
UR's SONI TSO Governance: Consultation on modifications to the SONI TSO Licence

EirGrid Response – Version for Publication

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Introduction

1. EirGrid plc. (“EirGrid”) holds 100% of the share capital in SONI Ltd¹ (“SONI”), the company whose governance is the subject of the Utility Regulator’s (UR) consultation, “*SONI TSO Governance: Consultation on modifications to the SONI TSO Licence*” (the “Licence Modification Consultation”).
2. SONI holds a Licence to Participate in the Transmission of Electricity (“SONI’s TSO Licence”) and a licence to act as SEM Operator (“SONI’s MO licence”) for Northern Ireland. EirGrid holds licences as Transmission System Operator (“TSO”) and Market Operator (“MO”) for Ireland.
3. Article 2 of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (the “Order”)², as amended, defines the Single Electricity Market (the “SEM”) as follows:

“the SEM” means the Single Electricity Market, that is to say the arrangements in Northern Ireland and Ireland—
 - (a) initially described in the Memorandum of Understanding mentioned in paragraph (3);*
 - (b) designed to promote the establishment and operation of a single competitive wholesale electricity market in Northern Ireland and Ireland; and*
 - (c) which allow for the efficient application of the EU rules for cross border trade in electricity contained within or adopted pursuant to the Electricity Market Regulation as supplemented by—*
 - (i) network codes established under Article 6 of that Regulation, and*
 - (ii) guidelines adopted under Article 18 of that Regulation;”*
4. As the licenced TSO for Northern Ireland, SONI is responsible for operating the SEM and as licenced SEM operator SONI is responsible for settling the SEM. In each case, SONI does so in conjunction with EirGrid.
5. SONI's core functions under its TSO Licence include (but are not limited to):
 - the operation of the Northern Ireland transmission networks and operation of the All-Island Transmission Networks under the System Operator Agreement (the “SOA”) (in conjunction with EirGrid³),
 - the central market functions of operating the SEM Capacity Remuneration Mechanism (in conjunction with EirGrid⁴) and SEM Balancing Market Scheduling (again, in conjunction with EirGrid⁵) to achieve the lowest cost of production (including outage planning both for transmission and generation outages), done in accordance with the SEM Committee (“SEMC”) approved market rules,

¹ Through its subsidiary company EirGrid UK Holdings Ltd.

² [The Order](#)

³ SONI TSO Licence Condition 24

⁴ SONI TSO Licence Condition 23A

⁵ SONI TSO Licence Condition 22A

- the facilitation of payments within the electricity system and transmission network planning including the facilitation of connections to the network (in cooperation with EirGrid⁶).
6. Per the above, many, if indeed not nearly all, of SONI's core functions required to be carried out under licence, are either *"in coordination with"*, *"in cooperation with"*, or *"in conjunction with"* EirGrid.
 7. Option C as set out in the Licence Modification Consultation seeks to replace the EirGrid Group's current integrated structure by separating key operations under SONI's TSO Licence from the rest of the SONI and EirGrid business. This will also require governance changes within the EirGrid Group. The introduction of an independent SONI Board will impact the decision-making process across the entire EirGrid Group.
 8. By virtue of its Memorandum and Articles of Association, its Directors' Code of Conduct and its Transmission System Operator licence, EirGrid is required to discharge its functions for the benefit of consumers in both Ireland and Northern Ireland.
 9. The governance changes proposed run counter to the legislative requirements in Ireland with respect to the Code of Practice for the Governance of State Bodies to which both EirGrid and SONI, as a subsidiary, are subject, and which are specifically designed to promote good governance.
 10. The UR's proposed licence modifications will:
 - require fundamental changes to the governance of the EirGrid Group business, including the ability of the EirGrid Board to exercise oversight of SONI Ltd. as a subsidiary;
 - have a significant impact on the SEM which will ultimately have an impact on market participants;
 - create unnecessary duplication of systems and services at an additional cost to consumers in Ireland and Northern Ireland;
 - force an organisational restructure to ensure compliance with SONI's TSO Licence; and
 - reduce the synergies available by leveraging in-house expertise across the different licences within the EirGrid business and create unnecessary operational hurdles for both SONI and EirGrid.
 11. As a result, EirGrid does not support the proposed Option C in terms of either the changes in relation to governance or the operation of both its and SONI's licensed businesses which would result. EirGrid also has concerns with the legal implementation of the URs proposals as outlined further below and will be seeking indemnification in respect of any liabilities or losses etc arising out of same.

⁶ SONI TSO Licence Condition 30

12. The UR in its Licence Modification Consultation misascribes several views to EirGrid. EirGrid asks that these are formally corrected for the record⁷.

