



SONI TSO Governance: Consultation on modifications to the SONI TSO licence

24 January 2022



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, Markets and Networks. The staff team includes economists, engineers, accountants, utility specialists, legal advisors and administration professionals.



Our mission

To protect the short- and long-term interests of consumers of electricity, gas and water.



Our vision

To ensure value and sustainability in energy and water.



Our values

- Be a best practice regulator: transparent, consistent, proportionate, accountable and targeted.
- Be professional – listening, explaining and acting with integrity.
- Be a collaborative, co-operative and learning team.
- Be motivated and empowered to make a difference.

Abstract

This paper is the third stage of Utility Regulator's (UR) governance review of the System Operator for Northern Ireland (SONI TSO). It has two purposes:

- a) It sets out our policy position on the changes needed to SONI TSO governance following review by the UR; and
- b) It sets out the proposed modifications to SONI TSO's licence that we consider are necessary to implement this policy position. The proposed modifications are set out in Section 7 and Annex 1 of this paper.

UR will take final decisions on governance once we have considered the responses to the consultation on the proposed licence modifications.

Audience

This document is likely to be of interest to; SONI, NIE Networks, electricity generators, electricity suppliers, government, consumers, consumer groups with an interest in the energy industry.

Consumer impact

Compared to SONI TSO's current governance, the governance changes UR proposes to implement by means of licence modification, are designed to better secure the protection of the interests of Northern Ireland consumers and other stakeholders now and into the future. An updated cost benefit analysis for these proposals is set out in Section 6.

Contents

Overview of paper	1
1. Introduction	8
Purpose of this paper	8
Background	8
Re-cap on the findings from the call for evidence	9
Re-cap on governance options	10
Structure of this document	11
2. Summary of responses to consultation questions	13
Introduction	13
Responses to Questions	13
Other comments	29
3. Assessment of key points in EirGrid/SONI responses	31
EirGrid/SONI key common arguments	31
UR Response: Thesis of ‘divergence’ in SEM is fatally flawed	33
UR Response: enabling collaboration with EirGrid as intended	34
UR response: governance proposals consistent with SEMC policy	37
UR response: Governance changes will not have a material impact on the SEM	38
UR not acting ultra vires	42
No changes needed to SONI’s governance	42
4. Review of remaining aspects of SONI response	47
Failure to demonstrate harm	47
Deficiencies in UR cost benefit analysis	47
Material errors and omissions	47
5. Review of remaining aspects of EirGrid response	59
Impact on EirGrid licences	59
EirGrid’s continued ownership of SONI	60
Impact on exercise of governance and oversight by EirGrid	60
6. Policy position on SONI TSO governance	63
Do nothing not an option	63
Assessment of Options A and D	64
Assessment of Option B and C	65
Updated features of Option C	66
Updated Cost Benefit Analysis (CBA) for Option C	70

7. Proposed licence modifications to give effect to governance changes	77
SONI Board Composition	77
Managerial and Operational Independence.....	80
8. Responding to the licence modification consultation and next steps.....	85
Licence modification consultation	85
How to respond	85
Confidentiality	85
Annex 1: Proposed licence conditions to implement governance changes	87
Annex 2 Article 14(2) Licence Modification Notice.....	108

Overview of paper

- 1.1 SONI is the Transmission System Operator (TSO) for Northern Ireland, and has a key role in the development and operation of critical infrastructure. We believe that SONI needs to have a governance structure that is independent, transparent and accountable, and is focused on delivering and protecting the needs of Northern Ireland consumers.
- 1.2 This is the first review of SONI TSO's governance arrangements since SONI's acquisition by EirGrid in 2009. At the time of acquisition there were concerns as to whether Northern Ireland consumers would continue to be protected following the change in control of SONI.
- 1.3 The Utility Regulator's (UR) intention to review SONI's governance structure was initially signalled during the implementation of ISEM in 2016.¹ This confirmed that UR would review SONI's governance structures to ensure that they adequately met the requirements of an independent TSO for Northern Ireland. In the interim period UR has engaged with EirGrid and SONI on the need for changes to SONI's governance structure with little success. Consequently, UR published a Call for Evidence in July 2019, which was then followed in April 2021 by a consultation on proposals for changes to SONI's governance arrangements.²
- 1.4 This paper is the third stage of the review process. It has two purposes:
 - a) It sets out our policy position on the changes needed to SONI TSO governance following review by UR; and
 - b) It sets out the proposed modifications to SONI TSO's licence that we consider are necessary to implement this policy position. The proposed modifications are set out in Section 7 and Annex 1 of this paper.
- 1.5 UR will take final decisions on SONI's governance structures once we have considered the responses to the consultation on the proposed licence modifications.
- 1.6 Our vision for SONI is that it is a strong and effective TSO that works on behalf of Northern Ireland consumers. In the all-island arrangements it should work as an equal partner with EirGrid TSO. It is our aim through this review to ensure SONI TSO's governance structures are able to support this

¹ SEM-16-041, p.11.

² SONI and EirGrid each submitted a response to UR's April 2021 consultation paper. However, given the lack of independence from EirGrid which our review has demonstrated in practice, we consider that comments registered as having been submitted by SONI in effect representing the views of EirGrid, i.e. there is no independent SONI view.

vision by underpinning the long term success and sustainability of the TSO business. Therefore SONI TSO's governance must meet the needs of, and realise the benefits for, Northern Ireland consumers. Going forward, the structures need to be fit for purpose and appropriately designed and implemented so as to:

- Secure the protection of the interests of consumers and other stakeholders, including generators and suppliers, in Northern Ireland;
- Allow for the implementation of regulatory policy;
- Enable SONI to play its role in the implementation of the policy of the UK Government and/or Northern Ireland Executive, and in particular to facilitate the industry's energy transition; and
- Maintain cross-jurisdictional relationships necessary to facilitate the SEM;

while also:

- To the extent compatible with the above requirements, permitting appropriate synergies and efficiencies that stem from SONI's position as part of the overall EirGrid group.

Context for the review

1.7 Our current consideration of SONI's governance structures is unique for a number of reasons:

- a) SONI TSO's activities are funded by Northern Ireland consumers;
- b) It is licensed in Northern Ireland and regulated by UR with a principal objective of protecting the interests of consumers;
- c) The parent subsidiary relationship between EirGrid and SONI must ensure that the TSO's activities are transparent and so open to regulatory scrutiny in Northern Ireland;
- d) SONI has in effect become a "business unit" within the EirGrid group. It has no demonstrable independence of mind. This has come about due to the size of SONI relative to its parent company, and more significantly EirGrid has now fully integrated SONI employees, functions and resources into the EirGrid group³.

³ The integration of roles has been facilitated by the similarity in the roles of SONI and EirGrid, and the fact that they perform these roles on adjacent parts of an islanded system and that, even prior to the acquisition, they performed these roles 'in conjunction with' each other. Had SONI been acquired by company that was not a TSO then SONI would have had to maintain all of the necessary TSO

- e) There is a requirement within the SEM for the two TSO's (SONI and EirGrid) to work together to collaborate and coordinate the operation of the SEM. Therefore, any change to SONI's governance structures must also allow for the relationships necessary to facilitate successful operation of the SEM. A relationship of companies which operate as appropriately-resourced equals will ensure that such collaboration and coordination works transparently and effectively.
- f) The transition to a lower carbon economy will bring unique challenges and SONI will have a key role to play in the implementation of Northern Ireland Government policy. The energy transition to net-zero creates a need to ensure that SONI is able to effectively achieve the Northern Ireland Executive's targets in line with the interest of Northern Ireland consumers in a manner which is transparent and increases accountability and trust in SONI TSO.

Need for governance changes to promote accountability and transparency and underpin effective TSO collaboration

- 1.8 When SONI was acquired by EirGrid, the Single Electricity Market Committee (SEMC) envisioned that:

'The concept of independence remains important in terms of retaining SONI's corporate integrity and identity so that it should remain a standalone business with a specific role to play in the Northern Ireland transmission business.'

- 1.9 However, contrary to this vision, UR's governance review has found a lack of independence, transparency, and accountability on the part of SONI TSO. SONI is now so integrated into the EirGrid group that management and oversight of SONI TSO licence responsibilities are effectively discharged by EirGrid, and not by SONI. EirGrid group decision making structures have the effect of creating a 'black box', resulting in a lack of transparency as to how decisions are made on SONI TSO functions. There is also a concern that this enables much greater scope for significant conflicts of interest to emerge in that context.
- 1.10 The issues which the governance review have revealed, are driven by the integrated nature of the EirGrid group, and by how shared services are provided across EirGrid and SONI. In particular, the governance review has revealed the absence of appropriate mechanisms to bring transparency to

processes and be entirely self-standing. Alternatively, had SONI been acquired by a TSO not on the island of Ireland then, while the parent company might have had the necessary capabilities, it is likely there would have been far less overlap, in terms of the models, data, overall system knowledge and interactions with market participants, than is the case with SONI and EirGrid.

decisions on matters including how the provision of shared services in the group are controlled and managed. SONI appears to lack influence on these governance mechanisms and any relevant group policies. In EirGrid's current integrated governance model the manner in which the consideration of value or cost to Northern Ireland consumers is taken into account is not transparent, and indeed SONI is obliged to accept costs allocated by EirGrid to Northern Ireland consumers. Where integration can be demonstrated to be appropriate for SONI, which needs to be balanced with the need for independence, transparency and accountability by SONI. The current structures unfortunately operate at the expense of SONI accountability and transparency. This has undermined the regulatory mechanisms designed to support independent decision making by each of the two TSOs in the SEM.

- 1.11 UR's proposals for change to SONI's governance will ensure a governance structure which is in line with good practice for transparency and accountability within corporate governance arrangements in the UK, taking into account the regulated context SONI operates within.
- 1.12 EirGrid has sought to present the governance changes which are simply proposed to increase transparency and accountability as potentially catastrophic for the SEM and as appearing to *'promote discord and divergence between the TSOs.'*⁴ In doing so, EirGrid has not engaged constructively with the detail of any of the options developed by UR, or the views of stakeholders. Instead EirGrid rejects each of them and floats the possibility of legal challenge should UR proceed⁵ with any changes to their current governance structures.
- 1.13 Contrary to these views expressed by EirGrid, UR's proposed governance changes will look to create a strong and effective, well-led SONI, and ensure that EirGrid and SONI TSOs can collaborate and cooperate for SEM purposes. The proposed governance changes will ensure that SONI operates in an open (i.e. not a black box) and accountable manner thereby enabling UR and SEMC to regulate effectively.
- 1.14 Effective collaboration and cooperation between SONI and EirGrid must be predicated on each TSO being able to articulate its own views to the other. Each TSO should bring knowledge of, and speak for, the needs of the consumers in their jurisdiction in the context of the relevant network characteristics and policy framework. In this way, effective collaboration should enable SONI and EirGrid to reach conclusions which ensure that the overall outcomes from the SEM are a win-win for both sets of consumers (Northern Ireland and Ireland). This is not to say that each TSO should represent an exclusively jurisdictional viewpoint, but only that they are each

⁴ See for example, SONI response Para. 2.35.

⁵ SONI response, Para. 8.4.

expected to bring a jurisdictional perspective and knowledge to TSO discussions, in order to agree the optimal way forward for consumers in both Northern Ireland and Ireland.

- 1.15 How the System Operator Agreement (SOA) functions⁶ is critical to this outcome. Our proposed governance changes will restore a level of independence to SONI, which will allow it to participate in SOA structures as an effective TSO, as has always been intended under the licence. This will facilitate the regulatory framework to work as it was designed to do. The articulation of an effective SONI view may introduce a creative tension between SONI and EirGrid TSOs, which is healthy and natural as it allows any tension between jurisdictional perspectives to play out in joint TSO decision making, and to do so openly in a manner which ensures transparency and accountability to regulators and therefore to consumers.

Policy position on governance changes

- 1.16 In the April 2021 consultation paper, we consulted on four options (described as Options A - D in the Introduction Section below) but stated that our preferred Options were B or C. These two options would each require the establishment of an independent SONI Board, although Option B included the possibility of EirGrid nominating one representative on the SONI Board. Both options also allow SONI to maintain a constructive and clear collaboration with EirGrid for SEM purposes. In addition, they ensure an accountable and transparent process for the delivery of any synergies and related efficiencies which may arise from SONI's position in the EirGrid group. They also allow better alignment of the overall commercial interests of EirGrid group to the interests of Northern Ireland consumers.
- 1.17 However, the starting point for Options B and C differ. Option B presumes that SONI continues to deliver its TSO obligations through EirGrid's integrated management structure. Option C presumes SONI will be a standalone company independent of EirGrid, unless an independent SONI Board can make an evidenced case to UR to permit sharing of resources with EirGrid. Option C therefore puts a framework in place which leaves open future decisions about the level of interdependence between SONI and EirGrid. Depending on the extent of derogations which may be granted by UR under Option C, Options B and C could result in very similar outcomes.
- 1.18 Having considered the responses to the April 2021 consultation, we prefer to consult on the licence modifications designed to implement Option C. The key difference (vis-à-vis Option B) is that Option C puts the evidential burden on SONI to make a robust case for a 'derogation' from the requirement for independence. This is appropriate in circumstances where the present level

⁶ [System-Operator-Agreement.pdf \(soni.ltd.uk\)](https://soni.ltd.uk/System-Operator-Agreement.pdf)

of integration between SONI and EirGrid has not resulted from a conscious choice by an independent SONI Board. It will also allow SONI to identify those functions, systems and processes that need to be integrated to support the SEM, or that it wishes to remain integrated for other reasons that add value to Northern Ireland consumers, and make a case for continuing integration in these areas. The licence conditions proposed do not place any limit on the extent of derogations which SONI may apply for.

- 1.19 A case for 'derogation' would need to evidence and substantiate tangible efficiencies for Northern Ireland consumers and/or result in SONI being demonstrably more effective than would otherwise be the case, whilst maintaining independent SONI decision making and accountability. For example, in relation to single system operations, SONI has already put forward information in Section 7 of its response to substantiate its view that the existing arrangements have delivered benefits to consumers. This would need development into a robust cost benefit analysis but the information illustrates that SONI should be capable of providing a robust case with clear justification for a derogation in this area. It is appropriate that the evidential burden should lie with SONI, which is best placed to bear it, and if the case is as strong as SONI asserts it to be then an independent SONI board should have little difficulty in discharging that burden.
- 1.20 The derogation process in Option C will lead to evidence based outcomes that are the product of a considered request by an independent SONI Board. This should deliver greater accountability, trust and confidence in SONI compared to Option B, where continued delivery through the current EirGrid shared management model may not be evaluated by SONI in the same way.
- 1.21 We also consider that if Option C results in any hidden cross subsidies between the two jurisdictions (Ireland and Northern Ireland) being revealed as better information becomes available, then eliminating these cross subsidies would therefore be a positive outcome of UR's governance review. It is important that both sets of consumers on the island have confidence that they are paying a fair share and regulators need transparent and accountable information to monitor this effectively. For this reason, we consider that a service agreement between EirGrid and SONI will be required where services are being shared, or delivered in common. Having a service agreement between the TSOs on appropriate terms could be a condition placed on any derogation granted to SONI.
- 1.22 We have updated the cost benefit analysis but it remains limited due to the lack of engagement and evidence from SONI and EirGrid throughout this process. However, the costs of the governance changes that we have identified are unlikely to be substantial relative to SONI's overall costs, and in any event are necessary to ensure SONI's governance is fit for purpose. In

this respect, we believe that good and transparent governance is a cost worth paying as it ensures the needs of Northern Ireland consumers are fairly met, and it mitigates the overall risk of future harm.

Licence modification consultation

- 1.23 In order to implement Option C, licence modifications will be required and are proposed in this paper. The modifications would require the establishment of an independent SONI board, a general requirement for independence from EirGrid where a derogation is not in place, a derogation process, and the establishment of a compliance officer and compliance plan.
- 1.24 The proposed timescale for implementation of governance changes proposed in the licence modifications require the independent SONI board to be appointed before any application for derogations can be made by SONI.
- 1.25 We welcome comments on the proposed licence modifications by 21 February at 17:00.

1. Introduction

Purpose of this paper

- 1.1 This paper has two purposes:
- a) It sets out our policy position on the changes needed to SONI TSO following review by UR; and
 - b) It sets out the proposed modifications to SONI TSO's licence that we consider are necessary to implement this policy position. The proposed modifications are set out in Section 7 and Annex 1 of this paper.
- 1.2 UR will take final decisions on governance once we have considered the responses to the consultation on the proposed licence modifications.

Background

- 1.3 In July 2019, we initiated a review of the governance arrangements of the electricity transmission system operator of Northern Ireland, SONI, to ensure that the company is, and will continue to be, fit for purpose in securing the protection of the interests of consumers. This review was signalled during the implementation process for ISEM which confirmed that UR would review the governance of SONI TSO to ensure that it continues to adequately address the requirements of an independent TSO for Northern Ireland.
- 1.4 Our review started with the publication of 'A Call for Evidence' (CfE) seeking views of all interested stakeholders as to any issues that may arise from the current SONI TSO governance arrangements in the light of recent, and likely future industry developments.
- 1.5 Following the analysis of the information received through the CfE and all other relevant information, we considered that the current governance structure of SONI TSO is inadequate to ensure the protection of the interests of Northern Ireland consumers over the long-term. This situation also poses too many risks for those consumers. In order to mitigate these risks and protect the interests of Northern Ireland consumers, we identified four options for consideration and these were published for consultation in April 2021.
- 1.6 The options were designed to ensure that SONI can think and act independently from EirGrid in meeting its licence obligations while also preserving the collaboration between the two TSOs which is required within the SEM. We wish to ensure that SONI is a strong and effective TSO who

works as an equal partner with EirGrid TSO. SONI TSO's governance should support this vision by underpinning the long term success and sustainability of the TSO business.

Re-cap on the findings from the call for evidence

- 1.7 Our CfE has established the nature of SONI's current governance arrangements and the minimal level of autonomy the company has in its relationship with EirGrid. We conclude that the management and oversight of SONI TSO licence responsibilities are effectively discharged by EirGrid, and not by SONI. In addition, the integrated governance structures of the EirGrid group are not designed to enable SONI to act as an equal partner, nor even to be perceived as an equal partner with its own guiding mind. Moreover, there is no robust set of rules to govern collaboration between the TSOs – these are either missing or not working as intended.
- 1.8 Overarching concerns were identified by stakeholders about a lack of transparency and accountability. More specific concerns included the following:
- management and decision making in respect of TSO activities are increasingly performed on an shared management basis, potentially to the detriment of Northern Ireland consumers;
 - objectives of management and staff are predominantly aligned with the shareholder, without sufficient balance in respect of Northern Ireland consumers;
 - plans, policies, cost and benefit allocations are not wholly transparent or approved by an effective SONI Board; and
 - the lack of a System Operator Agreement (SOA) to transparently govern collaboration between the two TSOs.
- 1.9 We are concerned that the above areas could potentially give rise to:
- **inappropriately higher prices for Northern Ireland consumers**, particularly through the obfuscation of information including the increasing levels of inter-company recharges disclosed within the SONI Regulatory Accounts. The price control process to set prices is predominantly based upon historic cost trends, reflecting challenges in finding a robust and efficient comparator for SONI. Hence, there is a concern over the absence of any adequate shareholder incentive to make cost information transparent to the regulator compounded by the lack of an effective SONI management and Board to oversee and approve those costs;

- **misalignment of Northern Ireland policy and the SONI approach to network development** through a ‘one-size fits all’ approach to investment and operational decision-making, potentially agreed in a shared management model and decisions therefore risk being taken for the benefit of shareholders and not Northern Ireland consumers specifically. This also includes the risk that Northern Ireland network and user differences are not sufficiently encapsulated within decision-making; and
- **barriers to competition** whereby, again, the shared management and operating model employed across EirGrid and SONI risks a ‘one-size fits all approach’ which may not properly account for differences in developing and operating the Northern Ireland network. This is significant - both in the procurement of system services, and system analysis and planning.

1.10 Many of the concerns expressed by stakeholders resulted from the fact that the two TSO Licensees are operated under a shared management and resource model compounded by the lack of transparency in key areas. These concerns would not exist if the governance of the two licensed entities was sufficiently separate.

Re-cap on governance options

- 1.11 We consider that the current governance structure of SONI TSO is inadequate to ensure the protection of the interests of Northern Ireland consumers over the long-term. Consequently, we identified four options for consideration and consultation; these are outlined in the figure below and explained in greater detail in Section 6 of the April 2021 consultation paper. The options are based upon best practice initiatives employed elsewhere by regulators to remedy similar concerns. They will also ensure SONI meets our vision for good governance, including by introducing protections into the SONI TSO licence in a manner that preserves the collaboration between the two TSOs which is required within the SEM.
- 1.12 In the April 2021 consultation, our provisional preferred options were B and C. Following our review of the responses to that consultation, this paper outlines why we consider that a slightly modified version of Option C should be implemented. See from Para. 6.21 below for an outline of the changes made.
- 1.13 In adopting Option C, UR has reflected on the unique position of SONI and strengthened governance measures to increase consumer to trust and confidence. This reflects the fact that SONI is in a different position - it is owned by another electricity system operator located in a different

jurisdiction who also acts as TSO in that jurisdiction. By way of example, an equivalent situation would be if the parent company of National Grid (a GB TSO) were to be a TSO operating in an EU member state. None of the other regulators have had to grapple with this particular ownership structure in circumstances where the parent company has effectively integrated two TSOs in different jurisdictions into one de facto TSO. Therefore GB precedents, while helpful, do not quite fit the Northern Ireland context.

