

SONI Ltd.'s Response

To the Utility Regulator's

**SONI TSO Governance: Consultation on modifications
to the SONI TSO Licence**

25 March 2022



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1 Introduction and Executive Summary

- 1.1 This response is made by SONI Ltd. (**'SONI'**); company number NI 038715, which is the holder of Licences to Participate in the Transmission of Electricity, to act as SEM Operator and is the Designated Nominated Electricity Market Operator (**'NEMO'**) in Northern Ireland.
- 1.2 SONI Ltd is the subject of this 'Licence Modifications Consultation'¹ by the Utility Regulator (**'the UR'**) in relation to its corporate governance.
- 1.3 This consultation response is being provided by SONI without prejudice to the ongoing judicial process in Northern Ireland (including any related appeals) between SONI and the UR and its SEM Committee and SONI regarding, *inter alia*, the UR's vires to implement these proposals.
- 1.4 While SONI acknowledges the extension of time granted by the UR to respond to these proposals, SONI reiterates its procedural objections to the UR's consultation process – where the UR has effectively waited until the very last stage to explain how it envisages that any of its proposals (previously expressed only in high level and theoretical terms) will operate in practice. SONI maintains that both it and other interested parties have been afforded insufficient time to formulate detailed responses to the licence proposals now tabled for the first time by the UR as part of the Licence Modifications Consultation (even taking into account the extension provided).
- 1.5 SONI also considers that the UR has continually failed throughout its consultation process to engage properly with SONI on the important issues raised. Furthermore, the Licence Modifications Consultation fails to grapple with the serious concerns SONI raised in its 25 June 2021 response to the UR's Consultation on Proposals on SONI Governance (**'SONI's June 2021 Response'**), simply dismissing these with claims of irrationality. SONI has consistently raised objections to the UR's process in its consultation responses and in correspondence. In the interests of brevity, these concerns are not restated in this response, but SONI's objections are maintained, including its consistent position that the consultation and the proposals put forward by the UR – and as now proposed in the Licence Modifications Consultation to be codified in the SONI's License to Participate in the Transmission of Electricity (**'Transmission Licence'** or **'TSO Licence'**) – are 'SEM Matters' and therefore outside of the vires of the UR.
- 1.6 Accordingly, this response is submitted without prejudice to SONI's fundamental objections to the process conducted to date by the UR. In light of the limited time period for responding, SONI reserves the right to make further submissions in due course, including by way of further correspondence.
- 1.7 SONI's key concerns with the Licence Modifications Consultation, as addressed in this response, can be summarised as follows:
 - (a) That the decision, and the UR's ongoing consultation in relation to the matters of SONI Governance, is **wrong in law** in the context as set out in Article 14D(4)(e) of the Electricity (Northern Ireland) Order, 1992, as amended (**'the Order'**)

¹ SONI TSO Governance: Consultation on modifications to the SONI TSO licence published 24 January 2022

- (b) The UR has failed to have proper regard to the carrying out of its **principal objective** in the context of Article 12 of the Energy (Northern Ireland) Order, 2003, as amended ('the **2003 Order**');
- (c) That the modifications proposed fail to achieve, in whole or in part, the **effect stated** by the Utility Regulator by virtue of Article 14(8)(b) of the Order; and
- (d) That the decision is based, wholly or partly, on **errors of fact**.

The decision is Wrong in Law

- 1.8 Contrary to the assertions of the UR in the Licence Modifications Consultation, it remains the position of SONI that the matters the UR is consulting on are 'SEM Matters', in that they "materially affects, or is likely materially to affect the SEM", and are thus matters that should have been taken forward by the SEM Committee of the UR.
- 1.9 In doing so, the UR's SEM Committee would be required to act in accordance with its principal objective as set out in Article 9 of the Electricity (Single Wholesale Market) (Northern Ireland) Order, 2007, as amended ('the **2007 Order**') as opposed to that of the UR under Article 12 of the 2003 Order.
- 1.10 SONI maintains its view that this consultation process has taken place outwith the appropriate decision-making process for matters affecting the SEM. This is poor governance on the part of a public body. Notwithstanding this, SONI has endeavoured to respond to the Licence Modifications Consultation to the fullest extent possible within the limited timeframe provided, even though that set out therein cannot legally be implemented, including by reference to Section 5 of the Electricity Regulation (Amendment) (EirGrid) Act, 2008 as enacted by the legislature in Ireland.
- 1.11 In addition, the UR's stated vision for SONI in the Licence Modifications Consultation which when taken in the context of SONI's SEM functions is fundamentally at variance to SONI's obligations to secure generation adequacy and capacity across the island of Ireland including as set out and required by virtue of Article 11A of the Order.
- 1.12 Further, the intended new Condition 42 for SONI's TSO Licence is poorly designed, and may not constitute a lawful modification to SONI's TSO Licence within the scope and meaning of modifications that the UR is either required to or may direct under the relevant provisions in the 1992 and 2007 Orders.

The UR has failed properly to have regard to the carrying out of its principal objective under Article 12 of the 2003 Order

- 1.13 The proposals as set out fail to further the UR's statutory objectives and, rather, are directly contrary to certain of those statutory objectives. In particular the actions in the Licence Modifications Consultation do not further nor protect the interests of consumers in Northern Ireland and the Republic of Ireland – as required in the context of the principal objective of the Utility Regulator's SEM Committee as set out in Article 9 of the 2007 Order – nor indeed those in Northern Ireland alone, as the Utility Regulator appears to infer by reference to its principal objective as set out in Article 12 of the 2003 Order. No substantive articulation has been set out as to how the proposals would benefit consumers or do anything other than to harm them.

- 1.14 SONI's existing governance arrangements continue to benefit customers both on the island and in Northern Ireland specifically, within the all island context. The unique advantages that ownership and the integrated operation with EirGrid bring include many benefits which would not be available under the independent SONI structure proposed, and cannot be replicated, nor the impact removed, through the now proposed Derogation process.
- 1.15 Furthermore, the proposed derogation process, for the reasons as further set out in this response, is woefully under-developed and subject to guidance which has not been developed and on which neither SONI, nor any other party, has been consulted.
- 1.16 These current benefits have been realised following years of system and process integration based on investments approved by the UR and a result of decisions of the SEM Committee. These SEM Committee decisions have resulted in greater integration between SONI and EirGrid across both their licences in the context of the furtherance of consumer benefit across the island as part of a set of single integrated all island market arrangements. That set out in the Licence Modifications Consultation will undo this.
- 1.17 What is most concerning is that the harm which would be caused by the Licence Modifications Consultation, and in particular the harmful impact to the SEM, is not examined. The UR seeks to simply dismiss legitimate concerns raised by SONI about the SEM as 'irrational'. There is nothing irrational (in any sense) in pointing out how the proposals will have obvious affects on the SEM; what is 'irrational' is the UR's refusal to engage with SONI's submissions on this point. This harm will adversely impact customers in both Northern Ireland and the Republic of Ireland and the functioning of the SEM itself.
- 1.18 As demonstrated in this response, SONI considers that it is clear that the UR has significantly understated the costs (£1.8m) in its Cost Benefit Analysis ('CBA'). The assessments undertaken by SONI as discussed in this response demonstrates the scale of the impact (estimated to be in excess of 50 times that set out by the UR) and the need for a new price control in order to reflect the full impact of the UR proposals.
- 1.19 The UR has sought to mask the cost impact to stakeholders and consumers of its proposals by asserting that 'derogations may be granted'. However, derogations by their nature are optional for the licensee to request and the UR retains full discretion as to whether any such derogation would be granted. The UR must therefore assess the CBA of its proposals, absent of any such derogations and based on that which it has set out – full independence and separation of resources including premises and systems.
- 1.20 SONI estimates that the separation of the systems and processes in order to allow SONI to remain compliant with existing obligations will be in excess of £100m. SONI has estimated that this unnecessary investment may cost domestic customers in the region of an additional £80 at a time when a significant number of households are experiencing financial pressure and fuel poverty.
- 1.21 Yet no benefits have been set out by the UR in terms of its actions. As a result it has not fulfilled its principal objective in the context of the 2003 Order and further has failed to have regard in particular to individuals with low incomes as required under Article 12(3)(c) of the 2003 Order who may face the greatest impact and be worst hit by the resultant costs of these proposals.
- 1.22 In addition by failing to set out that which would be necessary for SONI to operate on the standalone basis proposed or indeed to provide any of the funding in respect of that set out the UR has also failed to discharge its duty under Article 12(2)(b) of the 2003 Order

to have regard to the need to secure that licence holders are able to finance their activities which are the subject of obligations imposed by it.

The Modifications fail to achieve, in whole or in part, the effect stated by the UR

- 1.23 In the Notice published alongside the Licence Modifications Consultation the UR simply states that the effects of the modifications are set out in the paper.
- 1.24 In paragraph 6.2 of the Licence Modifications Consultation the UR has stated the effect of the proposed changes as:
- '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.'*
- 1.25 The Modifications as proposed do not however have this effect. First and foremost, and absent any derogation, the modifications require full management and systems separation between SONI's licensed TSO activities and that of any Associated Company. They therefore do not *balance opportunities from a shared management and operating model* as is stated by the UR, they actually prohibit it.
- 1.26 Secondly when it comes to seeking derogations the UR has provided that SONI must set out "*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*"² and presumably the UR in granting or refusing to grant such derogations to equally do so by reference to the meeting of the same principal objective.
- 1.27 As a result, contrary to the stated effect of "*properly taking into account the interests of both Northern Ireland consumers and Ireland consumers*", that proposed by the UR seeks to take into account the interests of Northern Ireland consumers alone, with the interests of consumers in Ireland being simply ignored.
- 1.28 Furthermore, rather than providing that SONI can operate "*in conjunction and co-operation with Ireland's TSO (as required and appropriate)*", as is stated in terms of the proposed effect, the Licence Modifications prohibit such co-operation and would effectively render SONI in breach of other aspects of its licence.
- 1.29 For example, the modifications will render SONI in breach of its obligations under Licence Condition 23A to operate the Capacity Market in conjunction with EirGrid from the proposed effective date. It would not be a matter for the SONI Board to determine if a derogation is required, rather in order for SONI to remain compliant with Condition 23A SONI would have no choice but to seek a derogation and UR approval. A mandatory derogation by way of implementation of a structural inconsistency in licence is not a derogation, nor the purpose of a well specified and properly articulated derogation process.

² Condition 42, paragraph 25(d)

- 1.30 Finally, SONI has demonstrated in this response, through the use of a number of case studies, that the proposed derogation process cannot be implemented in practice. SONI therefore considers that the Modifications fail in whole or in part to have their stated effect.
- 1.31 This is a key requirement of Articles 14(2)(B) and 14(8)(b) of the Order. The UR's failure to introduce licence modification that would achieve the effect stated is an error.

The Decision is based wholly or in part on Errors of Fact

- 1.32 Moreover, the underlying factual matrix upon which the decision of the UR is premised appears to SONI to be unsound, specifically
- (a) Failing to recognise SONI's obligations to the all island operation of the SEM or All Island Consumers.
 - (b) Failing to recognise that SONI is a single legal entity and that the SONI Board must seek to ensure that it fulfils its licenced functions with respect to the SEM / All Island Consumers as applicable.
 - (c) Directly impinging on the remit of the SEMC
 - (d) Failing to recognise the impact on other licensees and wider Market Participants.
 - (e) Operating on the assumption that SONI can accept and implement any additional conditions that the UR may add to a derogation thus overruling SEM related decisions.
 - (f) Making the sweeping assumption that EirGrid, and SEMO and SEMOpX as applicable will agree to all requested and approved derogations.
 - (g) Is unrealistic in terms of the time periods for preparation, progression and implementation.
 - (h) It impacts on planned work such as SEM related initiatives, EU Network Codes and delivery of the NI Energy Strategy and therefore runs counter to the intent of that signed up to by the government of the United Kingdom in the Northern Ireland Protocol and the UK-EU Withdrawal Agreement.
- 1.33 At its most basic the UR appears to have failed to fully assess the industry architecture which it oversees and regulates. SONI is a single legal entity. Any consideration of its governance must be by reference to the corporate entity as a whole. The UR has however undertaken a review of the governance of SONI with respect to only a subset of its activities that is under the TSO Licence.

Procedural Impropriety

- 1.34 The entire consultation process up to and including publication of the Licence Modifications Consultation is indicative of poor regulatory practice on the part of the UR.
- 1.35 It was initially intimated that this process would commence some 6 years ago in 2016 following which:
- (a) The UR engaged in relation to a Call for Evidence over 2 ½ years ago in July 2019;
 - (b) despite having received no evidence of harm or requirement to take action, in response to its Call for Evidence consulted on potential options (outlining said options at a high level only) in a paper in April 2021;

- (c) failed to elaborate any further on its proposals – despite requests from SONI for further engagement – until publication of the Licence Modifications Consultation. (Despite this, and despite the length of time the UR has had this matter under consideration, it initially afforded stakeholders only the 28-day statutory minimum time period to respond, for reasons that remain unclear); and
- (d) failed to develop and/or disclose any substantive CBA in support of its proposals, only providing an inadequate high-level set of assumptions in the absence of a quantitative supporting assessment that would allow stakeholders to engage with its proposals.

- 1.36 Whilst SONI has provided full responses to the UR's proposals at every stage of the process, SONI considers that this process has been wholly inadequate. Despite the UR's view that it has consulted on this issue for some time, there have been long periods of silence on the issue followed by short consultation periods on lengthy papers with vague analysis, and the UR did not advance *anything resembling concrete proposals* until the very last stage in its process. These proposals have far-reaching implications for SONI's business, its operating model, its structure, and its customers. Viewed in that context, the late development of proposals and the lack of engagement afforded to SONI on these detailed proposals is clearly unsatisfactory.
- 1.37 The proposals that have been advanced are still incomplete – most of the Condition 42 derogation process is unspecified, none of the 'guidance' proposed by the UR has yet been provided in draft form, and on its own admission the UR intends to make further changes to Licence Condition 12. No reason has been given as to why this is the case. The UR's bifurcated process – by which it intends to substantiate the licence modification it now proposes to introduce through later, as-yet-unseen guidance – artificially separates inter-related legally challengeable decisions and reserves an unjustified level of discretion to the UR.
- 1.38 Further, the consultation documents produced by the UR are inadequate and fall short of the standard expected from a public authority – for example, no reliable cost benefit analysis has been carried out, no tangible existing or likely consumer harm has been identified and no clear articulation is given to explain why the proposals are necessary or further the UR in the delivery of its own statutory objectives. The lack of analysis is indicative that the UR had pre-determined the output of its consultation process from the outset.
- 1.39 Moreover, SONI's view is that it cannot legally implement that set out, and it would in fact be impossible for it to comply with the intended new obligations within the terms of its licence. Accordingly, SONI would seek that in the event the UR were to proceed with that proposed, which would result in breach by SONI of that set out within its licences, that the UR would indemnify it from and provide assurances it will take no action in respect of any and all such breaches as would result from the Licence Modifications Consultation.