The UR's Approach is neither balanced nor well-reasoned

13. Since EirGrid acquired SONI, EirGrid has always acted reasonably and rationally seeking to maximise benefits for consumers on the island consistent with its own Memorandum and Articles of Association and the requirements of its licence. EirGrid has provided financial support when required by SONI and has never drawn a dividend from SONI.
14. EirGrid and SONI have become further integrated over the past few years by virtue of regulatory decisions which have required same, in particular following the deployment of the Integrated Single Electricity Market (the "I-SEM"). This heavily integrated structure allows for economies of scale which ultimately benefit consumers of Ireland and Northern Ireland and enables them to benefit from lower cost electricity than would otherwise be the case.
15. The UR states that the proposed licence modifications should not result in a removal of the opportunity to realise the synergies and efficiencies that are experienced today by EirGrid and SONI. Yet, whilst the licence today provides that such synergies can be realised, under that proposed by UR, they cannot.
16. The UR states that "*good and transparent governance is a cost worth paying for as it ensures the needs of Northern Ireland consumers are fairly met, and it mitigates the overall risk of future harm*". However, in so doing the UR fails to properly consider future costs to consumers as a result of its proposals and the risk of future harm to consumers, in particular arising from the material effect on the SEM that the matters under consideration can be expected to have.
17. It is not clear to EirGrid how the UR thinks it necessary to impose very restrictive measures, which will undoubtedly result in additional cost to the consumer, in an effort to mitigate the risk of potential future harm whilst no evidence of harm has been evidenced. Indeed, the UR itself clearly states it has adduced no evidence to suggest it exists⁸.
18. It is difficult to see how the additional requirements outlined in the Licence Modification Consultation would ultimately benefit Northern Ireland consumers; indeed, to EirGrid it appears they clearly would not.
19. In EirGrid's response to the UR's Consultation on Proposals on SONI Governance in April 2021 ("UR's Proposal Consultation") we noted how, in contrast to the practice of other regulators and that of the UR itself in respect of other matters, the UR had chosen not to meaningfully engage with EirGrid in relation to SONI Governance. It is disappointing therefore that in the 6+ months following EirGrid's submission of its

⁷ See for example Paragraph 1.12 of the Licence Modification Consultation where a view is specifically ascribed to EirGrid but ultimately referenced to SONI's response, or Paragraph 3.9 of the Licence Modification Consultation where the UR alludes to the all-island approach being a construct of EirGrid / SONI when in fact it is an agreed approach by the SEMC and both Governments. Further references can be found in Annex 1 of this consultation response.

⁸ The UR confirms itself that no harm has been identified in the Licence Modification Consultation where it states, "*no evidence of actual harm has become known, against which to quantify the benefit of remedying that harm*". This was also confirmed by the UR at the Northern Ireland Assembly Committee for the Economy in April 2021.

response to UR's Proposal Consultation, the UR has failed to avail itself of the opportunity to engage with EirGrid, or its Board, in respect of this issue of fundamental importance.

20. In the UR's Licence Modification Consultation, EirGrid is not included in the audience that this document is likely to be of interest to. EirGrid plc is the ultimate parent company of SONI Ltd. and the governance changes proposed will significantly impact the relationship between the EirGrid Board and the proposed future independent SONI Board. Therefore, such a specific exclusion is questionable, given that the EirGrid Group is referred to in the definition of an Associated Company in the licence modifications proposed⁹.
21. The systematic lack of engagement which EirGrid has experienced cannot be consistent with good regulation or regulatory practice. EirGrid and the UR may of course hold different positions in relation to this issue, but nonetheless a better overall outcome is likely to be achieved were both parties to engage constructively with each other. Despite numerous attempts neither EirGrid or SONI were afforded the opportunity to understand the UR's position, or to explain their concerns regarding the UR's Proposal Consultation. This is very disappointing.
22. Irrespective of the fact that Option C as proposed by the UR will have a negative impact on the consumers of Northern Ireland, Ireland and the SEM, the manner in which the UR conducted this consultation process is completely inappropriate. This can only lead EirGrid to believe that there is some wider unexplained motivation by the UR which is shaping and informing its approach in relation to this matter.

The proposed modifications affecting SONI's governance constitute a SEM Matter

23. As regulator of SONI's TSO Licence, the UR has the power to make licence modifications in respect of SONI, but not where such a decision would trespass upon the jurisdiction of the SEMC. EirGrid's view is that the changes set out in the Licence Modification Consultation materially impact the SEM - as such, as a matter of logic, this is a matter for the UR's SEMC and not the UR.
24. The Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland in December 2006¹⁰ states that "*The Authorities intend that the SEM arrangements will be designed to promote the creation of a single competitive, sustainable and reliable market in wholesale electricity in Northern Ireland and Ireland...*" *[Emphasis added]*.
25. This followed the All-Island Energy Market Development Framework¹¹, which provided for consideration of a single electricity Transmission System Operator on the island of Ireland, a consideration which subsequently underpinned the Order.

⁹ See Part F, Definitions, of the Licence Modification Consultation

¹⁰ [Memorandum of Understanding](#)

¹¹ [All-Island Energy Market Development Framework](#)