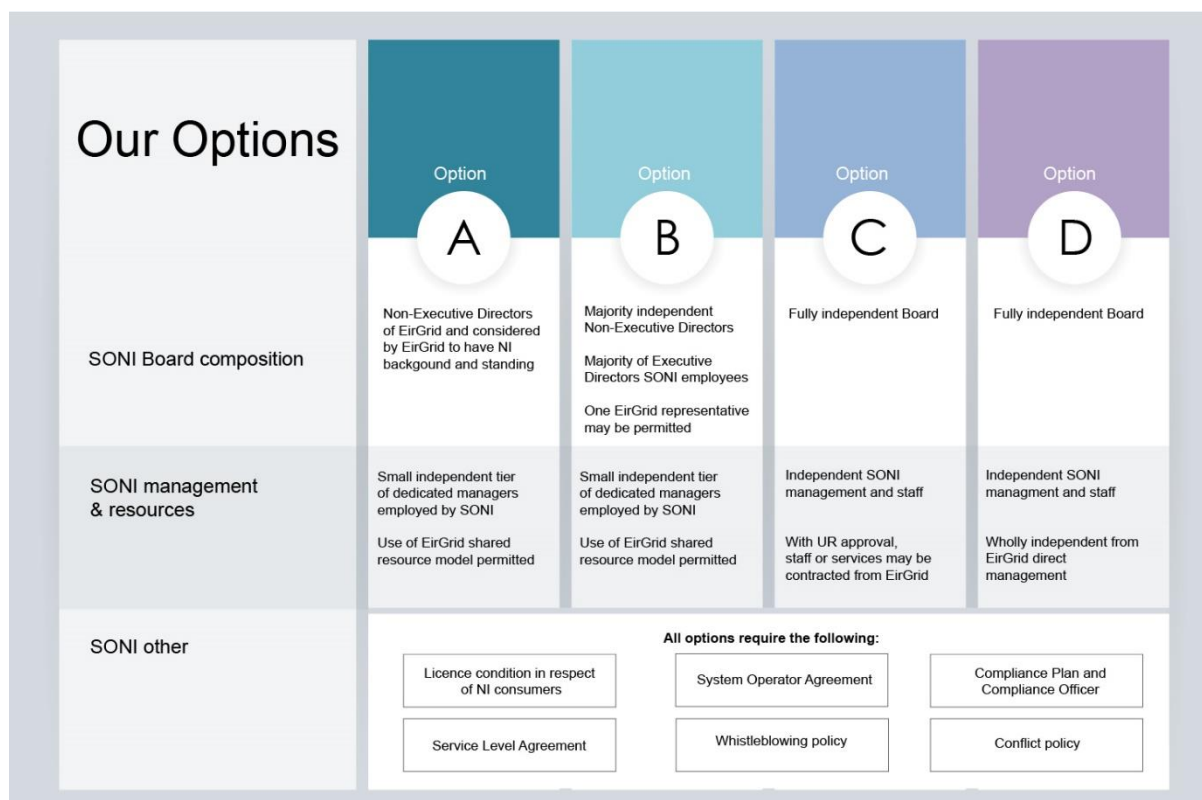
- 1.14 We have no issue with SONI's ownership structure provided that we are able to regulate SONI as a standalone TSO. In this regard, collaboration between the two TSOs must be visible to UR. A shift is needed from integration back towards two independent TSOs collaborating as the regulatory framework requires. Therefore, SONI's effective independence from its parent is critical to effective regulation by UR. Governance changes in the form of Option C are proportionate to achieve these aims. Our preference for Option C notwithstanding, other measures can be considered in future, such as those encapsulated in Option D.
- 1.15 We will keep any new governance obligations under review, and SONI will be required to demonstrate its compliance with any new obligations, and that it is an effective partner to EirGrid TSO in all-island TSO decision making. A review of the effectiveness of the new governance arrangements will be conducted after a suitable period has passed following implementation of all new governance measures.

Structure of this document

- 1.16 The structure of this document is as follows:
1. Introduction;
 2. Summary of responses to April consultation questions;
 3. Assessment of key points in the SONI/EirGrid responses;
 4. Review of remaining aspects of the SONI response;
 5. Review of remaining aspects of the EirGrid response;
 6. Policy position on SONI TSO governance changes;
 7. Proposed licence modifications to give effect to governance changes;
 8. Responding to the licence modification consultation and next steps;
 9. Annex 1: Text of proposed licence conditions to implement governance changes;

10. Annex 2: Art. 14(2) licence modification notice.

Figure 1: Options from the April 2021 consultation paper



2. Summary of responses to consultation questions

Introduction

- 2.1 Our consultation paper set out a number of questions where we sought feedback. We received eighteen (18) responses to this consultation of which four were marked as confidential. Two were from SONI and EirGrid. UR did not consider that most of their content was genuinely confidential and, subject to some limited redactions, has not treated them as such. Two from other respondents appeared to be more genuinely confidential. The respondents declined to waive confidentiality. Accordingly, since UR cannot publish them or refer to their content in the rationale for its decision-making, it has decided that it cannot take them into account and they have not shaped the policies which are now being consulted upon. The extent to which these responses directly address the questions we raised varies by response, with a number of responses making separate comments.
- 2.2 The following paragraphs summarise the key points arising from the responses received covering all public responses. In the main, this summary is organised around the questions raised in the consultation paper. Where significant comments have been made that do not fit the specific questions, these have also been summarised separately. The summary below includes the response from EirGrid as it responded to the questions raised in the consultation paper. The SONI response did not address the consultation questions.
- 2.3 Our discussion of these responses is organised as follows:
- Response by question;
 - Other comments relating to potential solutions; and
 - Other comments on the process that we should take in further progressing this.

Responses to Questions

- 2.4 Our April 2021 consultation paper set out thirteen specific questions relating to:
- Our consideration of the current situation;
 - High-level options for the governance of SONI; and

- Further remedies that could be applied to improve the transparency and governance of SONI.

2.5 These questions, and their associated responses, are summarised in the following paragraphs.

Question 1: Vision of Good Governance

2.6 Our consultation paper set out a vision for good governance. In summary, this set out a vision where:

“[...] SONI TSO is delivering for NI consumers its governance should encourage and enable it to:

- *Play a proactive role in the implementation of NI government policy, e.g. energy transition;*
- *Provide clear, accurate, and timely information for the regulator and other stakeholders as appropriate; and*
- *Ensure compliance with licence conditions and other legal obligations.*

3.10 [...] SONI TSO’s governance should enable:

- *Both TSOs to work together collaboratively but as equal partners representing their own consumers;*
- *Collaboration on the basis of a formal agreement with clear rules;*
- *Mechanisms to resolve disputes between the TSOs; and*
- *Decision making which records how the balance between the interests of the two different sets of customers had been struck, in particular where they are not aligned.”*

2.7 Our consultation paper then provided an initial analysis of how SONI matched this vision, noting:

“The information provided by SONI indicates that within the EirGrid Group, the model applicable to SONI is highly centralised, characterised by a strong plc Board, a limited Board at subsidiary level, a range of corporate policies applicable to subsidiaries, and pooling of subsidiary resources in a shared resource model reporting upwards to the EirGrid plc Board.

As a consequence management and oversight of SONI TSO licence responsibilities are effectively discharged by EirGrid plc and not by SONI Ltd. In addition, the integrated governance structures of the EirGrid group do not seem designed to enable SONI to act as an equal partner nor even to be perceived as an equal partner with a mind of its own. In addition there is no robust set of rules to govern collaboration between the TSOs. These, are either missing or not working as set out above. Overall, therefore we consider that SONI’s present governance arrangements do not meet the vision for good governance set out above.”

2.8 We then asked:

Do you agree with our vision for good governance and our assessment of whether SONI meets this vision?

2.9 All of the responses that expressed an opinion agreed with our vision of

good governance – this being eight (8) of the responses considered. Further comments made in this area include:

- One (1) respondent commented that, there is, as a minimum, a risk that SONI could be subject to unconscious bias which may not always be in the interest of Northern Ireland consumers and stated a lack of confidence that SONI are viewed as an equal partner with EirGrid. Therefore the governance model must have strong safeguards to ensure transparency, independence, and equality.
- One (1) respondent commented that effectively, SONI has no control of TSO decisions for Northern Ireland at any level.
- One (1) respondent stated an opinion that SONI's current governance structures already provide an appropriate framework for this good governance.

Question 2: Effectiveness of existing licence

- 2.10 Our consultation paper set out the existing measures in SONI's licence that may address the issues raised in the Call for Evidence.⁷We then asked:

Do you agree with our analysis of the effectiveness of the existing licence in mitigating the majority of concerns raised within the CfE?

- 2.11 Of those respondents that expressed an opinion:

- Five (5) agreed with our analysis of the effectiveness of the existing SONI licence; and
- One (1) disagreed, suggesting that as no actual harm had been detected and there was not an issue.

- 2.12 Whilst agreeing with the analysis, a number of parties noted room for improvement, notably:

- That the regulatory framework relies on the following two factors (and questioning whether either can actually be relied on or have happened in the past):
 - SONI compliance; and
 - UR enforcing that framework – including being able to detect any regulatory breaches, and apply remedies to pull SONI in line.

⁷ <https://www.uregni.gov.uk/files/uregni/media-files/20190709%20SONI%20Governance%20A%20Call%20for%20Evidence.pdf>

Question 3: Assessment of Residual potential for Harm

2.13 Our consultation paper set out three potential areas of harm – and highlighted a risk that harm could occur in these areas without changes to the governance and wider regulation of SONI. The three areas highlighted were:

- Higher Prices;
- Ability to Align Policy; and
- Compromised Competition.

2.14 We then asked the following in respect of these potential areas of harm:

Have we adequately assessed the residual potential for harm given the current drafting of the Licence and statutory duties?

2.15 Of those responses that expressed an opinion, most supported the analysis in this area, and agreed there was a risk of future harm under the current governance and regulatory framework. A breakdown of these responses is shown below:

	Area of Potential Harm		
	Higher prices	Policy Alignment	Competition
Agree	5	5	3
Don't Agree	2	2	2
No Opinion	8	8	10

2.16 Additional comments made relevant to this question include:

- One (1) respondent noted an increase in the impact of transmission constraints in Northern Ireland, leading to a loss of ~£25m/year revenue for Northern Ireland wind generators (as their output is curtailed). Whilst not stated by this respondent, such an increase in constraint and curtailment costs could suggest sub-optimal investment in the transmission network – where such investment plans are the responsibility (under licence) of SONI.
- One (1) respondent reported experience of a generator in Northern Ireland being paid (as a result of group⁸ policy) for a service that is not needed in Northern Ireland.

⁸ Given the context, it is implied that that “group” refers to the Eirgrid Group; however, this is not stated.

- One (1) respondent believed that the proposals to reform SONI's governance and regulation could, themselves, lead to harm. This response noted:
 - That costs (and hence prices) could increase if SONI management is prevented from accessing a resource pool that is shared with EirGrid.
 - That significant progress has been made towards low-carbon policy objectives with the current arrangements for the regulation and governance of SONI.
- One (1) respondent noted that “harm” does not just arise from cross charging and transparency. This respondent highlighted that greater impacts come if policies (for SONI's activities in Northern Ireland) are sub-optimal.
- One (1) respondent noted that SONI's shareholder (EirGrid) has an existing licence requirement to “protect the interests of consumers of electricity in Northern Ireland and Ireland”, and further questioned whether there was any scope for harm arising from the governance of SONI.

Question 4: Other committees or working groups?

- 2.17 Our consultation paper set out a number of committees and working groups that we have discovered form part of the governance of SONI within Eirgrid. Our interactions with SONI were such that we were not confident that our knowledge of these was complete, leading us to ask:

Are there other committees or working groups not identified in the paper that readers are aware, that span both TSOs and that should be considered as part of any governance proposals?

- 2.18 There were relatively few responses to this question. The key such response suggesting we looked at EirGrid's working groups to prepare for the Low Carbon Economy in Ireland⁹.

Question 5: Options for SONI Governance

- 2.19 Section 6 of the Consultation Paper sets out a number of options for the future governance of SONI looking at each of:
- Independence of the SONI Board;
 - SONI TSO Management Independence; and

⁹ <https://www.eirgridgroup.com/how-the-grid-works/ds3-programme/flextech-initiative/>

- Other Governance Changes.

2.20 Each of these areas are analysed, including against the principles of good governance as set out in the UK Corporate Governance Code (UKCGC), leading to the development of four options. We then asked:

Do you agree with the areas for discussion on which we have focused and do you agree with the consultation options we have proposed in respect of the creating an effective SONI Board? If so, which of the four options do you favour?

- **Option A: A SONI Board with EirGrid NEDs** which draws from the Non-Executive Directors of EirGrid plc considered by EirGrid to have 'NI background and standing' but which is supported by a small independent tier of dedicated managers specified within the Licence who oversee delivery of SONI licence obligations via the shared resource model with EirGrid.³²
- **Option B: An Independent SONI Board**, a fully independent board for SONI as defined by UKCGC and which is supported by a small independent tier of dedicated managers specified within the Licence who oversee delivery of SONI licence obligations via the shared resource model with EirGrid.
- **Option C: Standalone SONI within EirGrid Group (with provision for exceptions)** an independent board for SONI which is supported by a dedicated SONI management and staff team who deliver SONI licence obligations independently of EirGrid's shared resource model. With the approval of the UR some of these staff or services may be contracted from EirGrid and managed similar to third-party contracts with defined contracts, SLAs etc.
- **Option D: Standalone SONI within EirGrid Group (no exceptions)** a fully independent board for SONI which is supported by a dedicated SONI management and staff team who deliver SONI licence obligations independently of EirGrid's shared resource model.

2.21 In general, the non-confidential responses were supportive of our analysis in this area, with many expressing preference for one or more of the options as follows:

Option	Number of respondents that expressed an opinion	
	For	Against
A – SONI Board with EirGrid NEDs	1	3
B – Independent SONI Board	4	3
C – Standalone SONI with regulated access to shared resources	6	3
D – Standalone SONI	4	2

2.22 Other comments made in this area include:

- One (1) respondent (who supported Option C) stated that sharing of staff and/or service resources should only be undertaken with UR approval in order to increase transparency regarding resource allocation and provide assurance to Northern Ireland consumers that

resources are being correctly prioritised, deployed and managed in an effective and efficient way.

- One (1) respondent stated an opinion that EirGrid¹⁰ had demonstrated a lack of transparency “over and over”.

This respondent argues this as a case for Option D. We assume this is based on the assumption that (without management changes) a lack of transparency will continue even with explicit measures to require it, or that transparency will not extend beyond that explicitly required – and so continue to undermine trust in SONI.

- Two (2) respondents suggested that the loss of shared resourcing (between SONI and EirGrid) could undermine benefits, and therefore argued against Options B and C
- One (1) respondent argued that Options B, C and D would provide UR with greater oversight of SONI than that afforded to its shareholder.
- One (1) respondent argued that no change is necessary, as the issues of SONI independence was addressed by the SEM Committee at the time of the EirGrid’s acquisition of SONI.

Question 6: Need for the UKCGC and Independence

- 2.23 Question 6 builds on the analysis set out in Section 6 of the Consultation Paper, looking at specific measures to improve the independence, transparency and governance of SONI.

Irrespective of the option chosen, do you agree with our proposals in respect of the SONI Board that:

- a) There should be a non-executive Chair of the SONI Board?*
- b) The SONI MD should report to the SONI Board and not to the EirGrid CEO?*
- c) The SONI TSO Licence should be strengthened to explicitly protect the interests of NI consumers and balance their interests with those of other stakeholders, and require the SONI TSO to maintain managerial and operational independence as appropriate from EirGrid?*
- d) The SONI TSO Licence should also specify the scope and duties of the SONI Board (‘matters reserved’) and do you agree with those proposed duties?*
- e) The UKCGC makes reference to the need for specific sub-committees in exercising good governance. Should these sub-committees be adopted for the SONI Board and should an additional sub-committee be required to*

¹⁰ The respondent mentions EirGrid; however, Utility Regulator’s relationship is with SONI. Given the context of the comment and response, this respondent believes SONI has been largely subsumed in EirGrid such that EirGrid and SONI are largely synonymous names.

discuss and approve NI network policy, development and investment plans and proposals?

- 2.24 The respondents were generally supportive of our analysis before commenting further on each of the specific areas (a to e) set out above. These responses to the specific areas are summarised below. For this summary, sub-question c) has been split into two parts – as some respondents supported obligations to protect Northern Ireland customers, whilst not supporting requirements for managerial and operational independence.

Option	Number of respondents that expressed an opinion	
	For	Against
a) – Non-Executive Chair	5	0
b) – SONI MD to report to SONI Board	5	0
c1) – Licence obligation to protect Northern Ireland customers	4	1
c2) – Licence to require managerial & operational independence	3	2
d) – Licence to specify matters reserved	4	1
e) – Require specific sub-committees	3	2

b) SONI MD to report to SONI Board

- 2.25 Those who expressed an opinion were universally supportive of the need for the SONI MD to report to the SONI Board; however, two respondents suggested that the SONI MD should also have (at least some) reporting through to the EirGrid CEO:

- One suggested this should be a “dotted line” report to the EirGrid CEO, with the solid line relationship being with the SONI Board.
- One suggested that the accountability to the EirGrid CEO should be for “conduct”, with the accountability to the SONI Board being for delivery of the SONI licence.

- 2.26 In addition, one respondent who did not express an opinion on the merits or requiring a non-executive chair, noted that the current chair of the SONI board is a non-executive, and also the deputy-chair of the EirGrid board.

c1) Licence obligation to protect interest of Northern Ireland consumers.

- 2.27 One stakeholder who supported the requirement for this obligation suggested that the SONI Board should also consider the needs of other stakeholders in the industry, and of its staff.

c2) require managerial and operational independence.

2.28 Where additional views were stated for this area, they were polarised:

- Two (2) respondents expressed a strong opinion that such separation was essential for SONI to be trusted.
- One (1) respondent expressed a strong concern that this would undermine the benefits arising from co-ownership of EirGrid and SONI – potentially increasing costs for consumers.
- A further respondent stated that the extent to which SONI uses shared resources should be a matter for the SONI Board. This respondent is supportive of the need for an independent SONI Board (specifically “Option B”).

d) Matters Reserved

2.29 Additional views stated in this area are as follows:

- One (1) respondent suggested they would support an independent SONI board having the vires to determine the matters that should be reserved to that Board but that it was not appropriate to specify these in the licence.
- One (1) respondent expressed support for revisions to SONI’s TSO license to ensure that a much broader range of issues become fully reserved matters for the SONI Board.
- A further respondent stated they believed it essential that the SONI Board had the powers to do its job – including the matters reserved as stated in the consultation paper.

e) Require specific sub-committees.

2.30 Additional views for this were varied:

- One (1) respondent suggested a need for a committee to focus on Northern Ireland grid development and investment arising from the energy strategy. This respondent also suggests two further committees should be mandated for each of:
 - Audit and Risk assurance; and
 - Nominations and Remuneration.
- Two (2) respondents suggested that the SONI Board should be free (independent of EirGrid) to appoint its own committees as required.

- One (1) respondent, whilst agreeing that the SONI Board should be free to appoint its own committees, noted an opinion that (as a subsidiary company) it may not be appropriate for these committees to exactly match those suggested by the UK Corporate Governance Code.

Question 7: Who should appoint the Board?

- 2.31 Section 6 of our consultation paper explained that a company's board is normally appointed by that company's shareholders to run that company on their behalf. We then asked:

In Options B, C and D, should the SONI Board no longer be appointed by shareholders? If so, who should appoint the Board?

- 2.32 Non-confidential response to this question split into three broad categories:

- **Public:** Three (3) respondents stated a view that the board should be appointed publicly.
- **Shareholder:** Four (4) respondents stated that shareholders should be responsible for Board Appointments. In three of these cases, the respondents suggested additional safeguards to ensure the suitability of board appointees. These safeguards included:
 - Independent oversight, with UR involvement being required for knowledge of the sector;
 - A requirement for UR to ratify appointments; and
 - A requirement for those appointed to be aware of the governance arrangements.

- 2.33 Additional comments include:

- One respondent argued for a public appointments process stating a belief that the current appointments process for appointing EirGrid directors leads to a definite conflict of interest between Ireland and Northern Ireland. The basis for this respondent's view relates to:
 - NewERA being the Irish body that appoints EirGrid Directors; and
 - NewERA's statutory role being to attract inward investment to Ireland.
- One respondent suggested the need for a worker's representative on the board.
- One respondent stating that the appointment of the Board by its shareholder was an essential part of ensuring that "the company's

purpose, values and strategy¹¹” are communicated to all subsidiary companies

Question 8: Proposals for SONI Management and Resources

2.34 The options set out in Section 6 of the consultation paper vary in their requirements for how the SONI management and resources are separated from those of EirGrid, with four broad options:

- Option A: SONI Dedicated team sufficient to support and inform an independent SONI MD. This would include coverage of each of the following
 - Financial planning;
 - Regulation, Strategy & Stakeholder Management;
 - Engineering Assessment;
 - Network Development;
 - Planning;
 - Operations; and
 - Procurement.
- Option B – As Option A, plus any additional resources SONI Board deems it requires. In each case, resources to be appointed by the SONI Board.
- Option C: All resources are dedicated to SONI. SONI can sub-contract work to others in the EirGrid group if approved by UR.
- Option D: All resources are dedicated to SONI.

2.35 In respect of the above, the consultation paper asked:

In regard to each option proposed, do you agree with our proposals in respect of SONI management and resources?

2.36 The preferences of respondents in this area mirrored their preferences for the specific options (A to D) as discussed for Question 5 above. Additional points made in this area include:

- Two (2) respondents stated that the appropriate resourcing model is best determined by an effective (SONI) Board with a full mandate. One of these respondent (amongst others) states that resource sharing is important for economies of scale – so should not be precluded.

¹¹ The relevant respondents cross reference this quoted text to the UK Corporate Governance Code, “Purpose B.”

- One (1) respondent stated an opposition to any restriction on the shared staffing model on the grounds of cost.

Question 9: Do you agree with the other remedies suggested?

- 2.37 Our consultation paper set out a number of additional measures that could improve the governance, accountability and transparency of SONI. These measures are additional to those relating to the form of the SONI Board, and any restrictions on the resources SONI is able to deploy.

Irrespective of the option chosen, do you agree with our proposals in respect of other governance arrangements that:

- *The transparency between the operations of EirGrid and SONI TSOs could be sufficiently improved through a SOA and its associated governance, or are there further proposals you would make?*
- *Whilst not a public document for commercial reasons, do you believe it appropriate for UR to require SONI TSO to draw up and maintain an SLA to provide greater transparency and accountability for the services provided from across the EirGrid group to SONI TSO or from SONI TSO to the EirGrid Group?*
- *Do you believe that the current EirGrid whistleblowing policy is effective to the extent it is applied to SONI or should SONI have its own published policy with suitable escalation routes to the SONI Board?*
- *Do you agree with the need for SONI to publish a policy in respect of resolving any conflicts of interest that may arise, either between SONI and EirGrid TSOs, or between the interests of consumers within Republic of Ireland and NI?*
- *Do you agree with our proposals for a specific Compliance Plan in respect of the implementation of a more independent board and management, including an annual review by an independent Compliance Officer?*
- *Do you believe there is a need to amend the SONI TSO licence to require access on a non-discriminatory basis to UK companies who provide services to SONI through EirGrid joint procurement?*

- 2.38 These non-confidential responses to the specific areas are summarised below. For this summary, sub-question c) has been split into two parts – as some respondents supported obligations to protect Northern Ireland customers, whilst not supporting requirements for managerial and operational independence.