2 Proposed Actions are a “SEM Matter”

SONI Ltd. A single legal entity

- 2.1 SONI Ltd. is a single legal entity. Any consideration of its governance must be by reference to the corporate entity as a whole.
- 2.2 The UR has however undertaken a review of the governance of SONI with respect to only a subset of its activities that is under the SONI License to Participate in the Transmission of Electricity (**‘Transmission Licence’** or **‘TSO Licence’**)³.
- 2.3 It has done so without reference to the other functions SONI performs, or the governance of them, including where SONI performs and discharges its Single Electricity Market (**‘SEM’**) functions under its Transmission Licence or under the SONI License to Act as SEM Operator (**‘Market Operator Licence’** or **‘MO Licence’**)⁴. This has led to a number of ill-conceived inconsistencies that impact on SONI’s abilities to discharge its function effectively and efficiently across the corporate entity.
- 2.4 SONI, and in particular SONI’s Board, has responsibilities that, necessarily and unavoidably, extend to SEM matters, by reference to Article 2 of the 2007 Order. Accordingly, much of SONI’s management (and hence governance) will always be related to the SEM.
- 2.5 The UR fails to recognise and distinguish the role of the corporate entity that is SONI and that of a singular licenced entity. It has equally failed to distinguish and appropriately identify the SEM functions carried out by SONI within SONI’s TSO Licence. This is evident in its conflation of SEM functions and the function of the Single Electricity Market Operator (**‘SEMO’**) in paragraphs 4.10-4.11 of the Licence Modifications Consultation.
- 2.6 At no point has SONI asserted that SEMO is an integral part of their role as Transmission System Operators as alleged. Rather SONI highlighted in para 3.27 of the SONI’s June 2021 Response that the *“proposed approach of carving out what would be “the constituent part of SONI” within SEMO as being distinct from SONI in its capacity as TSO is irrational as a corporate construct.”*
- 2.7 The reality is that corporate governance arrangements can only apply to SONI as a corporate entity across all its licence functions. This means that quite apart from the application of the broad legal construct of what is a “SEM Matter”, the corporate reality is that if SEMO is impacted then SONI is also impacted and if SONI is impacted then SEMO is impacted.

The UR’s proposals will materially affect the SEM

- 2.8 Contrary to the assertions of the UR in the Licence Modifications Consultation, it remains the position of SONI that the proposed actions are a ‘SEM Matter’⁵, in that if codified the decision *“materially affects, or is likely materially to affect the SEM”*, and thus are beyond

³ The statutory provision for licencing the transmission of electricity in Northern Ireland is enshrined under Article 10(1)(b) of the Electricity (Northern Ireland) Order 1992 - <https://www.legislation.gov.uk/nisi/1992/231/article/10>

⁴ The statutory provision for licencing the SEM operator in Northern Ireland is enshrined under Article 10(1)(d) of the Electricity (Northern Ireland) Order 1992 - <https://www.legislation.gov.uk/nisi/1992/231/article/10>, in addition to Section 4 of The Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 - <https://www.legislation.gov.uk/nisi/2007/913/article/4>

⁵ Pursuant to Article 6(3) of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007

the vires of the UR acting without its SEMC. To the extent that the UR is acting 'ultra vires', any resultant decision would be Wrong in Law.

- 2.9 SONI set out its views in this regard in SONI's June 2021 Response which have not been addressed by the UR in its paper. SONI reiterates its previous submissions on this point, and discusses the demonstrable impact of the UR's proposals on the SEM further in sections 4 and the annexes to this response.
- 2.10 As – on even the most cursory analysis – this is a “SEM Matter” and as this issue materially affects the SEM, SONI maintains its view that the SEMC of the Utility Regulator alone has the *vires* to determine the SONI governance proposals contained in the Licence Modifications Consultation.
- 2.11 The UR has sought in the Licence Modifications Consultation to dismiss this concern and states “the SEMC has agreed that the issue of SONI governance is not a SEMC matter”. In subsequent correspondence, and on analysis of SEMC board minutes published in February 2022, it has become evident that this statement was misleading – at the time of publication the SEMC had not yet made a decision as to whether the UR's consultation in relation to SONI's corporate governance is a SEM matter and – at that time at least – could yet take a decision to “call in” the matter. The disingenuousness of the UR's statement in the Licence Modifications Consultation is demonstrated by the High Court's recent finding that no positive determination had been made at this time, although it is clear that a public law decision was taken by the SEMC to the effect that it was not appropriate to make a determination in the circumstances.

Utility Regulator objectives in the SEM

- 2.12 The UR has also misdirected itself as regards its statutory objectives in the context of a matter affecting the SEM.
- 2.13 The UR has throughout the Licence Modifications Consultation proposals into SONI's governance referred to its principal objective of protecting the interests of consumers in Northern Ireland. Whilst SONI acknowledges the principal objective of the UR under Article 12 of the 2003 Order, this is not the principal objective of the UR in so far as it relates to the functions of the UR under the 2007 Order (see Article 13(1 A) of the 2003 Order).

13(1A) Article 12 does not apply in relation to the carrying out of functions of the Department or the Authority to which Article 9 of the SEM Order applies.

- 2.14 Article 9(b) of the 2007 Order states that, the principal objective of the UR in giving effect to any decision of the SEM Committee is to protect the interests of consumers of electricity in Northern Ireland and Ireland. Central to this matter is:
- (a) the apparent misapprehension by the UR of the extent of SONI TSO functions that are SEM Matters and subject to SEM oversight and directions and the underlying integrated arrangements, put in place under the governance of the SEM as evidenced by the following:
 - (i) the UR's comments in which it seeks to draw precedence from the operation of the SEM in 2008⁶. The current SEM arrangements, requirements and architecture, following the implementation of the I-SEM in 2018, are fundamentally different to that in place in 2008. In so

⁶ Ref. Para 3.51 of the Licence Modifications Consultation

doing the UR has in setting out its proposals sought to draw an entirely artificial undefined and unworkable distinction between that proposed for SONI and the functions of SONI as TSO in the operation of the SEM. The UR has not referenced the licence modifications introduced to reflect the new obligations on SONI in relation to the operation of the I-SEM.

- (ii) The SEM Committee has itself already considered matters related to the governance of SONI to be a "SEM matter" (see further below).
- (b) the UR's stated vision for SONI in the Licence Modifications Consultation which when taken in the context of SONI's SEM functions are fundamentally at variance to SONI's obligations to secure generation adequacy and capacity across the Island of Ireland including as set out and required by virtue of Article 11A of the Order.

SONI TSO Functions In the SEM

- 2.15 The SEMC identifies three areas as being matters that, essentially, fall within the remit of the SEM and are to be addressed by it. That is, that the SEM⁷:

.. comprises three distinct areas that provide revenue streams relating to the services provided by market participants. The Energy Trading Arrangements (ETA), Capacity Remuneration Mechanism (CRM) and Delivering a Secure Sustainable Electricity System (DS3) make up the three main pillars of the market."

- 2.16 SONI has a core function in each of the three distinct areas. These obligations are defined within its Transmission Licence. The costs to SONI for the operation of these functions are provided for under the Transmission Licence and were sought and provided for by the UR on the basis of no restriction on the integrated economic operation of the system across EirGrid and SONI or between licences.
- 2.17 The actions taken by SONI in fulfilment of these actions directly impact the SEM. As that set out by the UR in the Licence Modifications consultation will directly impact on SONI's fulfilment of these activities and in turn the SEM (ref. Annexes 1-5 for further details), the UR's proposals are a SEM Matter.
- 2.18 The proposals will impact on the SEM, as set out in SONI's June 2021 Response and further addressed in this submission. That such impacts will arise is not as alleged by the UR "*premised on an expectation that SONI will act irrationally*⁸" but rather a clear and direct outworking of the proposals as set out.

Previous SEM Committee Determinations

The UR's proposals are inconsistent with, and will likely cut across, SEMC previous practice and decision-making. This is not good practice and gives rise to a risk of inconsistent and incoherent decisions, which the statutory scheme set out in the 2007 Order was created to avoid.

The acquisition of SONI

⁷ <https://www.semcommittee.com/how-sem-works>

⁸ Para 3.13 of the Licence Modifications Consultation

- 2.19 Prior to the acquisition of SONI by EirGrid the SEM Committee published SEM 08-176 which concerned the ownership of SONI, and thereby necessarily its corporate governance.
- 2.20 SEM 08-176 expressly welcomed the corporate governance changes proposed by EirGrid, noting "*that they represent measures aimed in good faith at promoting and protecting consumers in both jurisdictions equally*". In adopting this stance, the SEM Committee thereby acknowledged that the corporate governance arrangements concerned the interests of both Irish and Northern Irish consumers
- 2.21 On the basis of its consultation the SEM Committee recommended certain licence modifications that were effected by its decision of 26 February 2009.

The I-SEM

- 2.22 Following industry wide consultation, the SEM published its "I-SEM Roles and Responsibilities Decision Paper" (SEM-15-077) on 7 October 2015. This was followed up by a paper entitled "Integrated Single Electricity Market ('I-SEM') and DS3 (Delivering a Secure, Sustainable Electricity System) Information Paper (SEM-16-041) dated 29 July 2016.
- 2.23 In SEM 16-041, the SEM Committee recommended certain alterations to EirGrid's corporate structure (which were agreed by EirGrid and SONI and so no licence modifications were made). The SEM Committee noted that these alterations "*will help to instil a sense of independence of SONI Ltd from EirGrid plc*". It also observed that "*the UR will review the governance of SONI Ltd to ensure that it continues to adequately address the requirements of an independent TSO for Northern Ireland*".
- 2.24 This latter observation should not be read as granting the UR free rein to consider SONI's governance. First, the SEM Committee has no power under the 2007 Order to delegate its jurisdiction on SEM Matters to the UR; accordingly, any review by the latter could only relate to uniquely Northern Irish issues with no material impact on the SEM. Second, on any reading the SEM Committee was not suggesting that the UR could take any action beyond reviewing SONI's governance. In other words, it was not suggesting that the UR could make modifications to SONI's TSO Licence as regards governance. Indeed, it could not rationally have permitted the UR to make such modifications pertaining to governance given the inevitable consequential effects that such modifications could have on the very alterations the SEM Committee had overseen.
- 2.25 The Licence Modifications Consultation clearly cuts across a number of SEM Committee decisions, notwithstanding the now proposed derogation process, indeed because of it, including those related to:
- (a) Modifications made by the SEM Committee relating to governance and which removed the need for management independence of SONI from that of EirGrid; and
 - (b) The SEMC governed and approved procurement of a single integrated IT solution to provide a multiplicity of SEM services; with all IT systems, data storage and retrieval devices, telecommunications and middleware centrally procured. The architecture of which underpins the functionality required by the TSOs and MOs to enable their respective functions to be met including those related to operation of the Capacity Market and the Balancing Market.

- 2.26 In fact, the proposed derogation process directly impinges on the remit of the SEM Committee going so far as to propose that SONI must seek the unilateral approval of the UR for a derogation from the proposed licence conditions in order to retain in operation the integrated I-SEM systems, designed, procured and implemented on a single integrated basis under the governance and approval of the SEM Committee. In addition, the derogation process allows for the UR *'to place supplementary controls and reporting requirements to assure their obligations towards consumers in the jurisdiction of Northern Ireland'*⁹. These controls may alter, replace or remove previous SEMC decisions. This is discussed further in section 3 of this response.

Operation of the SOA

- 2.27 SONI's actions under the System Operator Agreement ('SOA') are designed to at all times protect the interests of consumers of electricity in Northern Ireland and Ireland. Yet the UR, somewhat inexplicably, talks about both TSOs seeking to protect the interests of "their own customers" without defining who these customers are and notwithstanding that the customers to which the SOA is designed to protect and take into account the interest of is the same for both SONI and EirGrid – i.e. in each instance the consumers in Northern Ireland and the Republic of Ireland.
- 2.28 The UR in the Licence Modifications Consultation seeks to infer harm and issues with respect to the actions of SONI and EirGrid in the context of the SOA which are wholly without basis. As the UR notes no harm has been identified. Contrary to the inference of the UR¹⁰ no priority has been given to one set of consumers over another, nor have the interests of one set of consumers been neglected.
- 2.29 The UR further asserts, again without basis, that *"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"*¹¹. This may be the perception of the UR, but it is not representative of the facts.
- 2.30 In regard to the operation of the SOA and any changes to same, the following was clearly stated by the Regulatory Authorities in AIP/SEM/232/07¹²

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 [emphasis added]

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. [emphasis added]

- 2.31 The scope of the SOA covers a large number of key TSO activities, including Network Planning, Grid Code, Use of System and Connections. The matters of the SOA were

⁹ Ref. Para 3.48 of the Licence Modifications Consultation

¹⁰ Ref. Paras 3.22 – 3.25 of the Licence Modifications Consultation

¹¹ Ref. Para 3.25 of the Licence Modifications Consultation

¹² <https://www.semcommittee.com/sites/semcommittee.com/files/media-files/AIP-SEM-07-232%20Proposed%20conditions%20of%20System%20Operator%20Licences%20-%20First%20Consultation%2009.01.07.pdf>

developed by the SEMC, as recognised by the UR¹³ and the requirement of these matters in the SOA to be managed in a manner which specifically required SONI and EirGrid to do so on behalf of customers in both Northern Ireland and Ireland was specifically specified by the SEM Committee. As outlined in AIP/SEM/232/07, it is the responsibility of SONI and EirGrid to ensure the content of the SOA works for both entities, provided that the licence obligations are fulfilled.

- 2.32 The SOA was developed in advance of the SEM go-live. The licence consultation modification for the SOA in the respective EirGrid and SONI TSO Licences was carried out by the All-Ireland Project ('AIP') which was a pre-cursor to the SEM Committee. As such, should significant change be required to the SOA licence condition in SONI's TSO licence, this would be a matter for the SEM Committee. The same changes would also be required in the EirGrid TSO licence. Per the above, any significant changes to the SOA document itself is a matter for SONI and EirGrid.
- 2.33 In July 2021, the UR served a notice under Article 51(2) of the 2003 Order (the '**Article 51 Notice**') to SONI in respect of Condition 24 of SONI's TSO Licence, and the SOA. The Article 51 Notice was raised by the UR as it appeared to the UR that SONI may be contravening or may have contravened Condition 24 of SONI's TSO Licence. SONI responded to the UR's notice on 26 August 2021 providing the required information. SONI has not received any feedback from the UR since this submission.

¹³ Ref. Para 3.26 of the Licence Modifications Consultation

3 Feasibility of the Implementation of Option C proposal

Proposed modifications fail to achieve, in whole or in part, the effect stated by the UR

3.1 SONI considers that the UR has failed to fully assess the effects of its proposals and give notice of same. This is a key requirement under Article 14 (2)(B) of the Order. If the effects of that proposed are not the same as the stated effects, effectively the Utility Regulator has misled respondents to its consultation.

3.2 In paragraph 6.2 of the Licence Modifications Consultation the UR has stated the effect of the proposed changes as:

'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.'

3.3 The modifications as proposed do not however have this effect. First and foremost, and absent any derogation, the modifications require full management and systems separation between SONI's licensed TSO activities and that of any Associated Company. They therefore do not *balance opportunities from a shared management and operating model* as is stated by the UR, they actually prohibit it.