26. The proposed changes to SONI's TSO Licence will have a detrimental impact on the SEM due to the jurisdictional focus the proposed changes will introduce which run counter to the direction of travel and intent of the two governments as articulated above.
27. EirGrid and SONI's TSO Licences require them to work "*in conjunction with*", "*in cooperation with*" and "*in coordination with*" each other with respect to a number of licence obligations. In particular, EirGrid and SONI "*in conjunction with*" each other are responsible for:
- Operation of the Balancing Market, participation in which is mandatory for all market participants. This also involves the balancing of energy (supply and demand) and the balancing of reserves through the scheduling and dispatch process.
 - Operation of the Capacity Market including the running of a singular auction process on a singular integrated platform, and a singular approach to remuneration for all participants in the market.
 - The procurement of services necessary to enhance performance of the all-island electricity system and ensure safe and secure operation at higher levels of renewable generation.
28. The SEMC itself recognises these three pillars which constitute and support the SEM. Decisions in respect of each pillar have been reserved to the SEMC by the SEMC, and can only have been so reserved on the basis that these decisions materially affect the SEM. The licence changes proposed affect the delivery of these functions and will as a result have a material effect on the SEM.
29. Each of the above activities are carried out on all-island basis, developed on an all-island basis and are facilitated through all-island systems. Each of the above activities are influenced by decisions made by both EirGrid and SONI staff.
30. Should the UR adopt the framework outlined in Option C of the UR's Licence Modification Consultation, this could impact the above decisions and the outcome of the SEM and as such this is a SEM matter. The decisions made today jointly on an all-island basis in the interests of consumers will, if made separately and with a purely jurisdictional focus, influence the outcome of the SEM and ultimately impact the cost to market participants.
31. In circumstances whereby it is obvious that the matter under consideration is a SEM matter, such as the UR's Licence Modification Consultation, such issues should be reserved to the UR's SEM Committee for its full consideration in accordance with the statutory objectives applicable to that body under the Order. The UR was therefore wrong to proceed with this consultation generally, and should not proceed to take the Licence Modification Consultation decision and ultimately insert the intended new Condition 42 into SONI's TSO licence. The decision as to what constitutes a SEM matter falls to the SEMC – indeed, it has become apparent to SONI and EirGrid on analysis of SEMC board minutes and recent correspondence that the SEMC considers that it is within its powers to "call in" the matter for consideration.

32. As outlined in EirGrid's response to the UR's Proposal Consultation, "*it is time for this to move from a regulatory discussion in relation to a single licensee, to its rightful place as a wider discussion with both Regulatory Authorities and the SEMC and wider stakeholders as to the future of the SEM and the all island energy framework.*"¹² In particular it cannot be appropriate for the UR, as a non-ministerial government department that does not make policy, to amend or alter the policy framework put in place by the two governments on the island.
33. EirGrid has had sight of and supports the SONI response regarding this matter.

The UR's Misportrayal of EirGrid's Response

34. There are a number of statements attributed by the UR to EirGrid or made by the UR in respect of EirGrid, and of SONI, which are simply not factually correct or represent mischaracterisation and which EirGrid does not and cannot agree with. It may be that this misinterpretation of fact has influenced the UR in coming to the proposed licence modifications as set out. As a result, when examined against a corrected factual matrix, an entirely different proposal may be arrived at. EirGrid wishes to correct these factual inaccuracies for the record and asks that the UR do likewise¹³.
35. Throughout its Licence Modification Consultation, the UR states that "*there is no independent SONI view*" and that "*There is no SONI 'guiding mind' on the Board such that UR's vision of good governance could be fulfilled.*" This is simply not the case. The SONI Board, as currently constituted, exercises appropriate oversight and control over the operation of the SONI business and the fulfilment of the Conditions as set out in both of SONI's licences. This is, for example, specifically underpinned by the requirement under Condition 3 of both SONI's TSO Licence and SONI's MO Licence for the holder of the licence to have available to it adequate resources to fulfil its licence functions. These resources are not only those employed by or contracted directly to SONI but also those provided by or contracted to other entities within the EirGrid Group.
36. The UR also asserts that for the impacts as set out by EirGrid and SONI to eventuate would imply that SONI (and/or EirGrid) will act irrationally and that the impacts would result only from irrational actions. No basis has been set out by the UR as to why it believes this to be the case and there is no fact supporting this view. The UR has failed to consider scenarios where two independent economically rational agents acting in their own interest do not reach the same outcome as two economically rational agents acting together in a common interest.
37. Effectively under that proposed by the UR, both EirGrid and SONI would be required to operate with an economic rationale which sought to maximise their own interests even if at the expense of the other. This contrasts with the situation which currently pertains where both act in the common interest.
38. Without the opportunity to actively engage on and discuss the proposed licence modifications with the UR prior to publication of the Licence Modification Consultation, EirGrid was not able to highlight these misconceptions. Instead, EirGrid has been left

¹² EirGrid's Response to the UR's Proposal Consultation, paragraph 36.

¹³ Please see Annex 1.

with no option but to now respond to these proposed licence modifications which are based on an entirely false premise. Given that the modifications are based on such falsehood and therefore will not have the outcomes or effects stated, the UR's Licence Modification Consultation therefore fails to highlight to respondents the impacts which would result if the UR's proposals were implemented. That proposed will ultimately lead to inefficient outcomes in both jurisdictions and on the island as whole.