Sub-question	Number of respondents that expressed an opinion	
	For	Against
a) – SOA to improve transparency	6	0
b) – SLA to improve transparency	6	0
c) – SONI whistleblowing escalating to SONI Board	4	0
d)– SONI policy for Eirgrid/SONI disputes	6	0
e) – SONI compliance plan and officer	3	2

f) – UK Companies access to joint procurement	2	2
---	---	---

2.39 Additional comments were raised against some of these sub-questions (a-f) as summarised below.

a. System Operator Agreement (SOA) to improve transparency

2.40 Additional views for this include:

- One (1) of the respondents that supported the need for an SOA provided further evidence on the extent to which SO requirements have been ignored by EirGrid historically. The SOA requires a number of subcommittees to operate across both EirGrid and SONI. This respondent notes their experience that those committees never met.
- Six (6) respondents noted the benefits of transparency, with some highlighting the importance of this for a regulated monopoly. Five (5) of those respondents further commented that the SOA would support that required transparency.
- One (1) respondent claimed that an SOA is already in place, but question whether there is any conflict of interest to be managed under that SOA.

b. Service Level Agreement (SLA) to support transparency

2.41 As noted for the SOA (above) six (6) respondents noted the benefits of transparency.

- One (1) respondent expressed the opinion that a SLA was essential to the transparency required for a regulated monopoly.
- One (1) respondent emphasised that the SLA should be approved by UR, and have clear services that can be measured.

c. Whistle Blowing

2.42 Additional comments for this area are as follows:

- One (1) respondent noted the risks to an employee that uses a whistle blowing policy should concerns be escalated to the EirGrid Board. These concerns related to the extent to which legislation in Ireland provided statutory protection to whistle blowers compared to Northern Ireland. These concerns notwithstanding, that respondent supported the need for a SONI whistle blowing policy.

- One (1) respondent noted that SONI should publish its own whistleblowing policy.
- One (1) respondent noted that the content of the policy should be a matter to be determined and approved by the SONI Board.

d. SONI/Eirgrid conflict policy

2.43 Additional comments in this area are as follows

- One (1) respondent stated that this should form part of the SOA between EirGrid and SONI.
- One (1) respondent claimed a conflict policy already forms part of the SOA between EirGrid and SONI.

e. SONI compliance plan and officer

2.44 Additional comments in this area are as follows:

- One (1) respondent stated a concern that this would create costs.
- One (1) respondent noted that SONI is already required to have a compliance officer covering a number of licence conditions, and did not see the value of an independent compliance officer.

f. Procurement from UK Companies

2.45 Additional comments in this area include:

- Further information was provided by one (1) of the respondents that support the need for UK companies to be considered in the procurement of “things” that would ultimately be used by SONI. This information suggested how the requirement could be delivered – by requiring that such procurement be published through an existing UK procurement portal.
- One (1) respondent stated this requirement should not be captured in the SONI licence, without commenting on whether such a requirement as legitimate.
- One (1) respondent argued there is no need for such an obligation, as they state there is currently no such discrimination.

Question 10: Views on analysis of costs and benefits.

- 2.46 Our consultation paper included an analysis of the costs and benefits of the options as set out in Section 6 of that paper. In respect of this analysis, we asked:

Do you have any views on our analysis of the cost and benefits of the various options?

- 2.47 The nature of this question is not one that leads to a “yes/no” or “for/against” answer; however, a number of comments made by non-confidential respondents are relevant to this question. Notably:

- **Resourcing Trade Off:** A number of respondents stated that the costs and benefits needed to consider any increased staffing costs that may arise from governance changes.
- **No significant cost rise:** One respondent stated that the options proposed set out in the consultation paper would not give rise to significant cost rises.
- **Question EirGrid Analysis:** One respondent noted that they did not believe claims for cost increases were credible.

- 2.48 Additionally, one (1) of the respondents claimed that the split would give rise to significant costs based on an assumption that any change to the governance of SONI would automatically mean completely separate operations and markets for Northern Ireland and Ireland. The increase costs claimed then include:

- **Increased generation capacity in Northern Ireland:** That Northern Ireland would no longer be able to rely on imports of electricity from Ireland, so would need more generation capacity to meet security of supply.
- **Increased reserves in Northern Ireland:** That Northern Ireland would no longer be able to assume that flows between Northern Ireland and Ireland would vary as part of offsetting uncontrollable variations in the demand of Northern Ireland customers and the output of Northern Ireland generation. This would increase the level of generation that would need to be held in reserve in Northern Ireland.
- **Increased wholesale energy costs:** That the wholesale energy costs in Northern Ireland would rise. This reflects that, under current market conditions, some of the generation producing electricity in Northern Ireland is (due to transmission constraints) high-cost relative to that required for the island as a whole.

- **Reduced wind export:** That operating the Northern Ireland system on a stand-alone basis would reduce the amount of wind power that could be exported to GB.

Question 11: Seeks response from SONI on the synergy benefits under the current model

2.49 Our consultation paper asked the following question:

We ask SONI to provide any information available quantifying cost efficiencies and synergies which it says arise from the current governance structure

2.50 No non-confidential respondents have provided this data; however:

- One (1) respondent stated it was reasonable for these benefits to be understood by EirGrid Group and the regulator, and expressed frustration that information had not been provided;
- One (1) respondent stated a belief that there is a prima facie case that sharing management resources would lead to cost savings. This respondent acknowledged, however, that this may not be consistent with appropriate governance.
- One (1) respondent stated there were clear benefits in terms of shared services, pooled experience and all-island system services.

Question 12: Do you agree the proposals have a limited impact on the cost of debt

2.51 Our consultation paper asked the following question:

Do you agree that none of our proposed options for governance changes would not give rise to a material incremental impact on the TSO cost of debt, above that which has been allowed for under the 2020-25 TSO price control decision?

2.52 This question was considered by 4 of the respondents:

- Three (3) of the respondents agreed that the proposals should not have a significant impact on the cost of debt.
- One (1) respondent suggested that SONI's costs of debt would increase if:
 - Eirgrid's oversight of SONI was restricted; and
 - SONI's financials were excluded from EirGrid's balance sheet.

Question 13: Does a future review of these proposals impact your views?

2.53 Our consultation paper asked the following question:

Does your view change on the above issues given our proposal to undertake a formal review of the effectiveness of any new proposals two years after implementation?

2.54 Four (4) of the responses expressed an opinion on the need for such a review:

- One (1) stated that a future review was consistent with a smaller intervention now, with further interventions potentially arising from future review.
- Three (3) further respondents supported the need for a subsequent review as good practice.

2.55 In addition, one of the respondents stated a view that any such review should be carried out by the SEM Committee. This respondent did not express an opinion on whether such a review was required.

Other comments

2.56 In addition to providing comments on the specific questions in the consultation paper, non-confidential respondents also commented on areas that do not align with those questions. These comments relate to two areas:

- Enhancements and/or additions to the options and remedies in the consultation paper; and
- Suggestions for how this process should progress to decision.

Enhancements and Additions to the Options and Remedies

2.57 A number of responses made comments on how the options and remedies set out in the consultation paper should be enhanced. Notable comments include:

- One respondent noted that, as a natural monopoly, SONI should be subject to higher requirements for governance and oversight than are expected of others (e.g. with the governance expectations of “others” being the UK Corporate Governance Code).
- One respondent suggested that the regulation and regulatory reporting required (by UR) of SONI should be aligned with that required (by CRU) for EirGrid.

- One respondent suggested that SONI should be subject to Key Performance Indicators (KPIs) relating to renewable penetration, system emissions and dispatch down.¹²

Process suggestions

2.58 Relevant comments in this area are:

- One respondent suggested that the SEM Committee should be consulted on any proposals; and
- It was suggested that the final proposals should include an analysis of any cost impacts on SONI's cost base, and how this would impact the energy bills of different customer types in Northern Ireland.

¹² We take this to be the impact of transmission constraints, where transmission capacity is insufficient to carry the electricity from some “cheap” generators to the point of consumption, meaning they need to be replaced by more expensive generators located closer to that consumption.

3. Assessment of key points in EirGrid/SONI responses

- 3.1 EirGrid's and SONI's responses contain a number of common lines of argument. These are reviewed in this section.

EirGrid/SONI key common arguments

- 3.2 EirGrid and SONI do not support any of the options proposed by UR and prefer the status quo, in governance terms, to continue. They assert that:

- UR is proceeding without evidence of harm;
- harm would be caused by any of the four options;
- existing arrangements deliver benefits; and
- these matters are a SEM matter and UR is therefore acting without legal basis (acting ultra vires).

- 3.3 The preferred governance 'status quo' is not depicted by EirGrid/SONI but the current governance arrangements involve integrated decision making for all SONI TSO functions at group level and a pooling of SONI resources with those of EirGrid. SONI and EirGrid argue that these integrated arrangements deliver benefits for consumers in Ireland and Northern Ireland, which would be put at risk by UR's proposals.

EirGrid/SONI 'All-island approach'

- 3.4 EirGrid/SONI present themselves as practising an 'all-island approach' which they argue is consistent with SEMC policy and beneficial to Irish and Northern Ireland consumers. They present their 'all-island approach' as antithetical to a 'jurisdictional approach,' this being the label EirGrid/SONI use to characterise the governance proposals advocated by UR. EirGrid/SONI view a 'jurisdictional approach' as harmful to Irish and Northern Ireland consumers. EirGrid/SONI characterise all UR options as applying a 'jurisdictional approach.'
- 3.5 These two labels are nowhere clearly defined but we infer that in a 'jurisdictional approach':
- SONI represents only Northern Ireland consumers;¹³

¹³ See Paras. 1.20 and 2.17 of the SONI consultation response. See also Paras 6 and 52 of the EirGrid response which reject the idea that 'SONI should seek to protect Northern Ireland consumers'

- Therefore SONI moves away from an all-island basis for doing things;
- Consequently, this undermines existing relationships with EirGrid and creates tensions between the two TSOs. This has the effect of promoting discord and divergence rather than collaboration and cooperation between the two TSOs; and
- ‘divergence’ in policy and operating practices and materially impacts the SEM increasing costs for consumers on the island.

3.6 We also infer that in an ‘all-island approach:’

- All-island TSO functions are delivered in an integrated decision making structure to the benefit of all consumers across the island;
- there are no natural tensions between the two TSOs or between the interests of Northern Ireland and Irish consumers, i.e. the interests of Northern Ireland and Irish consumers are the same;
- If SONI is obliged to represent Northern Ireland consumers (as envisaged in all of UR’s options) then the overall welfare of consumers on the island will be significantly harmed.

Jurisdictional approach leads to ‘divergence’ and is therefore a SEM matter

3.7 EirGrid/SONI allege that a ‘jurisdictional approach’ is harmful because a focus on Northern Ireland consumers would lead to action by SONI (matched by similar action by EirGrid) resulting in ‘divergence’ in policy and operating practices of the TSOs, thereby undermining the SEM. For example:

- in relation to system operation if SONI was focussed on its own consumers, SONI would be required to take certain steps to ensure it could act unilaterally from EirGrid, for example make an independent system assessment and would assume EirGrid would do the same, redesign of control centre tools and their underpinning algorithms, and ensure SONI could unilaterally adhere to its own operational standards without drawing on the capability of EirGrid;¹⁴
- diverging operating policies may cause the all-island balancing market to split into two separate balancing arrangements;

interests and EirGrid should seek to protect Ireland consumers’ interests.’

¹⁴ See Para 6.4 and 6.5 of the SONI response

- in relation to the capacity market the two TSOs would be more cautious in their assumptions about cross-jurisdictional support. This would result in higher jurisdictional demand forecasts, pessimistic forecasts of generator outage performance etc., resulting overall in a greater all-island requirement being used to set the auction clearing price and increased LCC requirements thus increasing the costs of running the all-island capacity market.¹⁵
- 3.8 They state that these outcomes would materially impact the SEM and increase costs to the detriment of consumers in Ireland and Northern Ireland. Therefore they contend that SONI TSO governance is a SEM matter.
- 3.9 The ‘all-island approach’ is a construct of EirGrid/SONI based on EirGrid’s preference for full integration of SONI and EirGrid TSOs. It is the antithesis of two TSOs collaborating for SEM purposes as equal partners. Clearly the more integrated the two TSOs are, the more difficult it is for SONI to effectively articulate an Northern Ireland perspective either on all-island matters or anything else.
- 3.10 EirGrid/SONI’s ‘jurisdictional approach’ is likewise a construct designed to depict UR’s proposals for governance changes as promoting discord and divergence rather than collaboration and cooperation between SONI and EirGrid TSOs.
- 3.11 In reality the legal framework requires collaboration and cooperation between two TSOs to deliver all-island functions and benefits. UR’s governance proposals do not alter the all-island obligations placed on EirGrid and SONI. They will, however, ensure transparency and accountability in how SONI discharges these obligations.
- 3.12 For the reasons set out below we reject EirGrid and SONI’s presentation of our options as a ‘jurisdictional approach’ – this construct is a misconception of both the SEM arrangements and the options UR consulted on.

UR Response: Thesis of ‘divergence’ in SEM is fatally flawed

- 3.13 EirGrid/SONI asserts that the governance changes proposed by UR will lead both SONI and EirGrid to act in a manner which will result in ‘divergence’ in the policy and operating practices of the TSOs, thereby undermining the SEM. This view appears premised on an expectation that SONI will act irrationally if allowed a greater level of independence from EirGrid.
- 3.14 We do not agree that ‘divergence’ as depicted by SONI/EirGrid will result from governance changes. In the SEM the interests of Northern Ireland

¹⁵ See Paras 6.30-6.31 of the SONI response

consumers are aligned sufficiently to those of Irish consumers such that the overall welfare of consumers on the island can be maximised by the successful implementation of the SEM. It follows that SONI TSO, acting in the interests of Northern Ireland consumers, should seek to collaborate with EirGrid TSO to maximise the benefits of the SEM for Northern Ireland consumers. EirGrid would do likewise for Irish consumers.

- 3.15 We expect that SONI will, now and once governance changes are made, seek to collaborate with EirGrid to maximise the benefit to Northern Ireland consumers that could be gained from all-island cooperation. It would be irrational for SONI to undertake unilateral action which ignores the benefit to Northern Ireland consumers that could be gained from all-island cooperation with EirGrid. EirGrid's thesis of divergence is premised on a view that SONI will act irrationally and is therefore flawed.
- 3.16 Collaboration and cooperation between the TSOs is entirely compatible with governance changes. More particularly governance changes will add clarity about how SONI's licence obligations are to be discharged in circumstances where EirGrid continues to own SONI and can exert a level of influence over SONI and where UR's options facilitate a level of integration with EirGrid.

UR Response: enabling collaboration with EirGrid as intended

- 3.17 SONI collaboration and cooperation with EirGrid is fundamental to the SEM. However, UR's governance review has revealed a culture of integration not collaboration between EirGrid and SONI TSOs. This was not intended by the regulatory framework which envisages two independent TSOs collaborating for SEM purposes while still able to drive synergies and efficiencies between them. Our governance changes are designed to enable collaboration between the TSOs while also introducing transparency and accountability mechanisms. These governance mechanisms will ensure that how the TSOs collaborate is visible thereby enabling UR and SEMC to regulate effectively.
- 3.18 This section explains how the regulatory framework should work to enable collaboration between the two TSOs and in particular the centrality of the SOA to these arrangements and the ability of UR, CRU and SEMC to regulate EirGrid and SONI TSOs. In the drive for integration across the EirGrid group the SOA has been 'internalised' by EirGrid and SONI.
- 3.19 In accordance with legislation and the TSO licences they hold, each TSO only operates in its respective jurisdiction. EirGrid cannot legally operate as TSO in Northern Ireland, and SONI cannot legally do so in Ireland. SONI must therefore act to further the interests of Northern Ireland consumers.

- 3.20 However, EirGrid and SONI for SEM purposes have a duty (defined in their licences) to ‘act in conjunction’ with each other in relation to a number of TSO functions. This ensures that the Northern Ireland and Irish transmission systems can be operated in a coordinated manner but it requires each TSO to effectively articulate the needs of the consumers in their jurisdiction.¹⁶ It cannot be assumed that these needs are identical and the SEM architecture does not treat Irish and Northern Ireland consumer needs as identical nor give priority to the needs of one set of consumers over another.
- 3.21 The relationship between the two TSOs while ‘acting in conjunction,’ cooperating, coordinating or otherwise exchanging information with each other is required to be governed by a SOA. The EirGrid and SONI TSO licences require them to enter into, comply with, and at all times maintain in force a SOA. It is to govern their operational interactions with each other in respect to the carrying out of the TSO functions which must be coordinated for the purposes of the SEM, and is a key document for this purpose.
- 3.22 At acquisition of SONI by EirGrid, ensuring that the interests of consumers of electricity in Ireland and Northern Ireland were appropriately protected was a key driver for SEMC. To underpin this outcome SEMC recognised the importance of ‘acting in conjunction’ and of the SOA as an outworking of this concept.¹⁷ SEMC envisaged the TSOs working together under the SOA such that each of them would essentially be mindful of the particular interests of consumers in their respective jurisdictions. Consequently, SEMC agreed that the SOA licence condition should be amended, in both EirGrid and SONI TSO licences, to ensure that the SOA is designed to ‘at all times protect the interests of consumers of electricity in Northern Ireland and Ireland.’
- 3.23 These changes were not about giving priority to one set of consumers over another, or about neglecting the interests of one set of consumers – they were aimed at maximising the interests of both sets of consumers. How the two TSOs interact is critical to this outcome. Each should bring knowledge of, and speak for, the needs of the consumers in their jurisdiction in the context of the relevant network characteristics and policy framework, and cooperation or acting in conjunction under the SOA should enable SONI and EirGrid to reach conclusions which ensure that the overall outcomes from the SEM are a win-win for both sets of consumers.
- 3.24 This is not to say that each TSO should have a perspective which is exclusively jurisdictional but only that they are each expected to bring a

¹⁶ At the policy and regulatory level, the principle objective of the Department of the Economy, UR, and the SEMC includes protecting the interests of both Irish and Northern Ireland consumers. For example, see principle objective of the Department of the Economy, UR, and the SEMC in relation to SEM as described in Art 9(1), The Electricity (Single Wholesale Market) (Northern Ireland) Order 2007). There is no equivalent overarching duty on the TSOs.

¹⁷ See SEM-08-176, Paras 31 and 32.

jurisdictional perspective to TSO discussions, in order to agree the optimal way forward for Northern Ireland and Irish consumers. The articulation of an effective SONI view may introduce a creative tension between SONI and EirGrid TSOs. However, this is healthy and the proper functioning of the SOA relies on structures, which allow any tension between jurisdictional perspectives to play out in joint TSO decision making.

- 3.25 Contrary to how the SOA should operate, SONI has stated that the “System Operator Agreement” between itself and EirGrid TSO has been ‘internalised’ in consequence of the shared operating model employed across the EirGrid group. This internalisation of the SOA effectively renders it redundant and suggests an EirGrid view that legitimate differences between the transmission systems and operations of Northern Ireland and Ireland are small or non-existent. Regardless of EirGrid’s preferences, the SOA was not meant to be ‘internalised’ between the two TSOs.

Effect of the UR’s proposals

- 3.26 The changes to SONI’s governance being sought by UR do not change, in any way, the licence obligations on ‘acting in conjunction’, the SOA, or the licence change in respect of the SOA and the protection of Irish and Northern Ireland consumers made by SEMC at acquisition.
- 3.27 UR’s proposals are designed to maintain the TSO collaboration necessary to facilitate the SEM by ensuring the SOA works as intended and delivers increased transparency over TSO interactions. UR’s proposals also facilitate greater SONI independence at Board and management level as a prerequisite to allow SONI to develop and articulate the jurisdictional perspective envisaged by the licence.
- 3.28 In particular UR’s proposals will:
- a. ensure transparency over TSO interactions such that UR and other stakeholders in Northern Ireland can be assured that SONI is bringing a Northern Ireland perspective to bear on TSO interactions under the SOA;
 - b. Open up TSO activities to regulatory scrutiny thereby ensuring licence compliance. Transparency of TSO interactions allows any problems to be revealed over time, enabling SEMC or UR, as appropriate, to take corrective action;
 - c. Facilitate SEMC and UR in each doing its job as greater transparency may highlight TSO decisions that SEMC may wish to call in as a SEM matter or UR may wish to act on, if not called in by SEMC; and

- d. Ensure accountability by SONI for decision making on TSO function which are coordinated with EirGrid for SEM purposes. TSO Governance must enable decision making between the TSOs which records how the balance between the interests of the two different sets of customers had been struck, in particular where they are not aligned.

UR response: governance proposals consistent with SEMC policy

- 3.29 EirGrid/SONI attempt to present their preferred 'all-island approach' as being required by SEMC, but that is not the case. When SONI was acquired by EirGrid, SEMC desired an outcome which would ensure an ongoing requirement for SONI independence from generation and supply while also relaxing certain requirements between EirGrid and SONI so that opportunities for economies of scale and potential for synergies and efficiencies between EirGrid and SONI could be realised.¹⁸
- 3.30 Consequently, the licence changes made by SEMC to facilitate the acquisition retained the general requirement for SONI independence from generation and supply (in compliance with EU law) in the SONI licence conditions.¹⁹ However, more relevant in the current governance context, the independence conditions of the SONI licences were also amended to remove the requirement for managerial independence of SONI from EirGrid. This allowed opportunities for economies of scale and potential for synergies and efficiencies to be pursued.
- 3.31 These licence changes reflected SEMC's view that SONI and EirGrid did not require the same degree of independence as had been necessary between SONI and NIE. As between EirGrid and SONI 'independence' remained important but could mean something less stringent. SEMC stated:

'The concept of independence remains important in terms of retaining SONI's corporate integrity and identity so that it should remain a standalone business with a specific role to play in the Northern Ireland transmission business.'
- 3.32 More than a decade has passed since acquisition and in that time, SONI has become increasingly integrated into EirGrid. UR's governance review has revealed the extent to which SONI's independence has been lost and accountability and transparency in SONI TSO's governance reduced. This has reached the point that management and oversight of SONI TSO licence responsibilities are effectively discharged by EirGrid and not by SONI. SONI is now integrated into EirGrid's decision making structures, which have the effect of creating a 'black box', resulting in a lack of transparency as to how

¹⁸ See Paras 24-28 of SEM-08-176.

¹⁹ This is clearly the intention of SEMC – see Para. 27 of SEM-08-176.

decisions are made on SONI TSO functions.

- 3.33 Given UR's findings it is clear that, contrary to the wishes of SEMC at acquisition, SONI's corporate identity and integrity and ability to remain a standalone business with a specific role to play has been undermined by changes to SONI's independence from EirGrid since acquisition in a manner which imposes risks to the protection of Northern Ireland consumers.
- 3.34 As a consequence, UR's proposals for changes to SONI's governance would tilt the balance of the relationship between EirGrid and SONI back towards ensuring a governance structure which is in line with good practice within corporate governance arrangements.
- 3.35 However, as desired by SEMC, the ability for economies of scale and synergies to be realised would also be retained. UR's Option C is designed to facilitate the sharing of resources with EirGrid, by means of derogation from the general requirement for independence, where the SONI Board can make an evidenced case to UR to do so.
- 3.36 The ongoing licence requirement for SONI independence from generation and supply would not be affected by UR's proposed governance changes.

UR response: Governance changes will not have a material impact on the SEM

- 3.37 As set out above at Para. 3.7 both TSOs express deep concerns about the potential harm to SEM that may flow from the governance options set out in the Consultation Paper. These impacts are various and include:
- System operation and security;
 - Capacity market and balancing; and
 - Cost to the consumer and decarbonisation.

