

Single Electricity Market Committee¹

The Proposed Acquisition of SONI Limited by EirGrid plc

A Consultation Paper

(Incorporating Statutory Consultation Notices)

SEM-08-176

18 December 2008

Responses by Friday 30th January 2009

¹ The SEM Committee is established in Ireland and Northern Ireland by virtue of section 8A of the Electricity Regulation Act 1999 and Article 6 (1) of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 respectively. The SEM Committee is a Committee of each of CER and the Utility Regulator (together the Regulatory Authorities) that on behalf of the Regulatory Authorities, takes any decision as to the exercise of a relevant function of CER or the Utility Regulator in relation to a SEM matter

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Executive Summary

1. The introduction of the Single Electricity Market (**SEM**) in Northern Ireland and Ireland worked in tandem with, amongst other activities, Viridian/Northern Ireland Electricity plc (**NIE**) agreeing to the voluntary divestment of SONI Limited (**SONI**)². SONI is both the System Operator and Market Operator in Northern Ireland. NIE announced on 22nd August 2008 that they had reached conditional agreement with EirGrid plc (**EirGrid**) to sell SONI to EirGrid. EirGrid is the System Operator in Ireland and Market Operator in Ireland and operates the SEM together with SONI.
2. The SEM Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland in December 2006 bringing openness and transparency in the SEM (the **Governmental MOU**) envisaged that the System and Market Operator activities conducted by SONI would need to be conducted by a company with no affiliate conducting generation or supply. In practice this meant that all relevant parties agreed that NIE would voluntarily divest SONI. The divestment is also in line with EU policy on unbundling of transmission system operation from competitive activities of generation and supply.
3. Following a corporate sales process, NIE selected a preferred bidder for the purchase of the entire issued share capital of SONI – that preferred bidder was EirGrid.
4. The purchase of SONI is conditional on two principal matters:
 - Clearance from the Irish Competition Authority (which was received on 25th September 2008³); and,
 - Confirmation from the Utility Regulator (and/or the SEM Committee) that none of SONI's licence conditions could impede the acquisition.In addition the Office of Fair Trading confirmed on 17 October 2008 that the proposed acquisition did not constitute a merger under the Enterprise Act 2002 and thus did not qualify for further investigation.⁴
5. The SEM Committee has determined that the purchase of SONI and the exercise of certain regulatory functions in connection with the matter constitute SEM Matters for the purposes of the relevant legislation i.e. that the exercise by the Utility Regulator and CER of their regulatory functions are matters which materially affect or are likely to materially affect the SEM. The SEM Committee has formed the view that in the event EirGrid purchases SONI, regulatory measures would be required to ensure that (i) the various licences held by SONI

² SONI are licensed to participate in the transmission of electricity (as a System Operator) and also have a licence to act as a SEM Operator (Market Operator)

³ The Competition Authority www.tca.ie.

⁴ Office of Fair Trading, www.oft.gov.uk.

and EirGrid take account of the new ownership structure (principally by removal of NIE specific references where appropriate, to be replaced with apt references to EirGrid), (ii) consumers of electricity in Ireland, but particularly in Northern Ireland, continue to be protected and are not in any way disadvantaged by the change of control of SONI and (iii) that the relevant licence conditions which would otherwise preclude the acquisition are removed or suspended, as appropriate..

6. Such regulatory measures would take the form of licence changes required to both the System Operator (**SO**) and Market Operator (**MO**) licences of SONI and to the equivalent SO licence of EirGrid (the **Licence Changes**). These Licence Changes are where the Utility Regulator and CER have most direct influence and authority to act in this matter – as it should be noted that neither the Utility Regulator nor CER has legislative competence to approve or veto any corporate mergers or sale per se. The vires of both the Utility Regulator and CER in this context derive from exercising functions related to the Licences and it is only to the extent that any such sale or merger is dependent on licence modifications in order to enable it to go ahead, do the Utility Regulator or CER have a role. The fulcrum of this consultation document is therefore the provision of a consultative opportunity on the regulatory Licence Changes – as required by law.
7. Not part of this consultation on the regulatory Licence Changes, but providing important context for it, are additional constitutional and corporate measures designed to further enhance the prominence and protection of SONI and Northern Ireland consumers. Such measures include the addition of two new independent directors to EirGrid of appropriate standing with extensive Northern Ireland backgrounds. These have been voluntarily offered by EirGrid and refined after discussions with CER and the Utility Regulator over recent weeks. These additional constitutional and corporate measures have been acknowledged and welcomed by the SEM Committee at its recent meeting on 25th November 2008. They have also been brought to the attention of the Department of Enterprise Trade and Investment (NI) (**DETI**) and the Department of Communications, Energy and Natural Resources (ROI) (**DCENR**) – and we discuss these in more detail in the Background section which follows.
8. Conditional upon the outcome of this consultation, the SEM Committee is minded to take the view that the proposed Licence Changes, supplemented by the Constitutional and Corporate Measures, would be sufficient to build the relevant degree of comfort for the SEM Committee and all other policy partners and stakeholders to be assured that EirGrid will be monitored through licence or encouraged through other means to ensure that consumers of electricity in Ireland and Northern Ireland are being appropriately protected.
9. The purpose of this consultation is therefore to consult on the proposed Licence Changes that the SEM Committee consider is requisite to protect consumers and which would be required to ensure SONI was not in breach of its licences, should the purchase of SONI by EirGrid be

completed. It should be noted that the SEM Committee with the help of the staff at the CER and the Utility Regulator will continue to keep under review the arrangements for SONI and EirGrid long after this consultation exercise has run its course regardless of outcome, and reserves the right to re-examine various licence conditions to ensure that they are fit for purpose in an ever changing energy industry and regulatory landscape.