EirGrid's Response to the UR's Proposed Licence Modifications

39. EirGrid has not provided any detailed proposed amendments to the UR's proposed licence modifications which are for the reasons set out above.
40. Suffice to say that that proposed by the UR in relation to Condition 42 is inconsistent with SONI's and EirGrid's respective existing TSO Licences. Throughout the EirGrid and SONI TSO Licences, both TSOs are required to work "*in conjunction with*" each other, a licence obligation that both TSOs maintain and uphold as part of their daily operations.
41. The UR's proposed licence modification would introduce separation between EirGrid and SONI, including separation of premises, IT and other systems, equipment, facilities, processes and tangible and intellectual property. EirGrid does not understand, nor has the UR explained, how EirGrid can simultaneously be expected to work "*in conjunction with*" SONI in the context of the operation of a single market and power system, underpinned by integrated systems, whilst at the same time being required to operate entirely separately.
42. Further to the abovementioned inconsistencies, there is further inconsistency in terms of the approach taken by the UR when compared to other licence holders regulated by the UR.
43. The proposed criteria needed to become a SONI Board member are very detailed with any directors to be appointed to the SONI Board needing be approved by the UR prior to appointment.
44. As set out in draft Condition 42, Part A (10) of the UR's Licence Modification Consultation:

"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."*
45. No basis for why the UR should exercise such a role, or the appropriateness of the UR as an independent economic regulator stepping into and placing itself in the middle of a

matter of legitimate corporate governance between a parent company and its subsidiary has been set out.

46. The proposed licence modifications also go much further, in terms of restricting EirGrid's legitimate rights as shareholder in exercising corporate governance and control over its subsidiary, than that which is in place between NIE Networks (NIEN) and ESB under the arrangements UR has put in place for NIEN. As per Condition 12 3(C) of NIEN's Licence to Participate in the Transmission of Electricity¹⁴ (the NIEN Transmission Licence):

"The Licensee shall ensure that [...] decisions for which it is responsible [...] shall not prevent the holding company approving the Licensee's capital expenditure budget nor exercising its corporate governance role in relation to the Licensee where it does so in a way calculated to ensure that such exercise does not restrict, prevent or distort competition in the supply or generation of electricity".

47. This is reflected in NIEN's 2016 Compliance Plan¹⁵, in which it is stated that ESB as the ultimate shareholder of NIEN *"shall exercise its corporate governance role in respect of NIE Networks where it does so in a way calculated to ensure that such exercise does not restrict, prevent or distort competition in the supply or generation of electricity"*.

48. And as per 7.6 of the NIEN Compliance Plan:

"The exercise of corporate governance involves compliance with legal duties and obligations by NIE Networks' ultimate holding company and ensuring that the economic and management supervision rights of the ultimate holding company in respect of its investment and the return on NIE Networks' assets are protected. This includes:

- (i) approving NIE Networks' annual financial plan and overseeing its longer-term financial plans, and providing such financial resources and financial facilities as are necessary, including setting global limits on NIE Networks' indebtedness;*
- (ii) overseeing NIE Networks' system of internal control and risk management;*
- (iii) consultation on price control matters which could have a material effect on ESB's investment in NIE Networks;*
- (iv) appointing and removing the directors of the NIE Networks Board; and*
- (v) establishing a governance framework to facilitate decision making for corporate governance purposes."*

49. No reason or rationale has been set out as to why more stringent separation and independence is required between EirGrid and SONI as opposed to between ESB and NIEN. Indeed, one would expect entirely the reverse. There is an explicit requirement for NIEN to have a level of independence from ESB in the context of the vertically integrated nature of the ESB's operations. This independence ensures a fair and level playing field for all participants in the market and this is reflected in the requirement in

¹⁴ [The NIEN Transmission Licence](#)

¹⁵ Northern Ireland Electricity Networks, Compliance Plan, 2 December 2016, <https://www.nienetworks.co.uk/documents/regulatory-documents/nie-networks-compliance-plan-2-dec-2016.aspx> (NIEN Compliance Plan)

the NIEN Transmission Licence Condition quoted above, to help support competition in supply and generation of electricity. There are no such concerns in the case of EirGrid and SONI both of whom have been certified as independent TSOs and who are specifically required to work together in order to enhance and enable upstream and downstream competition.

50. Indeed, as stipulated in the European Commission Decision on the Certification of SONI¹⁶, it is specifically noted that *“The Commission also recognises that the links between SONI and EirGrid support regional integration and the effective independence of transmission system operation.”*
51. The UR’s proposed licence modifications allow for EirGrid to elect only one representative to be a member of the SONI Board. This effectively impinges on EirGrid’s rights as owner and shareholder.
52. EirGrid’s authority to both appoint and remove directors is derived from SONI’s Articles of Association (the “Articles”). The Articles provide that, alongside appointment and removal by ordinary resolution and by the Board of SONI, any holder or holders for the time being of more than half of the ordinary shares of SONI have the power to appoint, by notice to SONI, a director, or to remove a director.
53. The UR’s proposed licence modifications would drive changes to the Articles to ensure they would be consistent with the 13 specific conditions imposed by the UR.
54. As per Ireland’s Electricity Regulation (Amendment) (EirGrid) Act 2008 (the “EirGrid Act”), s.5(3)¹⁷ – *“An alteration to the memorandum of association or articles of association of a subsidiary of EirGrid shall not be valid or effectual unless it is made with the consent of the Minister.”* Therefore, ministerial consent from the Minister for Environment, Climate and Communications is required in relation to an amendment of the Articles of Association of any subsidiary company of EirGrid, i.e. SONI. As a result, were the proposed licence modifications to be accepted or implemented, they would result in either SONI Ltd being in breach of its licence or EirGrid, and its subsidiary, being in breach of the EirGrid Act.
55. In Ireland, state bodies (such as EirGrid) and their subsidiaries are required to confirm to the Minister that they comply with the Code of Practice for the Governance of State Bodies in their governance practices and procedures. This Code was put in place by the Government of Ireland to support and promote good corporate governance. In order to ensure that it can confirm compliance with the Code on behalf of its trading subsidiaries, parent companies will need to exercise appropriate oversight and control of those subsidiaries.
56. For reasons set out in the preceding paragraphs, the licence modifications as now proposed by UR are not capable of being affected by either the Board of SONI Ltd or indeed the Minister for Environment, Climate and Communications. Neither is acceptable. Effectively the UR is seeking that the Government of Ireland overlook or rewrite its own codes of practice in terms of the exercise of governance which apply not