System Operation and Security

- 3.38 In our reading, the central fear expressed by both TSOs is that the proposed governance changes will result in jurisdictional-focussed system operation including a separate assessment of system security and adequacy.²⁰ For example, SONI states that "In contrast a move towards jurisdiction-specific decisions in relation to system operation would require each TSO to make an independent system assessment and to assume that the neighbouring TSO would be doing the same. This would mean that across the island of

²⁰ EirGrid Response, Para 88.

Ireland access to the capabilities of generation plant in the other TSO's jurisdiction could not be guaranteed.”²¹

- 3.39 SONI also concludes that the revised governance proposals will ultimately diminish the reliability and security of the Northern Ireland system. In particular, they note that “Local security policies will drive greater run hours and operation of local plant. This will add to the maintenance requirement in each jurisdiction and reduce the number of run hours available on older plant. This will ultimately reduce operating margins and increase the risk of supply shortages.”²²

Capacity Market and Balancing

- 3.40 The TSOs' conclude that changes to the governance of SONI will lead to a jurisdictional focussed approach for system operation and security and will drive a number of other undesirable impacts with respect to the SEM Capacity Remuneration Mechanism (CRM), balancing and the zonal definitions under EU's internal energy market arrangements. EirGrid notes that it “would expect to see an increase in jurisdictional specific operational costs; procurement and execution of the Capacity Market; and procurement and delivery of System Services”²³.
- 3.41 EirGrid further concludes that this will likely include splitting existing balancing markets: “The balancing market operations are a TSO function under the pan-European arrangements. Therefore any divergence between EirGrid and SONI TSO operations into a more jurisdictionally focused TSO could cause a separation of the balancing markets in Ireland and Northern Ireland, with these markets independently setting balancing prices.”²⁴ This concern is echoed by SONI which states that “the divergence of TSO operational policy may cause the all-island balancing market to split into two separate balancing arrangements.”²⁵

Cost to the Consumer and Decarbonisation

- 3.42 The TSOs find that the jurisdiction-focussed approach likely would lead to increased costs to the consumer and potentially impede the decarbonisation agenda in both jurisdictions. With respect to the former, SONI notes that “The inevitable consequences of this “jurisdictional approach” would create near-term challenges in terms of amending existing operational tools and practises. It would also create long-term challenges relating to the industry

²¹ SONI Response, Para 6.4.

²² SONI Response, Para 6.20.

²³ EirGrid Response, Para 96.

²⁴ EirGrid Response, Para 105.

²⁵ SONI Response, Para 6.17.

frameworks and generation mix that would lead to substantial increases costs.”²⁶ EirGrid similarly states that “A move towards a jurisdiction-focussed approach would likely result in both TSOs taking a cautious approach to inputs; specifically, assumptions may be premised on higher jurisdictional demand forecasts, pessimistic forecasts of generator outage performance and later forecast commissioning dates for new plant.”²⁷

- 3.43 SONI further concludes that “An unavoidable, more conservative view of local security issues would inevitably reduce the utilisation of renewable asynchronous plant and conversely increase reliance on older and less reliable conventional plant. Therefore, in addition to creating near-term investment costs, this “jurisdictional approach” would create challenges in relation to the achievement of Department for the Economy’s decarbonisation objectives.”²⁸
- 3.44 EirGrid and SONI effectively argue that any changes to the governance of SONI will, inevitably, lead to these impacts which, in turn, will ultimately damage the Northern Ireland consumers. We do not accept this argument.

UR view Option Impacts

- 3.45 The various undesirable consequences detailed in the TSOs’ submissions largely flow from the premise that the proposed changes to SONI governance arrangements will result in a “jurisdictional approach” to system operation and security. In turn, this is the premise for the TSOs’ claims with respect to, inter alia, imposition of increased production costs on the Northern Ireland consumer, reduced reliability and security as well as reduced ability to meet decarbonisation targets.
- 3.46 We struggle to see how the relatively limited changes to SONI governance in Options A and B could possibly result in these outcomes. We accept that Option D could have a material impact on the current extent of integration between the two TSOs. It is in part for this reason that we have not expressed a preference for this option. However, even under Option D we consider that all-island functions could still be delivered.
- 3.47 In Option C, the ability to continue with current joint system operations, if required, can be facilitated through SONI making an application for a derogation and providing a robust case with clear justification for the derogation to be granted. SONI has already put forward information in Section 7 of its response to substantiate its view that the existing arrangements have delivered benefits to consumers. This would need

²⁶ SONI Response, Para 6.2.

²⁷ EirGrid Response, Para 113.

²⁸ SONI Response, Para 6.21.

development into a robust cost benefit analysis but the information illustrates that SONI should be capable of providing a robust case with clear justification for a derogation in this area.

3.48 It is not the intent of these proposals to create unnecessary barriers to smooth and joint operations, provided that there is sufficient transparency and accountability within such joint working arrangements to enable UR to assure itself that Northern Ireland consumers are treated equitably and fairly. Option C does not preclude joint working with EirGrid or common service delivery, but:

- Requires SONI to carry the burden of proof; and
- Allows UR to place supplementary controls and reporting requirements to assure their obligations towards consumers in the jurisdiction of Northern Ireland.

3.49 EirGrid and SONI also argue that existing arrangements have benefits to consumers and cite benefits from economies of scale arising from the current arrangements. Areas cited include, procurement, cyber security, transmission system operations, financing and decarbonisation.

3.50 It is not clear why the benefits cannot be realised as a consequence of governance changes. Option C would permit economies of scale to be realised where SONI can make an evidenced case to UR for sharing of resources with EirGrid.

SEM Precedent

3.51 We do wish to note that the all-island market worked with two independent TSOs before SONI was acquired by EirGrid. While it is recognised that the SEM market structure has changed considerably since then, the fact that the TSOs previously operated under separate ownership without experiencing the dire consequences claimed by SONI and EirGrid must carry some credence. In this respect, Options A to C in the Consultation Paper fall a long way short of the separation actually observed under separate ownership of SONI and EirGrid.

3.52 Along the same lines, we note that the SEM design envisages two separate TSOs regulated by two separate Regulatory Authorities (CRU and UR). This is evidenced through the legal document that governs the SEM (the Trading and Settlement Code), which references:

- TSOs (plural) – for example, Part B, F.2.1.8
- Regulatory Authorities (plural) – for example, Part B, B.17.20

Separate Balancing Operations

3.53 As stated earlier, most of the dire consequences outlined in the TSOs' submissions flow directly from the underlying premise that all options lead to a jurisdictional approach for system operation. This includes potential separation of the balancing markets in Ireland and Northern Ireland, with these markets independently setting balancing prices. While neither submission makes any reference to price zones, in our view it is difficult not to interpret these statements as an anticipation of a splitting of the current single SEM price zone. If this interpretation is correct, we fail to see why changes to the SONI governance arrangement should cause the SEM to be split into two (or more) price zones since:

- The physical constraints on the network are unchanged – and the TSOs have not seen fit to suggest a change to zones before; and
- The SEM has operated as a single price zone since its inception – including when SONI and EirGrid had separate ownership

UR not acting ultra vires

3.54 SONI's response alleges that UR's governance proposals are a SEM matter and therefore UR will be acting ultra vires if it proceeds to make changes to governance. These matters, in SONI's opinion, fall within the jurisdiction of the SEM committee (SEMC). SONI gives various reasons for this in Section 2 and 3 of its response.

3.55 We do not consider these reasons in detail here as only the SEMC has the power to determine that something is a SEM matter. In the absence of any such determination by SEMC, the jurisdiction in relation to a matter remains with the Regulatory Authorities (CRU and/or UR) as the case may be.

3.56 In the case of SONI TSO governance proposals, UR has kept the SEMC informed as the review has progressed. The SEMC has had the opportunity to consider a number of materials, including the full responses to the April 2021 consultation submitted by SONI and EirGrid. At this point in time, in light of the papers and briefing they have received to date, the SEMC has agreed that the issue of SONI governance is not a SEMC matter. UR will continue to keep SEMC informed in advance of any final decisions on license modifications.

No changes needed to SONI's governance

3.57 SONI and EirGrid argue that the existing arrangements are fit for purpose, and benefit the consumers across both jurisdictions. For example:

- EirGrid observes that “EirGrid and SONI, and ultimately customers in Ireland and Northern Ireland, benefit from the economies of scale gained through the current arrangements. The all-island system allows EirGrid and SONI to leverage capacity benefits, costs for both parties being allocated from all-island system is more beneficial than the total sum of two single-jurisdiction functions.” ²⁹; while
- SONI notes that “The unique advantages that ownership and the integrated operation with EirGrid bring include many benefits which would not be available under an alternative ownership or independent structure. The cost-sharing arrangements, irrespective of where the costs are actually incurred, to support the existing structure also reflect this reality.” ³⁰

SONI/EirGrid Main Arguments

- 3.58 The TSOs put forward four main arguments. Firstly, they argue that UR already have sufficient powers to give effect to its regulatory obligations including the tools to address any information asymmetry.
- 3.59 Secondly, the TSOs argue that they have recently implemented a number changes to the governance of the SONI Board that are aligned with the direction of UR’s proposals.
- 3.60 Thirdly, the TSO find that UR have not represented the current arrangements correctly. In this regard they note that:
- Contrary to the statements set out in the Consultation Paper, a System Operator Agreement (SOA) between EirGrid and SONI is in fact in place, and this agreement includes provisions for dispute resolution; and
 - EirGrid has a whistle blowing policy supported by a board level escalation path.
- 3.61 Fourthly, both TSOs strenuously emphasise that UR has failed to provide any evidence of actual or potential harm resulting from the existing arrangements.

SONI/EirGrid Supplementary Arguments

- 3.62 As part of their argumentation, the TSOs note that various authorities have reviewed the existing arrangements and found them to be adequate

²⁹ EirGrid Response, Para 203.

³⁰ SONI Response, Para 1.11.

including:

- EU's certification of SONI as an independent TSO;
- CRU's review of current regulatory arrangements similarly which found no specific issues with respect to safeguarding the interests of Northern Ireland consumers; and
- Both TSOs also argue that UK Corporate Governance Code (UKCGC) is not appropriate benchmark for SONI.

UR Response

3.63 With respect to UR's existing power, we recognise that UR do have the means to address at least some of the current information deficiencies. However, such an approach would inevitably require UR to become increasingly intrusive in its regulation of SONI. In particular, UR would likely need to place increasingly specific and onerous information requirements on SONI. In this type of approach:

- It often takes several iterations to get the requested data and/or information to a sufficient level of accuracy and granularity. Of course, this is a particularly likely outcome if the regulated entity adopts an adversarial stance towards the regulator; and
- The regulator has to establish its own analytical and engineering capabilities to enable internal analysis of detailed operational aspects of the regulated entity to detect whether the information has been provided in good-faith.

3.64 Ultimately, the above factors would require UR to establish an internal organisation to shadow SONI's operation, performance and management decisions. It is almost inevitable that such an intrusive approach would lead to tension between the respective roles and responsibilities of SONI and UR. As already explained, the proposed SONI Governance arrangements are a conscious choice to foster a more trusted relationship between UR and SONI. UR effectively shadowing SONI decisions would come at high cost and undermine trust.

3.65 With respect to recent internally implemented governance changes, we note that these voluntary changes clearly did not lead to the kind of catastrophic consequences that the TSOs elsewhere claim would arise from UR's proposals, despite going in the same broad direction. In making this observation, we recognise that in particular Options C and D go further. However, UR now favours Option C and it incorporates flexibility to retain shared working through derogations. Where there are solid and good

reasons for derogations, UR will consider such requests. The intention of Option C is not to create unnecessary barriers, but rather to place the burden of proof on the TSOs while providing UR with a means to specify supplementary controls and reporting where needed as part of its approval of a derogation request.

3.66 With respect to the TSOs claims of misrepresentation in the Consultation Paper, we note:

- **SOA:** As set out in the consultation document, we do not agree that the SOA is in place as an active document which is being operated to; and
- **Whistle Blowing Policy:** EirGrid's existing whistle blowing policy provides little comfort where the issues being escalated relate to any claim of bias against Northern Ireland. UR does not regulate EirGrid, and has no powers to gain sight of the issues raised through that process. Furthermore, the need for a SONI specific whistle blowing policy is illustrated by the number of confidential representations made to UR from present and past SONI employees throughout this review of SONI governance.

3.67 Finally, the absence of evidence of past harm simply cannot be taken as a measure of the adequacy of existing governance arrangements. This is true for any type of governance structure, whether for regulatory, financial or commercial purposes. For example, for the absence of historic credit events or limit breaches can evidently not justify the removal or loosening of credit and trading controls within the risk governance of commercial and trading operations. The ultimate yardstick for judging governance structures is the strength of the alignment between stakeholders' obligations and corresponding powers. As mentioned earlier, we recognise that this alignment needs to consider all stakeholders which, in addition to UR, includes EirGrid as parent, the Irish Government as the ultimate shareholder as well as the SEM Committee.

3.68 Furthermore, it is relevant to highlight that where the governance structures are such that Northern Ireland consumers are unable to obtain benefits or to obtain optimal benefits this in itself constitutes a form of harm. That is the deprivation of a benefit or the most optimal benefit can also be a form of harm to Northern Ireland consumers.

3.69 With respect to the TSOs supplementary arguments, we make the following observations:

- **EU Certification:** The EU Certification established that the TSO is independent ("unbundled" in the language of EU law) of the retail and

production areas of the electricity industry.³¹ Hence, this certification was primarily concerned with the vertical separation across the value chain as opposed to the (horizontal) relationship between EirGrid and SONI. We find that the EU certification does not speak to the independence concerns raised in this consultation;

- **CRU Opinion:** Given that CRU is the compliance body for the EirGrid licence, it is natural that they review compliance with Condition 3 of EirGrid licence. By the same token, CRU's statutory objectives relate to Ireland rather than Northern Ireland. Ultimately, UR's opinion is what matters when it comes to safeguarding the interests of Northern Ireland consumers.

3.70 UR does not intend to make applying the UKCGC a licence obligation. Nonetheless it remains a highly relevant guide for companies who do not have a premium listing. We reference this framework as a mature and respected best practice guideline for addressing issues similar to those we face, namely trust between a company and significant external stakeholders. In the case of the UKCGC, the external stakeholders are shareholders, whilst in this case the external stakeholders include the regulator. However, the underlying approaches and lessons are, in the main, still applicable.

³¹ This is covered in Chapter IV of EU Directive 2019/944 "Unbundling of Transmission System Operators"

4. Review of remaining aspects of SONI response

- 4.1 This section contains a review of the key arguments advanced by SONI alone.³²

Failure to demonstrate harm

- 4.2 The SONI response does not acknowledge the concerns raised by respondents, arguing simply that UR has found no actual evidence of harm. However, UR is concerned to protect the interests of consumers, not only with ensuring the absence of harm but by optimising benefits to consumers by actively promoting improved outcomes for consumers. Consequently UR does not always need to identify a source of harm before it can act.
- 4.3 In addition, we note that while evidence of actual harm in the past might point to governance failures, the absence of such evidence cannot be taken to imply that existing governance arrangements are adequate. Good corporate governance requires forward looking arrangements which seek to mitigate the risk of future harm. On its own, absence of evidence of past harm is a wholly insufficient benchmark for judging whether existing arrangements provide robust governance against future risks.

Deficiencies in UR cost benefit analysis

- 4.4 UR response to the points raised by SONI and EirGrid and an updated cost benefit analysis is set out in Section 6.

Material errors and omissions

- 4.5 The SONI response alleges ‘material errors and omissions’ in nine areas and we consider each of these in turn.

Role and functions of UR

- 4.6 SONI alleges that in setting out its proposals UR has failed to take into account its duties to consider the impact of its actions on Ireland or elsewhere and has proceeded from a view that SONI TSO governance proposals are not a SEM matter. In support of this SONI points to Art 50(1)(a) of the Electricity Order and to Art. 12(2)(a) of the Energy Order.
- 4.7 This is a secondary argument of SONI’s – its primary position is that governance is a SEM matter and therefore that the SEM legislation applies.

³² We have not repeated here EirGrid arguments that overlap with the SONI response.

In response UR notes that:

- Art. 50(1)(a) places UR under a duty to, 'where practicable' keep under review in Northern Ireland and elsewhere any activities connected with the generation, transmission, distribution, and supply of electricity. This article is nothing more than a general obligation to keep certain matters under review where it is practical to do so. It does not extend to the scope of UR's function beyond Northern Ireland in such a way that UR would be required to review the discharge of its activities beyond Northern Ireland and to take the interests of Irish or any other consumers into account.³³
- Art. 12(2)(a) contains a reference to ensuring that the reasonable demands for electricity in Northern Ireland and Ireland are met. UR must not therefore do anything that would damage security of supply on the island of Ireland. For the reasons advanced in Section 3 we find SONI's arguments that UR's governance proposal will have a detrimental impact on the SEM to be wholly unconvincing. Accordingly, we reject SONI's assertion that we have acted contrary to Art. 12(2).

SONI Ltd. – A corporate body

4.8 SONI asserts that the proposed changes to the SONI board would have a direct impact on the arrangements in place for other SONI licences and activities, and therefore UR is in error as it has not conducted a proper consideration of all impacted licences.

4.9 SONI does not specify what the impacts are for other SONI licences and activities so that they may be considered by UR. In response, UR notes that:

- the proposed licence obligations to give effect to governance changes with regard to operational independence apply only to the TSO business and not to the MO licence or activities carried on under that licence. We accept that the board independence requirements will alter the board composition of SONI. However, that the SONI board will need to be comprised of a majority of independent non-executive directors does not have a direct impact on the market operator activities and functions for which the legal entity that is SONI is responsible;
- the TSO management and staff are already required to be independent from SONI's SEMO/NEMO activities. The market operator has a separate staff shared with EirGrid and a separate general manager;

³³ We infer that this is SONI's interpretation of our duties from Para. 5.4 and 5.5 of the SONI response.

- We confirm that no changes are currently proposed to the independence requirements applicable to the MO/NEMO business. SONI will therefore need to continue to comply with the licence requirements for independence applicable to the SEMO/NEMO businesses. There is no reason why our proposals would affect SONI's SEMO and NEMO activities being carried out from the same premises as the TSO business;³⁴ and
- Option C gives SONI the right to seek derogations from the general duty of independence in order to manage any unforeseen issues.

Impact on Market Operator role

- 4.10 In general terms, SONI and EirGrid have also argued that SEMO is an integral part of their role as Transmission System Operators, and that any change to the governance of SONI would undermine SEMO, and hence the operation of the SEM.
- 4.11 We do not accept the argument that the SEMO is such an integral part of the TSO role that it precludes alterations to the governance of SONI. In the following paragraphs, we set out, in generic terms, the role of the SEMO before providing examples of this role has been managed in the electricity industry elsewhere.
- 4.12 The SEMO role applies to the balancing market. This market makes payments and charges to market participants (principally Generators and Suppliers) in respect of adjustments necessary to ensure that the production and consumption of electricity match and are consistent with network capabilities. It is useful to set out, at a high level:
- The overall end-to-end process for the balancing market – as illustrated in Figure 2 below;
 - The role of the SEMO within the balancing market process; and
 - The process for a typical cleared forward market – as illustrated in Figure 3 below - for comparison.

³⁴ Facilitated by Condition 12(2)(d) of the SONI TSO licence.

Figure 2: High-Level End to End Process for Balancing Market

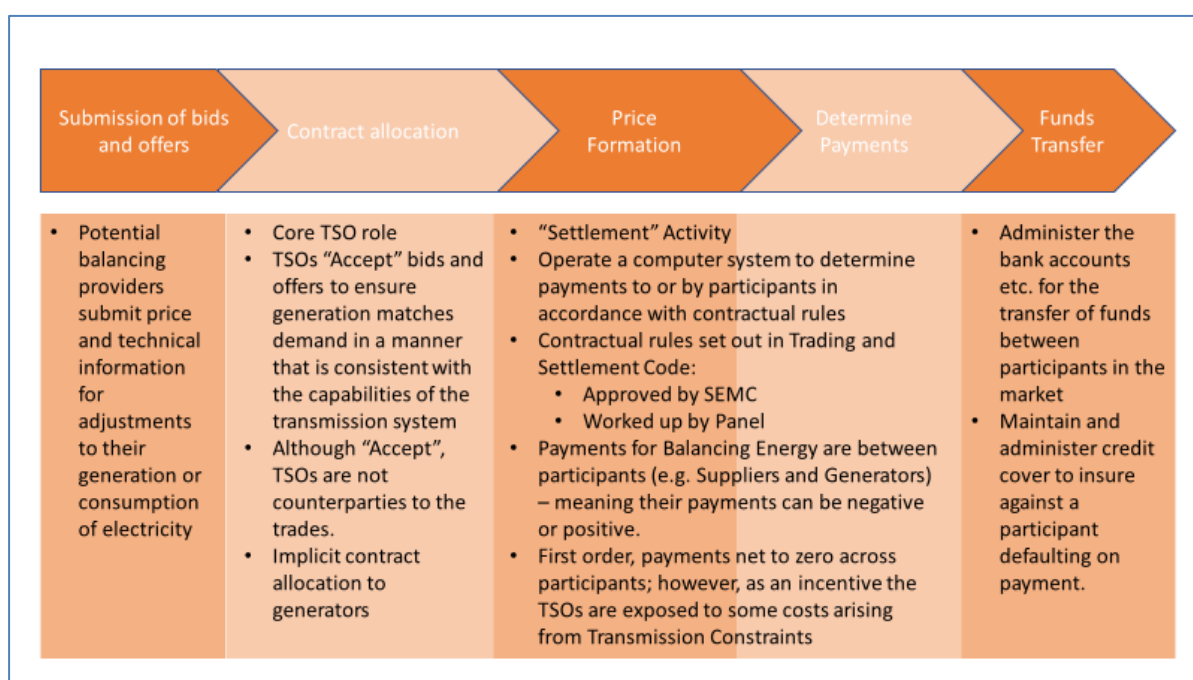
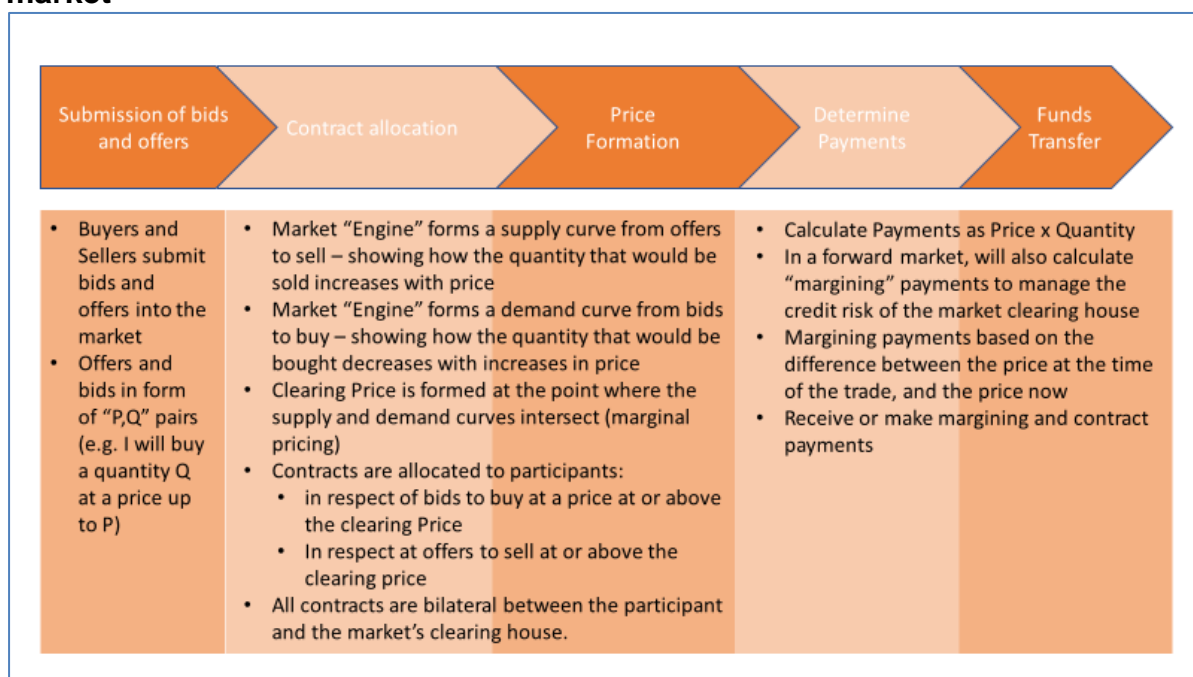


Figure 3: High-Level End to End Process for a typical cleared forward market



4.13 It is not essential that any of the SEMO roles in the above processes are carried out by the TSOs. This is considered separately for each of the markets in which the SEMO has a role:

- The Balancing Market; and

- The Day-Ahead market operated by SEMOpx.