3.4 Further to this, SONI considers the deemed failures include:

- (a) The UR has failed to carry out an appropriate and full cost benefit analysis (CBA) of the actions proposed and has significantly understated the costs associated with implementing its proposals.
- (b) Derogations by their nature are optional for the licensee to request and the UR retains full discretion as to whether any such derogation would be granted. For the CBA as set out to hold, it would not be that the SONI Board would consider what derogations are required, rather that the UR would have to assume that SONI will seek derogations and the UR has predetermined that they will be granted – in so doing acknowledging that the current arrangements in place are indeed appropriate.
- (c) That proposed presents a legal inconsistency and is clearly under-developed. For example, if implemented it would render SONI in breach of its obligations under Licence Condition 23A from the proposed effective date (requirement for a single capacity auction). It would not be a matter for the SONI Board to determine if a derogation is required rather it would require SONI to seek a derogation and the UR to approve such a derogation to enable compliance. A mandatory derogation by way of implementation of a structural inconsistency in licence is not a derogation.
- (d) The use of derogations is not compatible or practical for SEM related obligations and the integrated nature of the SEM systems, such matters in any event being under the jurisdiction of the SEM Committee.
- (e) The assumption that SONI can accept and implement any additional conditions that the UR may add to a derogation.

- (f) The assumption that EirGrid, and SEMO and SEMOpx as applicable where related to integrated systems, will agree to all requested and approved derogations.
- (g) The unrealistic timeframes proposed for the preparation of initial derogations.
- (h) No consideration of the timeframes required for the implementation of alternate arrangements / non-integrated arrangements where a derogation is not sought or not granted.
- (i) No consideration of the costs required for the implementation of alternate arrangements / non-integrated arrangements where a derogation is not sought or not granted.
- (j) No consideration of the additional costs on EirGrid, SEMO and SEMOpx as applicable, for the preparation and ongoing management of derogations and Service Level Agreements ('SLAs') and how these will be recovered.

3.5 SONI discusses the limitations of the derogation process below and then provides an assessment of the cost implications of the proposals in Section 4.

Limitations of the derogation process

- 3.6 The UR proposals appear to allow for some element of shared systems and resources on the basis of approval of a derogation to the licence obligations.
- 3.7 The concept of derogations has not been raised in any of the UR's previous consultations in the context of SONI Governance nor in any of the limited engagement it has had with SONI throughout this process.
- 3.8 It is not further explained in the Licence Modifications Consultation and the UR has not published the guidance documentation for the derogation process. The Licence Modifications are therefore effectively incomplete.
- 3.9 Overall, the derogation process would introduce a considerable administrative burden that may significantly hinder SONI's performance of its day-to-day functions. Significant time and effort will need to be expended by the business and SONI Board to consider the extensive derogations that are likely to be required, to develop the application and supporting documentation required by the UR, and to respond to further requests and queries from the UR.
- 3.10 SONI has sought to assess the proposed approach and licence modifications to understand how the process for seeking derogations may work in practice. As a result of this assessment, SONI is firmly of the view that the UR has not fully considered the challenges and risks associated with implementing that proposed. The UR's reasons and effects assessment is inadequate and incomplete. Therefore, the proposed Modifications fail in whole or in part to have their stated effect. It is also clear from this assessment that the derogation process will risk undermining the effectiveness of SONI's functions in support of the SEM – these have not been considered anywhere in the documentation produced by the UR, and the existence of these effects is further justification for the view that the proposals advanced constitute SEM Matters.
- 3.11 SONI has set these out under the following headings:

- (a) Derogation process fails to recognise SONI's obligations to the all island operation of the SEM to consumers in both Northern Ireland and Ireland.
- (b) Derogation process fails to recognise that SONI is a single legal entity and SONI Board must seek to ensure that it fulfils its licenced functions with respect to the SEM / All Island Consumers as applicable.
- (c) Derogation process directly impinges on the remit of the SEMC
- (d) Derogation process presents a dilemma where related to the usage of any integrated system or service, such a derogation would impact on each of the licensees/functions, Regulatory Authorities, Consumers and Market Participants.
- (e) The UR has failed to consider the impact of additional conditions imposed by UR when approving a derogation
- (f) The cost recovery for SONI and EirGrid activities associated with the operation of derogations and SLAs has not been set out.
- (g) The UR has failed to consider a realistic time period for the SONI Board to be established and then undertake a strategic assessment of what (if any) derogations should be progressed
- (h) Lack of Guidance documentation on derogations process
- (i) Limitations of timeframes proposed by UR for implementation
- (j) Impact on planned work such as SEM related initiatives including compliance to EU Network Codes as well as the delivery of the NI Energy Strategy.

Derogation process fails to recognise SONI's obligations to SEM participants, and therefore to consumers

- 3.12 It is proposed under Annex 1 – Condition 42 – Para 25(d) of the Licence Modifications Consultation – that in seeking a derogation SONI TSO must consider, assess and set out why the granting of a derogation “*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*”. That is focused on protecting the interests of consumers in Northern Ireland.
- 3.13 However, this is not the sole lens that SONI TSO is required to apply in the majority of its licensed activities, including those that are SEM related or fall within the scope of the SOA.
- 3.14 Where a derogation pertains to obligations under the SOA¹⁴, Condition 24 of the SONI Transmission license which deals with the SOA explicitly states that the SOA “*is designed as to at all times protect the interests of consumers of electricity in Northern Ireland and Ireland*”;

¹⁴ The scope of the SOA covers a large number of key TSO activities, including network planning, Grid Code, the UoS Systems and connections

- 3.15 Where a derogation pertains to obligations related to the SEM, SONI is again required to consider its actions with regard to All Island Consumers.
- 3.16 In addition, the UR would need to assess the derogation to ensure they adhere to the requirements under the 2007 Order.

Derogation process fails to recognise that SONI is a single legal entity and the SONI Board must seek to ensure that it fulfils its licenced functions with respect to the SEM / All Island Consumers as applicable

- 3.17 The UR sets out the envisaged role of the SONI Board in regard to derogations in the License Modifications Consultation para 7.3 (j)

“The SONI Board must be responsible for –

[]

iii. determining and approving applications to be submitted to UR for a derogation from the requirements of Part B of the license condition

[]

v. approving any changes proposed to be made to any Service Level Agreement which relates to a derogation given by UR;

[]”

- 3.18 However, the UR has failed to recognise the SONI Board’s obligations to the single legal entity that is SONI and in turn the obligations of the business, across all its licenses to the all island operation of the SEM or All Island Consumers where applicable. For example:
- (a) The SONI Board cannot consider a derogation request, set in the context of Article 12, as required under Annex 1 – Condition 42 – Para 25(d) of the Licence Modifications Consultation, or endorse the submission on the basis of same in isolation.
 - (b) The SONI Board must consider what is best for the corporate entity this includes all of the licensees/designations SONI TSO, SONI MO and SONI NEMO.
 - (c) Where a derogation pertains to obligations under the SOA (which covers a large number of key TSO activities, including network planning, Grid Code, the Use of Systems and connections) in order for the Board to ensure ongoing compliance of SONI TSO with same it must consider, where applicable, SONI’s obligation in the context of which the SOA was set. As per Condition 24 of the SONI Transmission license the SOA is designed as to *“at all times protect the interests of consumers of electricity in Northern Ireland and Ireland”*;
 - (d) Where a derogation pertains to obligations related to the SEM – in order for the Board to ensure ongoing compliance of SONI TSO with same it must consider the All Island Consumers;
 - (e) Where a derogation has the potential to impact on cost allocation or recovery or the ability of the MO or NEMO to fulfil their respective functions these matters would have to be taken into account. This is particularly of note where a derogation relates to the underlying shared systems and services.

- 3.19 Equally where the UR rejects a derogation request or approves a request with conditions, the SONI Board will need to assess same with respect to the impact to the corporate entity SONI.

Derogation process directly impinges on the remit of the SEMC

- 3.20 The proposed derogation process directly impinges on the remit of the SEMC.
- 3.21 The Licence Modifications Consultation includes a section (section 7) detailing the 'reasons and effects' for the proposed licence modifications. The UR has failed to include any assessment of the effects of the proposed licence modifications on the existing licence obligations. These include:
- Condition 22A – 'Scheduling and Dispatch',
 - Condition 22B – 'Balancing Market Principles Statement'
 - Condition 23A – 'Capacity Market' and
 - Condition 23B – 'Compliance and Assurance Officer'

Which were introduced to impose the obligations on SONI as per the decisions made by the SEMC on the I-SEM design, implementation and operation.

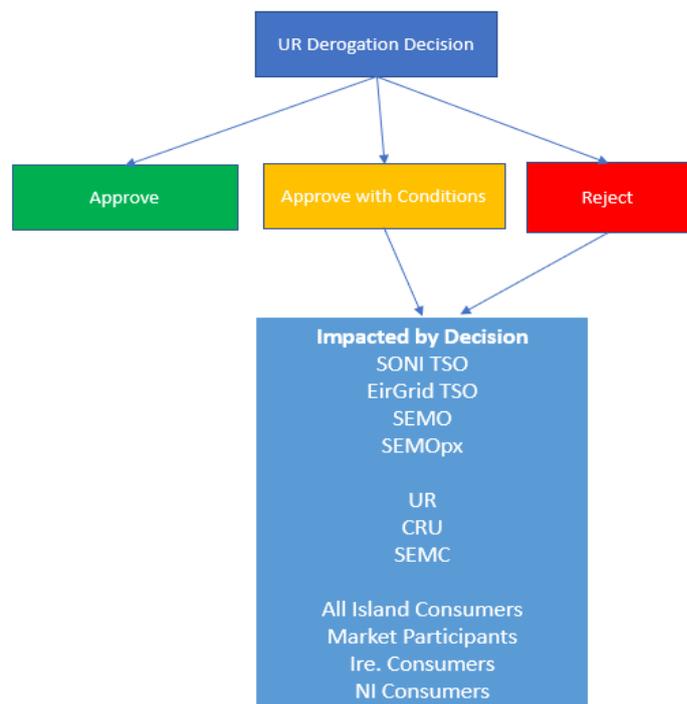
- 3.22 The impact of the proposed licence modifications is such that:
- (a) If SONI does not seek a derogation, it cannot fulfil the obligations of the licence conditions referenced above which were put in place as a result of the decisions of the SEMC.
 - (b) If SONI seeks a derogation, but the UR does not approve it, SONI cannot fulfil the obligations of the licence conditions referenced above.
- 3.23 Therefore, in order for SONI to remain compliant with the decisions made by the SEMC, under the proposed licence modifications, it must seek a derogation and the UR must approve the requested derogation.
- 3.24 The outcome of the proposed process is such that in order to ensure that the decisions of the SEMC are adhered to, the derogation process will need to result in the continuation of the working arrangements that are currently in place for these functions.
- 3.25 In the absence of any consideration of the above, it can be concluded that the 'effects' of the UR proposals have not been fully documented or consulted on. Moreover, with the absence of guidance on the derogations process and the proposed consequential changes to Condition 12 they are incomplete.
- 3.26 SONI highlights the effects of the UR proposals in a number of examples included in Annexes to this paper. These further demonstrate that the proposed modifications fail in whole or in part to have their stated effect.

Derogation process presents a dilemma

3.27 The derogation process presents a dilemma where in relation to the usage of any integrated system or service, in the event that the UR rejects or ‘approves with conditions’ (particularly where Conditions pertained to costs) such a derogation would impact on each of the licensees/functions, Regulatory Authorities (‘RA’), Consumers and Market Participants.

3.28 The only pathway in which such an UR derogation decision does not impact other parties is where it is approved without conditions.

3.29 Save where the UR provide that the full implementation costs of any separate system, service or conditions are borne by Northern Ireland Consumers,



- (a) Such a decision would drive further RA decisions across UR, CRU and SEMC to enable implementation as the respective revenue control provisions for each licensee are premised on the basis of a shared integrated systems and services.
- (b) The costs of implementation would be borne by all consumers on the island and pending the level of system separation required also by Market Participants.
- (c) Where the system is a core market system such as the [REDACTED] which underpins a number of core SEM functions, changes to the market design may be required where such a derogation is rejected, including any codes approved by the SEMC.

3.30 Indeed, a decision to ‘Reject’ a derogation in and of itself is unimplementable by SONI as the derogations would in large be for extant arrangements and not prospective arrangements. Thus, where a derogation is Rejected the UR would need to provide SONI with, at a minimum, the necessary revenues and time to implement separation of the systems and/or services.

3.31 Depending on the system concerned, a decision to reject or ‘approve with conditions’ a derogation may impact wider market workstreams. For example, if SONI requested a derogation to continue to use the central integrated [REDACTED] and this was rejected the resulting separation of systems would prevent any parallel works on the central system itself, and changes such as those to facilitate the implementation of Article 12 of Regulation 2019/943 could not be advanced.

The UR has failed to consider the impact of additional conditions imposed by the UR when approving a derogation

- 3.32 The UR states that it may include additional requirements onto a derogation decision:
- ‘UR may approve derogation applications (based on a robust cost benefit analysis) including specifying conditions necessary for the protection of NI consumers’¹⁵*
- 3.33 This is a broad power, indicating that the UR intends to reserve significant discretion to itself to derogate from, or modify, the requirements of new Condition 42 by way of future direction or conditions imposed. SONI notes the recent decision by the Competition and Markets Authority (**‘CMA’**) in relation to ‘RIIO-2 Energy Licence Modification Appeals’, where it decided that¹⁶:
- ... a licence condition may contain a mechanism for its later modification provided that the condition specifies the manner, and circumstances in or under which such a modification may be made. If such criteria are properly set out in the condition, the licensee in question should be able to understand the potential impact on it of a future modification and be in a position meaningfully to appeal the condition to the CMA at the outset of the price control.*
- 3.34 SONI considers that the proposals presented by the UR in its Licence Modifications Consultation fall far short of this criterion.
- 3.35 In addition, from a practical point of view, SONI is concerned about this approach and, in the absence of any guidance documentation, seeks clarity on the following scenario:
- I. SONI progresses a derogation request.
 - II. UR approves the derogation however it includes additional conditions *‘necessary for the protection of NI consumers’*.
 - III. SONI and EirGrid cannot come to an agreement on accommodating the additional conditions via a shared service. Therefore, no agreements or SLA can be put in place.
 - IV. SONI is at risk of noncompliance as it cannot implement the approved derogation.
- 3.36 SONI considers that this is a realistic scenario that has not been considered in the reasons and effects assessment undertaken by the UR.
- 3.37 The UR has assumed that SONI will be in a position to accept any or all additional conditions it may impose without any method of appeal.
- 3.38 The UR has also assumed that EirGrid, and SEMO and SEMOpX where applicable, will also accept any or all additional conditions.
- 3.39 This is one of a number of potential scenarios. SONI considers that the proposed Modifications fail in whole or in part to have their stated effect.

¹⁵ Ref. Table 2 – page 69 of the Licence Modifications Consultation

¹⁶ https://assets.publishing.service.gov.uk/media/61791296d3bf7f55ff1fc099/Energy_appeals_-_Summary_of_final_determination_28.10.21.pdf

The Cost recovery for SONI and EirGrid activities associated with the operation of derogations and SLAs has not been set out.

- 3.40 The UR recognises that there are additional activities that would fall to SONI under the proposed arrangements and an estimate of funding for these activities has been included in the Licence Modifications Consultation.
- 3.41 However, the UR has not stated its assumptions in relation to these costs. The scale of costs will depend on the number of derogations required and the funding awarded would need to reflect both the effort required for the initial set up and also the ongoing management of the derogation process including the associated SLAs. SONI is of the view that the costs as set out underestimates the cost of these activities.
- 3.42 In addition, it is reasonable to assume that there will also be additional effort required from EirGrid to assist SONI in the preparation of derogation requests, the development and introduction of SLAs and the associated management and governance of these (from an EirGrid perspective).
- 3.43 The UR has been silent on these activities in its paper. It is unclear as to whether the UR expects EirGrid to seek additional funding from its Regulator (CRU), or if these costs will be charged to SONI as part of the derogation process.
- 3.44 SONI seeks clarity from the UR on this aspect.
- 3.45 The UR has positioned the use of derogations to allow the continued benefit of synergies and cost savings, however it has failed to recognise all of the additional costs associated with the implementation and ongoing management of the derogation process including the associated SLAs.