¹⁶ https://ec.europa.eu/energy/sites/ener/files/documents/2013_059_uk_en.pdf

¹⁷ [Electricity Regulation \(Amendment\) \(EirGrid\) Act 2008](#)

solely to EirGrid but to all Irish state owned bodies to enable the imposition of this proposed arrangement which places an economic regulator in the middle of the governance of a corporate entity. This level of prescription proposed within the licence in relation to the corporate governance of a licensed entity is extremely unusual, and may not constitute lawful modification to a licence within the scope and meaning of modifications under the relevant statutory provisions in Northern Ireland.

57. The UR's proposed licence modifications are in direct contravention of the current legal framework in place for EirGrid as ultimate parent, and also for SONI as holder of the TSO Licence. They are therefore unworkable. When compared to, for example, that which the UR has provided for in the case of NIEN, that now proposed in the case of SONI portrays prejudice against EirGrid as its parent company. The UR's proposed changes do not give EirGrid any oversight or control of SONI as its subsidiary apart from the one elected representative to sit on the SONI Board.
58. The UR's apparent bias against EirGrid is further highlighted when compared against the governance review the UR previously carried out in respect of Mutual Energy Limited ("MEL"). It is important to note that MEL is not an entity licenced by the UR and itself has no relationship with the UR other than as the parent company of entities that the UR regulates (i.e. it is therefore akin to EirGrid in this regard). MEL's subsidiaries include Moyle Interconnector Limited and Premier Transmission Limited, both of whose licences are regulated by the UR.
59. As we have already outlined, EirGrid has not been afforded any substantive engagement with the UR as part of the SONI Governance review. However, this is in contrast to the approach adopted by the UR when reviewing the governance arrangements for MEL and where it is noted per the UR's Board meeting minutes of 24 May 2018¹⁸ that *"...further engagement would be carried out with the company to explore the outcomes of the interim report [] Direct engagement would also take place with the current members to seek their view and a further review would take place once identified actions had been completed"*.
60. Further to the different treatment of MEL in contrast with that of EirGrid in terms of engagement, we further note the UR's different treatment in terms of outcome in relation to licence modifications and subsidiary board composition. The UR appeared satisfied with the structure of MEL, and did not seek to mandate or impose any restrictions in licence regarding the board composition of the licenced entities owned by MEL notwithstanding that the Board of Directors of MEL as the parent company, and Moyle Interconnector Limited and Premier Transmission Limited as its subsidiaries, have effectively identical board composition.
61. It is unclear to EirGrid how the UR deemed that no licence changes were required in the case of the above licence holders, Moyle Interconnector Limited and Premier Transmission Limited, regarding board composition, whilst the UR proposes to require complete separation and independence of the SONI Board from that of its parent.
62. It appears that the UR has overstepped anything that the UR itself has done previously, in respect of separation of SONI's TSO Licence from its parent. Such a subrogation of

¹⁸ [Minutes of a Meeting of the UR Board held on 24 May 2018](#)

EirGrid's right as parent would require it to act outside a framework to which it is legally bound.

The UR's Proposed Derogations Process

63. In the proposed licence modifications, the UR defines EirGrid as an "*Associated Company*", and asserts that under Condition 42, EirGrid will not use or have access to the premises, IT and other systems, for the recording, processing or storage of data, equipment, facilities, processes and tangible and intellectual property, and the services of persons under SONI's TSO licence.
64. Under the current arrangements, which have been furnished to both UR and to the Commission for Regulation of Utilities (CRU), EirGrid and SONI undertake and provide joint services which are apportioned on a cost basis in accordance with the Group Cost Allocation and Recharge Policy applicable to SONI's regulatory accounts and the Specified Proportions as set out in the Market Operator Agreement.
65. That proposed by the UR of an "arm's length" contractual Service Level Agreement type approach would fundamentally alter this and would be expected therefore to fall within more typical arm's length type arrangements for the attribution of services to no longer be on a cost attribution basis but rather on the basis of commercial terms.
66. Such commercial terms attribution, with appropriate margins and benchmarked counterfactuals for the provision of specialised TSO services, would give rise to significantly greater cost to the SONI business and to Northern Ireland customers.
67. This is the case even if the services themselves were capable of being replicated under the derogation process proposed. There is therefore no situation where the current arrangements could be expected to continue, and the derogation process proposed by the UR which is itself very poorly specified and ill-conceived does nothing to alter this.
68. Moreover, if SONI is to fulfil its obligations under licence and under the SOA¹⁹, and EirGrid likewise, the scale, scope and number of derogations which would be necessary as a result of the proposed Condition 42 would be expected to be significant.
69. The scope of the SOA which was put in place as part of SEM, is far reaching, and includes the treatment of connections, the basis for the calculation of Use of System charges, technical network rules as set out in the Grid Code, the interfaces in terms of connections and network planning in addition to the scheduling and dispatch of plant, operation of the system and revenue transfers between the parties. All of this is in the context of the underlying licence obligations which require SONI and EirGrid to operate "*in co-ordination with*", "*in co-operation with*" and "*in conjunction with*" each other. Indeed, only the most minimal of SONI's functions are required to be carried out absent of such co-operation, co-ordination and working in conjunction with EirGrid, and which will therefore not require the derogations process to be invoked.