Background

10. The introduction of the SEM in Northern Ireland was effected principally through the exercise of powers conferred on DETI and the Utility Regulator by the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 with similar legislation also being introduced to facilitate the introduction of the SEM in Ireland. In Northern Ireland, the introduction of the SEM was also accompanied by changes to further implement European law and policy, principally the Internal Market in Electricity Directive (**IME**) facilitated through powers conferred on DETI and Utility Regulator by the Electricity Regulations (Northern Ireland) 2007. IME was concerned principally with the opening up of energy markets to ensure, where feasible, there was competition in energy supply and where competition was not feasible, there was open and transparent access to relevant markets.
11. In Northern Ireland, the introduction of the SEM included not just the establishment of the single wholesale trading arrangements enshrined within the Trading and Settlement Code, but also a number of broader changes to licences and industry codes as well as structural changes within the Industry in Northern Ireland. In particular, the Governmental MOU stated that:
 - a. *"in the interests of promoting competition, it is intended that the SEM arrangements will include an appropriately defined set of transmission system operator activities in each jurisdiction (including appropriate contractual arrangements in relation to the conduct thereof), such activities and the activities of the SEM Operator to be carried out by one or more organisations that neither carry out the activity of generation or supply in Northern Ireland or Ireland nor, from such time as may be considered appropriate, have any affiliates that carry out the activity of generation or supply in Northern Ireland or Ireland".*

The Governmental MOU goes on to say that:

- b. *"To that end, the SEM arrangements in Northern Ireland will include the transfer of such transmission system operator activities into a company which, at the time of transfer, conducts no electricity-related activities other than activities of transmission system operator and SEM Operator."*

12. The initial transfer of the transmission system operator activities to a separately licensed SONI took place as a precursor to the initial introduction of the SEM in November 2007. Arrangements were then put in place so that SONI's system operator activities were to be carried out by one or more organisations that neither carried out a prohibited activity of generation or supply in Northern Ireland or Ireland nor, from such time as may be considered appropriate, have any affiliates that carried out such prohibited activity.
13. This was reflected in Condition 13 of the SO Licence and Condition 11 of the MO Licence. This prohibition stated, inter alia, that the Licensee could not be related or affiliated with companies licensed to generate or supply electricity. It was principally aimed at ensuring that entities linked through private law corporate structures could not operate both transmission assets and be involved in generation and supply. It was also considered at the time of SEM Go Live that these prohibitions would probably catch EirGrid and other State-owned entities through their Ministerial or other links to supply or generation companies. It was however not felt that any particular or immediate actions were necessary to lift such prohibitions which were in place especially as the identity of any potential purchaser was at that time hypothetical and it was more logical to address discrete issues as and when they actually arose.
14. Chiefly in discussions between DETI, the Utility Regulator and NIE, it was agreed that in order to give effect to the arrangements within the Governmental MOU, SONI would be divested by NIE and that the divestment process would be carried out on a voluntary basis by NIE. NIE have since conducted this divestment process. It was announced on 22nd August 2008 that EirGrid had signed a conditional agreement with NIE for the purchase of the entire issued share capital of SONI.
15. Regulatory policy has naturally been evolutive since SEM Go-Live, and detailed consideration on the merits and demerits of EirGrid's potential ownership of SONI have now been considered by the relevant decision making body for the first time, the SEM Committee. It has had regard to the particular facts and circumstances of the times, and we explain in more detail the SEM Committee's rationale for proposing the present licence modifications at paragraph 26. The various appendices contain the finer detail of the changes proposed, but we shall describe each of the proposed changes in paragraphs 21 – 38 in layman's terms.
16. As things stand, with the Irish State still owning both EirGrid and ESB, Conditions 13 of the SO Licence and Condition 11 of the MO Licence would be breached by the purchase by EirGrid of SONI. As explained later, the SEM Committee takes the view that this was neither the true intention of the Condition nor is it presently desirable. Any purchase by EirGrid of SONI would therefore need to have this Condition modified. This is the principal issue addressed by this Consultation.