The UR has failed to consider a realistic time period for the SONI Board to be established and then undertake a strategic assessment of what (if any) derogations should be progressed

- 3.46 The UR has proposed a 6-month period from the establishment of a new SONI Board to the submission of any derogations from the proposed '*operationally separate*' obligation.
- 3.47 It is only after this assessment that the preparation of the derogations and the associated work with EirGrid to agree the process, resources, costs and the associated SLA can begin.
- 3.48 It is unclear what assumptions the UR made in coming up with the proposed timeframes, however, the timetable it has set suggests that the UR expects relatively few derogations to be brought forward by SONI. Given the fundamental unwinding of 10 years of integration (as discussed in Section 4) particularly in the context of the underlying IT infrastructure the timeframes set out by the UR are unrealistic.

Lack of Guidance documentation on derogation process

- 3.49 The UR states it plans to publish guidance on the derogation process

“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.”¹⁷

- 3.50 Considering the scale of changes proposed, SONI is at a loss as to why such guidance has not been prepared or consulted on by the UR, in particular given how long the Utility Regulator itself states the process has been ongoing. This is particularly surprising, given that the impact that the absence of guidance can have on a licensee was recognised by the CMA in its final determination in *SONI v UR*. In that case, the CMA ordered the UR to implement certain procedural guidance to remedy the inadequate codification of its proposed framework for recovery of costs pursuant to the Pre-construction Network Projects (**‘PCNP’**) and Dt mechanisms set out in SONI’s TSO Licence (paragraphs 2 to 5 of the CMA’s Order dated 10 November 2017).
- 3.51 The fact that the guidance document has not been published means that SONI and all affected parties cannot fully assess whether the draft modifications achieve their stated effect and prevents stakeholders from determining their impact.
- 3.52 It therefore puts SONI and other stakeholders at a disadvantage as the Licence Modifications Consultation is being progressed based on incomplete information. This is in direct contradiction with the URs own consultation guidance documentation¹⁸.
- 3.53 SONI notes that the UR values to *“be a best practice regulator: transparent, consistent, proportional, accountable and targeted”*. SONI would interpret the transparent and consistent attributes as suitable rationale for publishing the referenced guidance document. SONI considers that the UR should follow the best practice procedures that it would apply to any other consultation process.
- 3.54 SONI considers that the Licence Modification Consultation cannot in fact be valid under Article 14(2) of the Order as the effect of these modifications cannot be considered without the guidance documents that the UR has failed to provide. Key stakeholders and consumers as a whole have not been afforded the opportunity to review documents which will have a fundamental impact on determining how the proposed modifications operate. The absence of any consultation, or guidance as to their exercise, is a clear breach of the principle of "predictability".
- 3.55 The UR has a statutory ability to modify SONI’s TSO Licence. It is also acknowledged and accepted that the Utility Regulator can publish guidance documents to facilitate understanding of how modifications (which have then become conditions) are to operate. However, if the modifications themselves and their ramifications are incapable of being understood on their own then such actions are ultra vires. In addition, deferring the operative mechanics of these modifications to guidance documents will prohibit SONI from having any recourse to appeal and effectively enables the UR to reserve additional powers to itself absent any accountability in the exercise of those powers.

¹⁷ Ref. Para 7.13 (c) of the Licence Modifications Consultation.

¹⁸ https://www.uregni.gov.uk/files/uregni/media-files/Consultation_Guidance.pdf

Limitations of timeframes proposed by UR for implementation

- 3.56 SONI has assessed the various activities and associated dates set out in the Licence Modifications Consultation and draft licence modifications. We have concerns in relation to the 'Transition Period' and the 'Effective Date'.

Transition Period

- 3.57 The UR refers to a transition period between when the new licence condition would take effect and the recruitment and appointment of a chair and members to a new SONI Board. This process will need to be managed by the current SONI Board¹⁹.

- 3.58 The UR also states that:

*"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."*²⁰

- 3.59 SONI agree that if the proposed modifications were accepted that a transition period is required to allow the establishment of the new SONI Board and other obligations to be progressed effectively. SONI is concerned however that the UR has included a hard-coded deadline (1 January 2023), but has not stated what it considers as an adequate timeframe for the transition period

- 3.60 SONI understands that the UR needs to consider the responses to its consultation, update and complete its reasons and effects assessment and publish a decision paper. Therefore, at this stage it cannot put a specific date on when the licence modifications take effect (without predetermining its decision). However, it could consider using relative dates rather than hard coded dates thus ensuring its requirement for "*sufficient time to undertake the process for recruiting/appointing members to the Board in order to ensure compliance with the licence requirements*"²¹ can be met.

Effective Date

- 3.61 The UR has defined the 'Effective Date' as a potential number of milestones which fall between 1 July 2024 and end of June 2025. This is based on the proposed time period that the UR may take in making determinations on any derogations submitted by SONI and the lead time for implementation.

- 3.62 This means that there could potentially be a 1-year period where some parts of the SONI business will need to have full managerial and operational independence and others where the approved derogations are being implemented, with existing arrangements continuing during the implementation period. This is simply not capable of any rational interpretation nor in all likelihood capable of being complied with.

¹⁹ Ref. Para 6.27 of the Licence Modifications Consultation.

²⁰ Ref. Para 7.3(a) of the Licence Modifications Consultation.

²¹ Ref. Para 7.3(a) of the Licence Modifications Consultation.

Impact on planned work such as SEM related initiatives and delivery of the NI Energy Strategy and EU Network Codes

- 3.63 As part of the Licence Modifications Consultation (reasons and effects assessment), the UR fails to consider the impact that the proposed modifications will have on wider work that SONI is required to play a significant role in.
- 3.64 SONI has published an ambitious roadmap²² (Shaping Our Electricity Roadmap) detailing the activities that need to be undertaken up to 2030 in order to support the decarbonisation targets set for Northern Ireland.
- 3.65 This roadmap complements the requirements set out by the Northern Ireland Executive in the NI Energy Strategy - Path to Net Zero Energy publication. SONI expects to have and looks forward to playing a key role in the following key principles from the energy strategy, as well as supporting other areas:
- Replace Fossil Fuels with Renewable Energy
 - Create a Flexible, Resilient and Integrated Energy System
- 3.66 The requirements of the NI Energy Strategy also feature heavily in the URs draft forward work plan for 2022/23. It includes a number of major SEM related initiatives, including some driven by EU Network Codes, such as:
- *Develop more competitive future arrangements for system services*
 - *Assess and develop measures to enhance SEM/GB Trading Arrangements*
 - *Deliver SEM capacity auctions in line with programme*
 - *Review arrangements to incentivise participation by demand side units in the wholesale market.*
- 3.67 It is assumed that the UR envisages that these programmes of work can continue to progress under the current arrangements, in parallel with its proposed timeframe for the implementation of the new obligations on SONI. No risks or dependencies were included in its draft forward work plan. The UR's proposals will render some of these in breach or possibly illegal absent a derogation being applied for and granted.
- 3.68 Under the proposed arrangements, SONI would need to seek derogations from the UR in order to continue working with EirGrid on the delivery of these important initiatives.
- 3.69 There is a significant risk that the implementation of these SEMC related solutions will continue based on the existing integrated arrangements and then subsequently may need to be revised depending on which derogations the UR may decide to approve.
- 3.70 The UR has not given any consideration to these programmes of work in its Licence Modifications Consultation nor has it detailed the effects that its proposed modifications may have.
- 3.71 To illustrate this further, SONI has considered the impact on the 'future arrangements for systems services' work currently being progressed by the SEMC.
- 3.72 SONI has identified impacts including:

²² Shaping Our Electricity Future Roadmap –
https://www.soni.ltd.uk/media/documents/Shaping_Our_Electricity_Future_Roadmap.pdf

- The fact that the System Services HLD is being progressed by the SEMC on a joint and integrated basis
- Potential conflict with the expected new licence conditions to create the new obligations on SONI in relation to system services (for example, a System Services Code)
- The timeframes for the cessation of the existing arrangements for system services vs the timeframes for initial derogations
- Potential conflict created in terms of compliance with licence conditions vs compliance with EU Network Codes.

3.73 The above points are discussed in more detail in Annex 5.

3.74 SONI notes that the 'effective date' for the SONI Governance proposal (1 July 2024) is two months after the planned 'go-live' date for the future arrangements for system services programme. It is unclear at this stage whether the implementation will be such that SONI will be able to or need to seek a derogation for the new ways of working and / or need to seek derogation for the current ways of working.

3.75 In addition, the UR has not highlighted any risks in their reasons and effects assessment in terms of the timing of the next price control. SONI considers that the scale of change required would require a fully revised price control to be put in place and could not be dealt with through Change in Law or other uncertainty mechanisms

3.76 SONI notes that all of this is in the context where there has been no finding by Utility Regulator of any breach by SONI in the context of the performance of its functions under its licence.

4 Understated Cost Impact of UR Proposals

- 4.1 The UR has failed to fully assess the effect of its proposals, providing only an inadequate high-level set of assumptions rather than any substantive quantitative supporting assessment. The high-level CBA presented by the UR in its Consultation on Proposals on SONI Governance and Licence Modifications Consultation is fundamentally flawed and misleading, meaning that stakeholders have not been appropriately and correctly informed of the potential impact of the UR's proposals. Therefore, the UR has failed properly to have regard to the carrying out of its principal objective under Article 12 of the 2003 Order. By failing to properly assess that which would be necessary for SONI to operate on the standalone basis proposed the UR has also failed to discharge its duty to ensure the licensee can finance its activities.
- 4.2 The UR has sought to obfuscate the cost impact to stakeholders and consumers of its proposals by asserting that 'derogations may be granted'. However, it must not be forgotten that the UR retains full discretion as to whether any such derogation would be granted. Unless the UR has predetermined that all derogations sought will be granted absent conditions, the UR must therefore assume some measure of additional cost is required to secure independence and separation of resources (including premises and systems). Instead, the UR forecasts that the new arrangements will have a "*negligible impact in terms of lost synergies*", and relies on unjustified assumptions such as: "*the costs of good governance...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*".
- 4.3 For the UR's assumptions to hold the UR would have to assume that SONI will seek derogations in relation to all existing areas where any synergies or efficiencies are realised and the UR will grant all such derogation requests absent the imposition of any conditions – in so doing acknowledging that the current arrangements in place are appropriate.
- 4.4 Indeed, this appears to be largely what is intended, as the UR asserts that
- "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.*
- 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."*²³
- 4.5 In addition, the UR has through the price review processes visibility of, not only SONI TSO but also in its oversight of SEMO and SEMOpx, cost sharing and costs allocations across the licensees. Indeed as part of the funding submission to the UR in 2017 to facilitate the operation of the revised SEM arrangements, the total resources (all island) and costs and the allocation of those resources and costs between the TSOs was provided to the UR by SONI and the revenues to be recovered for SONI for its share of the costs were approved by the UR on that basis. This basis for the allocation to and recovery of costs for SONI is reflected in the most recent SONI TSO Price Controls. In addition, in the recent SEMO Price Control the allocation of the core integrated system costs between the SOs and SEMO etc where provided to the RAs to enable an

²³ Ref. Page 72 of the Licence Modifications Consultation

assessment to be carried out and again the revenues where provided for on this integrated basis.

- 4.6 The UR is thus aware of the arrangements in place and can, based on the information it possesses, even at a most cursory level assess the potential ramifications on costs of unwinding of the integrated arrangements in place.
- 4.7 The existing governance arrangements within SONI continue to benefit customers both on the island and in Northern Ireland specifically, within the all island context. The unique advantages that ownership and the integrated operation with EirGrid bring include many benefits which would not be available under the independent structure proposed and cannot be replicated through the now proposed derogation process.
- 4.8 These current benefits have been realised following years of system and process integration based on investments approved by the UR. The Licence Modifications Consultation as proposed will undo this.

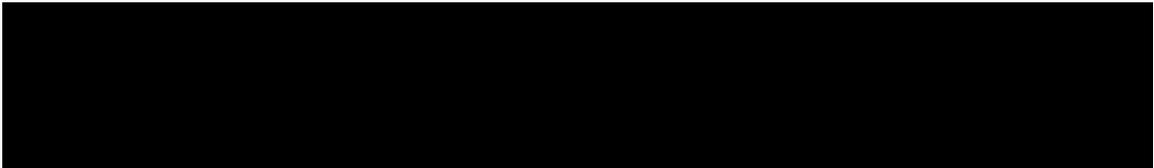
Impact of proposals on IT systems

- 4.9 SONI has undertaken a high-level assessment of the impact the UR proposals would have on the existing IT systems, processes and resources required to manage and operate the business functions within SONI TSO.
- 4.10 This high-level assessment is being provided within the timeframe that the UR has accorded respondents to make submissions. Accordingly, this high-level assessment cannot constitute SONI's full and considered response given the unreasonably short period of time that it has been afforded to make submissions on the UR's licence proposals, which are being tabled for the first time in the Licence Modifications Consultation. Nevertheless, within these time constraints SONI has provided a high-level assessment to demonstrate that the costs associated with the proposals are significant and in effect would require a new price control in order to implement.
- 4.11 SONI has identified a number of issues that will have a material impact and were not considered in the UR Licence Modifications Consultation 'reasons and effects' assessment. These include:
 - (a) The implementation of the UR proposals would result in separation of IT systems, processes and resources at a potentially much higher cost than is presented in the Licence Modifications Consultation and that cannot be addressed/mitigated through the proposed derogation process.
 - (b) The derogation process will result in conflicts with existing licence obligations:
 - (i) The proposed licence modifications, if implemented, would result in SONI being mandated to seek derogations in order to remain compliant with existing SEM related licence conditions that require the use of integrated shared systems (such as the CRM single Auction Management Platform).
 - (ii) The derogation process implies that the UR has the vires to include additional conditions on SONI which could result in the UR adding to, replacing, removing or altering existing SEMC decisions pertaining to shared integrated systems

- (iii) SONI considers that the practical implications of the UR proposals in relation to the IT systems, processes and resources are such that the proposals cannot, if implemented, meet the 'vision' set out by the UR for SONI independence.