¹⁹ [System Operator Agreement](#), dated 31 October 2007

70. These key functions under the SOA require EirGrid and SONI to work with each other and is designed to *“at all times protect the interests of consumers of electricity in Northern Ireland and Ireland”*²⁰.
71. The UR emphasises the importance of the SOA between EirGrid and SONI and that its function will be critical to the UR’s desired outcome.
72. There are currently 24 Licence Conditions in SONI’s Licence to Participate in the Transmission of Electricity (SONI’s TSO Licence) which overlap with EirGrid TSO licence conditions that require SONI to act in cooperation with or in conjunction with EirGrid.
73. The UR states in its Licence Modification Consultation that the 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.”* This is effectively what is stipulated in the SOA, and the UR’s stated aspiration is a synopsis of the arrangements currently in place today.
74. Moreover, the SOA is a matter for the corporate entities (i.e. EirGrid / SONI) meeting the requirements to enable them to work together. As set out in All Island Project Single Electricity Market First Consultation Paper AIP/SEM/232/07²¹ –
- “Other than in relation to the inclusion of connection and use of system rights, the SO Licence conditions relating to the SOA do not attempt to prescribe, or circumscribe, in detail, the obligations that should be covered in the SOA. It is not required that the SOA be approved by the Regulatory Authorities, as the Regulatory Authorities take the view that the content of the SOA is a matter for agreement between the SO licensees and it is the responsibility of each SO to ensure that the SOA includes appropriate provisions enabling it to procure necessary services from the other SO such that it can meet its SO licence obligations [] For the same reason, and in accordance with general principles of contract law, the parties are free to amend the SOA by agreement from time to time.”*
75. As currently drafted, the UR’s proposed licence modifications forbid any sharing of systems, data and staff between EirGrid and SONI TSO. Any exception to this requires a UR derogation and approval.
76. The UR’s derogation requirements under the proposed new SONI organisational structure creates a number of hurdles that the derogations may not pass:
- Misidentification – the need for derogation may not be identified in time by SONI based on the timelines set out by the UR.
 - SONI Board Approval - The test required by the SONI Board to determine if the derogation is ultimately to the benefit to NI customers. If this cannot be provided, the SONI Board cannot apply for derogation.
 - In SONI’s view, a derogation may benefit the NI consumers but there is a possibility that the UR may not grant the derogation.

²⁰ EirGrid TSO Licence Condition 4 (1)(e)(i); SONI TSO Licence Condition 24 (1)(e)(a)

²¹ [AIP/SEM/232/07](#)

- It may not be rational for EirGrid to agree to the proposed derogation (acting in economic rationality as a commercial entity).
77. Where no hurdles previously existed between EirGrid and SONI to achieve economic synergies, there is now the opportunity to fall at 4 potential hurdles.
78. EirGrid could be in breach of its TSO Licence solely on the basis of action, or inaction by SONI or by an absence of the UR taking the appropriate decisions – this is totally unacceptable. For example, under EirGrid’s TSO Licence, EirGrid continues to be obligated to work “*in conjunction with*” and “*in cooperation with*” SONI TSO. Should SONI fail to obtain the requisite derogations in a timely fashion to permit same, it is possible that EirGrid TSO could be in breach of its Licence.
79. Contrary to that stated by the UR in its Licence Modification Consultation, that proposed by UR would require corollary amendments to the EirGrid TSO licence and in particular Condition 3 to amend the requirement to take into account in the exercise of its functions the interests of consumers on both Ireland and Northern Ireland, although we recognise these changes are a matter for SEMC.²²
80. It is clear that to have even the remotest possibility of being consistent with the existing framework the proposed Condition 42 would have to include a specific exclusion of applicability in the context of Condition 1, 3, 7, 11, 12, 22, 22A, 22B, 23, 23A, 23B, 29, 33, 35, 39 of SONI’s TSO Licence at which point it would effectively become meaningless.