Balancing Market

- 4.14 The Single Electricity Market Operator role has two key parts in the Balancing Market (Figure 2):
- Determine payments to be made under the Single Electricity Market Operator in accordance with the market rules. This is referred to as the “Settlement” role, and covers the “price formation” and “determine payments” elements of the market process; and
 - Administer the funds transfer associated with those payments.
- 4.15 It is not essential that either of the above roles are carried out by the TSOs. In practice, each are business processes that can be outsourced – as illustrated through a number of examples across Europe. Most notably, this includes Nord Pool which operates across Denmark, Norway, Finland and Sweden and the Baltic States in a manner compliant with EU law. Each of the constituent countries has its own Transmission System Operator, subject to its own governance and regulation by the relevant sector regulator. The four TSO’s have established a new company eSett to be responsible for the imbalance settlement.
- 4.16 eSett calculates imbalances for each Balance Responsible Party (BRP) and makes sure each party is paid and invoiced correctly. A BRP is defined as a company that has a valid Imbalance Settlement Agreement with eSett and a valid Balance Agreement with a TSO and manages a Balance Obligation on its own behalf as a producer, consumer or trader of electricity or on the behalf of other producers, consumers or traders of electricity.

The SEMOpx Role

- 4.17 SEMOpx administer and operate the Day Ahead electricity market for Ireland and Northern Ireland. In doing this, they carry out a role referred to in EU law as “Nominated Electricity Market Operator” or NEMO. This is explicitly not envisaged to be a monopoly role. EU law requires that there be at least one designated NEMO in each geographical area, but also requires that competing NEMOs are also able to enter. In this respect there are two main companies operating as NEMOs across Europe:
- EPEX – who are sub-contracted by SEMO to operate SEMOpx; and
 - NORD Pool – who have previously explored becoming a designated NEMO for the SEM, in competition with SEMOpx.

Cost allocation and recharges

- 4.18 In regard to SONI's ability to performance manage and approve costs and services provided to it by EirGrid, SONI makes a number of points:
- The Cost Allocation and Recharge policy is developed jointly by EirGrid and SONI;
 - This policy must ensure compliance with the relevant revenue authority's transfer pricing regulations in the UK or Ireland as applicable;
 - This policy has been shared with UR and CRU and no concerns have been raised in regard to the policy, nor did UR do so in the final determination for the SONI price control; and
 - The SONI Compliance and assurance Officer reports to UR annually on compliance with Condition 5, and the policy is reviewed by group internal audit as part of the annual statutory audit process for all group companies.
- 4.19 UR notes that none of these mechanisms amounts to review or oversight by SONI of the costs and services charged to SONI under this policy. Contrary to SONI's assertion that no concerns have been raised by UR, we considered the implications of how the policy is operating in some detail in our consultation proposals for SONI TSO governance.³⁵ There has been no answer from SONI or EirGrid to these points from our consultation proposals.
- 4.20 Also, the fact that particular cost allocations have been accepted for the purposes of the price control does not mean that UR is content with the extent to which the policy is being scrutinised or can be scrutinised by SONI. An independent SONI Board and Management team would provide further controls and accountability for the allocation of costs attributed to SONI. Where the costs attributed to the TSO are predominantly fixed an independent Board and Management team could challenge those allocations further, benefiting Northern Ireland consumers and providing assurance on cost allocations to UR. The Board and Management role is important therefore in reducing information asymmetry between SONI and UR, particularly in circumstances where SONI TSO price controls are predominantly based upon historic data and trends, where there are not sufficiently robust comparators, and therefore historic information reported

³⁵ See Section 4 of the April 2021 consultation paper.

by SONI will continue to form the basis of future prices.

4.21 SONI also takes issue with our characterisation of the cost allocations under the policy as ‘broad brush’, noting they are not outside of UR’s oversight. Here we simply note that it is difficult to characterise a cost allocation of 75:25 or any other proportions as anything but ‘broad brush’ and again that reliance on UR to have oversight of the application of the policy is again a denial of the need for accountability in SONI itself.

4.22 SONI also makes a number of points about UR’s analysis of SONI’s regulatory accounts and the narrative relating to these in the April 2021 consultation paper. Notably that:

- Trends in operating profit as a % of total Revenue vary year on year as a result of multiple variables and Net Recharges are comparatively immaterial when compared with SONI’s total cost base;
- The majority of recharges are administered in accordance with specific regulatory decisions. All remaining sales and purchase recharges were administered as per the cost and allocation policy;
- The £17m net transfer of costs in 2018 was attributable to IT costs associated with I-SEM and rebalancing of generator charges. SONI did not however seek to explain or justify the individual recharges from and to SONI of £51m and £68m respectively which had grown 20-fold from the average levels of recharges over the period 2011-2013; and
- It is not appropriate to compare operating margin with net recharges.

4.23 We have updated our analysis of SONI’s regulatory accounts to include information in the 2019 and 2020 accounts. This confirms the premise of the April 2021 consultation paper that accountability, and therefore the risks that Northern Ireland consumers could be overcharged, could be improved by more autonomy within SONI at both a Board and management level. The data, updated for 2019 and 2020, shows that:

- There appear further unexplained anomalies in the more recent data within the regulatory accounts i.e. a £2m swing in management charge over time; a significant growth in ‘other costs’ c£4m; and, whilst the net recharge may be justified, the scale of the purchases and sales remains significant and potentially remains open to management discretion; and
- Whilst we suggested that the reduction in profit over time could be the result of increasing scale of recharges, we accept SONI point that only 14% of SONI costs are ‘controllable’ with the rest being energy,

transmission and depreciation costs. This residual proportion of costs attributable to staff and 'other operating costs' has remained stable over time.

- 4.24 Whilst, with the exception of the inter-company transfers, most of these issues have revealed themselves through the addition of 2019 and 2020 data and were not addressed by SONI or EirGrid in their responses, they continue to show the potential asymmetry in data between the regulators and regulated companies. We intend to review the RIGs requirement for the 2020-2025 price control but do not consider that this is sufficient to deal with potential asymmetry in data – UR needs further assurance in the form of cost challenge by an independent SONI Board and management.³⁶

Network reliability concerns

- 4.25 Under this heading SONI appears to treat the fact that UR has identified a risk of misalignment in network development as an error. As evidence that UR is in error, SONI relies on how the Transmission Interface Arrangements (TIA) is working, scrutiny of investment projects by the Transmission Investment Committee (TIC) and the SONI board, and the fact that core documents underpinning SONI's operations are approved by UR or come from NIE Networks.
- 4.26 In response we do not accept that identification of this risk is an error and note that SONI has not addressed, by way of pointing to mitigating measures, the key issues which drive the risk.
- 4.27 In the course of our review of the SONI response we asked SONI to provide copies of SONI Board minutes for the last three years which illustrate any decisions taken by the SONI board in respect of network development projects. In response SONI noted that the SONI board 'is apprised of network project developments via the SONI MD reports,' and that the SONI board approves changes to the TIA. No copies of Board minutes were provided to UR as requested. SONI has not therefore evidenced the SONI Board actively scrutinising (as opposed to merely being apprised of) key decisions in this area.

Incorrect interpretation of European legislation

- 4.28 SONI states that UR has incorrectly described SONI and an Independent System Operator (ISO) and in consequence states incorrectly that SONI must have a supervisory body.

³⁶ The EirGrid response makes similar points but under different headings, our response above applies equally to the similar points raised by EirGrid.

- 4.29 We acknowledge that SONI has been certified as a TSO under Article 9(9) of Directive 2009/72/EC. In consequence, SONI does not need to have a ‘supervisory body’ but its licence does require it to have a compliance officer (see below). The fact that UR has incorrectly described SONI as an ISO is not a material error, nothing turns on this in UR’s analysis. The risks arising from the current governance arrangements do not stem from how SONI ensures independence from generation and supply activities.

Compliance plan Condition 12

- 4.30 SONI argues that the current Condition 12 is a ‘holdover’ from when SONI was part of the Viridian group, and that UR intended to amend the Condition in 2010 thereby signalling that the regulator viewed the condition as redundant. Furthermore, SONI states that as UR has not stated a position to the contrary, SONI assumes this remains UR’s position. Consequently, this undermines any concerns UR may have now about the lack of a Condition 12 compliance plan.
- 4.31 In response, UR notes that the independence requirements in Condition 12 exist for the purpose of ensuring no vertical integration of electricity operators and therefore compliance with EU law and the principles of effective completion and open and transparent access to electricity markets. In this sense they are not a ‘holdover’ rather they are an enduring requirement on SONI. Whatever UR may have considered doing in 2010, the fact is that condition was not modified. SONI therefore has no basis to claim an expectation that the condition need not be complied with or that any of its provisions are ‘suspended’. Accordingly, any information which is not published under the condition, diminishes transparency and accountability by SONI. We propose to make consequential changes to Condition 12 for clarity following which SONI will be expected to publish a Condition 12 compliance plan as soon as reasonably practicable.

System Services Procurement risks

- 4.32 SONI alleges that UR has made a number of assertions about perceived barriers to competition, which are unfounded, inaccurate and lacking in evidence. Also that UR has made inaccurate assertions in regard to system services procurement and that UR’s proposals are predicated on a concern with the all-island procurement of system services. SONI explains in detail how system services are procured and how this is regulated by the SEMC.
- 4.33 In response, we note that the risks identified by UR are not driven by SEMC policy or any decisions taken by SEMC. Instead, as the April 2021

consultation paper makes clear,³⁷ the risks arise from the shared management and operating model employed across EirGrid and SONI which could lead to a 'one-size fits all approach' that may not properly account for differences in developing and operating the Northern Ireland network. The SEM Committee and UR each rely on objective advice from the TSOs on the requirements for System Services, and how these are impacted by the specific engineering considerations of the relevant networks. We lack confidence or evidence that any specific requirements of the Northern Ireland networks have been considered.

- 4.34 This concern arises both in the procurement of system services, and system analysis and planning. SONI has not addressed, by way of pointing to mitigating measures, the key issues which drive the risk.

SOA and MOA

- 4.35 SONI alleges that UR is wrong to say that the SOA is not in place, citing the fact that it is published on the SONI website. While the agreement is published on the SONI website, the key issue is how it is operated. We are engaging with SONI on this and will advise it of our proposed next steps on the matter shortly (and outside of this TSO governance licence modification process).
- 4.36 SONI also alleges that UR demonstrates a clear misunderstanding of how the SOA is designed to operate, specifically that it is not designed to enable SONI and EirGrid to represent and protect a jurisdictional interest but instead must enable them to protect the interests of consumers of electricity in both Northern Ireland and Ireland.
- 4.37 For the reasons set out in Section 3 we find these arguments to be flawed and that they appear primarily aimed at defending the fact that the SOA has been 'internalised' by the shared operating model employed across the EirGrid group. As stated in April 2021, UR does not accept (and has not previously accepted) that such internalisation fulfils the requirement of the licence obligation or indeed negates the need for the licence obligation and therefore for an SOA to be in place.
- 4.38 In passing, we note that SONI references the Market Operator Agreement (MOA) in this section. However, UR's assessment of the need for governance changes does not take the MOA into account as the agreement will not be affected by any changes proposed to TSO governance.

³⁷ See for example page 7.

Inappropriate comparators

- 4.39 UR's April 2021 Consultation Paper on future SONI governance arrangements includes, as an Annex, a number of case studies that show governance arrangements that are one or more of:
- similar to those proposed for SONI;
 - for similar organisations to SONI; or
 - to address issues similar to those faced by UR in the governance of SONI.
- 4.40 SONI has questioned the relevance of three of the case studies quoted in the consultation paper Annex, stating an opinion that these are "inappropriate comparators". The three case studies questioned by SONI are:
- **National Grid ESO:** SONI claim that governance changes to National Grid ESO are driven by a perceived or actual conflict of interest between the Transmission System Operator and Transmission System Owner roles. As Eirgrid is not a Transmission System Owner, they then claim this comparator is inappropriate;
 - **OFWAT and Water Companies:** SONI note that services failures had been identified in the water sector but that in the case of SONI no harm has been identified;
 - **ELIA in Belgium:** SONI claim this is an inappropriate comparator based on their claim that the governance arrangements reflect the ownership structure of ELIA.
- 4.41 It is appropriate for UR to consider governance approaches that have been used for companies elsewhere. As stated above, the case studies were chosen that covered governance arrangements that are one or more of:
- similar to those proposed for SONI;
 - for similar organisations to SONI; or
 - to address issues similar to those faced by UR in the governance of SONI.
- 4.42 The table below summarises how each of the case studies highlighted by SONI match these three factors.

Table1: Comparators

Case	Similar Changes	Similar Organisation	Similar Change Drivers
National Grid ESO	Yes	Yes – System Operator for United Kingdom	<p>Yes:</p> <ul style="list-style-type: none"> • Need for independent and trusted advisor given change to low-carbon paradigm is the same in both cases • Perceived conflicts of interest in both cases. <ul style="list-style-type: none"> ○ In Northern Ireland’s case, conflict of interest is between a “one-size-fits-all” approach, and recognising legitimate differences in Northern Ireland (e.g. from legacy network design, reduced smart meter deployment etc); ○ In National Grid’s case, conflict for ESO to favour solutions that need more transmission assets
OFWAT – Water Company Governance	Yes	Yes – Regulated industries	<p>Yes:</p> <ul style="list-style-type: none"> • OFWAT changes are designed to “address the particular challenges facing a sector delivering an essential public service through monopoly business³⁸”. This flows through as a primary driver in the rationale for each of the governance principles proposed by OFWAT.
Elia - Belgium	Yes – And goes further with the State able to directly appoint members to the Board	Yes – System Operator for Belgium	<p>This is unclear – and lost in the realms of time. SONI claim the governance arrangements reflect the split ownership of the company. SONI’s assertion notwithstanding:</p> <ul style="list-style-type: none"> • It is the drivers of that separate ownership which would then be relevant; • That does not explain the right of the State to appoint two members to the board

³⁸ Consultation on revised Board Leadership, Transparency and Governance principles, OFWAT, July 2018

5. Review of remaining aspects of EirGrid response

- 5.1 This section contains a review of the key arguments advanced by EirGrid alone.³⁹

Impact on EirGrid licences

- 5.2 Section 3 of the EirGrid response identifies one potential impact of UR governance proposals on EirGrid licences – on Condition 3 of the TSO licence – and states impact this arises from UR’s proposal to place an obligation on SONI to discharge its duties on behalf of Northern Ireland customers.
- 5.3 EirGrid states that this obligation on SONI would make it untenable for EirGrid to retain the existing licence obligation to discharge EirGrid functions on behalf of customers in both Ireland and Northern Ireland. Therefore, Condition 3 of the EirGrid licence would need to be amended to remove the requirement on EirGrid to discharge its functions on behalf of Northern Ireland consumers.
- 5.4 We do not agree with this assertion - our governance proposals do not disturb this EirGrid licence condition. The requirement in Condition 3 of EirGrid’s TSO licence is that when it is carrying out its regulatory functions, EirGrid must at all times have regard to the interests of Northern Ireland consumers as well as Irish consumers. This obligation was placed in EirGrid’s licence by SEMC at the time EirGrid acquired SONI. We consider the condition remains appropriate in circumstances where EirGrid continues to own SONI and as its shareholder can have some influence and where the UR’s governance changes facilitate a level of operational integration with EirGrid.
- 5.5 This condition in EirGrid’s licence does not create a requirement for a corresponding condition in SONI’s licence as SONI is the subsidiary company and is not in a position to influence EirGrid in the same way. The reference to Irish and Northern Ireland consumers in SONI’s licence is appropriately confined to the design of the SOA as this deals with all-island coordination for SEM purposes.
- 5.6 UR is not proposing any changes to the SOA licence condition but the Call for Evidence raised concerns about SONI’s compliance with that condition

³⁹ We have not repeated here EirGrid arguments that overlap with the SONI response.

and we have requested further information from SONI in light of these concerns and are considering potential next steps accordingly.

- 5.7 The other points made by EirGrid (that UR is reinterpreting existing government policy, licence amendments are a SEM matter), are largely repeated from elsewhere in the EirGrid response. EirGrid also notes that *‘any approvals requiring ministerial consent will always apply to the SONI business and cannot be devolved to the SONI Board under any of the options.’*⁴⁰ The response mentions only the execution of borrowing agreements as an example of an approval that would require ministerial consent. EirGrid provides no assessment of whether any of the governance changes proposed by UR is problematic in this context and we do not consider that to be the case. We also note that the SONI licence requires SONI’s ultimate controller and EirGrid to provide legally enforceable undertaking to the effect that each will refrain from action which would cause SONI to be in breach of its legal obligations, including its licence conditions.

EirGrid’s continued ownership of SONI

- 5.8 EirGrid states that the underlying policy proposition and benefit which could be delivered to customers on the island as a result of EirGrid’s continued ownership of SONI would effectively be called into question by any of UR’s proposed changes to governance.
- 5.9 For the reasons set out in Section 3, we do not consider our proposals to have an impact on the SEM. We also note that should EirGrid decide to sell SONI in the future, the SEM can operate with two TSOs not in common ownership. In fact, the SOA is designed with separate ownership in mind.

Impact on exercise of governance and oversight by EirGrid

- 5.10 EirGrid considers that SONI’s current governance arrangements enable it to meet UR’s vision for good governance and points to the SOA and the scope of the SONI Board’s authority as supporting this view.
- 5.11 However, UR has raised concerns about SONI’s compliance with the SOA. Also, the Call for Evidence established that the authority of the SONI Board is set out in the EirGrid group Delegated Control Framework (DCF) which is approved by the EirGrid’s CEO and the SONI board itself has a majority of EirGrid representation, either in the form of EirGrid NEDs or senior EirGrid executive team members. There is no SONI ‘guiding mind’ on the Board such that UR’s vision of good governance could be fulfilled.
- 5.12 EirGrid also implies that because UR has not expressed any concerns

⁴⁰ See Para. 85 of the EirGrid response.

regarding the scope of the SONI board's role, UR cannot have any concerns.⁴¹ This is a surprising statement in circumstances where transparency about the role of the SONI board has only arisen as a result of UR's review, including the use of UR's information powers. The fact that UR has not raised concerns cannot be a defence in these circumstances.

- 5.13 EirGrid also states that extending the UKCGC to SONI is unnecessary given that EirGrid plc complies with the Irish equivalent of the code, and that in any case the code is not applicable to SONI as it is not a public limited company with a premium listing on the London Stock exchange.
- 5.14 With respect to UKCGC, as noted in 3.70 above we reference this framework as a mature and respected best practice guideline and consider that the underlying approaches and lessons it offers, in the main, still applicable to SONI.
- 5.15 There are various other concerns advanced by EirGrid, for example:
- The options proposed limit the oversight by EirGrid of its subsidiary in such a crucial way so as to impinge on the fulfilment by both EirGrid and SONI of their respective licence functions;
 - If EirGrid does not appoint the board of SONI it is questionable whether it will meet the test of control defined in International Financial Reporting Standard 10 (IFRS 10);
 - Consideration of the governance arrangements for SONI must start from SONI nature as a corporate entity and be appropriate and proportionate to the scale of the SONI business and by reference to its subsidiary status; and
 - It is unrealistic to expect SONI directors to ignore the interests of the group in their deliberations. Parent companies must have the necessary control and visibility to reduce operational risks across all risk categories that the subsidiary's actions or inactions pose. Parent boards need to provide stewardship on the governance 'underneath' as well as on the governance at the top of the group.
- 5.16 None of these concerns are well explained, e.g. it is not clear which changes proposed by UR are problematic, lead to particular consequences, and why.
- 5.17 It is not at all clear why governance changes would impinge on the fulfilment by both EirGrid and SONI of their respective licence functions. We have considered Condition 3 of the EirGrid TSO licence from Para. 5.2 above. In

⁴¹ See Para. 127 of the EirGrid response.

regard to SONI, governance changes will assist SONI in the delivery of TSO licence obligations and provide assurance on compliance to UR.

- 5.18 In regard to IFRS 10 the concern advanced by EirGrid is that if EirGrid does not appoint the Board of SONI it is questionable whether it will meet the test of control defined in International Financial Reporting Standard 10 (IFRS 10). If so, EirGrid would not be permitted to consolidate the financial results of SONI in its Group Results and would expect this to be of concern to providers of finance facilities to SONI and to have an adverse impact on the availability and pricing of future funding.
- 5.19 We propose that SONI will appoint the Directors of its Board (with the exception of the member to be appointed by EirGrid). UR will not appoint directors to the Board. The governance changes balance the shareholder interest with the interest of consumers set out within SONI licence and other key stakeholders affected by the decisions of the TSO. They do not override the company law requirements on SONI Directors once appointed, in particular the fiduciary duties that they owe to the shareholder.
- 5.20 In these circumstances, it is not clear why changes to the board appointment process would impact on EirGrid and SONI accounting under IFRS10 and have an adverse impact on the availability and pricing of future funding for SONI. EirGrid have not explained why this would be.
- 5.21 The key issue for EirGrid appears to be the composition of the SONI board and who appoints the board. EirGrid clearly wishes that the power to appoint members to the SONI Board will remain with EirGrid as shareholder. In UR's Options B-D that would not be the case. We set out in Section 6 below why we consider Option C should be implemented.
- 5.22 We have also altered Option C to enable EirGrid plc to nominate one non-executive director for the SONI board should they wish to do so. It is not unusual for a shareholder to be able to do so and an EirGrid appointee who also sits on the EirGrid Board could allow EirGrid visibility at Board level of SONI matters and vice versa as required. See also Paras. 6.23-6.25.