17. On 25th November 2008, the SEM Committee determined that regulatory policy on the potential purchase of SONI by EirGrid, coupled with the potential exercise of regulatory functions (such as Licence Changes) in pursuit of that policy clearly are SEM Matters as defined in the relevant legislation. The performance of System and Market operation functions in the SEM, the identity of those who own those entities who perform such functions, and potential licence changes to the SO and MO licences held by those engaged in system and market operation are matters which either materially affect or are likely materially to effect the SEM.
18. We also set out, by way of background only (and not for consultation purposes) EirGrid's additional commitments which we refer to as Corporate and Constitutional measures. These respectively oblige EirGrid to
- Change its internal corporate documents (its Directors Code of Conduct and its memorandum and articles of association) to inter alia, to recognise SONI and its system and market operation roles and to extend its corporate responsibility to protect the interests of Northern Ireland consumers; and
 - Seek and obtain (in conjunction with its Ministerial shareholder) constitutional change to its founding legislation – to the effect that two independent directors of appropriate standing with extensive Northern Ireland backgrounds, shall sit on the EirGrid board of directors. This significant and important move requires statutory amendment to extend the number of directors on EirGrid's board from 8 to 10. It shall be underpinned by Ministerial assurances to be provided by Minister Ryan at DCENR to Minister Foster at DETI – which assurances, going forward, will vouch for and ensure satisfactory representation of the Northern Ireland perspective on the EirGrid board.
19. Both these sets of Constitutional and Corporate Measures are of course conditional upon a positive outcome to this regulatory consultation on the Licence Changes and upon the corporate transaction reaching completion. If that happens, the SEM Committee is minded to take the view that the proposed Licence Changes, supplemented by the Constitutional and Corporate Measures, would be sufficient to build the relevant degree of comfort for the SEM Committee and all other policy partners and stakeholders. Such comfort would derive from EirGrid being monitored by the SEM Committee through licence or encouraged through other means to ensure that the interests of consumers of electricity in Ireland and Northern Ireland are being appropriately protected, and are being so protected in a non-discriminatory way⁵.
20. The commitments made by EirGrid and described under paragraph 18 above are outside of the jurisdiction of the SEM Committee and will not be effected by means of licence conditions. However, the SEM Committee welcomes these public commitments and are of the view that

⁵ Such non-discrimination between consumers in Northern Ireland and Ireland is a key principle and forms part of a particular statutory duty of the SEM Committee, as articulated at Article 9 (2) (e) of the SEM Order.

they assist in building political and regulatory confidence in EirGrid in Northern Ireland – and most importantly of all, that they represent measures aimed in good faith at promoting and protecting consumers in both jurisdictions equally.

The Regulatory Measures: Licence Changes

21. This section sets out the rationale for the proposed changes, with Appendix 1 setting out the detail of the suggested changes and Appendix 2 setting out the statutory notices of modification for the SONI SO Licence, the SONI MO Licence and the EirGrid SO Licence.
22. The SEM Committee is of the opinion that there is already a high degree of comfort around whether the existing licences in Northern Ireland are appropriate in the context of this divestment. This is principally because the existing SO and MO licences of SONI already had to deal with SONI acting independently from NIE. Therefore, most of the changes suggested are modifications of existing licence conditions to deal with the factual change in ownership which EirGrid's ownership would bring about.
23. The ownership structure in Ireland is also very different from that in Northern Ireland in that a lot of the relevant assets are still owned by the State and whilst this remains the case, the need for licence conditions which are a consequence of private ownership (i.e. ownership in the hands of large corporate entities or banks or other financial institutions), is diminished. For that reason the SEM Committee is also content that the suggested modifications set out in this consultation paper are appropriate for the prevailing circumstances in Ireland, particularly in assurance of the state-backed protection which EirGrid benefits from, and in light of European energy precedent and policy which has shown state-backed energy companies to have been particularly successful to date (for example RTE, part of EDF in France).

Modifying the conditions relating to who can own SONI

24. The SEM Committee is concerned to ensure that prevailing European law and further liberalisation of energy markets, plus the SEM Governmental MOU and the resulting SEM legislation are delivered in spirit and in practice. The SEM Committee is also keen to ensure that there is no vertical integration of electricity operators such as to be contrary to the principles of the IME and in particular so as not to be contrary to the principles of effective competition and open and transparent access to electricity markets. This is articulated in practice by, for example, the structural changes described above that have led to SONI being divested by NIE. Equally, the SEM Committee is mindful that implementing the IME Directive

should not lead to disproportionate or convoluted rules attempting to cover all possible contingencies related to ownership structures.

25. The existing SO and MO licences, at Conditions 13 and 11 respectively, capture the vertical integration concern in simple drafting. Each condition prohibits SONI being owned by either an entity in either Northern Ireland or Ireland which engages in the truly competitive activities (the prohibited activities) of generation or supply, or an entity which controls another entity engaged in such activities. As drafted, these conditions catch EirGrid's ultimate controller, the State because the State is also in law in control of ESB, which is engaged in the activities of generation and supply. The effect of this condition would be to put SONI immediately in breach of its licence should it be acquired by EirGrid.
26. This we believe is not a preferable outcome for a number of reasons:
 - a. When the SEM was designed, the two Governments were not minded to take any action with respect to the State ownership of EirGrid in the context of State ownership of ESB otherwise the Governmental MOU would have ensured a parallel divestment of EirGrid from the State commensurate with the divestment of SONI from the vertically integrated NIE group. It did not. This acceptance by the two Governments of State ownership of EirGrid and its role in the Irish electricity industry does not cause concern to the SEM Committee either;
 - b. Over the course of our discussions with EirGrid (emanating from various regulatory interfaces pursuant to the proposed transaction) we have found no reason to doubt (notwithstanding the common State ownership structure as between EirGrid and ESB) that EirGrid is in statutory functions, corporate, operational and management terms sufficiently independent from ESB;
 - c. EirGrid ownership of SONI meets the divestment requirements of the Governmental MOU, and is now the preferred outcome for NIE and its owners after a fair and competitive commercial bidding process. Regulatory intervention, via licence enforcement of the prohibited activities condition, seems disproportionate and an unintended consequence whenever the key drivers of IME policy and national law support the transaction;
 - d. Unlike ownership vesting in any other would-be bidder for SONI, ownership vesting in EirGrid brings opportunities of economies of scale, and potential for greater efficiencies and synergies between the parties. This is largely due to the fact of EirGrid and SONI's joint ownership of the SEMO contractual joint venture, and an already established relationship which enables cross-jurisdictional delivery of the System Operator Agreement; and