Conclusion

81. Option C as proposed will negatively impact consumers in Northern Ireland. However, it would be naïve and blinkered to think that the only impact will be on Northern Ireland. The cost benefit analysis included in the Licence Modification Consultation, while updated since the UR’s Proposals Consultation, remains limited. This is acknowledged by the UR.
82. If that proposed is implemented, there can be expected to be a significant impact on the SEM and its participants. This alone dictates the matter is a SEM Matter as “*it materially affects or is likely to materially affect*” the SEM.
83. Moreover, there will be a direct impact on EirGrid and the EirGrid licences, although nowhere in the Licence Modification Consultation is this direct impact acknowledged or quantified by the UR.
84. For the total financial impact to be determined a full price control assessment across multiple licences would be required, in the absence of which the cost benefit analysis in the UR’s Licence Modification Consultation is incomplete and significantly underestimates the total cost impact of that proposed. At a time when consumers are

²² Condition 3 of the EirGrid TSO licence states that “*The Licensee shall operate and ensure the maintenance of and, if necessary, develop a safe, secure, reliable, economical and efficient electricity transmission system as part of an efficient, economical, co-ordinated, safe, secure and reliable electricity transmission system on the Island of Ireland as a whole, and to explore and develop opportunities for interconnection of its system with other systems, in all cases with a view to ensuring that all reasonable demands for electricity are met and having due regard for the environment [] when carrying out the functions [] at all times have regard to the need to protect the interests of consumers of electricity in Northern Ireland and Ireland*”

already experiencing extremely high energy costs, it is paramount that any cost benefit analysis be carried out fully and accurately.

85. Moreover, the UR fails to address how the impacted parties will recoup the additional costs as a result of their proposed Licence Modifications from the UR. EirGrid, SONI and SEMO will all experience additional unforeseen costs during their respective price control periods which are currently not accounted for. As such, a recovery mechanism for these costs will need to be determined. In addition, there may be unforeseen costs to Market Participants as a result of that being proposed. In each instance, it is assumed that in the first instance it is SONI, and Northern Ireland customers, who would need to cover these costs.
86. Notwithstanding that Option C may not be legally implemented²³, EirGrid nevertheless notes that SONI has considered the Option C implementation in detail as part of its response, with a detailed assessment of the separation of the current IT systems would take. Such a large implementation initiative increases risk of non-delivery or could add a significant delay to key strategic all-island projects, including reaching both Ireland's and Northern Ireland's decarbonisation targets.
87. Due to the complexity of some of the bespoke integrated IT systems, it could take 8 – 10 years to separate out the necessary IT networks into the required EirGrid TSO, SONI TSO and SEMO systems.
88. Although that which is proposed may not be legally implemented, and further may not practicably be delivered, EirGrid would in any case require full indemnification from the UR in respect of all legal considerations and liabilities arising if the UR still proposes to proceed with that which it has set out in the UR's Licence Modification Consultation.

²³ This assumes that Option C is, in fact, capable of being implemented. As mentioned above, the UR's proposed changes require amendments to SONI's Articles of Association. However, ministerial consent is required in relation to amendment of the Articles of Association of any subsidiary company of EirGrid. As outlined, the UR's proposed changes are such that EirGrid will not be capable of confirming compliance with the Code of Practice for the Governance of State Bodies in Ireland in respect of its subsidiary, SONI. The licence modifications as now proposed by UR may therefore not be capable of being legally affected by either the Board of SONI Ltd or indeed the Minister for Environment, Climate and Communications.

Annex 1 – EirGrid’s Response to allegations, and false premises included by the UR

Overview of the UR's SONI TSO Governance: Consultation on modifications to the SONI TSO licence		
Section	Allegations / False Premises / Factual Inaccuracies by the UR which would misguide the reader	EirGrid Comment
Overview of Paper		
1.2	<i>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.</i>	The SEMC reviewed these concerns and included measures to mitigate them. EirGrid also included additional voluntary measures to ensure the protection of the interests of consumers in Northern Ireland which were welcomed by the SEMC.
1.3 FN 2	<i>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.</i>	The SONI and EirGrid responses were submitted separately and were reviewed by their respective boards and submitted accordingly. The UR's assumption that there is no independent SONI view is unfounded.
1.7 (d)	<i>SONI has in effect become a “business unit” within the EirGrid group. It has no demonstrable independence of mind.</i>	This is not accurate. SONI Ltd. is a body corporate whose board fulfils its duties as required.
1.12	<i>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.’ 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 proceed with any changes to their current governance structures.</i> <i>FN 4: See for example, SONI response Para. 2.35</i>	The UR has conflated the EirGrid and SONI response, stating "EirGrid" but including a reference from SONI's response.

	FN 5: SONI response, Para. 8.4.	
Summary of responses to consultation questions		
2.22	<p>One (1) respondent stated an opinion that EirGrid had demonstrated a lack of transparency “over and over”.</p> <p>FN 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.</p>	<p>This is an assumption made by the UR. No evidence or foundation has been cited for this assumption. Moreover, this point was raised by a single respondent out of the 18 responses received.</p>
2.57	<p>One respondent suggested that SONI should be subject to Key Performance Indicators (KPIs) relating to renewable penetration, system emissions and dispatch down.</p> <p>FN 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.</p>	<p>This is an assumption made by the UR. In any event, this comment is out of scope in relation to the matters that are under consideration. Therefore, it is not clear why the UR has given credence to this comment in this consultation when no other parties were invited or afforded the opportunity to comment on these matters.</p>
Section 3	Assessment of key points in EirGrid/SONI responses	
Throughout	The UR references "EirGrid/SONI" throughout this section	<p>The UR's approach to amalgamating EirGrid and SONI's responses is completely inappropriate. EirGrid and SONI submitted separate responses; EirGrid provided its submission based on its role both as shareholder and impacted party as co-party with SONI to the MOA and SOA. Both responses should be considered separately.</p>
3.4	<i>EirGrid/SONI characterise all UR options as applying a 'jurisdictional approach.'</i>	<p>This approach is appropriate because all options proposed by the UR included a Licence Condition specific for NI Consumers. This was not characterisation, but fact.</p>
3.9	<i>The 'all-island approach' is a construct of EirGrid/SONI based on EirGrid's preference for full integration of SONI and EirGrid TSOs.</i>	<p>The 'all-island approach' is not a construct by EirGrid and SONI, but an agreed approach by the SEMC and both Governments.</p>