6. Policy position on SONI TSO governance

- 6.1 This section considers which of the governance options consulted on by UR in April 2021 should be adopted for SONI TSO.
- 6.2 Many of the concerns expressed by stakeholders (other than EirGrid and SONI) resulted from the fact that the two TSO Licensees are operated under a shared management and resource model compounded by the lack of transparency in key areas. These concerns would not exist if the governance of the two licensed entities was sufficiently separate. UR's options for changes to SONI TSO governance seek to balance the opportunities from a shared management and operating model with the need for transparency and accountability by SONI TSO including by properly taking into account the interests of both Northern Ireland consumers and Ireland consumers by working in conjunction and co-operation (as required and appropriate) with Ireland's TSO for the purposes of undertaking their respective TSO functions.

Do nothing not an option

- 6.3 For the reasons set out in the April 2021 consultation paper, UR considers that the current SONI licence does not effectively mitigate the risks identified in UR's Call for Evidence. The licence therefore requires modification to implement changes to SONI TSO's governance.

Intrusive regulation inferior to governance changes

- 6.4 In addition, we have considered whether more intrusive regulation using UR's existing information powers could remedy the lack of transparency and accountability in SONI TSO revealed by the Call for Evidence. However, whilst more intrusive regulation may gain greater transparency, such an approach would likely come at a very high cost.
- 6.5 Firstly, in the absence of sufficient transparency and information provision UR would need analytical capabilities enabling the authority to form its own independent view of detailed operational aspects of SONI's operation. Hence, it would create a need for UR to establish an internal organisation to shadow SONI's operation, performance and management decisions, which evidently would come at a material expense.
- 6.6 Secondly, it is almost inevitable that such an intrusive approach could have the effect of creating an unnecessary tension between the roles and responsibilities of the regulator and the regulated company. It is therefore a conscious decision to seek an alternative non-adversarial approach which provides greater alignment between SONI and UR as well as supporting

transparency and information provision through modified corporate governance arrangements for SONI without the need for continuous interference into SONI's operations.

- 6.7 Thirdly, a more intrusive regulatory approach, while it may deliver increased transparency over time at a cost, will not deliver accountability and therefore promote trust. A more intrusive approach risks more de facto delegation of responsibility from SONI to UR, diminishing accountability within SONI. Governance changes – in particular greater board and management independence - are therefore a better answer to problems of accountability than intrusive regulation.
- 6.8 This view is borne out by the experiences of other regulators who have made changes to board composition as a means of ensuring that the regulated entity is accountable for the outcomes it delivers.

Most stakeholders support changes to governance

- 6.9 The non-confidential responses to the governance consultation are assessed above in Section 2. All the non-confidential responses support changes to SONI TSO's governance. EirGrid and SONI do not support changes to SONI governance. However, we have also assessed the concerns raised by both companies and for the reasons set out in Sections 3-5 do not find their analysis of the impact of governance changes convincing.
- 6.10 For the reasons above we consider that 'do nothing' is not an option.

Assessment of Options A and D

- 6.11 In the April consultation 2021 paper, we provisionally ruled out Option A because it does not go far enough to meet our vision for SONI governance and provide sufficient protection for Northern Ireland consumers. It does not go much further than strengthening the Northern Ireland 'voice' in the process of decision-making within EirGrid corporate structures.
- 6.12 Those responses to the consultation, which expressed a preference for a particular option, illustrate very limited support for Option A as set out in Section 2.
- 6.13 We also provisionally ruled out Option D as it could potentially remove all of the efficiencies that could be gained between the TSOs. We believe that it is correct to rule out Option D at present but we note that in the context of the SEM arrangements that an operating model based on Option D is tenable and indeed the SOA envisages collaboration between two separate TSOs. It is an open question as to whether the SEM arrangements could be delivered

just as effectively by two separately owned TSOs in a joint venture with appropriate licence conditions to cooperate and collaborate.

Assessment of Option B and C

- 6.14 At the consultation stage we stated that our preferred Options are B or C. These are likely to represent the most proportionate interventions considering the evidence we have received to date. They will provide effective transparency and accountability by SONI for the delivery of its TSO obligations. They each allow SONI to maintain collaboration with EirGrid for SEM purposes, and the scope to deliver any synergies and related efficiencies which may arise from SONI's position in the EirGrid group. They also allow better alignment of the commercial interests of SONI's shareholder with the interests of Northern Ireland consumers.
- 6.15 However, the starting point for Options B and C differ. Option B presumes that SONI will continue to deliver its TSO obligations through EirGrid's integrated management structure. Option C presumes SONI will be a standalone company independent of EirGrid unless an independent SONI Board can make an evidenced case to UR to permit sharing of resources with EirGrid. Option C therefore puts a framework in place which leaves open future decisions about the level of interdependence between SONI and EirGrid. Depending on the extent of derogations which may be granted by UR in Option C, Options B and C could result in very similar outcomes - the licence conditions do not place any limit on the extent of derogations which SONI may apply for.
- 6.16 The key difference is that Option C (vis-à-vis Option B) is that it puts the evidential burden on SONI to make a robust case for a 'derogation' from the requirement for independence. This is appropriate in circumstances where the present level of integration between SONI and EirGrid has not resulted from a conscious choice by an independent SONI Board. A 'derogation' would likely only be permitted in Option C where it would deliver tangible efficiencies for the Northern Ireland consumer and/or result in SONI being demonstrably more effective than would otherwise be the case, whilst maintaining independent SONI decision making and accountability. If SONI wishes to have a derogation in Option C it must put forward a robust cost benefit analysis to support its request for a derogation(s) to be granted by UR. If no derogations are granted the default in the licence conditions for Option C will be separation from EirGrid.
- 6.17 Therefore, we consider that Option C will lead to more evidence based outcomes that are the product of a considered request by an independent SONI Board. As explained below, any derogation will also be time bound allowing for the need for it to be revaluated periodically by the SONI Board.

We expect that evidence based outcomes will deliver greater trust and confidence in SONI compared to Option B, where continued delivery through the EirGrid shared management model may not be evaluated by SONI in the same way.

- 6.18 The fact that the derogation process exists in Option C will, naturally, lead the independent SONI Board to evaluate the most efficient means of delivering its licence obligations in the interests of Northern Ireland consumers. We consider that this exercise and any subsequent applications for derogation will be important in beginning to build a culture of accountability in SONI. Accountability over time will therefore be stronger under Option C than B.
- 6.19 We also note that of those respondents⁴² to the April 2021 consultation who expressed a preference for any of the options consulted on by UR, more respondents favoured Options C and D than favoured Options A and B.
- 6.20 For all these reasons, and subject to the outcome of the consultation on the implementing licence conditions, we prefer Option C, over Option B.

Updated features of Option C

- 6.21 We have made two key changes to Option C compared to the version consulted on in April 2021.
- 6.22 Firstly, this option no longer has a specific licence duty on SONI in respect of Northern Ireland consumers. We consider that this is not necessary at the present time given the proposed requirements for an independent SONI board as the Board will ultimately be responsible and accountable for compliance with the requirements of the TSO licence which are designed to ensure that delivery of Northern Ireland system operation is in the best interests of Northern Ireland consumers, and where, for SEM purposes, the SOA is designed to protect the interests of both Northern Ireland and Irish consumers.
- 6.23 Secondly, for the reasons explained at Para. 5.22 we have made an adjustment to Option C to enable EirGrid to nominate one member of the SONI board should they wish to do so. Option C did not previously facilitate this – unlike Option B where an EirGrid appointment was explicitly a possibility.
- 6.24 However, to preserve the operational and managerial independence of SONI and its board, the person appointed should be one of the existing NEDs from

⁴² Non-confidential responses.

the EirGrid Board appointed to the SONI Board. However, this appointment will not be permitted to chair the SONI Board as we continue to believe that an independent NED should chair the Board to bolster SONI's independence.

- 6.25 In the course of drafting the licence conditions to give effect to Option C we have developed an independence test (the Sufficiently Independence Director (SID)) which any NED to be appointed to the SONI board will have to meet (see Para. 7.3(c) below). The EirGrid nominee will not be required to meet the independence test.
- 6.26 A summary of the updated features of Option C is provided in Table 2 below. The licence conditions do not specify all of these features. Those features flagged in the table below as being consequential to the proposed licence modifications were features of Option C consulted on in the April 2021 consultation paper. We expect an independent SONI to apply these as good practice unless an applicable derogation has been granted by UR.

Transition to new SONI board

- 6.27 The SONI Board in place at the time any new licence conditions take effect, will need to manage the transition to the new SONI Board. Between now and then we acknowledge that appointments to the SONI Board are at the discretion of EirGrid. However, we can see no reason why EirGrid would need to alter the overall composition of the Board – in particular the fact that half of the board is composed of EirGrid NEDs (one of whom chairs the board) and that the SONI Managing Director has a seat on the Board. We regard these features of the current board composition as an important interim stage towards full board independence which should be maintained until the new SONI Board is appointed.
- 6.28 Once the new SONI Board has been appointed, the selection and appointment of future SONI Board members will be managed by the SONI Board itself in a process consistent with any licence conditions applicable to SONI. We expect the new Board will also be mindful of the principles in the UKCGC.

Timescales for implementation of licence modifications

- 6.29 The timescales for appointment of the new SONI Board and any other requirements are set out in the draft licence conditions published for consultation in Annex 1 of this paper.
- 6.30 The licence modifications for consultation propose that the new independent SONI Board should be in place from 1 January 2023. The Board should then consider what initial derogations are necessary and the window for those

applications to be made to UR is between 1 May and 30 June 2023. This ensures that the SONI board has adequate time to consider any recommendations from the executive team.

- 6.31 The requirement for managerial and operational independence takes effect on 1 July 2024 unless a derogation has been applied for within the window referred to above. UR will endeavour to determine any application for an initial derogation by 1 January 2024, and SONI then has 12 months to implement the decision. However, UR can extend the date by which it takes derogation decisions to 1 July 2024. In this case SONI will have until the end of June 2025 to implement the derogation decision.

Future review of effectiveness of SONI TSO governance

- 6.32 We will keep any new governance obligations under review, and SONI will be required to demonstrate its compliance with any new obligations, and that it is an effective partner to EirGrid TSO in all-island TSO decision making. A review of the effectiveness of the new governance arrangements will be conducted after a suitable period has passed following implementation of all new governance measures.

Table 2: Updated Option C

Updated Option C – Standalone SONI potential exemption from UR		
Board	Licence Duty to require Independent Board	✓
	Licence requirement in respect of operational and managerial independence	✓
	Licence requirement for compliance officer and plan for new duties	✓
	SONI Board Composition	<p>Licence conditions for consultation require:</p> <p>SID to Chair the Board</p> <p>Number of SIDs to be a majority on the Board</p> <p>SIDs must to meet the independence test that will be set out in licence conditions and meet the requirements in regard to experience</p> <p>First term of SIDs must not be less than four years nor more than six years and if reappointed the maximum period of both appointments must not exceed 9 years</p> <p>One Director may be nominated to the SONI board by EirGrid</p>

		<p>plc from among the NEDs on the EirGrid plc board but this appointment cannot chair the Board</p> <p>Consequential to the licence modifications we expect:</p> <p>SONI MD to be appointed by, report to, and be an executive member of the SONI Board</p> <p>Any SONI executive directors on the Board appointed from SONI Senior team (SONI employees)</p> <p>Selection and appointment of Board members by the independent SONI Board in a process consistent with the UKCGC (apart from EirGrid nominee)</p>
	SONI Board Duties & Matters Reserved	Minimum matters we consider should be reserved set out in licence conditions (see Para. 14 of Annex 1).
Management & Resources	SONI Dedicated Management & Resources (to include services)	<p>Licence conditions for consultation require:</p> <p>Managerial and operational independence, from EirGrid plc and other group companies</p> <p>SONI may apply to UR for a derogation from the general requirement for independence</p> <p>UR may approve derogation applications (based on a robust cost benefit analysis) including specifying conditions necessary for the protection of NI consumers</p> <p>Consequential to the licence modifications we expect:</p> <p>Direct reports to the SONI MD (The Senior Management Team – SMT) to be as if SONI were a standalone company</p> <p>Appointment and remuneration of SMT individuals and staff to be within control of SONI Board.</p> <p>Any other resources required to deliver the SONI Licence appointed by SONI Board or SMT.</p>
	Pay and Incentives	Controlled by SONI Board for SONI staff as a consequence of the following in the draft licence conditions for consultation – the general requirement for independence and the provision that there can be no shareholder reserved matters other than those required by corporate law
Other	Conflicts with Group policies and approaches	SONI Conflict Policy is a matter proposed to be reserved to the SONI board by the licence conditions for consultation
	Whistle Blowing	SONI Whistle Blowing Policy is a matter proposed to be reserved to the SONI board by the licence conditions for consultation
	SLA	Licence conditions for consultation specify that the approval of a Service Agreement is reserved to the board and that a Services Agreement may form part of conditions that may be attached to any derogation granted by UR
	SOA	Operate to the SOA as required in the existing SONI licence.
	Compliance	Licence conditions for consultation specify that a dedicated

	Officer	SONI Compliance officer required to own a Compliance Plan (for UR Approval) and to report to SONI Board on Compliance

Updated Cost Benefit Analysis (CBA) for Option C

Consultation Position

- 6.33 Within the April 2021 consultation paper, we set out high level costs and benefits of the various options. We asked respondents for views on this analysis. We further requested that SONI provide information on the cost efficiencies and synergies arising from the current governance structure.
- 6.34 The estimated costs of the preferred Option C were forecast in the consultation paper as follows:

Table 3: Consultation forecast cost of Option C (April 2019 prices)

	2020-21 (£000's)	2021-22 (£000's)	2022-23 (£000's)	2023-24 (£000's)	2024-25 (£000's)	Total (£000's)
One-Off Recruitment Costs	10					10
Independent Chair - (1 at £40k)	40	40	40	40	40	200
Non-Executive Directors - (3 at £20k each)	60	60	60	60	60	300
Additional Managers - (1 at 15% above FD average)	91	91	91	91	91	454
Additional Analysts - (1 at £79k FD average)	79	79	79	79	79	394
Economies of Scale Impact						
Total Governance Cost	280	270	270	270	270	1,358

- 6.35 Our provisional view was that this option would cost around £270k per annum or £1.4m over a five-year price control period. We did however recognise that the cost could go up or down depending on various factors such as loss of synergies, recharged staff being more expensive, need for more in-house expertise etc.
- 6.36 In terms of the benefits, we did not set out an expected monetary return. Rather, the report listed potential positive impacts such as:

- Challenge or rejection of group costs by SONI.
- Removal of 'one-size-fits-all' approach.
- Distinct service needs being developed by SONI.
- Enhanced delivery of price control outputs.
- Increased trust, accountability and transparency.

6.37 Some of these benefits are expected to have a monetary benefit which it is difficult to estimate. Other impacts such as increased trust and confidence in delivery is non-financial in nature but nevertheless essential to the efficient working of the electricity industry.

Responses

6.38 There was relatively little discussion in most of the responses regarding the option costs. The principal criticisms were captured in the SONI response. The table below sets out the TSO views and our response.

Table 4: Consultation forecast cost of Option C (April 2019 prices)

	Consultation Responses on Costs/Benefits and UR Responses
SONI Comment	The analysis focuses solely on headcount, and indeed only on a small component of the likely headcount that would be required, and does not make any attempt to quantify costs in relation to the inevitable loss of synergies, or even of affecting some of the changes required.
UR Response	The proposals tried to capture the foreseeable additional costs associated with the options. SONI was asked to provide evidence of lost synergies and a follow up question on duplicate costs was issued. These issues have been attempted to be addressed in the following responses.
SONI Comment	There is a complete absence of any attempt to consider or quantify potential market impact.
UR Response	We do not consider that the current market arrangements will be adversely affected. Consequently, no additional costs are detailed in the CBA.
SONI Comment	The "jurisdictional" approach to regulation put forward by the Utility Regulator – one more concerned with "who" undertakes the functions and "where" they are undertaken, even though as we have set out above such considerations are without basis would seem to suggest a greater duplication of resources than has been allowed for in the Utility Regulator's analysis of costs. SONI's view is that this approach would inevitably lead to greater cost implications than the Utility Regulator has envisaged.

UR Response	<p>We asked SONI a follow-up query regarding the duplication of costs. SONI listed a couple of examples where costs might be expected to rise. They further stated, <i>"In summary, it is clear that that proposed by the Utility Regulator would remove the opportunity to realise synergies leading to consumer savings, and has the potential to greatly increase costs."</i></p> <p>Such a conclusion seems to be misplaced. For the preferred option the opportunity to realise synergies is not removed and we are prepared to grant derogations where this is in consumers' best interests and where sufficient mitigations are included. This gives SONI the opportunity to challenge or refuse duplicated costs where they are not appropriate. As a consequence, we do not consider there to be a significant potential for 'greatly increased costs' at this time.</p>
SONI Comment	<p>The Utility Regulator concludes that much of the one-off implementation costs can be reduced (for example, because recruitment costs are already provided under existing allowances). The amount provided by the Utility Regulator for such one-off implementation costs in each scenario is therefore de-minimis. Given the far-reaching implications of the proposed changes, this figure appears to bear little relation to reality.</p>
UR Response	<p>We consider this rationale to be justified, particularly when there is an annual recruitment allowance for SONI staff. The figure also doesn't seem that unreasonable given that the SONI business plan requested recruitment costs of £22k per annum alongside an increase in staff numbers of over 20 FTEs. Our proposals are for much lower numbers of staff recruitment.</p> <p>That being said, we recognise that there may be additional costs for Board and Chair recruitment if an external body is used to undertake this activity. Consequently, we are proposing to increase this allowance to a one-off provision of £50k for implementation.</p>
SONI Comment	<p>Under both Options C and D, SONI would no longer have ready access to a pool of staff with relevant expertise via the group shared resource model. But the cost / benefit analysis contains no consideration of the additional cost of accessing such specialist expertise – which will likely need to be procured through expensive consultancy arrangements.</p>
UR Response	<p>In the preferred Option, C SONI will still have access to such shared resources but the process will be formally managed under the granting of appropriate derogations where they are well justified and with sufficient mitigations to overcome the risks.</p> <p>In fact, SONI will have more scope for delivering efficiency as it will be able to assess on a case-by case basis whether to use group resource, consultancy or direct employment depending on the nature of the activity required.</p>
SONI Comment	<p>Substantive review of the staffing levels would be required. The Utility Regulator has misrepresented the basis of the Price Control by inferring that only minor staffing changes are required or taken into account.</p>
UR Response	<p>We consider that the price control provides SONI with adequate resources based on a shared resource model. Under the preferred option SONI will still have access to such resource if properly managed and justified.</p> <p>Consequently, we do not consider that there is material scope for staff increases beyond the additional NEDs and the financing of new obligations required under mitigating controls e.g. board oversight and drafting and operation of a sufficiently robust SLA which provides sufficient transparency over the activities and resulting costs for such shared resource.</p>

SONI Comment	The Utility Regulator has not considered the impact on the financeability of SONI's licenced activities, for example the proposed approach will prevent efficiencies being achieved through Group synergies and mean SONI will not be financeable.
UR Response	As above, SONI will still have access to such shared resources but the process will be formally managed. There is no obvious concern regarding financeability.
SONI Comment	Should the IT systems be required to be separately provided the costs would be multiple times more.
UR Response	Where the savings from joint procurement are obvious and independence is not compromised, SONI will be able to avail of such shared systems and resource via a formal derogation to the licence and with, for example, an appropriately robust SLA in place following approval by UR.
SONI Comment	Rather than estimating such synergies or providing a range, the Utility Regulator leaves this information blank, <i>"as to use the limited information we have could give a misleading picture."</i> But to omit any consideration of the potential loss of synergies is equally misleading
UR Response	<p>We recognise this issue which is why further information was requested. While credible examples of scale economies were given, these are less applicable to Option C as shared resource will still be available where savings are clear and continued independence demonstrated.</p> <p>If joint working or procurement cannot be justified, it is likely that the savings are either immaterial or perhaps more costly to SONI. This is likely for more user or network focused roles where such resource is already dedicated or scaled to activities e.g. network planning and development. As such, we do not consider that the loss of synergies is material for the preferred option and have made no such allowance in the final decision paper. An estimate would be required if Option D was selected at some point in the future.</p>
SONI Comment	The Utility Regulator proposes that a series of other governance changes should be implemented on all four Options. These obligations are not considered in the cost / benefit analysis, but cannot reasonably be considered as cost-free. Yet no costs for their implementation or ongoing operation are identified.
UR Response	<p>The common obligations include a compliance plan / officer, whistleblowing policy, Board committees and specification of reserved matters. The increased Board activity is reflected in the higher allowances for NEDs than present levels of remuneration for EirGrid Board members.</p> <p>We do not consider the whistle blowing policy to be a costly or resource intensive function. The compliance officer is already provided for via an additional manager. However, given the additional activity required under this obligation and operation of sufficient mitigation, including the drafting and operation of a robust SLA potentially, we have increased the analyst support to two full time equivalents (FTE).</p>
SONI Comment	The estimated savings lacks evidence, or any clear articulation as to how any of the Utility Regulator's proposals would drive cost savings for consumers.
UR Response	<p>With respect to synergies, SONI stated that, <i>"the fact that these synergies are difficult to quantify does not mean that they do not exist."</i> We understand this sentiment and believe the same rationale applies to potential savings.</p> <p>In contrast to the SONI statement, we have listed a number of potential efficiencies under the new arrangements including; a) challenge or rejection of group costs by SONI; b) removal of 'one-size-fits-all' approach; and c) distinct service needs being developed by SONI.</p>

SONI Comment	The Utility Regulator does not explain why it is appropriate to consider unquantified benefits in this context, when to account for unquantified synergies in its cost-benefit analysis was potentially 'misleading'.
UR Response	We have not attempted to estimate either the costs of lost synergies or the monetary benefits. This treatment is consistent and appropriate given the uncertainty around any such estimates. We do however believe that the potential for lost synergies is low and has not been demonstrated under the preferred option.
SONI Comment	SONI does not understand why there would be an issue of 'trust and confidence in SONI' by the Utility Regulator where SONI continues to fulfil its roles in the SEM pursuant to its licences.
UR Response	<p>We recognise the important role SONI plays in the SEM. However, our concern is the potential for harm under the existing arrangements. The 'trust' issue is seemingly shared and further highlighted by the consultation responses.</p> <p>Excluding SONI and EirGrid, over 70% of respondents across a wide range of organisations and stakeholders indicated a preference for adoption of further independence measures (Options A-D). This would suggest that improvements are possible in the area of trust.</p>
SONI Comment	It has not been demonstrated how the proposed approach to SONI governance would bring about 'increased transparency and accountability measures' and any such justification for the proposed approach has not been by the Utility Regulator.
UR Response	<p>Within the consultation paper we set out our concerns about the issues of recharging. Under the preferred option, SONI would still be able to avail of group skills but this would be managed through the application of formal derogations to the licence requirements and approved by UR subject to sufficient mitigations being introduced e.g. agreed SLA overseen by an independent board.</p> <p>Such an approach should have a positive impact on both transparency and accountability. This is due to the fact that SONI will have to justify why use of such resource is appropriate or indeed preferable to other options. This will also give UR insight as to the level of recharges and what they are for. Such detail is largely absent from current reporting.</p> <p>SONI points out that UR has access to the Cost Allocation and Recharge Policy. This however is obviously high level and does not provide the necessary detail to give assurance that recharges are appropriate. Such could be achieved by adoption of the SLA and scrutiny by UR.</p>
SONI Comment	On the estimated saving of £550k per 1% reduction in costs, the Utility Regulator speculates that such a saving could arise from " <i>the challenge of costs being allocated to or imposed on SONI TSO by EirGrid, or the imposition of costs through a one size fits all approach</i> ", or by granting SONI the ability to " <i>develop and articulate its own service needs distinct from EirGrid plc</i> ". But this lacks evidence, or any clear articulation as to how any of the Utility Regulator's proposals would drive cost savings for consumers.