- e. Recent reflection by the SEM Committee on the question of Irish and European precedents for State-owned transmission assets has confirmed, in line with paragraph 23 above, that State protections and benefits can be more favourable to asset operators than might otherwise be the case if alternative forms of private ownership held sway, particularly in the current economic climate.
27. The licence conditions containing the prohibition holds good in capturing larger private corporate entities, or financial institutions such as banks which retain many and varied competing interests in transmission, generation and/or supply assets. This principle underpinning the prohibition remains sound and should be maintained through the existing condition text as a general rule in future.
28. To maintain the condition at the present time, which would catch and in effect penalise EirGrid for having a state owned parent which owns a large number of entities, including ESB, is not the SEM Committee's preferred course of action.
29. The SEM Committee is therefore of the opinion that the most appropriate course of action is to suspend application of part of this licence condition whilst EirGrid owns all of the share capital of SONI and EirGrid itself remains in state ownership. This allows the intent behind the condition to remain but allows the condition to be relaxed in the special circumstances of the presently proposed divestment. This is to be achieved by a licence modification which would apply this suspension to the text of the present conditions dealing with "prohibitions following divestment". We do not take the view that it is necessary to bind the suspensory mechanism within the licences to the longevity of the corporate and constitutional measures remaining in place (see paragraph 18). Such a construction would be disproportionate in our view, and encourage increased regulatory oversight of constitutional and corporate arrangements which do not appear to be the proper domain of economic regulation.
30. The SEM Committee has also considered alternatives to suspending the Condition. Discussions were had as to whether the Condition should be abolished in its entirety or whether simply its definitional section could be tweaked to achieve a clear derogation for state owned bodies. These alternatives were judged to both convey a poor policy signal with respect to the SEM Committee's regard for the prohibited activities concept within the licence. Neither alternative retained the power and integrity of the original prohibition in the event EirGrid sell SONI on to another party in due course – in which case the prohibition applies again in full. For this reason the SEM Committee consider the suspension concept to be the most appropriate solution in these unique circumstances.

Modifying the Licences to enhance protection of consumers

31. With the introduction of SEM, a duty was placed on each jurisdiction's respective system and market operators to act in conjunction with each other, where the circumstances dictated that this was a pragmatic approach to issues. Part of this led to each of SONI (in the capacity as System Operator) and EirGrid to develop a System Operator Agreement (**SOA**) which regulated the relationship between both parties. This is underpinned by a licence obligation in each of SONI's SO licence and EirGrid's SO licences framing what the SOA should deal with and the underlying principles that should inform the SOA and any amendment to it.
32. The SEM Committee consider that this is a good opportunity to reinforce and improve what the underlying principles of the SOA are, and propose to place appropriate licence conditions in both the EirGrid and SONI licenses. The SEM Committee has therefore decided that the licences will legally ensure that when the System Operators are working together under the SOA they protect the interests of consumers of electricity in both Northern Ireland and Ireland. In addition, a new standalone obligation will be placed in EirGrid's licence so that when EirGrid carries out its regulatory functions, it must at all times have regard for the interests of Northern Ireland consumers, as well as Irish consumers.

Modifying the operational independence condition of SONI's Licences

33. Condition 12 of the SO licence (and Condition 10 of the MO licence) was drafted to ensure that SONI was managerially and operationally independent from NIE and its vertically integrated group of companies (with an equivalent Condition 10 of the MO licence). The SEM Committee are of the view that the fulcrum of this original condition can be adapted somewhat, to render the intent of the proposed modifications more fitting with the kind of "separation" which is more fitting in the context of EirGrid owning SONI.
34. The concept of independence remains important in terms of retaining SONI's corporate integrity and identity so that it should remain a standalone business with a specific role to play in the Northern Ireland transmission business. Equally, the licence conditions need to be modified to reflect the fact that there is much less scope for requiring EirGrid and SONI to be completely independent. The SEM Committee is content to publicly acknowledge that nothing within the applicable general duty of independence shall act so as to constrain EirGrid and SONI, as separate businesses, from harnessing beneficial economies of scale and other synergies (such as cost-saving on shared services) for the betterment of consumers.

Modifying the Licences to give extra financial security to SONI

35. The Utility Regulator has previously consulted⁶ on the need for SONI to have some form of licence condition linked to the financial strength of SONI. The consultation discussed how there was already a high degree of regulatory oversight in this area with SONI, for example,

⁶ See Consultation on SONI Divestment and Proposed Modifications to the System Operator and Market Operator Licences dated 27th March 2008.

not being able to borrow monies from holding companies. These arrangements were all designed to reduce the risk of financial distress by constraining the conduct of SONI, ensuring its resources were not diverted and that it was not exposed to undue risk.