Separation of IT systems, processes and resources

- 4.12 Based on the level of IT integration over recent years, SONI has been able to obtain substantial synergies from operating as part of a Group. 
. This integrated design is a key feature of the decisions made by the SEMC on the design and implementation of the SEM.
- 4.13 The UR approved the necessary funding for SONI to implement the ISEM arrangements on the basis of the integrated model as determined by the SEMC. The funding provided covered the activities associated with the design, build, operation and maintenance of the integrated arrangements.
- 4.14 Under the proposed licence modifications, the UR will require 'operational and managerial independence of SONI' unless the UR approves a derogation allowing SONI to avail of 'Shared Resources'.
- 4.15 Indeed, the UR acknowledges that "*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.*"²⁴ However, it fails to recognise the arrangements as extant.
- 4.16 The UR has portrayed the arrangements as a one-way reliance of SONI on EirGrid resources. That SONI can have "*access to these resources*" as though they were outside of itself. As SONI has repeatedly set out many of the TSO functions are carried out in an integrated basis. As a result, SONI resources carry out functions on an all island basis and under the proposed arrangements SONI could not fulfil its functions unless it sought a derogation.
- 4.17 The shared resource model between EirGrid TSO and SONI TSO for resources and between EirGrid TSO, SONI TSO, SEMO and SEMOpX for corporate services (e.g. procurement, HR etc), IT services and IT systems & maintenance have all been provided on shared resources model basis. It is not reasonable to assume that the other Licensees / functions can be beholden to SONI TSO and at the discretion of the UR under the SONI TSO licence as to what derogations may or may not be sought and ultimately granted and for what periods of time in terms of ensuring the necessary resources are available to each to fulfil their respective functions.

4.18 

²⁴ Ref. Page 72 of the Licence Modifications Consultation.

[Redacted]

4.19

[Redacted]

4.20

SONI considers that where the prospect of separation may be feasible this would include:

(a)

[Redacted]

(b)

[Redacted]

(c)

[Redacted]

4.21

[Redacted]

4.22

[Redacted]

4.23

[Redacted]

4.24

[Redacted]

4.25

The UR did not consider or make any allocation of costs for IT system changes; rather it pointed towards the utilisation of the derogation process with no identified additional costs to consumers.

4.26

The UR states that its proposals will meet the SEMC desire that there is '*the ability for economies of scale and synergies to be realised would also be retained*'. This is clearly not the case.

4.27

SONI raised its concerns in response to the previous consultation, where it stated:

“Should the IT systems be required to be separately provided the costs would be multiple times more.”²⁵

4.28 The UR responded to this concern stating that:

“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.”²⁶

4.29 SONI considers that this statement is a hugely simplistic view of what is a highly complex business and market design.

4.30 Whilst the scale of derogations that could feasibly be sought has not been identified at this stage, SONI has estimated that full system separation would cost in excess of £100m²⁷ and would require a multi-pronged programme over 8-10 years. If even a fraction of such system separation is ultimately required, it will have a significant impact on consumers not only in terms of initial capital costs but also enduring operational costs. Ultimately these costs will be dependent on the number of derogations that can be progressed and practically implemented if approved, however, the incremental costs cannot be zero and therefore the URs assumptions in this regard are incorrect.

4.31 Thus, regardless of the scale of derogations, there will be significant changes needed to the existing IT arrangements as a result of the UR proposals. SONI considers that the costs included in the Licence Modifications Consultation are significantly understated and misleading in terms of the impact on the functions that SONI is obliged to undertake.

4.32 The implementation of the above separation of IT infrastructure:

- (a) Will directly impact the functions of EirGrid TSO, SONI TSO and SEMO (noting SEMO functionality is also hosted on the underlying shared systems);
- (b) Will in turn directly impact the respective licensees’ capabilities to further develop or deliver SEMC approved modifications to existing systems, as it is impracticable to roll out changes to systems that are being separated in parallel;
- (c) May, depending on where the costs for any such separation are to be borne, impact SEMC cost allocation or price control decisions in both Northern Ireland and Ireland; and
- (d) Limit or halt the ability to progress the SEM related programmes included in the UR draft forward work plan for 2022/23 as well as the wider programmes of work required to adhere to EU obligations.

4.33 Further information on the high-level assessment of the IT impact can be found in Annex 6.

²⁵ Ref. Page 73 of the Licence Modifications Consultation

²⁶ Ref. Page 73 of the Licence Modifications Consultation

²⁷ Based on estimate capex and associated OpEx costs over 5 years

Cost allocation and recharges

- 4.34 SONI notes that the UR discusses cost allocations and recharges in its Licence Modifications Consultation. SONI is surprised at the concerns expressed by the UR and notes that the UR did not seek clarity or direct any queries to SONI in the period since the UR received the SONI Regulatory Accounts.
- 4.35 SONI strongly refutes the implications that ‘*accountability, and therefore the risks that Northern Ireland consumers could be overcharged*’²⁸ is an actual risk as well as the reference to ‘*hidden cross subsidies between the two jurisdictions*’²⁹. The Regulatory accounts prepared by SONI are independently audited and are approved by the SONI board prior to submission to the UR.
- 4.36 It should also be noted that had the UR raised any queries or required clarifications in relation to the accounts of SONI, SONI could have easily and comprehensively addressed those queries and provided clarifications.
- 4.37 The supplementary information in the Regulatory Accounts (whilst not part of the annual audit) includes the intergroup transactions (called sales and charges to other businesses) and are included to provide further information to the UR that would not be in a normal set of accounts.
- 4.38 SONI addresses each of the specific points raised by the UR in the Licence Modifications Consultation (para 4.22 and 4.23) below:

UR Comment	SONI Comment
<p><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></p>	<p>As the UR note the £17m net transfer (£68M - £51M) of costs in 2018 was attributable to IT costs associated with I-SEM and rebalancing of generator charges</p> <p>The key cost element in both figures is as per the above associated with</p> <ul style="list-style-type: none"> • I-SEM that is £47m of the £51m and £55m of the £68m of the recharges from and to SONI related to costs incurred by the I-SEM project. This was due to the quarterly rebalancing on a 75:25 basis³⁰ with EirGrid of the total costs of the project. This means that SONI’s net cost for I-SEM in the 2018 year was £8m (£55 - £47m); and • Rebalancing of generator charges including £6m related to GTUoS recharges and a further £3m of Other System Charges, in line with approved regulatory arrangements. <p>These are RA directed costs and were not unexpected.</p> <p>The driver for the increasing recharges simply reflects the movement of monies from EirGrid to</p>

²⁸ Ref. Para 4.23 of the Licence Modifications Consultation

²⁹ Ref. Para 6.43 of the Licence Modifications Consultation

³⁰ [SEM-15-004 Published AAD 9 Jan 2015.pdf \(semcommittee.com\)](#)

	<p>SONI and vice versa to ensure the costs incurred or revenues recovered are attributed to the correct licensee and in turn consumers, in line with the allocation of costs as approved and provided for by the SEMC or CRU/UR in regard to all island activities.</p> <p>That these values have increased significantly is not unexpected and reflects the increase in the all island aspects of the TSO functions and the increasing scale of those activities over the period concerned.</p>
<p><i>a £2m swing in management charge over time;</i></p>	<p>SONI notes that these costs were discussed with the UR during the price control process (meeting on 27th August 2020). There were no follow up queries or actions from the UR.</p>
<p><i>a significant growth in 'other costs' c£4m</i></p>	<p>These costs include costs relating to IT maintenance contracts, insurance and professional fees as well as including costs incurred in relation to the preparation of the SONI price control.</p> <p>It must be noted that these charges relate to actual invoices received. The vast majority of these invoices go to EirGrid first and are split and charged over to SONI for activities and costs associated with SONI's activities through intercompany recharges – there are no additional costs added to these external costs.</p>
<p><i>whilst the net recharge may be justified, the scale of the purchases and sales remains significant and potentially remains open to management discretion</i></p>	<p>The scale of costs relates to the significant investment needed to implement the ISEM project and reflect the increased operational costs post ISEM and GTUoS recharges.</p> <p>SONI has followed the cost allocation policy for the ISEM project as approved by the SEMC³¹. The costs are based on UR approvals.</p> <p>The GTUoS recharges are regulatory directed costs and reflect the rebalancing of GTUoS revenues recovered on an all island basis and then allocated to the correct licensees in line with approved regulatory arrangements.</p> <p>The allocation of costs is not open to management discretion but rather is strictly down to the group allocation methodology, and reflects the cost allocation arrangements underpinning the RA approved price controls, project costs allocations and revenue allocations and is reflective of the costs that lie with each entity of the group.</p>

³¹ [SEM-15-004 Published AAD 9 Jan 2015.pdf \(semcommittee.com\)](#)

- 4.39 The UR further misrepresents its role and the role of SONI in para 1.10 (Overview of paper section) of the Licence Modifications Consultation and seeks to create a risk of harm where no such harm exists.
- 4.40 The assertion by the UR that *“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.”*³² is factually inaccurate and misrepresents the licence structures in place.
- 4.41 Neither SONI, nor EirGrid through SONI, can allocate a charge to the Northern Ireland consumers. The decision as to what costs are ultimately approved and thus charged to consumers is a matter for the UR. This is undertaken on an annual basis via the tariff process.
- 4.42 Moreover in regard to charging, SONI notes for completeness and to avoid confusion, that SONI TSO’s activities are not solely *“funded by Northern Ireland consumers.”*³³ SONI’s revenues are recovered largely from NI consumers via the SSS tariff with the balance recovered from all island generators via the All-island Generation Transmission Use of System Charges (**GTUoS**).

Impact to Consumer Bills

- 4.43 SONI has endeavoured to present the potential costs associated with the implementation of the UR proposals.
- 4.44 This is notwithstanding the points made in terms of it being a SEM Matter and the practical limitations that mean that in some cases the use of derogations cannot be implemented and allow SONI to remain compliant with its obligations.
- 4.45 SONI has not undertaken a full business assessment as part of our response, due to the short window available for responding, however, SONI has detailed out what it believes may be required to ensure compliance with the proposed licence modifications both in terms of IT systems and resources (see Annex 6).
- 4.46 SONI considers that it is clear that the UR has significantly understated the costs (£1.8m) in its CBA. The assessments undertaken by SONI demonstrates the scale of the impact and the need for a new price control in order to reflect the full impact and risk profile of the UR proposals.
- 4.47 SONI has undertaken a high-level assessment to determine the impact of the proposals on customer bills. This assessment is based on the assumption that the estimated costs for the implementation of the changes to the IT systems and support functions (see Annex 6) will be borne fully by Northern Ireland customers.
- 4.48 Based on the methodology and assumptions used by the UR in the SONI Price Control 2020 - 2025 Final Determination and taking into account project phasing, depreciation, return and OpEx for the lifetime of the investment, SONI has estimated that the impact of the UR proposals will increase annual domestic customer bills by approximately £7.00 – £8.00. This may cost domestic customers in the region of an additional £80 over the lifetime of the investment.

³² Ref. Para 1.10 of the Licence Modifications Consultation

³³ Ref. Para 1.7(a) of the Licence Modifications Consultation

- 4.49 By contrast the revenue allowed under the SONI price control 2020-2025, based on the current arrangements, increased domestic annual customer bills by an estimated £0.91³⁴.
- 4.50 It should be noted that the above cost assessment excludes any costs associated with the markets (e.g. Capacity Market) as these would have an all island impact. Therefore, the cost to Northern Ireland consumers may be even higher than the estimated range presented above.
- 4.51 Considering the already significant recent increases in energy prices, the UR needs to consider whether its proposed approach is worth continuing. This is particularly relevant when considering other work that the UR is actively engaged in:
- Additionally, we are working with partners in the Department for the Economy, Department for Communities and the Consumer Council to actively explore practical measures to alleviate the burden of higher energy prices on consumers³⁵.*
- 4.52 The UR states '*... 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.*'³⁶
- 4.53 SONI considers that the costs relating to the governance changes proposed will be substantial. The UR needs to consider whether their proposed approach is indeed 'a cost worth paying'.
- 4.54 In addition, SONI notes the UR statement in the Licence Modification Consultation:
- "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."³⁷*
- 4.55 As demonstrated in this paper, SONI considers that the UR has failed to consider the full potential costs associated with the implementation and ongoing management of its proposals.
- 4.56 SONI has provided real examples of the potential costs that the proposals would result in, if progressed. These costs would impact all customers on the island of Ireland.
- 4.57 Contrary to the point made by the UR (para 3.68 of the Licence Modifications Consultation), SONI considers that the proposals presented will mean that Northern Ireland consumers will be unable to obtain the benefits they avail of under the existing arrangements.
- 4.58 By the UR's own logic, this means that the proposals presented in the Licence Modifications Consultation constitute a form of harm to Northern Ireland consumers.

³⁴ Ref. Para 9.17 - <https://www.uregni.gov.uk/files/uregni/media-files/Final%20determination%20main%20body.docx.pdf>

³⁵ <https://www.uregni.gov.uk/news-centre/utility-regulator-warns-more-increases-consumer-bills-wholesale-energy-prices-continue>

³⁶ Ref. Para 1.22 of the Licence Modifications Consultation

³⁷ Ref. Para 3.68 of the Licence Modifications Consultation

- 4.59 For the avoidance of doubt, SONI considers that the scale of the changes needed as demonstrated in the case studies presented in this paper leads to a clear requirement for a new price control to be developed to reflect proposed arrangements and ensure that SONI has the resources required in order to meet all of its obligations and that the associated risks and financeability needs are fully considered.

5 Licence Modifications

- 5.1 For completeness, SONI has assessed the drafting of the licence modifications and we have detailed our specific comments and concerns below. This should not be interpreted that SONI is in any way in acceptance of the proposed licence modifications; rather we have included these comments to ensure that we have provided a complete response to the Licence Modifications Consultation.
- 5.2 We consider that the concerns highlighted below further evidences that the UR has failed to undertake a full reasons and effects assessment and that the proposed modifications fail in whole or in part to have their stated effect.
- 5.3 Moreover, the licence modifications are, in many cases, insufficiently clear and precise and are likely incapable of being complied with. In some cases, they directly contradict other conditions of SONI's TSO licence. In other cases, they demonstrate an inappropriate level of micro-management by the UR. This cannot be good regulatory practice. Nor is it clear how the new Condition is "requisite or expedient" having regard to the UR's statutory duties under the 2003 and 2007 Orders, as Article 11(1) of the 1992 Order requires.
- 5.4 The key concerns can be summarised into the following areas:
- Drafting potentially overrules SEMC decisions and network code obligations and allows the UR to add additional/different unspecified conditions.
 - Contradictions/Conflicts with existing licence conditions and no assessment appears to have been completed as part of the reasons and effects section of the consultation. These issues are obvious to anyone familiar with SONI's TSO Licence, yet the UR has not proposed any modifications to the existing conditions to address these.
 - In addition to the lack of context surrounding the implications for the existing licence modifications, the UR has delegated many of the proposed changes to guidance or future potential modifications. As such, SONI is unable to assess the effects of the modifications proposed. SONI would have expected the UR to have assessed the impact of its proposals against all licence conditions and as a minimum considered the following licence conditions. SONI has raised specific concerns on some of these in the case studies undertaken as part of this response:
 - Condition 1 – Interpretation and Construction
 - Condition 3 – Availability of Resources and Undertaking of Ultimate Controller
 - Condition 7 – Provision of Information to the Authority
 - Condition 11 – Restriction on Use of Certain Information
 - Condition 12 – Independence of the Transmission System Operator Business
 - Condition 22 – Central Dispatch & Merit Order
 - Condition 22A – Scheduling and Dispatch
 - Condition 22B – Balancing Market Principles Statement
 - Condition 23 – Single Electricity Market Trading and Settlement Code
 - Condition 23A – Capacity Market
 - Condition 23B – Compliance and Assurance Officer
 - Condition 29 – Economic Purchasing of System Support Services
 - Condition 33. Transmission System Capacity Statement
 - Condition 35 – Generation Capacity Statement
 - Condition 39 – Dispatch Balancing Costs Incentive – Reporting

- The Role of the Parent company and shareholder in relation to ‘articles of association’ and ‘scheme of delegation’
- Lack of published guidance documentation means that SONI cannot undertake a full assessment of the impact of the proposed modifications. This leaves SONI having to consider how the licence modifications will work as abstract concepts without any substantive guidance as to how they will operate in practice.
- Hard coded dates may penalise SONI if the UR delays its decision. Further, by binding itself to these dates, the UR risks undermining the consultation itself should they prove unworkable.
- There are no definitions for “Compliance Plan” and “Compliance Manager” despite them being highlighted in bold and it is unclear how this drafting aligns with Condition 12 of the SONI TSO Licence.