UR Response	<p>We recognise the difficulty in forecasting unknown benefits. This is why the consultation and decision paper has remained non-definitive on the issue. We have however articulated how the new governance arrangements might prove beneficial.</p> <p>We further note that in SONI's business plan submission the direct costs of recharged staff was forecast over 2020-25 to be greater than 25% more expensive per FTE than internal staff. This indicates the potential for savings should alternate approaches to group resources be adopted.</p>
SONI Comment	<p>No conflict of interest has been identified by the Utility Regulator outside of a mere speculation that a conflict could possible arise at some future date. The "<i>qualitative benefits</i>" as described by the Utility Regulator are no such thing.</p>
UR Response	<p>Issues concerning trust, confidence and accountability can be difficult to measure. However, we are of the opinion that governance changes may help address such issues.</p> <p>The formal review after two years will help establish whether improvements have been made in this respect. This review may also help understand the impact on costs and benefits.</p>

Conclusions

- 6.39 We have updated the cost benefit analysis but it remains limited due to the nature of the evidence available. SONI and EirGrid are correct that UR has not identified quantifiable benefits (in monetary terms) arising from new governance arrangements. In response to the consultation, no evidence of actual harm has become known, against which to quantify the benefit of remedying that harm. Nor have SONI been able to provide further evidence of the economies and scale and efficiencies arising from the present arrangements compared to the situation pre-acquisition.
- 6.40 Therefore, the cost benefit analysis for the policy position paper will not change materially from that published in the consultation. We will rely on the fact that the costs of good governance, which includes the provision of derogations for areas of the business significantly impacted by this licence obligation but where sufficient mitigations can be demonstrated, are unlikely to be substantial relative to SONI's overall costs, and in any event are necessary to ensure SONI's governance is fit for purpose.
- 6.41 Based on the consultation responses we are not minded to make material changes to the CBA. However, we have uplifted the one-off implementation costs to account for an independent body to make Board member appointments. We have also increased analyst support to help address the additional obligations and mitigations, including reporting required under the SLA and compliance plan.
- 6.42 We have made no estimate of the financial benefits but have listed examples

where savings could be made.⁴³ We are also of the opinion that the new arrangements will have a negligible impact in terms of lost synergies. Overall, we are forecasting additional costs of around £350k per annum as set out in the table below.

- 6.43 We also note that if the implementation of SONI governance changes results in any hidden cross subsidies between the two jurisdictions being revealed as better information becomes available, then eliminating these cross subsidies will be a positive outcome of the governance review. It is important that both sets of consumers on the island have confidence that they are paying a fair share and regulators need information to monitor this effectively. For this reason, we consider that a service agreement between EirGrid and SONI is required where services are being shared or delivered in common. Having a service agreement between the TSOs could be a condition placed on any derogation granted to SONI.

Table 5: Final forecast cost of Option C (April 2019 prices)

	2020-21 (£000's)	2021-22 (£000's)	2022-23 (£000's)	2023-24 (£000's)	2024-25 (£000's)	Total (£000's)
One-Off Recruitment Costs	50					50
Independent Chair - (1 at £40k)	40	40	40	40	40	200
Non-Executive Directors - (3 at £20k each)	60	60	60	60	60	300
Additional Managers - (1 at 15% above FD average)	91	91	91	91	91	454
Additional Analysts - (2 at £79k FD average)	158	158	158	158	158	789
Economies of Scale Impact	0	0	0	0	0	0
Total Governance Cost	398	348	348	348	348	1,792

⁴³ The CBA assumes four (4) NEDs, however the licence conditions for consultation do not specify a number of SIDs on the SONI Board. That will be a matter for SONI to decide and the costs will vary accordingly.

7. Proposed licence modifications to give effect to governance changes

- 7.1 This section sets out the reasons and effects of the proposed licence amendments that we consider are necessary to give effect to governance changes.

SONI Board Composition

SONI Board

- 7.2 Part A of the proposed licence condition makes provision for the composition and functions of the board of SONI Limited (the **Board**).
- 7.3 The effects of the proposed licence condition are as follows –
- a. SONI will have until January 2023 to ensure that the specific requirements are fulfilled. There will therefore be a transition period which ensures that SONI has sufficient time to undertake the process for recruiting/appointing members to the Board in order to ensure compliance with the licence requirements.
 - b. The Board will need to be comprised such that it has an appropriate balance of skills, knowledge, experience and diversity which would be expected from the board of a company having a key position in the Northern Ireland energy sector.
 - c. The Board will need to consist of a majority of *sufficiently independent* non-executive directors. In essence persons that:
 - i. have the requisite skills, knowledge and experience of the energy regulated sector and of electricity transmission operation matters;
 - ii. are not, and were not in the previous 5 years before appointment, employed by, a director of, or have any other connection or relationship (including family ties) with SONI, EirGrid or any other company in the EirGrid group.
 - d. The Chair of the Board must be sufficiently independent non-executive director.
 - e. There may be one non-executive director on the SONI Board that does not meet the criteria of being *sufficiently independent*. But this cannot be an individual that has an executive or management role within EirGrid.

- f. At least 50% of the sufficiently independent directors will need to have requisite knowledge and experience of the regulated energy sector and of this 50% at least 50% need to have recent experience relating to transmission system operation matters.
- g. Each Board member only has one vote and the Board will only be quorate when the majority of the Board members present are sufficiently independent directors.
- h. SONI will need to give notice to UR of each proposed appointment of a *sufficiently independent* director and not make the appointment if UR so directs.
- i. The initial term of appointment for a sufficiently independent non-executive director will need to be between 4 to 6 years – which can be renewed once but subject to the cumulative period not being more than 9 years.
- j. The SONI Board must be responsible for –
 - i. making, and approving any changes to, a scheme of delegation which sets out the authority for decisions which do not (subject to below) need to be made by the SONI Board;
 - ii. ensuring that any such delegation scheme does not provide for decisions to be made by EirGrid Board or personnel (other than where EirGrid is legally required to make such decisions in its shareholder capacity);
 - iii. determining and approving applications to be submitted to UR for a derogation from the requirements of Part B of the licence condition;
 - iv. approving any changes proposed to be made to the System Operator Agreement;
 - v. approving any changes proposed to be made to any Service Level Agreement which relates to a derogation given by UR; and
 - vi. approving a SONI Conflict of Interest Policy and a SONI Whistle-blower Policy

7.4 The reasons for the proposed licence condition are as follows –

- a. A SONI Board which has a majority of sufficiently independent directors serves to ensure good practice in terms of governance of TSO functions and decision making on an independent and transparent

basis. It is also consistent with similar or equivalent requirements in certain other utilities sectors and jurisdictions and should lead to clearer and more effective governance of SONI TSO.

- b. This is also the reason for the provision that the Board will only be quorate where the majority of the Board members present are sufficiently independent directors. This is considered necessary and appropriate to ensure that the requirement for the majority of the Board to comprise of sufficiently independent directors is not undermined by virtue of vacant positions or absences for any other reason.
- c. The proposed condition does not specify either the maximum or the minimum number of sufficiently independent non-executive directors or executive directors that can be on the Board and therefore how SONI ensures there is at all times the required majority is for SONI to consider in determining the number of persons required to be on the SONI Board.
- d. UR considers it to be right and appropriate for EirGrid, in its capacity as the sole shareholder of SONI, to have a voice on the SONI Board should it wish to do so. This is the reason for providing that one non-executive director does not need to be sufficiently independent – as any such individual can therefore effectively represent the shareholder in that capacity. That the individual may represent EirGrid in that capacity, i.e. as shareholder, is also the reason for proposing that it cannot be an individual that has an executive or managerial role in EirGrid. There is no restriction on the relevant individual being a non-executive director on the EirGrid Board.
- e. Given the complex nature of SONI's business, the licensable activities it undertakes, the role and responsibilities it has as a TSO and the developing local and global energy strategy, it is considered necessary that at least some of the sufficiently independent directors have requisite knowledge and experience of electricity sector and of TSO businesses.
- f. While responsibility for compliance with the proposed licence condition lies (as it does for any other licence condition) absolutely, squarely and fairly on the legal entity that is SONI, UR recognises that SONI and individuals appointed as sufficiently independent directors may welcome some assurance that the appointments are not, after the event, seen to be in breach of the relevant requirements by UR. This is particularly the case given that it would be unhelpful and time consuming for an appointment to have to be unwound because the relevant criteria had not been satisfied. It is for this reason UR

considers it right and appropriate for the appointment process for sufficiently independent directors to include a step whereby UR is notified prior to the appointment and exercise a right of veto if it determines that the relevant criteria is not met in any individual case.

- g. In terms of the tenure of appointment for sufficiently independent directors, UR notes that it is important for the SONI Board to be relatively stable during the period within which key decisions on TSO governance are to be made and for appointed individuals to have some assurances as to the longevity of their appointment in order to make informed decisions for both the short, medium and long term aspirations of the company. The cumulative maximum term of nine (9) years reflects the provision of the UKCGC which indicates that serving on a board for more than nine (9) years is a circumstance which is likely to impair, or could appear to impair, a non-executive director's independence.
- h. Given the key decisions which will need to be made in relation to TSO governance and managerial and operational separation, it is also appropriate for the SONI Board to make some of these key decisions. Accordingly, UR considers it necessary that the SONI Board makes decisions on matters relating to delegation schemes, derogation applications under Part B and proposed changes to associated service legal agreements and the system operator agreement, and approves a SONI Conflict of Interest Policy and a SONI Whistle-Blowing Policy. Similarly, UR considers it is right and appropriate that the SONI Board does not delegate decision making powers to EirGrid Board or EirGrid personnel.

Managerial and Operational Independence

Operational Independence

- 7.5 Part B of the proposed licence condition relates to the separation of the SONI TSO business from EirGrid and any other company within the EirGrid group.
- 7.6 The overall effect of this part of the licence is that, except in respect of those functions for which a derogation has been granted – as to which see from Para. 7.11 below - the SONI TSO business will from 1 July 2024 need to be managerially and operationally separate from EirGrid and any other company within the EirGrid group.
- 7.7 UR's reasons for the proposed licence conditions are that greater

independence of the SONI TSO business will generate stronger incentives on the business to be efficient leading to lower costs and increased benefit to Northern Ireland consumers.

- 7.8 Greater independence from EirGrid will provide for greater transparency and accountability of the SONI TSO business in relation to decision making, the costs being incurred by it and the reasons for those costs, greater alignment between the shareholder and consumer objectives, increased confidence of stakeholders in the development, operation and management of the Northern Ireland transmission network, including in particular in respect of the transition to a low carbon economy, and a more balanced focus with regard to the interests of Northern Ireland consumers.
- 7.9 Managerial and operational independence from EirGrid in the performance by SONI of its TSO activities and functions will lead to dedicated resource for the TSO business (where required), more evidence based outcomes which can be properly and fully evaluated, and greater protection of the interests of Northern Ireland consumers and users of the Northern Ireland transmission network.
- 7.10 It will also ensure transparency and accountability in how SONI discharges its licence obligations.

Derogations

- 7.11 While the principal obligation is that the SONI TSO business is to be managerially and operationally separate from EirGrid, Parts C and D of the proposed licence condition provide for the TSO business to be exempt from that requirement in respect of those business functions for which it has been given a derogation by UR.

Initial Derogations

- 7.12 Part C of the proposed licence condition therefore sets out the process, and associated timings, by which SONI may, in respect of any particular function(s), initially apply for derogation(s) from the requirement for the SONI TSO business to be operationally separate from EirGrid and any other company within the EirGrid group.
- 7.13 The effect of the provisions in this part of the licence are as follows –
- a. SONI will have an initial opportunity to apply to UR for a derogation from the operationally separate requirement in respect of any function(s).
 - b. Any such initial application(s) can be made between (and only between) 1 May 2023 and 30 June 2023.

- c. UR will publish guidance to SONI on the application requirements, including for example the form and content of the application, and on how the UR will assess the application and the criteria which will be applied for that purpose.
- d. The application will need to include certain particulars including for example the terms of the derogation sought and SONI's reasons as to why a derogation is justified.
- e. UR will make a decision on any such initial application, i.e. on whether or not to grant the derogation applied for and if so to what extent (e.g. by way of derogation being subject to conditions) by 1 January 2024 (or a later date set out in a direction). If no decision is made by the UR by the relevant date, the derogation is deemed to have been given.
- f. Any such initial derogation that may be granted may have an expiry date but this will not be a date which is less than five (5) years from the date the derogation was granted.

7.14 The reasons for these licence conditions are –

- a. UR acknowledges that there may be certain TSO functions where it could be prudent and in the interests of Northern Ireland consumers for the SONI TSO business to share resources with EirGrid or group company.
- b. The evidential burden for making the case for any such sharing of resources should rightly be on SONI. It is best placed to demonstrate to the satisfaction of UR that in respect of the relevant function(s) it remains necessary and desirable for joint working and/or sharing of resources between the TSO business SONI and EirGrid/group company.
- c. UR is best placed to scrutinise SONI's proposals and determine whether SONI has been able to justify the necessity and desirability for joint working.
- d. It is necessary to specify the date by which applications for initial derogations must be made as this ensures that there is absolute clarity as to the date from which the primary obligation must be satisfied for those functions for which a derogation application is not made.
- e. In the same vein, it is necessary to specify the date by which the primary obligation must be satisfied in circumstances where (i) UR has refused a derogation application, and (ii) where a derogation expires (without a new subsequent derogation having been granted).

Subsequent derogations

- 7.15 Part D of the proposed licence condition sets out the process and timings for SONI to be able to apply for a derogation at a later stage, i.e. essentially after 1 July 2028.
- 7.16 The effect of this part of the licence condition is that –
- a. Such an application can be made either where an initial application was not made or not granted, where an initial derogation is due to expire or was revoked having been given.
 - b. Where an initial application was not made or was not granted, an application under Part D cannot be made before 1 July 2028.
 - c. Where an initial derogation is due to expire, an application under Part D cannot be made more than two (2) years prior to its expiry.
 - d. Where an initial derogation was given but later revoked, an application under Part D cannot be made within five (5) years of its revocation.
 - e. UR's published guidance and criteria for derogations applies to any such application.
 - f. UR will make a decision on whether or not to grant the derogation applied for within six (6) months of the application (or such later date that it may direct where it requires more time). If no decision is made by the UR by the relevant date, the derogation is deemed to have been given.
- 7.17 The reasons for these provisions are that –
- a. It is right and appropriate for the licence condition to recognise that the TSO business and functions may evolve over time and to cater for changes in circumstances, activities and functions such that SONI may wish to apply for additional or renewed derogations. Equally however it is also right and appropriate for there to be a period of stability to assess the effectiveness (or otherwise) of the independence of the TSO business.
 - b. It is therefore fair and reasonable to enable SONI to apply for –
 - i. an existing derogation which is otherwise due to expire to essentially be renewed (with or without changes as the case may be); and

- ii. a new derogation to be given in respect of functions for which no earlier derogation exists.

Compliance Plan

- 7.18 Part E of the licence condition replicates the existing provisions for SONI to prepare and report on a compliance plan.
- 7.19 The effect of this part of the licence condition is that SONI will need to –
- a. Prepare and submit to UR for its approval a compliance plan setting out how it will ensure compliance with all of the other requirements of the condition.
 - b. Comply with the compliance plan that is so approved by UR.
 - c. Undertaken an annual review of its compliance plan to ensure that it continues to be fit for purpose.
 - d. Appoint a compliance officer who shall be responsible for monitoring the effectiveness of the compliance plan and of SONI's compliance with the plan, for investigating any complaints relating to managerial and operational separation of the TSO business from EirGrid and reporting to UR on the same.
- 7.20 The reasons for these provisions are –
- a. The establishment of the compliance plan, the appointment of a compliance officer, and continual review of the plan are important assurance mechanisms both for the SONI Board and UR in regard to compliance with the new licence conditions.
 - b. Given the importance of the compliance plan UR needs to be able to approve the plan and SONI must have an obligation to comply with it.
 - c. The publication of the compliance plan will be an important mechanism to achieve transparency and promote trust.

8. Responding to the licence modification consultation and next steps

Licence modification consultation

- 8.1 The proposed licence modifications we consider are necessary to implement governance changes are set out for consultation in Annex 1. The associated statutory notice is set out in Annex 2. Responses to the licence modification consultation should be received on or before 17:00 on 21 February 2022.
- 8.2 We welcome stakeholder views and comments on the draft licence modifications and we will consider our final decisions on the licence modifications to give effect to governance changes in light of the responses received. It is our current intention to publish our final decision on licence modifications at the end of March 2022.

How to respond

- 8.3 Responses to this consultation should be received on or before 17:00 on 21 February 2022.
- 8.4 Responses can be sent in writing to or by emailing:

Roisin McLaughlin
The Utility Regulator
Queens House
14 Queen Street
Belfast
BT1 6ED

e-mail: Roisin.McLaughlin@uregni.gov.uk

and copying

e-mail: Electricity_Networks_Responses@uregni.gov.uk

- 8.5 Our preference is for responses to be submitted by e-mail.

Confidentiality

- 8.6 Please note that we intend to publish all responses unless marked confidential. While respondents may wish to identify some aspects of their responses as confidential, we request that non-confidential versions are also provided, or that the confidential information is provided in a separate annex.
- 8.7 As a public body and non-ministerial government department, UR is required

to comply with the Freedom of Information Act (“FOIA”). The effect of FOIA may be that certain recorded information contained in consultation responses is required to be put into the public domain. Hence it is now possible that all responses made to consultations will be discoverable under FOIA, even if respondents ask us to treat responses as confidential. It is therefore important that respondents take account of this. In particular, if asking UR to treat responses as confidential, respondents should specify why they consider the information in question should be treated as such.

- 8.8 UR has published a privacy notice for consumers and stakeholders which sets out the approach to data retention in respect of consultations. This can be found at <https://www.uregni.gov.uk/privacy-notice> or, alternatively, a copy can be obtained by calling 028 9031 1575 or by email at info@uregni.gov.uk.
- 8.9 This paper is available in alternative formats such as audio, Braille etc. If an alternative format is required, please contact the office of UR to request.

Annex 1: Proposed licence conditions to implement governance changes

Condition 42. Governance and Management of the Licensee

INTRODUCTION

1. This condition makes provision for the effective corporate governance and management of the Licensee in the interests of consumers, and consists of six parts:
 - (a) **Part A** makes provision for the composition and functioning of the board of directors of the Licensee;
 - (b) **Part B** requires that the management and resources used by the Licensee for the purposes of the Transmission System Operator Business are those which are dedicated to the Licensee alone;
 - (c) **Part C** makes provision for the Licensee to apply for, and the Authority to be able to issue initial, derogations from the requirements of Part B in respect of one or more designated business functions of the Licensee;
 - (d) **Part D** makes provision for the Licensee to apply for further derogations in the future where it did not do so initially, where its initial applications were rejected, or where any derogations that were granted have been revoked or are due to expire;
 - (e) **Part E** requires the Licensee to adopt a compliance plan and appoint a compliance manager to ensure that it complies with the requirements of this condition; and
 - (f) **Part F** sets out various defined terms which are relevant to this condition.

PART A. THE BOARD OF THE LICENSEE

The Principal Obligation

2. The Licensee must take all steps within its power to ensure that, with effect from 1 January 2023 and at all times after that date, the board of the Licensee is constituted and operates in accordance with the requirements of this Part A.

The Specific Requirements

3. The **first** requirement is that, at all times, a majority of the directors of the Licensee must be Sufficiently-Independent Directors.
4. The **second** requirement is that, at all times, the chair of the board of the Licensee must be a Sufficiently-Independent Director.
5. The **third** requirement is that, at all times:
 - (a) at least one-half of the Sufficiently-Independent Directors on the board of the Licensee must be individuals who, at the time of their respective appointments to that role, had substantial and recent experience of working at senior level in, or for, a part of the European Energy Industry; and
 - (b) from within those referred to in paragraph (a), at least one-quarter of the Sufficiently-Independent Directors on the board of the Licensee must be individuals who, at the time of their respective appointments to that role, had substantial and recent experience of working:
 - (i) at senior level in, or for, a European Electricity Transmission System Operator; or
 - (ii) in a capacity which required them to have routine engagement at senior level with a European Electricity Transmission System Operator.
6. The **fourth** requirement is that each Sufficiently-Independent Director must be appointed for a term which is neither less than four years nor more than six years, and may be re-appointed on one occasion only for a term which is also neither less than four years nor more than six years, but so long as the aggregate period of both appointments does not exceed nine years.

7. The **fifth** requirement is that, in order to ensure continuity in the functioning of the board of the Licensee, the terms of appointment of the Sufficiently-Independent Directors must be staggered so that no more than one-third of those appointments are due to expire at the same time.
8. The **sixth** requirement is that, at all times:
 - (a) there must be no more than one Non-Executive Director on the board of the Licensee who is not a Sufficiently-Independent Director; and
 - (b) all other directors on the board who are not Sufficiently-Independent Directors must be Executive Directors.
9. The **seventh** requirement is that the membership of the board of the Licensee must, at all times, reflect as a whole an appropriate mix and balance of skills, knowledge, experience and personal qualities necessary for ensuring the effective management and governance of the Licensee.
10. The **eighth** requirement is that, prior to the appointment of any director to the board of the Licensee:
 - (a) the Licensee must give written notice of the intended appointment to the Authority, and provide to the Authority all information relating to the intended appointee that it may reasonably request; and
 - (b) where – within 20 working days following the receipt of that notice or (if later) of such information and evidence as it has reasonably requested – the Authority notifies the Licensee that it has determined that the appointment would give rise to a breach of any one or more of the first to the seventh requirements of this part, that determination shall be treated as final and binding and the Licensee must not make the appointment.
11. The **ninth** requirement is that no meeting of the board of the Licensee may be treated as quorate unless the majority of directors present and able to vote are Sufficiently-Independent Directors.