36. The options explored (but not implemented in light of SONI's present restructuring priorities) included asking SONI to maintain an investment grade credit rating and/or a maximum gearing ratio. However, given that the proposed purchaser of SONI is a company with substantial assets of their own in EirGrid, the SEM Committee is of the opinion that the extra confidence required could be more easily obtained by EirGrid giving a letter of undertaking to SONI. This would give the SEM Committee the requisite comfort that SONI would be able to finance its regulated activities and deal with financial 'shocks' or major outlays as and when they arise. It would also give EirGrid greater freedom to structure SONI in a way best suited to their operational needs. This proposal would be structured through a licence modification which means that the obligation to provide this extra financial security is a legally enforceable one, both against SONI directly, and EirGrid indirectly. A new condition 3A of the SONI MO and SO licences has been drafted to achieve this aim.

Modifying and Clarifying Who Should Provide Deeds of Undertaking to SONI

37. It is an existing licence condition of both the SO and MO licences that the ultimate controller (currently NIE's owners) must give to SONI a legally enforceable undertaking in a form approved by the Utility Regulator, to the effect that the ultimate controller will refrain from any action and will procure that every subsidiary of the ultimate controller (other than SONI and its subsidiaries) will refrain from any action which would be likely to cause SONI to breach any of its obligations under the relevant licence or relevant legislation.
38. The SEM Committee consider that these licence obligations should equally apply such that SONI have to procure these deeds of undertakings from its new owner. The SEM Committee also consider that it would be in everyone's interests to make it clear who the undertakings should be given by. In the present case EirGrid is the preferred provider, as opposed to the Irish State or relevant Minister, either of which could be said to be an "ultimate controller" for licence purposes. The SEM Committee takes the view that EirGrid are closer to the business of SONI and understand the needs of licences and of regulation, of transmission system operators and market operator businesses, so as to be in a better position than a Minister to provide the requisite undertakings to SONI. Therefore, the SEM Committee propose altering the licence obligations relating to the deeds of undertaking to refer to the undertakings being given by EirGrid.

Notification Process and Next Steps

39. This consultation paper also constitutes notice by the SEM Committee pursuant to the relevant legislation in Northern Ireland and Ireland, for the purposes of consulting on the

proposed licence modifications more fully described in this consultation paper but also as detailed in Appendix 1.

40. Having obtained the consent of SONI and EirGrid as appropriate, the SEM Committee proposes to make the modifications as set out in Appendix 1 Part 1 to the SONI SO Licence, in Appendix 1 Part 2 to the SONI MO Licence, and in Appendix 1 Part 3 to the EirGrid SO Licence. We ask respondents to note the reasons for, and the effects of, such modifications as outlined in paragraphs 21 to 38 of this consultation paper, and as set out in the relevant notices within Appendix 2.
41. The SEM Committee welcomes representations and objections from all interested parties as to the three sets of proposed modifications. Non-solicited views pertaining to any other part of this consultation paper or any associated matter are also welcome.
42. Should anyone wish to contribute, please note that we shall receive responses from the date of this consultation paper, up to and including Friday 30th January 2009. The SEM Committee has asked both Jamie Burke and Martina Maguire at CER and the Utility Regulator respectively to act as the two points of contact and recipients of any comments made from interested parties, each of whose contact details are set out in Appendix 2.
43. Unless otherwise advised by respondents, responses may be made publicly available, via the CER, Utility Regulator, and / or the AIP websites. Respondents should clearly mark any part of their response (or, if appropriate, the whole response) if they wish it to remain confidential, along with the reasons as to why this is the case.
44. In accordance with the relevant law, notice of the proposed modifications has been sent to DETI and DCENR⁷.

⁷ Under The Electricity (Northern Ireland) Order 1992, DETI have the power to direct the Utility Regulator not to make any proposed modifications to licences in Northern Ireland and consequently part of the consent process includes the Utility Regulator not receiving such a direction from DETI. There is no equivalent power in Ireland.

APPENDIX 1 – LICENCE MODIFICATIONS

ANY NEW LICENCE TEXT IS SET OUT IN ITALICS AND RED FONT

DELETIONS OF ORIGINAL LICENCE TEXT ARE ALSO SET OUT OR REFERRED TO

PART 1 - MODIFICATION TO SONI'S SO LICENCE

1. Modification of condition 13 by including a new paragraph 7 in the form set out below:

7 Condition 13 paragraph 4 to paragraph 6 (inclusive) shall be suspended and have no effect for as long as the state owned constitutional status of EirGrid plc remains unchanged and EirGrid plc are the legal and beneficial owners of the entire issued share capital of the Licensee.