5.5 Each proposed paragraph of the proposed Condition 42 where SONI has concerns are presented below.

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.*

SONI Comment:

- 5.6 SONI notes that the UR has included hard coded dates in the proposed drafting. This approach limits the timeframe that may be required by the UR to review the responses to the consultation and address all concerns raised.
- 5.7 The reasons and effects section of the consultation states that (para 7.3a):
- ‘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.’*
- 5.8 The UR has not specified what it considers to be a sufficient transition period. There is a risk that if the UR requires a longer time period for assessment prior to making a decision, it may result in an insufficient lead time for the completion of the recruiting/appointing of members to the SONI Board. If this period extends beyond 1 January 2023, it will result in SONI being unable to fulfil its licence obligation.
- 5.9 SONI considers that the UR could have avoided this risk by included additional text such as *“the later of X months after this condition comes into effect and 1 January 2023”*
- 5.10 Based on the current drafting, if the review of responses takes longer than that anticipated by the UR and the date stated is not practical to achieve, it may need to reconsult to reflect the output of that review and updated dates.
- 5.11 Note that this point equally applies to the other hard coded dates in the licence that are dependent on the delivery of the terms in paragraph 2.

The Specific Requirements

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.

SONI Comment:

- 5.12 SONI notes that in the URs reasons and effects assessment (section 7 of the consultation) that the requirement for Board members is for '*requisite knowledge and experience of the regulated energy sector*' and '*recent experience relating to transmission system operation matters*' (para 7.3f). The UR does not make any reference to that experience being limited to the European Energy Industry.
- 5.13 Separately, the UR will note from the current UK Corporate Governance Code that a key principle is that non-executive directors should be truly independent from the company (not having held cross-directorships, close ties with other directors through involvement in other bodies etc). What the UR is instead proposing seems to be the exact opposite, a "closed shop" of directors who will likely know and have had regular dealings with each other. This can only promote group-think and not achieve the desired outcome.
- 5.14 SONI considers that there is an inconsistency between the reasons and effects presented and the associated drafting. The drafting appears more restrictive (as European experience is specified). SONI therefore considers that the effect of the drafting is not fully considered in the consultation paper.
- 5.15 One further observation is that the proposed forecast costs in Table 5 do not account for any travel costs that may be incurred if board members are European based.
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.

SONI Comment:

- 5.16 SONI notes that the above condition does not feature at all in the consultation paper. SONI considers that all elements of the proposed modifications should be consulted to ensure there is a full statement of both the effects of the proposed modifications and the reasons for them as required under the Article 14 (2) notice.

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) whistle blower 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.*

SONI Comment:

- 5.17 It is suggested that the introductory text to this modification in respect of actions required by SONI in relation to reserved matters be altered. As presented, it is unclear as to what action and when each action is expected to be taken in respect of reserved matters.
- 5.18 Under part (d) (i) of the licence modifications, there is a requirement for the board to decide on the making and approving of a scheme of delegation. This term does not consider the role of the parent company and its rights.
- 5.19 Whilst the consultation paper does recognise the role of the parent company (see para 7.3 (ii)), the legal rights of the parent company and shareholder are not reflected in the drafting. It is suggested that either a definition or new sub-section is added to state that subparagraphs (a) to (f) are subject to the rights of the Licensee's parent company.
- 5.20 As a matter of UK company law, the shareholders of a company devolve certain authority to the board. This devolution is subject always to the right of the shareholder to direct the board so as to protect its investment. Whilst the UR has provided a list of matters, which must be devolved to the board these will be in addition to the broad powers already devolved to boards at common law and under statute. As a general rule the primary duty of directors is to act in the best interests of the company and its shareholders. It is suggested that the UR is overreaching and should not seek to put the board in conflict between its fiduciary duties to its shareholders and its licence.
- 5.21 In respect of part (e), this contradicts the previous intentions of the UR as included in Condition 3, paragraph 13. As such should these modifications be progressed in the manner currently envisaged, it will be necessary to ensure related conditions are equally amended for consistency. This would require statutory consultation in order to progress.

- 5.22 Under part (f), it is unclear how the Compliance Manager will interact with the requirements under Condition 12. This is discussed further as part of our comments on Part E below.
- 5.23 In addition, SONI notes that in the consultation paper at paragraph 7.3 j. (iii) there is a reference to Part B of the licence. SONI believes this should read Part C of the licence.

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.*

SONI Comment:

- 5.24 Whilst the consultation paper does recognise the role of the parent company (see para 7.3 (ii)), the legal rights of the parent company and shareholder are not reflected in the drafting.
- 5.25 This paragraph assumes that all matters requiring shareholder votes are contained in the Companies Act 2006, which is incorrect. The Companies Act 2006 references certain matters which require certain types of resolution (special, ordinary etc.) but this is to protect minority shareholders in respect of certain important matters, such as the issue of new shares. The Companies Act 2006 does not list every matter requiring a shareholder vote as companies are free to reserve their own matters when delegating authority to the board. This flexibility is one of the strengths of UK company law. Indeed Article 4 of the Model Articles of Association for private companies published by UK Companies House specifically states that by special resolution the shareholders can "direct the directors to take, or refrain from taking, specified action." On this basis the UR's proposal seems misinformed.
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.*

SONI Comment:

- 5.26 Whilst the consultation paper does recognise the role of the parent company (see para 7.3 (ii)), the legal rights of the parent company and shareholder are not reflected in the drafting.
- 5.27 The licensee has no power to amend its own articles of association, this power is reserved to the shareholder pursuant to the Companies Act 2006.
- 5.28 As SONI is a subsidiary of EirGrid, the [Ireland] Electricity Regulation (Amendment) (EirGrid) Act 2008 (the 'EirGrid Act'), s.5(3)³⁸ applies:

³⁸ [Number 11/2008: Electricity Regulation \(Amendment\) \(EirGrid\) Act 2008 \(acts.ie\)](#)

“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, SONI cannot meet this proposed requirement as licensee without causing both itself and EirGrid to breach the EirGrid Act. As a result, the proposals cannot legally be implemented in accordance with Irish law.

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.*

SONI Comment:

- 5.29 The drafting appears to contradict with Licence Condition 3 paragraph 13, which does allow for direct and indirect contracts between SONI and EirGrid unless there is a breach of certain requirements. The interaction of these 2 licence conditions was not highlighted or discussed in the reasons and effects presented in the UR consultation.
- 5.30 It is worth noting that this is a fundamental change in paradigm from “permitted unless” to “prohibited unless”.

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.*

SONI Comment:

- 5.31 It is unclear where this condition fits into the legal hierarchy. For example, SONI has a legal obligation to adhere to network code obligations and approved methodologies, many of which are implemented based on the existing integrated model³⁹. It is unclear how these existing obligations align with the proposed requirement. SONI may need to seek a derogation in order to meet a legal requirement and also remain licence compliant.
- 5.32 This risk was not highlighted or discussed in the reasons and effects presented in the UR consultation.

³⁹ DECISION BY THE IRELAND-NORTHERN IRELAND REGULATORY AUTHORITIES ON THE AMENDED SYNCHRONOUS AREA OPERATIONAL AGREEMENT OF IRELAND AND NORTHERN IRELAND AND LOAD FREQUENCY CONTROL BLOCK OPERATIONAL AGREEMENT OF IRELAND AND NORTHERN IRELAND <https://www.cru.ie/wp-content/uploads/2019/11/CRU19140a-Joint-Decision-to-approve-Operational-Agreements-SAOA-and-LFCBOA-between-EirGrid-and-SONI-for-Ireland-and-Northern-Ireland.pdf>

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.

SONI Comment:

5.33 As discussed in the section 4 of our response, SONI considers that the proposals made by the UR will require a full implementation of a new price control. SONI therefore considers that the UR needs to reconsider the timeframes presented as they are unlikely to be achievable in that context.

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.

SONI Comment:

5.34 Under point (c), the definition restricts *any contractual or professional duties in respect of any Associated Company*. An Associated Company includes an affiliate, Related Undertaking or ultimate controller of the Licensee.

5.35 SONI is unclear whether it is legally correct that this term should apply to an 'ultimate controller'. The UR will acknowledge that SONI, like any privately owned utility company, if economic conditions allow it, may pay such things as a dividend. This drafting appears to preclude such actions taking place. It has also been drafted so widely that it will prohibit many of the existing contractual arrangements between SONI and its parent company. For this section to be operationally feasible, a much tighter definition of "contractual duties" is required.

5.36 SONI notes that the term *Associated Business* is already defined in the SONI licence, and has a similar, but different definition to '*Associated Company*' – it excludes any reference to the ultimate controller term):

Associated Business" means any business of the Licensee (or of any affiliate or related undertaking of the Licensee) other than a relevant holding company

5.37 SONI considers that the new drafting will introduce potential confusion and conflict between terms. The UR do not appear to have considered existing drafting as part of its reasons and effects assessment. SONI proposes the UR should consider excluding a

relevant holding company from the term Associated Company, consistent with its exclusion from the term Associated Business under Condition 12 of SONI's TSO Licence and Condition 10 of SONI's MO Licence.

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.

SONI Comment:

- 5.38 Under part (b), there is a requirement where resources are *not shared or accessible to any Associated Company*. It is unclear whether this requirement contradicts the requirements of Licence Condition 3 where SONI is required to have at all times sufficient resources to comply with its obligations as TSO and also obligations under various Orders including the 2007 Order, the CACM Regulation and Network Codes.
- 5.39 SONI considers that the UR has not considered the interactions between the proposed licence modifications and the existing conditions. SONI considers that the limitations imposed on SONI by the proposed drafting is likely to cause SONI to breach existing licence conditions. SONI has numerous licence conditions as well as other obligations (e.g. Network Codes) where it needs to have the ability to share systems or data with the Republic of Ireland System Operator.
- 5.40 Further to the above, under part (c), SONI will be limited in what data it can share. However, it is unclear how this drafting interacts with the requirements under Condition 11 and in particularly paragraphs 4(c) and 4(d).
- 5.41 In summary, SONI considers that the UR has failed to undertake an appropriate reasons and effects assessment in its consultation and therefore the drafting as presented is an error as the proposed modifications fail to achieve, in whole or in part, the effect stated by the Authority.

PART C. APPLICATIONS FOR INITIAL DEROGATIONS

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.

SONI Comment:

5.42 As discussed in our comments on PART A of the licence modifications, SONI considers that the UR should use relative dates rather than hard coded dates as the time period for its consultation is unknown at this stage.

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.

SONI Comment:

5.43 SONI considers that the inclusion of paragraph 25 (d) directly contradicts the URs intention set out in paragraph 6.22

Firstly, this option no longer has a specific licence duty on SONI in respect of Northern Ireland consumers

5.44 The SONI Board is of course legally required to act in the best interests of SONI as a corporate entity (with reference to all licences held by SONI), and not solely by reference to the UR's principal objective.

5.45 SONI notes the reference under (e) to the '*Principles and Guidance on Condition 42 Derogations*'. SONI is concerned that such guidance has not been prepared or consulted on by the UR. It therefore puts SONI and other stakeholders at a disadvantage as the consultation is being progressed based on incomplete information. SONI considers that

this guidance is a key element of the proposed arrangements and that the UR should consult on this guidance ahead of making any decisions.

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.*

SONI Comment:

- 5.46 SONI considers that the UR should include a stage in the process where it makes a provisional determination for any derogations and allow SONI the right of reply to highlight any errors of fact or misinterpretations in the URs 'minded to' position. This has been introduced recently for Transmission Network Pre-construction Projects ('TNPP') approvals and appears to work well in practice.

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.*

SONI Comment:

- 5.47 As discussed in our comments on PART A of the licence modifications, SONI considers that the UR should use relative dates rather than hard coded dates as the time period for its consultation is unknown at this stage.
- 5.48 In addition, SONI considers that the UR has failed to consider the impact that these changes may have on existing or planned workstreams over the period 2022 to 2024. For example, SONI notes that the date of 1 July 2024 is 2 months after the planned 'go-live' for the future system services programme. This work is being progressed by the SEMC on an All Island basis. It is unclear at this stage whether the implementation will be such that SONI will be able to or need to seek a derogation. The UR has not given any consideration to this or other SEMC related work in its consultation nor has it detailed the effects that its proposed modifications may have on this or other active SEMC related work.

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.*

SONI Comment:

- 5.49 It is unclear why the drafting under (b) above has been included. There is no discussion under the reasons and effects section of the consultation on this requirement. SONI already has an obligation for the 'Provision of Information to the Authority' via Licence Condition 7. SONI considers that the drafting is not needed as it may cause confusion or conflict with the existing licence obligations.

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.*

SONI Comment:

- 5.50 SONI has grave concerns in relation to the drafting under 30 (b) (ii). This drafting would allow the UR to change any aspect of a derogation request and put this obligation on SONI without any method to appeal. We have discussed our concerns in detail in section 3 of our response.
- 5.51 The UR has not provided any narrative on the effects of this condition in its consultation. SONI considers that this wording should be removed from the drafting.

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.*

SONI Comment:

5.52 SONI has grave concerns about the inclusion of paragraphs 31 and 32. These allow the UR to attach conditions to the approval of a derogation. These conditions may put additional obligations on SONI without any method to appeal. We have discussed our concerns in detail in section 3 of our response.

5.53 The UR has not provided any narrative on the effects of this condition in its consultation. SONI considers that this wording should be removed from the drafting.

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**).*

SONI Comment:

5.54 In relation to (a), the comments we have made on Conditions 31 and 32 equally apply here.

5.55 Regarding (b), we note the UR has included a 6-month period for SONI to have implemented any revocation of a derogation. SONI considers that there is an inconsistency in the URs approach. It has set a 12-month period to allow for the

implementation of a derogation, but only half that time for a revocation. SONI considers that this is unrealistic in practical terms if resources and systems need to be separated.

- 5.56 In addition, SONI notes that there is no discussion in the consultation on the choice of a 6-month period or the effect that this time period would have.

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.*

SONI Comment:

- 5.57 SONI notes the reference to the '*Principles and Guidance on Condition 42 Derogations*'. SONI is concerned that such guidance has not been prepared or consulted on by the UR. It therefore puts SONI and other stakeholders at a disadvantage as the consultation is being progressed based on incomplete information.
- 5.58 In addition, SONI notes the drafting states that '*The Authority may issue*'. This suggests that the guidance is optional. This contradicts the drafting proposed at paragraph 25(e) which requires the '*Principles and Guidance on Condition 42 Derogations*' to be in place in order to take effect.
- 5.59 SONI considers that this guidance is a key element of the proposed arrangements and requests that the UR consults on this guidance ahead of making any decisions. In addition, the drafting should be update to state '*The Authority will issue*'.