12. The **tenth** requirement is that no director of the Licensee may exercise more than one vote (or a vote weighted so as to be worth more than that of any other director) on any matter at a meeting of the board of the Licensee, except for the chair who, in any case where there is an equal number of votes, may be permitted to exercise a second and casting vote.
13. The **eleventh** requirement is that, where the chair of the board of the Licensee is unavoidably absent from any meeting of the board, that meeting must be chaired by another Sufficiently-Independent Director.
14. The **twelfth** requirement is that the matters which are reserved for a decision by the board of the Licensee must include at least the following:
- (a) determining whether to make any application for a Derogation under Part C or D;
 - (b) approving the content of any such Derogation application that it has determined to make;
 - (c) approving the terms of the System Operator Agreement and of any amendment to that agreement;
 - (d) making, and approving any revision to, any:
 - (i) scheme of delegation of the Licensee that is concerned with the allocation of authority to members of the board, committees or employees of the Licensee to make decisions or exercise functions on behalf of the Licensee;
 - (ii) conflict of interest policy applicable to members of the board, committees or employees of the Licensee; and
 - (iii) whistleblower policy of the Licensee;
 - (e) approving the terms of any Services Agreement and of any amendment to any such agreement; and

- (f) approving the appointment of the Compliance Manager and the terms of any revision of the Compliance Plan.
- 15. The **thirteenth** requirement is that no decisions relating to the business of the Licensee may be reserved to a vote of shareholders except those decisions in respect of which such a vote is required by or under the Companies Act 2006.
- 16. The **fourteenth** requirement is that the Licensee must ensure the modification of the articles of association of the Licensee to such extent as is requisite or necessary to make them consistent, and secure that they facilitate compliance, with the first to the thirteenth requirements.

Key Definition

- 17. For the purposes of this condition, a **Sufficiently-Independent Director** means a natural person who is a director of the Licensee and who:
 - (a) to the reasonable satisfaction of the Authority, has the skills, knowledge, experience and personal qualities necessary to perform that role effectively;
 - (b) has no executive responsibilities within the Licensee or any Associated Company;
 - (c) is not at any time during his appointment as a director of the Licensee, and was not at any time during the five years prior to that appointment:
 - (i) an employee of the Licensee;
 - (ii) an employee or director of any Associated Company; or
 - (iii) in any Material Business Relationship with the Licensee or any Associated Company;
 - (d) is not at any time during his appointment as a director of the Licensee a Close Relation of a person who is at the same time:
 - (i) an employee of the Licensee;

- (ii) an employee of any Associated Company; or
 - (iii) in any Material Business Relationship with the Licensee or any Associated Company; and
- (e) does not at any time during his appointment as a director of the Licensee:
 - (i) hold a remit to represent the interests of any particular shareholder or group of shareholders of the Licensee or of any Associated Company; or
 - (ii) receive remuneration from the Licensee or from any Associated Company other than a director's fee and reasonable expenses.

PART B. MANAGERIAL AND RESOURCE SEPARATION

The Principal Obligation

18. On and from the Effective Date, and at all times after that date, the Licensee must ensure that all activities carried out by it in the course of the Transmission System Operator Business are carried out by means of Separate Management and Separate Resources.

The Exception

19. However, the principal obligation in this Part B shall not apply in respect of any Business Function to the extent that:
- (a) the Licensee has applied for, and been granted by the Authority, a Derogation under Part C or Part D in relation to that Business Function; and
 - (b) the Derogation remains extant, having neither reached its Derogation Expiry Date (if any) nor been revoked by the Authority for material non-compliance by the Licensee with any of its conditions.

Key Definitions

20. For the purposes of this condition, the **Effective Date** means:
- (a) where the Licensee has applied in accordance with Part C for a Derogation in respect of any one or more Business Functions, the date, in relation to each such Business Function, which falls twelve months after the Derogation Decision Date;
 - (b) in respect of all other Business Functions, 1 July 2024.
21. For the purposes of this condition, **Separate Management** means, in relation to activities carried out by the Licensee in the course of the Transmission System Operator Business, that all decisions relating to those activities are taken by managers who, at all levels (up to and including Executive Director) are:
- (a) employed by the Licensee;
 - (b) engaged solely in the management and operation of the Transmission System Operator Business; and
 - (c) not in an employment relationship with, engaged in providing services of any kind to, or otherwise subject to any other contractual or professional duties in respect of any Associated Company.
22. For the purposes of this condition, **Separate Resources** means, in relation to activities carried out by the Licensee in the course of the Transmission System Operator Business, that:
- (a) those activities are carried out using personnel who are:
 - (i) employed, or engaged under a contract of services, by the Licensee; and
 - (ii) not in an employment relationship with, engaged in providing services of any kind to, or otherwise subject to any other contractual or professional duties in respect of any Associated Company;

- (b) those activities are carried out using managerial and operational resources – including in particular premises, IT and other systems, equipment, facilities, processes and tangible and intellectual property – which are not shared with or accessible to any Associated Company; and
- (c) no data obtained or created in the course of carrying out the activities are shared with or accessible to any Associated Company other than on terms provided for in the System Operator Agreement.

PART C. APPLICATIONS FOR INITIAL DEROGATIONS

Applications for a Derogation from Part B

23. The Licensee may apply to the Authority for a direction that it is not required to comply with the principal obligation in Part B in relation to any one or more Business Functions, and for the purposes of this condition such a direction shall be known as a **Derogation**.

Timing and Content of Application

24. The Licensee may submit to the Authority an application for a Derogation under this Part C:
- (a) no earlier than 1 May 2023; and
 - (b) no later than 30 June 2023.
25. The Licensee must ensure that any application for a Derogation is made in writing, specifies clearly the Business Functions to which it relates, and separately in respect of each Business Function to which it relates:
- (a) describes in detail the activities which together constitute that Business Function;
 - (b) specifies the characteristics of the Shared Management and Shared Resources that the Licensee would propose to use, if the Derogation were granted, for the purposes of carrying out the activities falling within the description of that Business Function;

- (c) sets out the arrangements with one or more Associated Companies by virtue of which that Shared Management and those Shared Resources would be used in common;
 - (d) states why, in the submission of the Licensee, the granting of a Derogation in relation to that Business Function would be best calculated to further the principal objective of the Authority at Article 12 of the Energy Order, having regard to the other matters referred to in that Article;
 - (e) includes such other information and evidence as may be required in accordance with the Principles and Guidance on Condition 42 Derogations, in such form and detail as may be set out in that document; and
 - (f) is accompanied by all other information and evidence that the Licensee wishes the Authority to take into account when considering the application.
26. Any application received by the Authority which does not meet these requirements on timing and content shall be deemed to be invalid and rejected without further consideration.

Consideration by the Authority

Timing

27. The date by which the Authority is to determine any application for a Derogation shall be the later of:
- (a) 1 January 2024; or
 - (b) where, prior to 1 January 2024, the Authority is satisfied that it requires more time to consider the application, such alternative date as it may specify in a direction issued to the Licensee, save that:
 - (i) the Authority may issue no more than one such direction;
 - (ii) the latest date that may be specified in such a direction is 1 July 2024.

28. Where the Authority has not determined an application for a Derogation by the date identified in accordance with the previous paragraph, the Derogation shall be deemed to be granted on that date on the basis applied for by the Licensee.

Duty of the Licensee

29. The Licensee must:
- (a) in good faith assist and co-operate with the Authority to such extent as the Authority may reasonably request in order to facilitate its consideration of any application for a Derogation; and
 - (b) in particular provide to the Authority all further information and evidence that it may reasonably request for that purpose as soon as reasonably practicable after it is requested.

Determination by the Authority

30. The Authority may, having considered any application for a Derogation, in respect of each Business Function to which that application relates:
- (a) reject the application and decline to grant a Derogation;
 - (b) grant a Derogation:
 - (i) in respect of that Business Function by reference to the activities described by the Licensee in its application; or
 - (ii) in respect of such an amended description of the activities which constitute that Business Function as the Authority may specify in its determination.

Conditions

31. Where the Authority grants a Derogation, it may attach to it such conditions as it considers requisite or expedient, which may, in respect of any Business Function by reference to which the Derogation is granted, include in particular conditions:

- (a) as to the length of the period for which the Derogation is granted and the date on which it expires (the **Derogation Expiry Date**), save that this shall not be less than five years after the Derogation Decision Date;
- (b) as to the circumstances in which, and restrictions subject to which, the Licensee may use Shared Management and Shared Resources for the purposes of carrying on the activities constituting that Business Function;
- (c) specifying in respect of any Services Agreement in relation to Shared Management and Shared Resources used for the purposes of that Business Function, a requirement to enter into that agreement on such terms as may be:
 - (i) specified in the condition; or
 - (ii) determined, or subject to approval, by the Authority in accordance with any process which may be set out in the condition;
- (d) making such provision as the Authority considers appropriate to secure the effective ring-fencing of any Shared Management and Shared Resources which may be used for the purpose of that Business Function from all Separate Management and Separate Resources required under this condition to be used for that, or any other, Business Function; and
- (e) containing provision for any of those conditions, or any such parts of them as may be specified, to have effect and/or cease to have effect on and from:
 - (i) such date as may be specified in the condition;
 - (ii) such date as may be determined by the Authority in accordance with any process which may be set out in the condition; or
 - (iii) the occurrence of such event or existence of such circumstances as may be described in the condition.

32. The Licensee must comply with the requirements of any conditions which are attached to a Derogation.

33. Where the Authority determines that the Licensee is in material non-compliance with any conditions of a Derogation, it may:
- (a) at any time amend the Derogation by attaching to it such further conditions as it considers requisite or expedient; or
 - (b) revoke the Derogation on a date prior to any expiry date which may be specified in its conditions, so long as the Authority gives to the Licensee no less than six months' notice prior to that revocation becoming effective (the **Derogation Revocation Date**).
34. The Authority may, on the request of the Licensee, at any time amend the conditions attaching to a Derogation in such manner as the Licensee has requested and to which the Authority has consented.

The Principles and Guidance on Condition 42 Derogations

35. The Authority may issue, and from time to time amend, a document which shall be known as the **Principles and Guidance on Condition 42 Derogations**, which may set out:
- (a) guidance as to the process to be followed by the Authority in considering applications for Derogations under Part C or Part D;
 - (b) guidance as to the principles to be applied by the Authority when deciding whether or not, and subject to what conditions, to grant a Derogation under Part C or Part D; and
 - (c) requirements as to the information and evidence which must be provided by the Licensee as part of any application for a Derogation under Part C or Part D.

PART D. SUBSEQUENT APPLICATIONS FOR DEROGATIONS

Applications which may be Made under this Part D

First-Time Applications

36. Where, in relation to any Business Function, the Licensee did not apply for a Derogation under Part C by 30 June 2023, it may apply for a Derogation in relation to the same Business Function under this Part D on a date which is no earlier than 1 July 2028.

Originally Invalid Applications

37. Where, in relation to any Business Function, the Licensee applied for a Derogation under Part C by 30 June 2023, but the application was invalid for non-compliance with the requirements of Part C and therefore deemed under that Part to be rejected, the Licensee may apply for a Derogation in relation to the same Business Function under this Part D on a date which is no earlier than 1 July 2028.

Originally Rejected Applications

38. Where, in relation to any Business Function, the Licensee applied for a Derogation under Part C by 30 June 2023, and the application was treated as valid but was determined to be rejected by the Authority, the Licensee may apply for a Derogation in relation to the same Business Function under this Part D on a date which is no earlier than five years after the Derogation Decision Date.

Originally Granted Applications – Revocation of Derogation

39. Where, in relation to any Business Function, the Licensee applied for and was granted a Derogation under Part C, but that Derogation was later revoked by the Authority for a material non-compliance by the Licensee with its conditions, the Licensee may apply for a Derogation in relation to the same Business Function under this Part D on a date which is no earlier than five years after the Derogation Revocation Date.

Originally Granted Applications – Expiry of Derogation

40. Where, in relation to any Business Function, the Licensee applied for and was granted a Derogation under Part C, but a condition was attached to that Derogation which specified that it was to expire on a certain date, the Licensee may apply for a Derogation in relation to the same Business Function under this Part D on a date which is no earlier than two years prior to the Derogation Expiry Date.

Variation of Time

41. The Authority may, by a direction issued to the Licensee, modify any date or period of time specified in any of the preceding paragraphs of this Part D, but only for the purpose of bringing forward that date or the date which is calculated by reference to that period of time.

Applicability of Part C

42. Where the Licensee is entitled to make an application for a Derogation under this Part D, the provisions of Part C shall apply to it in full, in the same way as if it had been an application made under that Part, except that in substitution for the corresponding provisions of Part C:
- (a) the earliest date at which an application may be made shall be the one specified in the proceeding provisions of this Part D;
 - (b) there shall be no latest date by which an application may be made; and
 - (c) the date by which the Authority is to determine any application for a Derogation shall be the later of:
 - (i) the date which falls six months after the application was received by it; or
 - (ii) where, prior to the expiry of that six month period, the Authority is satisfied that it requires more time to consider the application, such alternative date as it may specify in a direction issued to the Licensee, save that:
 - (A) the Authority may issue no more than one such direction; and
 - (B) the latest date that may be specified by the Authority in any such direction is the date which falls twelve months after the application was received by it.

43. In the same manner as in Part C, where the Authority has not determined an application for a Derogation by the date identified in accordance with the previous paragraph, the Derogation shall be deemed to be granted on that date on the basis applied for by the Licensee.

PART E. FACILITATING AND MONITORING COMPLIANCE

The Compliance Plan

44. The Licensee must, by no later than 1 January 2023, prepare and submit to the Authority a plan, which shall:
- (a) set out the practices, procedures, systems and rules of conduct which the Licensee has adopted, or intends to adopt, together with the timescales for adoption, to ensure its compliance with the requirements of this condition; and
 - (b) require to be approved by the Authority, and following such approval shall be known for the purposes of this condition as the **Compliance Plan**.
45. The Licensee must take all steps within its power to comply with its Compliance Plan and shall publish the up to date Compliance Plan on its website.
46. The Licensee must submit any proposed revisions to the Compliance Plan to the Authority for its approval, and those revisions may not be made until the Authority has approved them.
47. The Authority may:
- (a) within 30 days of the Licensee submitting an initial or revised plan; or
 - (b) following any review of the Compliance Plan that the Authority may conduct from time to time,

notify the Licensee that, in its opinion, the plan is not, or the Compliance Plan is no longer, suitable for the purpose of ensuring the Licensee's compliance with the requirements of this condition, and specify such revisions which must be made to it as are in the Authority's opinion necessary or expedient in order for it to be appropriate

for that purpose and capable of approval by the Authority.

48. Where the Licensee receives such a notification, it shall within 30 days revise the plan in such manner and to such extent as is necessary to reflect the Authority's requirements.
49. The Licensee shall review the Compliance Plan:
 - (a) by 1 July 2023; and
 - (b) at least once in each subsequent period of twelve months,so as to ensure that the Compliance Plan is accurate and up-to-date and remains suitable for the purpose of ensuring the Licensee's compliance with the requirements of this condition.
50. The Licensee must ensure that all persons who from time to time are engaged in the management and operation of the Transmission System Operator Business:
 - (a) are made aware of the practices, procedures, systems and rules of conduct set out in the Compliance Plan;
 - (b) have the necessary information and facilities to comply with their respective obligations under the Compliance Plan; and
 - (c) are aware of the disciplinary procedures that may be activated should they fail to comply with their obligations under the Compliance Plan.

The Compliance Manager

51. The Licensee, following consultation with the Authority, must ensure that there is at all times a senior employee engaged in the management of the Transmission System Operator Business who is appointed to a role which has the purpose of facilitating compliance with its obligations under this condition and with the Compliance Plan, and that person shall be known for the purposes of this condition as the **Compliance Manager**.

52. The Licensee shall ensure that the Compliance Manager has access to such staff, premises, systems, information, documentation, equipment, facilities and other resources as he might reasonably expect to require to fulfil the duties and tasks assigned to him.
53. The duties and tasks which the Licensee assigns to the Compliance Manager must include:
- (a) providing relevant advice and information to the Licensee for the purpose of ensuring its compliance with this Condition and with the Compliance Plan;
 - (b) monitoring the effectiveness of, and the Licensee's compliance with, the Compliance Plan;
 - (c) investigating any complaint or representation received by the Licensee from any person in respect of any matter arising under or by virtue of this condition or in relation to the Compliance Plan;
 - (d) recommending and advising upon the remedial action which any such investigation has demonstrated to be necessary or desirable, including where necessary revising the Compliance Plan to reflect such recommendation and advice; and
 - (e) reporting regularly – at least annually, or with such greater frequency as the board of the Licensee may require or as may be specified in a notice issued by the Authority to the Licensee from time to time – to the directors of the Licensee on:
 - (i) his activities during the period covered by the report;
 - (ii) the outcome of any investigations he has conducted during that period; and
 - (iii) on his assessment of the Licensee's compliance with this Condition and with the Compliance Plan, clearly identifying any areas of non-compliance that he has identified and the remedial actions required in order to address them.

54. The Licensee must ensure that the Authority promptly receives a copy of each report that is given by the Compliance Manager to the directors of the Licensee.

PART F. DEFINITIONS

55. For the purposes of this condition:

Associated Company

means any company which is:

- (a) part of the EirGrid Group, but excluding the Licensee itself; and
- (b) (if not part of the EirGrid Group) an affiliate, Related Undertaking or ultimate controller of the Licensee.

Business Function

means a set of activities carried on by the Licensee for the purposes of the Transmission System Operator Business which:

- (a) in the context of an application made by the Licensee for a Derogation, are as described by the Licensee in that application; and
- (b) in the context of any Derogation granted by the Authority following such an application, are as described by the Authority in that Derogation.

Close Relation

means, in relation to an individual, another individual who is their spouse (or partner of equivalent nature), parent, child, sibling, grandparent or grandchild.

Derogation	has the meaning given to that expression in paragraph 23.
Derogation Decision Date	means the date on which the Authority notifies the Licensee of its decision either to grant or reject an application for a Derogation under Part C or Part D.
Derogation Expiry Date	has the meaning given to that expression in paragraph 31.
Derogation Revocation Date	has the meaning given to that expression in paragraph 33.
Effective Date	has the meaning given to that expression in paragraph 20.
EirGrid Group	means EirGrid plc, each of its affiliates and Related Undertakings, and each company for which EirGrid plc or one of its affiliates or Related Undertakings is a holding company.
European Electricity Transmission System Operator	means an entity which acts as electricity transmission system operator in any part of the United Kingdom, or any member state of the European Union or the European Free Trade Area.
European Energy Industry	<p>comprises those entities engaged in carrying out the activities of:</p> <p>(a) the generation, transmission, distribution and supply of electricity; and</p>

- (b) the storage, and the conveyance, shipping and supply through pipes, of natural gas,

in any part of the United Kingdom, or any member state of the European Union or the European Free Trade Area.

Executive Director

means a director of the Licensee who is also an employee of the Licensee.

Material Business Relationship

means any material business relationship between an individual and an entity, including in particular a relationship in which the individual acts as a provider of professional or consultancy services, or is involved in the supply of any other goods or services, to that entity, but shall not include (taken by itself):

- (a) the holding by an individual of a small number of shares or associated rights in the Licensee or any Associated Company; or
- (b) the receipt by an individual of any pension or other accrued benefit associated with prior employment or service with the Licensee or any Associated Company.

Non-Executive Director

means a director of the Licensee who is not an Executive Director.

Principles and Guidance on Condition 42 Derogations

has the meaning given to that expression in paragraph 35.

Related Undertaking	in relation to a company, means any undertaking in which that company has a 'participating interest' with the meaning given to that expression in section 421A of the Financial Services and Markets Act 2000.
Separate Management	has the meaning given to that expression in paragraph 21.
Separate Resources	has the meaning given to that expression in paragraph 22.
Services Agreement	means an agreement (whether or not legally-binding) between the Licensee and any Associated Company which relates to the provision or staff or other resources by the Licensee to that company, or by that company to the Licensee, or any sharing of staff or other resources between the Licensee and that company.
Shared Management	means managerial staff taking decisions in relation to activities carried out by the Licensee in the course of the Transmission System Operator Business which do not constitute Separate Management.
Shared Resources	means resources used in relation to activities carried out by the Licensee in the course of the Transmission System Operator Business which do not take the form of Separate Resources.
Sufficiently-Independent Director	has the meaning given to that expression in paragraph 17.

Annex 2 Article 14(2) Licence Modification Notice

THE NORTHERN IRELAND AUTHORITY FOR UTILITY REGULATION NOTICE UNDER ARTICLE 14(2) OF THE ELECTRICITY (NORTHERN IRELAND) ORDER 1992 (AS AMENDED)

MODIFICATIONS PROPOSED TO SONI LIMITED's ELECTRICITY TRANSMISSION LICENCE

The Northern Ireland Authority for Utility Regulation (hereafter referred to as "**the Authority**") hereby gives notice under Article 14(2) of the Electricity (Northern Ireland) Order 1992 (as amended) (hereafter referred to as "**the Order**") as follows:

1. It proposes to make modifications to the conditions of the licence to participate in the transmission of electricity (the "**Licence**") granted to SONI Limited (the "**Licensee**") under Article 10(1)(b) of the Order.
2. The proposed modifications are set out at Annex 1 to the document "SONI TSO Governance: Consultation on Modifications to the SONI TSO licence" ("**the Consultation**"), of which this notice also forms part. Annex 1 to the Consultation should be treated as incorporated into this notice by reference.
3. The principal purpose of the proposed modifications is to implement and give legal effect to our policy position on the changes we consider are necessary to SONI TSO's governance. Our policy position is set out in the Consultation.
4. The Consultation provides a full statement of both the effects of the proposed modifications and the reasons for them, and should be treated as incorporated into this notice by reference. The Authority considers that its policy position, as embodied in the modifications, furthers the principal objective, having regard to the duties, at Article 12 of the Energy (Northern Ireland) Order 2003.
5. The Authority has, pursuant to Article 14(4) of the Order sent a copy of this notice to the Licensee, the Department for the Economy and the Consumer Council for Northern Ireland and published it on the Authority's web-site for the purposes of bringing to the attention of persons likely to be affected by the making of the proposed modifications.
6. Any representations in response to this notice may be made to the Authority by no later than 21 February 2021 at 17:00.
7. Contact details for making representations are set out in the Consultation.

8. Before deciding to proceed with the making of modifications to the Licence in accordance with Article 14(8) of the Order, the Authority will consider any representations which are duly made and not withdrawn.

Dated this 24th day of January 2022

A handwritten signature in black ink, appearing to read 'J. French', with a small dot at the end.

John French

For and on behalf of the Northern Ireland Authority for Utility Regulation

cc

Peter McClenaghan, CCNI

Martin McCourt, DfE

Alan Campbell, SONI Limited