3.13	<i>This view appears premised on an expectation that SONI will act irrationally if allowed a greater level of independence from EirGrid.</i>	SONI will not act irrationally if allowed a great level of independence from EirGrid. It will act as a rational agent in a manner that is required to fulfil its obligations should separation between EirGrid, SONI and SEMO be introduced.
3.15	<i>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.</i>	For SONI to do this under the UR's proposed licence modifications would require derogations of most, if not all, proposed changes being introduced by the UR. Moreover, such "collaboration" would itself not be sufficient to enable either SONI or EirGrid to meet its licence obligations.
3.15	<i>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.</i>	This comment demonstrates a fundamental misunderstanding of the underpinning of all-island cooperation which is not to benefit consumers in any particular part of the island but rather for the island as a whole.
3.30	<i>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. 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. FN 19: This is clearly the intention of SEMC – see Para. 27 of SEM-08-176.</i>	By the UR's own admission, what is proposed by the UR runs counter to the intent of the SEMC by seeking to reimpose managerial independence, which the SEMC considered not to be necessary and as a result reducing the opportunities for economies of scale and potential synergies and efficiencies to be pursued.
3.32	<i>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.</i>	No basis is given for these statements, nor is there any suggestion, founded or otherwise, that the SONI Board does not exercise appropriate governance and oversight of SONI Ltd.
Section 4	Review of remaining aspects of SONI response	

4.9	<i>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.</i>	This is in direct contradiction with the UR's proposed Licence Modifications, where Separate Resources is defined as <i>"activities carried out by the Licensee in the course of the Transmission System Operator Business, that [...]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"</i>
4.21	<i>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.</i>	The 75 / 25 proportions is derived from the 2007 Market Operator Agreement which provides that all consumers pay equally for all-island services relative to consumption.
4.22 (3)	<i>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</i>	The recharges are consistent with the applicable regulatory approved methodologies and have been subject to audit and assessment to ensure they are in compliance with the rules of the relevant taxation authorities.
4.23	<i>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</i>	The charges are consistent with the costs and the regulatory approved methodologies and have been subject to audit and assessment to ensure they are in compliance with the rules of the relevant taxation authorities.
4.24	<i>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.</i>	No evidence is provided to support this statement.

4.31	<i>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'.</i>	While the UR does not agree with SONI's approach regarding Condition 12, the issue of Condition 12 being fit for purpose was brought to the UR's attention in 2011. The UR has still not yet included proposed wording to address Condition 12, but merely states that they will make " <i>consequential changes to Condition 12 for clarity</i> ". It seems odd to EirGrid that the UR wishes to carry out a Licence Modification Consultation regarding SONI Governance, whilst not proposing amendments to the Licence Condition regarding SONI Independence itself.
4.36	<i>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.</i>	Per SONI's TSO Licence Condition 24, the SOA is designed so as to " <i>at all times protect the interests of consumers of electricity in Northern Ireland and Ireland</i> ", a requirement stipulated by the SEMC.
Section 5	Review of remaining aspects of EirGrid response	
5.4	<i>In reference to Condition 3 of EirGrid's TSO Licence the UR states - 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.</i>	This is a totally inaccurate statement for the UR to make when they are proposing to effectively remove any ability EirGrid plc would have to be able to consider measures which would affect Northern Ireland under the UR's proposed licence modifications and independent SONI Board.
5.19	<i>UR will not appoint directors to the Board.</i>	Although they will not appoint directors to the SONI Board, the UR will approve and have right to refuse members being appointed. Therefore, unless the UR approves, the directors will not be appointed.
Section 6	Policy position on SONI TSO governance	
Table	<i>If joint working or procurement cannot be justified, it is likely that the savings are either immaterial or perhaps more costly to SONI.</i>	This comment demonstrates a fundamental misunderstanding of the underpinning of all-island cooperation which is not to benefit

		consumers in any particular part of the island but rather for the island as a whole.
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Annex 2 – Acronyms

Acronym	Description
CRU	Commission for Regulation of Utilities
ESB	Electricity Supply Board
FN	Footnote
ISEM	Integrated Single Electricity Market
IT	Information Technology
MEL	Mutual Energy Limited
MO	Market Operator
MOA	Market Operator Agreement
NEMO	Nominated Electricity Market Operator
NIE	Northern Ireland Electricity
NIEN	NIE Networks
RIGs	Regulatory Instructions and Guidance
SEM	Single Electricity Market
SEMC	SEM Committee
SEMO	Single Electricity Market Operator
SOA	System Operator Agreement
TSO	Transmission System Operator
UR	Utility Regulator