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.*

SONI Comment:

- 5.60 SONI is unclear of the logic of the approach of waiting 4 years before having the ability to seek further derogations. The rationale for the date set as July 2028 is not explained in the consultation.

- 5.61 For example, Network Codes are expected to continue to develop (for example, new cyber security network code) and when they come into effect it may change the joint working requirements or scope of activities to be undertaken. This is expected to have a significant impact once the Celtic Interconnector is energised. In addition, the future system service arrangements are expected to continue to evolve after go-live as the scope of services included in auctions increases.
- 5.62 The UR has failed to consider the impact and effects of the legal hierarchy of EU related requirements and network codes as mandated by the Withdrawal Agreement signed by the UK Government.
- 5.63 SONI considers that the UR needs to revisit Part D of the proposed licence modifications and reflect on the practical implications of the transformation of the energy sector towards a net zero position. Whilst the UR has included a provision for earlier directions to be issued (Paragraph 40), it is unclear what process this will follow and what lead times will be considered to allow for the implementation of new European related or SEMC related obligations.

PART E. FACILITATING AND MONITORING COMPLIANCE

The Compliance Plan

SONI Comment:

- 5.64 It is unclear how Part E of the proposed licence modifications interact with Condition 12 of the licence. SONI considers that there is a significant conflict between these licence conditions and definitions as a result of the current drafting and considers that this section needs fully revisited.
- 5.65 The UR states in Para 4.31 of the Licence Modification Consultation that “*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.*”⁴⁰
- 5.66 However, no licence modifications to Condition 12 are set out and it is unclear when the UR plans to undertake the activity referenced in paragraph 4.31 of the Licence Modifications Consultation, noting that any such modifications would in turn be subject to statutory consultation.
- 5.67 That the UR has clearly omitted a “consequential change” to extant licence conditions that are required to enable any party to fully understand that proposed renders that set out incomplete.
- 5.68 SONI notes that the UR has included requirements for SONI to prepare a compliance plan and appoint a compliance manager. The UR itself notes “Part E of the licence condition replicates the existing provisions”⁴¹.
- 5.69 Part E proposes conditions on SONI to appoint a Compliance Manager and to produce a Compliance Plan. The definitions of ‘Compliance Manager’ and ‘Compliance Plan’ already

⁴⁰ Ref. Para 4.31 of the Licence Modifications Consultation

⁴¹ Ref. Para 7.18 of the Licence Modifications Consultation

defined terms under Condition 12. The current drafting is confusing and in the absence of an updated Condition 12 would require SONI to:

- (a) Appoint a Compliance Manager under Condition 12 and prepare a compliance plan under Condition 12; and
- (b) Appoint a separate Compliance Manager under Condition 42 and prepare a separate compliance plan to demonstrate compliance specifically with Condition 42

- 5.70 In addition, the UR has stipulated in the draft licence modifications that a compliance plan must be delivered to the UR by no later than 1 January 2023⁴².
- 5.71 SONI considers that the UR has omitted to fully consider the activities to be undertaken in order to submit a Compliance Plan to demonstrate compliance specifically with draft Condition 42. These activities include the appointment of a Compliance Manager and the completion of an assessment of what is in place or planned to be put in place in order to ensure compliance with the new licence condition.
- 5.72 SONI also notes that the submission of the compliance plan and the implementation of the new SONI Board are both required on 1 January 2023, meaning that the new SONI Board will not have any input into the compliance plan.
- 5.73 SONI considers that the UR should recognise, similar to the appointment of the new SONI Board, that there is a transition period needed to allow for the preparations of the compliance plan and consideration of this plan by the SONI board.

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*

SONI Comment:

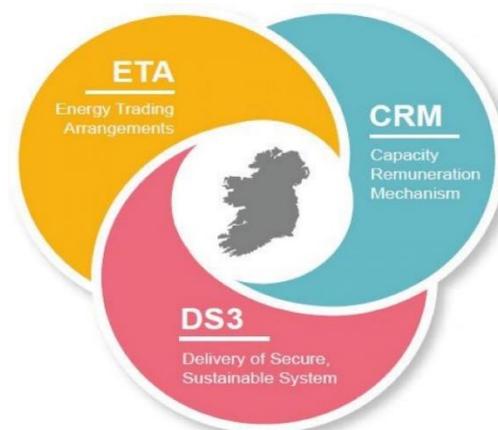
- 5.74 *(if not part of the EirGrid Group)* – It is unclear if this mean “if SONI is not part of the EirGrid Group”, or if the other company is not part of the group.

⁴² Ref. Annex 1 – Condition 42 – Para 44 of the Licence Modifications Consultation

Annex 1 Summary of each of the 3 pillars of the SEM

The SEM comprises three distinct areas that provide revenue streams relating to the services provided by market participants. The Energy Trading Arrangements (ETA), Capacity Remuneration Mechanism (CRM) and Delivering a Secure Sustainable Electricity System (DS3) make up the three main pillars of the market.

SONI has summarised below where each of these roles fits within the licenced structures. All of the respective general conditions of the SONI TSO and SONI SEM Operator Licences such as the obligations on Non-Discrimination apply in the carrying out of any activity and as such are not called out specifically below.



In terms of the **ETA**, this span a number of Energy Market timeframes and the obligations fall to a number of the licensed operators:

1. Forward markets [Interconnectors / generators and suppliers]
2. Day Ahead [SEMOpX]
3. Intraday [SEMOpX]
4. Balancing Markets [TSOs for Operation and SEMO for Settlement]

The TSO obligations in respect of the Balancing Market are separate to roles & responsibilities of SEMO who was assigned the role of settlement of the Balancing Market and the designated NEMOs (as referred to in the MO Licences) for operation of the Day Ahead and Intra Day markets.

The costs for the operation of the functions (not the payments to market participants) are provided for under the respective licences and were sought and provided for on the basis of no restriction on the integrated economic operation of the system across EirGrid and SONI or between licences.

SONI TSO Licence Conditions

- 9A – Priority Dispatch of Renewable Arrangements
- 16 – Grid Code
- 21 – Operational Security Standards
- 22 – Central Dispatch & Merit Order
- 22A – Scheduling and Dispatch
- 22B – Balancing Market Principles Statement
- 20 – Operation of the Transmission System and the System Security and Planning Standards
- 23 – Single Electricity Market Trading and Settlement Code
- 30 – Charging Statements
- 32 – Charge Restrictions
- 39 – Dispatch Balancing Costs Incentive – Reporting
- Annex 1 - Charge Restrictions

SONI MO Licence Conditions

- 15 – Single Electricity Market Trading and Settlement Code
- 15A – Nominated Electricity Market Operator (NEMO)
- 20 - Charging and Revenue Restriction
- Annex 1 - Charging and Revenue Restriction

CRM - The TSOs are the CRM Delivery body in the Capacity Market Code and associated Agreed Procedures.

The costs for the operation of the functions (not the payments to market participants) are provided for under the respective TSO licences and were sought and provided for on the basis of no restriction on the integrated economic operation of the system across EirGrid and SONI or between licences

SONI TSO Licence Conditions

- 23A – Capacity Market
- 23 – Single Electricity Market Trading and Settlement Code
- 30 – Charging Statements
- 32 – Charge Restrictions
- 35 – Generation Capacity Statement
- Annex 1 - Charge Restrictions

These TSO obligations are separate to roles & responsibilities of SEMO who was assigned the role of settlement of the Capacity Market. The costs for the operation of the functions (not the payments to market participants) are provided for under the respective MO Licences.

SONI MO Licence Conditions

- 15 – Single Electricity Market Trading and Settlement Code
- 20 - Charging and Revenue Restriction
- Annex 1 - Charging and Revenue Restriction

In terms of the **DS3** – both the operation and settlement of DS3 is an obligation of the TSOs

SONI TSO Licence Conditions

- 29 – Economic Purchasing of System Support Services
- 16 - Grid Code
- 30 – Charging Statements
- 32 – Charge Restrictions
- Annex 1 - Charge Restrictions

The costs for the operation of the functions and the payments to market participants are provided for under the respective TSO licences –

- in terms of the cost of operation these costs were sought and provided for on the basis of no restriction on the integrated economic operation of the system across EirGrid and SONI or between licences
- in terms of the revenues required to enable payments to participants these are provided for on the basis of 75:25 costs allocation EirGrid TSO: SONI TSO

SEMO has no role in the operation of DS3.

SONI MO Licence Conditions

- N/A

Annex 2 Case Study – Impact of Proposals on the ETA Balancing Market Operator Role [REDACTED]

REDACTED IN FULL

[REDACTED]

[REDACTED]

[REDACTED]

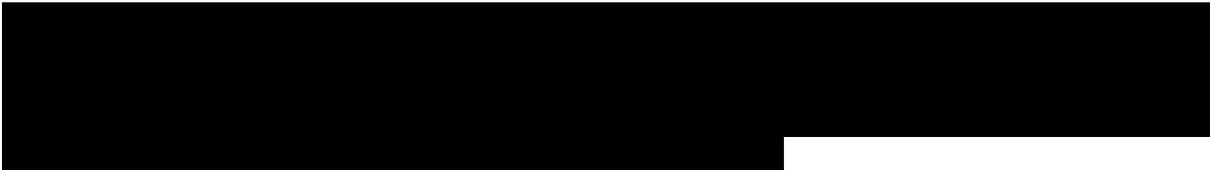
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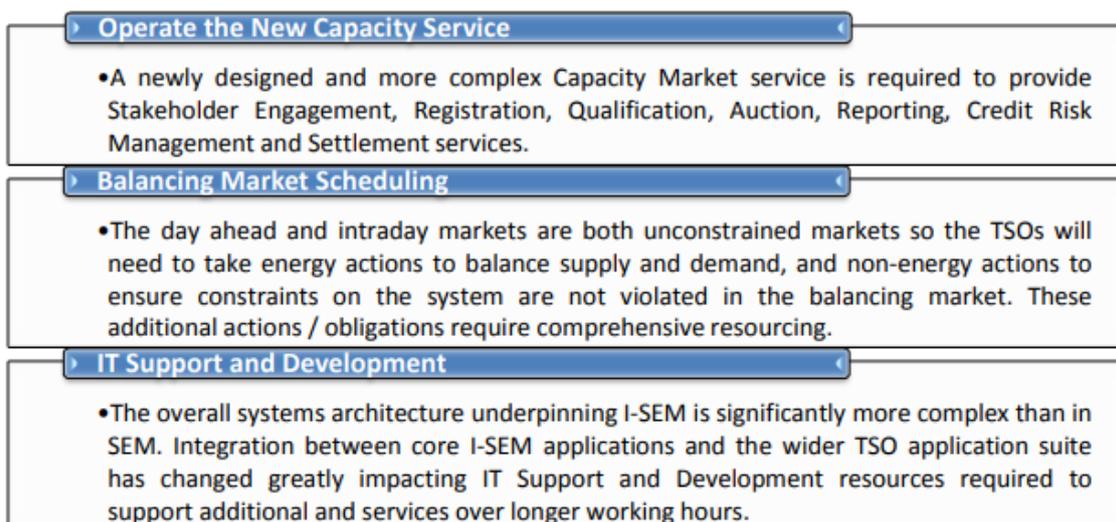
Annex 3 Case Study – Impact of Proposals on Capacity Market

Background

The introduction of the new market arrangements in 2018 lead to significant changes to the roles and obligations of SONI TSO.

During the design and implementation phase of the new integrated Single Electricity Market ('SEM') arrangements the SEM Committee ('SEMC') made a number of decisions and determined that SONI Ltd and EirGrid plc, in their capacities as licenced Transmission System Operators were required to carry out a number of additional activities under the new arrangements.

As set out in the revenue submission to the UR at the time the following business areas were noted as being impacted



Overview of the Capacity Market

Capacity Market Services

In order to ensure the demand for electricity is always met, generators receive a payment for being ready to generate electricity. This payment encourages generators to be available and ready to supply electricity to the grid when it is demanded by customers. This payment is known as the Capacity Remuneration Mechanism ('CRM').

Market Objective

The objectives of the capacity market code are defined in both TSO licences. The capacity auctions are an all-island competition, designed to "*facilitate the efficient, economic and coordinated operation, administration and development of the Capacity Market and the provision of adequate future capacity in a financially secure manner*". [LC23A para 4 b]

These processes are governed by the SEMC. The detailed implementation matters were considered by UR directors working in conjunction with their counterparts in CRU.

The SEMC made several decisions on the Capacity Service to be provided; these are summarised below.

SEM-15-077 I-SEM Roles and Responsibilities Decision Paper	Other SEMC CRM Decisions which have had a resourcing impact
<ul style="list-style-type: none"> •The SEM Committee Decision is that the TSOs will be responsible for delivery of the Capacity Remuneration Mechanism including administration and prequalification for the capacity auctions and administration of a set of capacity market rules subject to approval and oversight by the RAs. •The SEM Committee Decision is that, in order to maximise synergies and lower transaction costs in I-SEM, the Single Electricity Market Operator (SEMO) will be responsible for the function of capacity mechanism settlement; this is consistent with the minded-to position provided in the consultation that the same entity would be responsible for settlement of imbalances. 	<ul style="list-style-type: none"> •SEM-16-081 Capacity Remuneration Mechanism Locational Issues Decision Paper •SEM-16-082 Capacity Requirement and De-Rating Factor Methodology Detailed Design, Decision Paper •SEM-15-103 Capacity Remuneration Mechanism Decision 1 •SEM-16-022 I SEM CRM Detailed Design Decision Paper 2 •SEM-16-039 Capacity Remuneration Mechanism Decision 3 •SEM-17-022 CRM Parameters Decision Paper 1 •SEM-17-023 Terms of Reference for the Capacity Market Auditor and Capacity Auction Monitor •Capacity Market Code awaiting decision

The extensive range of SEMC Capacity Remuneration decisions outlined above placed a significant number of obligations on the **TSOs (as the CRM Delivery body)** in the Capacity Market Code and associated Agreed Procedures. These obligations are separate to the roles & responsibilities of SEMO who was assigned the role of settlement Capacity Market.

Impact of proposed licence modifications

Under today’s arrangements, SONI and EirGrid as TSOs act *"in conjunction"* with each other to set out the level of generation capacity required to be procured to ensure the security of the power system on the island of Ireland. As a result of the shared approach, close co-operation and single integrated governance structures each TSO can and does place reliance on the other for a level of capacity and system support which it could not do so in the same manner where each was under separate governance and sought first and foremost to protect the interests of its "own system" and its "own customers".

The rules of the CRM are underpinned by the Capacity Market Code ('CMC'). The CMC is administered and maintained by SONI "in conjunction" with EirGrid pursuant to Condition 23A of SONI's TSO Licence.

At no point during the development of the SEM (and within SEM, the CRM itself) was any consideration given to the running of separate auctions in Ireland and Northern Ireland, nor is there any concept, as proposed by UR in the Licence Modifications Proposals, that SONI in carrying out this function would seek to *"Secure the protection of the interests of consumers and other stakeholders, including generators and suppliers, in Northern Ireland"*. Rather SONI’s obligations as set out in Licence Condition 23A(3) is *"to secure generation adequacy and capacity [] across the Island of Ireland"*.