2. Modification of condition 24 paragraph 1(e) in the form set out below:

- (i) at all times protect the interests of consumers of electricity in Northern Ireland and Ireland;*
- (ii) promote the efficient discharge of the obligations imposed on the Licensee in its capacity as the holder of a licence granted under Article 10(1)(b) of the Order, and on the Republic of Ireland System Operator, under licences, laws and regulations;*
- (iii) facilitate the development, maintenance and operation of the transmission system as part of efficient, economical, co-ordinated, safe, secure and reliable All-Island Transmission Networks;*
- (iv) neither prevent nor restrict effective competition in the generation and supply of electricity on the island of Ireland; and*
- (v) promote good industry practice and efficiency in the implementation and administration of the matters covered by the System Operator Agreement.*

3. Modification to Condition 12 paragraph 1 in the form set out below:

- 1 The Licensee shall:
 - (a) unless it has already done so prior to this Condition coming into force, establish; and

(b) at all times thereafter maintain,

the full ~~managerial and operational independence of the Transmission System Operator Business from any Associated Business.~~

5. Modification to Condition 12 paragraph 14 in the form set out below:

“Associated Business” means any business of the Licensee (or of any affiliate or related undertaking of the Licensee) other than a relevant holding company, ~~the Transmission System Operator Business, the Transmission Owner Business, the Distribution Business and the Market Operation Activity.~~

6. Including a new condition 3A in the form set out below:

Condition 3A – Parent Company Undertaking from EirGrid plc

Parent Company Undertaking from EirGrid plc

1 *Whilst EirGrid plc are the legal and beneficial owners of the entire issued share capital of the Licensee, the Licensee shall procure from EirGrid plc a legally enforceable undertaking in favour of the Licensee:*

(a) *in a form approved by the Authority;*

(b) *that will remain in force for as long as the Licensee remains the holder of the Licence and EirGrid plc are the legal and beneficial owners of the entire issued share capital of the Licensee; and,*

(c) *to the effect that EirGrid plc shall ensure that at all times (i) the Licensee shall have adequate financial and non-financial resources in order that it may perform its obligations and discharge any liabilities arising under the Licence and (ii) it guarantees in full as and when they fall due the performance of such obligations and the discharge of such liabilities.*

2 *Nothing in this Condition 3A shall prevent or inhibit the Licensee from satisfying its obligation under paragraph 1 by reference and extension to the legally enforceable undertakings required under Conditions 3 and 7 of this Licence.*

7. Modification to Condition 3 by the addition of the paragraphs set out below:

- 10 *Condition 3 paragraph 6 to paragraph 9 (inclusive) shall be suspended and have no effect for as long as the state owned constitutional status of EirGrid plc remains unchanged and EirGrid plc are the legal and beneficial owners of the entire issued share capital of the Licensee.*

Undertaking from EirGrid plc

- 11 *For as long as the state owned constitutional status of EirGrid plc remains unchanged and EirGrid plc are the legal and beneficial owners of the entire issued share capital of the Licensee the Licensee shall procure, from EirGrid plc a legally enforceable undertaking in favour of the Licensee:*
- (a) in a form approved by the Authority;*
 - (b) that will remain in force for as long as the Licensee remains the holder of the Licence and the state owned constitutional status of EirGrid plc remains unchanged and EirGrid plc are the legal and beneficial owners of the entire issued share capital of the Licensee; and*
 - (c) to the effect that EirGrid plc will refrain from any action, and will procure that every subsidiary of EirGrid plc (other than the Licensee and its subsidiaries) will refrain from any action, which would be likely to cause the Licensee to breach any of its obligations under the Order, the Energy Order, the SEM Order or the Licence.*
- 12 *The Licensee shall:*
- (a) deliver to the Authority evidence that the Licensee has complied with the obligation under paragraph 11 (including a copy of the undertaking to be procured under that paragraph);*
 - (b) inform the Authority immediately in writing if the directors of the Licensee become aware that any such undertaking has ceased to be legally enforceable or that its terms have been breached; and*
 - (c) comply with any direction from the Authority to enforce any such undertaking.*
- 13 *The Licensee shall not, save with the consent in writing of the Authority, enter (directly or indirectly) into any contract or arrangement with EirGrid plc or any of the subsidiaries of EirGrid plc (other than the subsidiaries of the Licensee) at a time when:*
- (a) an undertaking complying with paragraph 11 is not in place;*
 - (b) there is an unremedied breach of such undertaking; or*
 - (c) the Licensee is in breach of the terms of any direction issued by the Authority under paragraph 12 in respect of such undertaking.*

8. Modification of Condition 7 by the addition of the paragraphs set out below:

- 10 *Condition 7 paragraph 6 to paragraph 9 (inclusive) shall be suspended and have no effect for as long as the state owned constitutional status of EirGrid plc remains unchanged and EirGrid plc are the legal and beneficial owners of the entire issued share capital of the Licensee.*

Undertaking from EirGrid plc

- 11 *For as long as the state owned constitutional status of EirGrid plc remains unchanged and EirGrid plc are the legal and beneficial owners of the entire issued share capital of the Licensee the Licensee shall procure, from EirGrid plc a legally enforceable undertaking in favour of the Licensee:*

- (a) in a form approved by the Authority;*
- (b) that will remain in force for as long as the Licensee remains the holder of the Licence and the state owned constitutional status of EirGrid plc remains unchanged and EirGrid plc are the legal and beneficial owners of the entire issued share capital of the Licensee; and*
- (c) to the effect that the EirGrid plc will give to the Licensee, and will procure that every subsidiary of, or person controlled by, EirGrid plc (other than the Licensee and its subsidiaries) will give to the Licensee, all such information as may be necessary to enable the Licensee to comply fully with paragraph 1 of this Condition.*

