5 of section 1 of this Annex 1 including by its Single Electricity Market Committee;
<b>regulated revenue</b>	has the meaning given in paragraph 2(a) of section 1 of this Annex 1, and shall be measured on an accruals basis after deduction of any value added tax and other taxes collected directly through the tariffs and charges.

<b>maximum allowed revenue</b>	has the meaning given in paragraph 2(b) of section 1 of this Annex 1.
<b>applicable exchange rate</b>	means the annual average exchange rate for the conversion of euro into sterling as published by Thomson Reuters.
<b>Modification Decision</b>	has the meaning given in paragraph 4(c) of section1 of this Annex 1.
<b>Order</b>	means the Electricity (Northern Ireland) Order 1992 as amended.
<b>regulated revenues</b>	has the meaning given in paragraph 3 of section 1 of this Annex 1.
<b>relevant year</b>	means a financial year of the Licensee in accordance with Condition 2 of this Licence.
<b>tariffs and charges</b>	means all tariffs, charges, fees and other means of revenue recovery which the Licensee levies under and in accordance with the Single Electricity Market Trading and Settlement Code or equivalent instrument.