Furthermore, the CRM is underpinned by a single IT infrastructure, that was procured with the approval of the SEMC, on a single integrated auction management platform. The costs of this single platform were approved to be recovered by SONI and EirGrid as TSOs in 2018 by the SEM Committee as part of the SEM Committee's approval that customers across the island of Ireland would fund €106m for the delivery by SONI and EirGrid of the revised trading I-SEM

SONI has considered a number of options to establish whether SONI could remain compliant

with its existing obligations in the CRM whilst also meeting the requirements of the proposed licence modifications, including where derogations are utilised. SONI has not been able to identify any viable options and it would therefore be in a difficult position as depending on what determinations the UR makes, SONI may not be able to meet the SEM related obligations in its licence. This would have an immediate and direct impact on SEM related functions that SONI is obliged to undertake.

As the single CRM auction system cannot be separated, the only way that the UR’s proposals and the extant licence conditions could operate (in the absence of a derogation being in place, which would be default licence position on codification of the proposals) would be where fundamental changes to the CRM design were implemented. This is something that could only be determined by the SEM Committee.

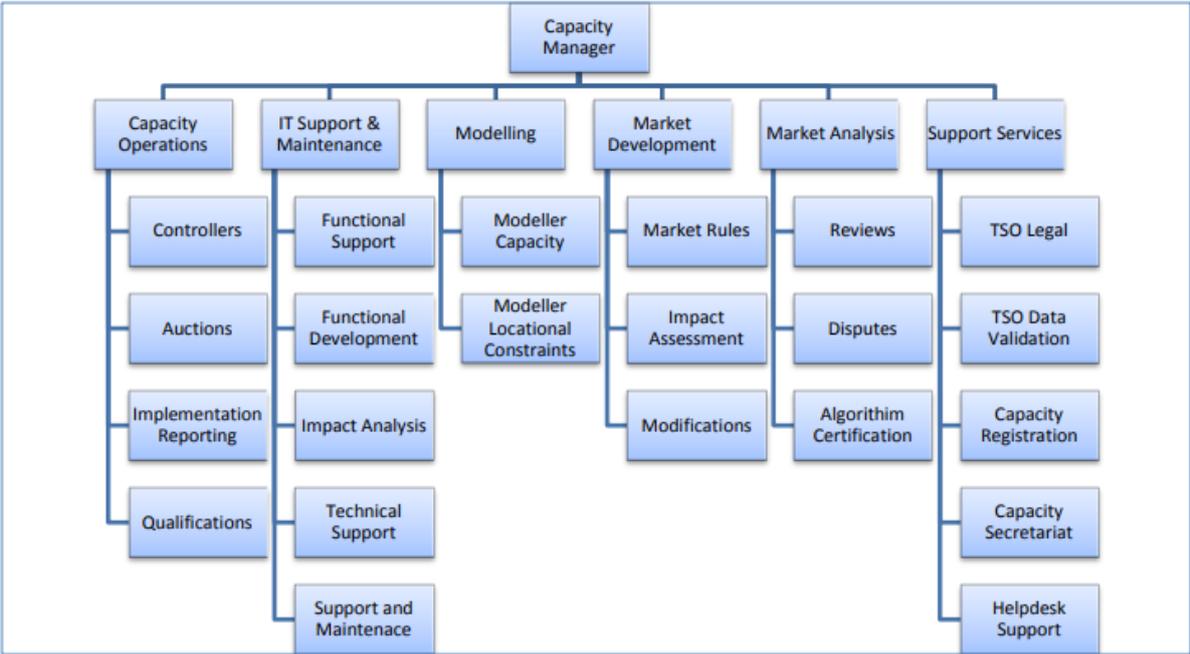
While not assessed in detail, it may be feasible to separate some supporting systems, however such separation would be limited in its implementation as ultimately, assuming the all island CRM remains, it would require a single auction platform and underpinning algorithm to remain in place, such a single platform requiring single ownership and operation by one party.

The most recent auction for capacity resulted in a price of ██████████ MW of generation capacity provided. SONI estimates that moving to a lower cooperation model would mean an extra generation capacity requirement in Northern Ireland of ██████████ MW, and an extra generation capacity requirement in Ireland of ██████████ MW. At the most recent auction price the additional cost to consumers in the SEM would be c ██████████ m per annum.

Outside from the system impacts, SONI has also for the purposes of this case study set out the impact of the UR’s proposal on the resource required to deliver the Capacity Market functions.

The starting point of the UR proposed licence modifications is ‘*Managerial and Operational Independence*’. Therefore, SONI would need to assess this ‘business function’ to determine whether it can be implemented as such.

As set out in the 2017 submission the single integrated structure implemented by the TSOs was as follows:



Annex 4 Case Study – Impact of Proposals on System Operations

SONI has undertaken a high-level assessment of the System Operations function to understand the effect of the proposals in the Licence Modifications Consultation.

Under the current operational model many TSO operational activities are carried out on an All Island basis, where teams work to carry out functions on the basis of the best use of available resources and decision making.

[Redacted]

- [Redacted],
- a range of control room tools such as

[Redacted]

- the all island market systems, including

[Redacted]

Another example of integrated teams is across the delivery of Capacity Market Services including the pre-auction stage during which the capacity requirements, local constraints and qualification of applicants for the auction are identified. The Capacity Market Service is discussed further in Annex 3.

Under a model where local management accountability dominates, and where such local accountability is being taken with reference to a clear regulatory direction, in SONI that being the UR's stated Vision for SONI, it is only rational that each TSO acting as both power system and balancing market operator would require a separate set of IT systems over which it has full operational and capital investment control.

[Redacted]

Each TSO would also require a direct line of reporting and performance management of all key staff which are required to deliver on their local targets and objectives. This would include, but not limited to, operational staff, control room operators, protection specialists, outage planners.

There would be a duplication for internal governance arrangements, for example the capacity market currently operates with a single capacity market board providing cross company management input and a single capacity market panel which coordinates the work of a single team of SME's across the company.

In the context of that proposed by the UR under the Licence Modifications Consultation, a high-level review of the organisational design impacts has been carried out for the Operations function. It should be noted that SONI has not examined each and every process across Operations to determine in detail which aspects it would be rational to split and duplicate under the lower level of integration and how such divergent processes would be re-linked to provide the desired level of collaboration.

Clearly this scale of change would take some time to execute as many of the roles are very specialist in nature with a limited pool of resources to recruit from. At this point SONI has not attempted to quantify the time or cost of the transition to such a new organisation design, but both time and cost are likely to be material as the current headcount in TSO operations delivering the function of SONI and EirGrid would need to increase where process and teams are dis-integrated.

The following table summarises the findings of the initial assessment.

Area	Estimated total Resource Increase across both TSOs	Justification
Real time Operation	█	█
Protection	█	█
System Services	█	█
Capacity Auction	█	█
Change Management	█	█
Audit	█	█
Additional manager	█	█
Total	█	█

As the UR is aware most services, including for provision of the Capacity Market and Balancing Market Operation, were developed and are currently provided for on the basis of no restriction on the integrated economic operation of the system across EirGrid and SONI or between licences. Therefore, in general 75% of the resources necessary to deliver Operational Functions are being provided for under the EirGrid Price Control and 25% under the SONI Price Control consistent with all customers across the island who benefit equally from the services provided paying equally for those services.

As a result, the impact of any dis-integration will impact SONI more significantly, with an estimated █ identified being required by SONI TSO to

enable it to carry out its Operational functions, on the basis proposed by the UR in the Licence Modifications Consultation.

No provision was made for any additional headcount for System Operations in the Licence Modifications Consultation. Rather the UR has incorrectly assumed that the synergies that customers avail of today would continue under the proposed arrangements. This will not be the case.

It is important to note that this case study only reflects a high-level assessment of the impact of the UR proposals on one area of the SONI business. It does not seek to address the likely increased FTE requirements that would be required across the SONI business as a result of separation *inter alia* of IT Systems and Support, Procurement, HR Services etc. A full detailed assessment needs to be undertaken by the UR in order to assess the real costs of its proposals across all of SONI's functions and obligations.

The scale of the changes needed as demonstrated in the case study points to the requirement for a new price control to be developed to reflect proposed arrangements and ensure that SONI has the resources required in order to meet all of its obligations and that the associated risks and financeability needs are fully considered.

Annex 5 Case Study – Impact of Proposals on System Services & Future System Services

Effect on Delivering a Secure. Sustainable System (DS3)

The DS3 programme is made up of a number of strands, one of which is the competitive procuring by SONI and EirGrid of services necessary to enhance performance of the electricity system and to provide for its safe and secure operation at higher levels of renewable generation. The consideration of the existing System Services was accepted by the SEM Committee as an all island approach and that the value in excess of €1 billion over the lifetime of the arrangements from 2016-2023 could be spent on any investment that supported meeting the all island systems 40% renewable targets to 2020.

The arguments in support of the DS3 System Services were all made on the assumption that system operational policy was on an all island basis, as was the investment needed to pursue the policy. It was envisaged that once the power system had the capability to manage 75% instantaneous penetration of non-synchronous power (being power which comes from a variety of sources including windfarms) this would be of benefit to the consumer if the costs associated with this remained within the investment provided by the SEM Committee.

The power system on the island of Ireland is a single synchronous power system and neither electricity nor the laws of physics respect jurisdictional boundaries or can be subjected to a jurisdictional approach. As a result, it is simply not possible to approach the challenges of higher renewable penetration on a single synchronous system on a jurisdictional or compartmentalised basis and to achieve or replicate integrated all island thinking. The same outcomes cannot therefore be assumed to be delivered. If the same outcomes are not delivered prices in the SEM will be affected and electricity customers on the island will see different prices and different outcomes. This would have a material effect that cannot be mitigated via the proposed derogation process.

Effect on next phase of System Services Development

The current licence condition 29 of SONI's TSO Licence obliges it to contract for System Services and to do so from the most economical sources available to SONI or to EirGrid. The current contractual arrangements (under DS3) have been determined by the SEM Committee and its decisions include a single procurement exercise for each tender gate to ensure a level playing field across the island. Although SONI contracts with parties in Northern Ireland and EirGrid contracts with parties in Ireland, the SEM Committee decisions can only be delivered through joint working.

The SEM Committee has decided that the current arrangements (DS3) will be replaced from 1 May 2024. The high-level design for these arrangements is due to be published soon by the SEM Committee.

Certain features of the framework are known, such as:

- System Services were determined to be a SEM matter, with joint delivery beginning as part of the original harmonisation exercise in 2007⁴³;
- The approval of revenues for system service is a SEM matter⁴⁴

⁴³ <https://www.semcommittee.com/sites/semcommittee.com/files/media-files/AIP-SEM-07-447%20Ancillary%20Services%20Consultation%20Paper.pdf>

⁴⁴ <https://www.semcommittee.com/sites/semcommittee.com/files/media-files/SEM-14-108%20DS3%20System%20Services%20Decision%20Paper.pdf> Paragraph 46 Page 23

- Frequency products must be auctioned each day (European Obligation);
- The SEM only contains one balancing/bidding zone;
- The concept of separate auctions in Northern Ireland and Ireland has not been considered within the consultations for either the current or future arrangements;
- A System Services Code is expected to be used to provide a governance framework for the new arrangements;
- The existing contracts for non-frequency products may be extended until they can also be included within the auction framework.

Impact of proposed derogation process

The derogation process proposed in the UR introduces four substantial problems with the delivery of the current and future system services arrangements.

Issue 1: Activities Defined in SONI's TSO Licence

On the basis of what SONI knows, it expects that the UR will have to modify SONI's TSO Licence to introduce the obligations associated with the new System Services Code and to create the necessary approval powers for themselves. This work cannot begin until sufficient detail has been determined by the SEM Committee. The earliest date that these licence changes will be required for project purposes is 1 May 2023. This is to support the termination of any existing contracts that will move to the arrangements governed by the new code.

Given the mandatory timeline for licence modifications in Northern Ireland and the delays to the High-Level Design, it is unlikely that the new (or updated) licence condition will be given effect in SONI's TSO Licence before SONI would be obliged to start preparing the derogation requests.

SONI will be unable to request a derogation for activities that are not permitted by the licence as extant on the date of application.

Issue 2: Current Activities Ceasing Before Decision Made

If SONI were to apply for a derogation covering the current system services arrangements, the UR is not obliged to make a decision before end June 2024. The earliest a decision can be expected is 1 January 2024, based on the UR proposals. At some point between these dates the current way of procuring frequency products (as a minimum) is scheduled to change.

Delays to key decisions to date mean that this timeline could be vulnerable and any delay to go live beyond 1 July 2024 would leave SONI with a compliance gap if it has not secured a derogation to cover the joint delivery of the current ways of procuring system services.

Therefore, SONI would have to seek derogation for activities that the SEM Committee has already determined are delivered jointly and which may have ceased before the decision is made. This will tie up substantial resources to prepare the paperwork and analysis to support this request (required in case of delay) which will be nugatory if the current project plan is met.

Issue 3: Conflict with Ongoing SEM Consultations and Decisions

As set out above, all of the consultations and decisions made in relation to system services since the original SEM harmonisation exercise have been based on a foundation of joint delivery. Notwithstanding the timing/licence issues, under the proposed licence modifications, the UR would be asking SONI to submit a derogation request for ways of working that have:

- not been subject to any form of industry consultation; and
- directly contradict the basis upon which all of the relevant SEM Committee decisions have been taken since the committee came into being.

SONI is unsure what scope the UR has to diverge from clear decisions made by the SEM Committee, particularly when it relates to such a material topic that is of paramount importance for the safe, secure and cost-effective delivery of the energy transition on the island.

Issue 4: EU Compliance

Timely delivery is essential to avoiding any potential infraction proceedings from the European Commission. These proceedings would result in fines for both Ireland and Northern Ireland if SONI is found to be in breach.

SONI is concerned that the proposed approach will result in SONI either being in breach of licence or in breach of network code requirements. SONI notes that the impact of the UR proposals on network codes has not been considered in its reasons and effects assessment.

Annex 6 IT Systems Impact Assessment

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Acronyms

AIP	All Island Project
CACM	Capacity Allocation and Congestion Management
CapEx	Capital Expenditure
CBA	Cost Benefit Analysis
CMA	Competition and Markets Authority
CMC	Capacity Market Code
CRM	Capacity Remuneration Mechanism
CRU	Commission for Regulation of Utilities
█	██████████
DS3	Delivering a Secure, Sustainable Electricity System
█	██████████
█	██████████
█	██████████
ETA	Energy Trading Arrangements
FTE	Full Time Equivalent
GB	Great Britain
GTUoS	Generation Transmission Use of System Charges
HR	Human Resources
█	██████████
█	██████████
ISEM	Integrated Single Electricity Market
IT	Information Technology
█	██████████
MO	Market Operator
MTBF	Mean Time Between Failure
MTTR	Mean Time to Repair
MW	Mega Watt
NED	Non-Executive Director
NEMO	Nominated Electricity Market Operator
NI	Northern Ireland
OES	Operator of Essential Services
█	██████████
OpEx	Operational Expenditure
PCNP	Pre-construction Network Projects
RA	Regulatory Authority
█	██████████
█	██████████
SEM	Single Electricity Market
SEMC	Single Electricity Market Committee
SEMO	Single Electricity Market Operator
SEMOpX	Single Electricity Market Operator Power Exchange
SLA	Service Level Agreement
SOA	System Operator Agreement
TNPP	Transmission Network Pre-construction Projects

Redacted Version for Publication

TDPNI	Transmission Development Plan Northern Ireland
TSO	Transmission System Operator
UR	Utility Regulator
[REDACTED]	[REDACTED]

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