- 12 *The Licensee shall:*

- (a) deliver to the Authority evidence that the Licensee has complied with the obligation under paragraph 11 (including a copy of the undertaking to be procured under that paragraph);*
- (b) inform the Authority immediately in writing if the directors of the Licensee become aware that any such undertaking has ceased to be legally enforceable or that its terms have been breached; and*
- (c) comply with any direction from the Authority to enforce any such undertaking.*

- 13 *The Licensee shall not, save with the consent in writing of the Authority, enter (directly or indirectly) into any contract or arrangement with EirGrid plc or any of the subsidiaries of EirGrid plc (other than the subsidiaries of the Licensee) at a time when:*

- (a) an undertaking complying with paragraph 11 is not in place;*
- (b) there is an unremedied breach of such undertaking; or*
- (c) the Licensee is in breach of the terms of any direction issued by the Authority under paragraph 12 in respect of such undertaking.*

PART 2 - MODIFICATION TO SONI'S MO LICENCE

1. Modification of condition 11 by including a new paragraph 6 in the form set out below:

6. Condition 11 paragraph 3 to paragraph 5 (inclusive) shall be suspended and have no effect for as long as the state owned constitutional status of EirGrid plc remains unchanged and EirGrid plc are the legal and beneficial owners of the entire issued share capital of the Licensee.

2. Modification to Condition 10 paragraph 1 in the form set out below:

1 The Licensee shall:

(a) unless it has already done so prior to this Condition coming into force, establish; and

(b) at all times thereafter maintain,

the full managerial and operational independence of the Market Operator Activity from any Associated Business.

3. Modification to Condition 10 paragraph 14 in the form set out below:

“Associated Business” means any business of the Licensee (or of any affiliate or related undertaking of the Licensee) other than a relevant holding company, ~~the Market Operation Activity, the Transmission System Operator Business, the Transmission Owner Business and the Distribution Business.~~

4. Including a new condition 3A in the form set out below:

Condition 3A – Parent Company Undertaking from EirGrid plc

Parent Company Undertaking from EirGrid plc

1 Whilst EirGrid plc are the legal and beneficial owners of the entire issued share capital of the Licensee, the Licensee shall procure from EirGrid plc a legally enforceable undertaking in favour of the Licensee:

(a) in a form approved by the Authority; and

(b) that will remain in force for as long as the Licensee remains the holder of the Licence and EirGrid plc are the legal and beneficial owners of the entire issued share capital of the Licensee.

- (c) *to the effect that EirGrid plc shall ensure that at all times (i) the Licensee shall have adequate financial and non-financial resources in order that it may perform its obligations and discharge any liabilities arising under the Licence and (ii) it guarantees in full as and when they fall due the performance of such obligations and the discharge of such liabilities.*
- 2 *Nothing in this Condition 3A shall prevent or inhibit the Licensee from satisfying its obligation under paragraph 1 by reference and extension to the legally enforceable undertakings required under Conditions 3 and 6 of this Licence.*
5. Modification to Condition 3 by the addition of the paragraphs set out below:
- 10 *Condition 3 paragraph 6 to paragraph 9 (inclusive) shall be suspended and have no effect for as long as the state owned constitutional status of EirGrid plc remains unchanged and EirGrid plc are the legal and beneficial owners of the entire issued share capital of the Licensee.*

Undertaking from EirGrid plc

- 11 *For as long as the state owned constitutional status of EirGrid plc remains unchanged and EirGrid plc are the legal and beneficial owners of the entire issued share capital of the Licensee the Licensee shall procure, from EirGrid plc a legally enforceable undertaking in favour of the Licensee:*
- (a) *in a form approved by the Authority;*
- (b) *that will remain in force for as long as the Licensee remains the holder of the Licence and the state owned constitutional status of EirGrid plc remains unchanged and EirGrid plc are the legal and beneficial owners of the entire issued share capital of the Licensee; and*
- (c) *to the effect that EirGrid plc will refrain from any action, and will procure that every subsidiary of EirGrid plc (other than the Licensee and its subsidiaries) will refrain from any action, which would be likely to cause the Licensee to breach any of its obligations under the Order, the Energy Order, the SEM Order or the Licence.*
- 12 *The Licensee shall:*
- (a) *deliver to the Authority evidence that the Licensee has complied with the obligation under paragraph 11 (including a copy of the undertaking to be procured under that paragraph);*
- (b) *inform the Authority immediately in writing if the directors of the Licensee become aware that any such undertaking has ceased to be legally enforceable or that its terms have been breached; and*

(c) *comply with any direction from the Authority to enforce any such undertaking.*

13 *The Licensee shall not, save with the consent in writing of the Authority, enter (directly or indirectly) into any contract or arrangement with EirGrid plc or any of the subsidiaries of EirGrid plc (other than the subsidiaries of the Licensee) at a time when:*

(a) *an undertaking complying with paragraph 11 is not in place;*

(b) *there is an unremedied breach of such undertaking; or*

(c) *the Licensee is in breach of the terms of any direction issued by the Authority under paragraph 12 in respect of such undertaking.*

6. Modification to Condition 6 by the addition of the paragraphs set out below:

10 *Condition 6 paragraph 6 to paragraph 9 (inclusive) shall be suspended and have no effect for as long as the state owned constitutional status of EirGrid plc remains unchanged and EirGrid plc are the legal and beneficial owners of the entire issued share capital of the Licensee.*

Undertaking from EirGrid plc

11 *For as long as the state owned constitutional status of EirGrid plc remains unchanged and EirGrid plc are the legal and beneficial owners of the entire issued share capital of the Licensee the Licensee shall procure, from EirGrid plc a legally enforceable undertaking in favour of the Licensee:*

(a) *in a form approved by the Authority;*

(b) *that will remain in force for as long as the Licensee remains the holder of the Licence and the state owned constitutional status of EirGrid plc remains unchanged and EirGrid plc are the legal and beneficial owners of the entire issued share capital of the Licensee; and*

(c) *to the effect that EirGrid plc will refrain from any action, and will procure that every subsidiary of EirGrid plc (other than the Licensee and its subsidiaries) will refrain from any action, which would be likely to cause the Licensee to breach any of its obligations under the Order, the Energy Order, the SEM Order or the Licence.*

12 *The Licensee shall:*

(a) *deliver to the Authority evidence that the Licensee has complied with the obligation under paragraph 11 (including a copy of the undertaking to be procured under that paragraph);*

(b) *inform the Authority immediately in writing if the directors of the Licensee become aware that any such undertaking has ceased to be legally enforceable or that its terms have been breached; and*

(c) *comply with any direction from the Authority to enforce any such undertaking.*

13 *The Licensee shall not, save with the consent in writing of the Authority, enter (directly or indirectly) into any contract or arrangement with EirGrid plc or any of the subsidiaries of EirGrid plc (other than the subsidiaries of the Licensee) at a time when:*

(a) *an undertaking complying with paragraph 11 is not in place;*

(b) *there is an unremedied breach of such undertaking; or*

(c) *the Licensee is in breach of the terms of any direction issued by the Authority under paragraph 12 in respect of such undertaking.*

PART 3 - MODIFICATION TO EIRGRID'S SO LICENCE

1. Modification to Condition 4 paragraph 1(e)(i)-(iv) in the form set out below:
 - (i) *at all times protect the interests of consumers of electricity in Northern Ireland and Ireland;*
 - (ii) promote the efficient discharge of the obligations imposed on the Licensee in its capacity as the Transmission System Operator, and on the Northern Ireland System Operator, under licences, laws and regulations;
 - (iii) facilitate the development, maintenance and operation of the transmission system as part of efficient, economical, co-ordinated, safe, secure and reliable All-Island Transmission Networks;
 - (iv) neither prevent nor restrict effective competition in the generation and supply of electricity on the Island of Ireland; and
 - (vi) promote good industry practice and efficiency in the implementation and administration of the matters covered by the System Operator Agreement.

2. Modification to Condition 3 paragraph 1 by the addition of the paragraph set out below:
 - (g) *when carrying out the functions in paragraphs (a) – (f) at all times have regard to the need to protect the interests of consumers of electricity in Northern Ireland and Ireland.*

APPENDIX 2 – NOTICES FOR MODIFICATION

PART 1 - NOTICE FOR MODIFICATION OF SONI SO LICENCE

NOTICE UNDER ARTICLE 14(2) OF THE ELECTRICITY (NORTHERN IRELAND) ORDER 1992

In pursuance of its duties and powers under Article 6(2) of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 and Article 14(1) of the Electricity (Northern Ireland) Order 1992 (as amended) (the “**Order**”) the SEM Committee (the “**Committee**”) having obtained the consent of the Licensee, hereby gives notice on behalf of the Northern Ireland Authority for Utility Regulation under Article 14(2) of the Order as follows:

- 1 It proposes to modify the system operator licence (the “**Licence**”) held by SONI Limited (the “**Licensee**”) by:
 - a. modifying the existing licence conditions as set out in Appendix 1 part 1 to the consultation paper on the proposed acquisition of the Licensee by EirGrid plc dated 18 December 2008; and
 - b. adding the new condition 3A relating to the giving of a parent company undertaking by EirGrid plc as set out in Appendix 1 part 1 to the consultation paper on the proposed acquisition of the Licensee by EirGrid plc.
- 2 The reasons for the proposed modifications are to:
 - a. permit the proposed acquisition of the Licensee by EirGrid plc;
 - b. ensure that following the acquisition the obligations of the ultimate controller before the acquisition apply to EirGrid plc following the acquisition;
 - c. enshrine the principle of protection of the interests of consumers of electricity in Northern Ireland in the system operators agreement;
 - d. ensure the operational independence of the Licensee; and
 - e. maintain and bolster the financial security of the Licensee.
- 3 The effect of the proposed modifications will be to permit the acquisition of the Licensee by EirGrid plc and ensure that appropriate and robust licence conditions are in place from the date of acquisition.
- 4 Representations or objections with respect to the proposed modifications (which are available on the All Island Project or NIAUR websites or can be obtained by contacting the person named below) may be made on or before **5pm on Friday 30th January 2009** to:

The SEM Committee care of: Martina Maguire
The Northern Ireland Authority for Utility Regulation
Queens House
14 Queen Street
Belfast
BT1 6ER

Tel: 028 9031 1575
Fax: 028 9031 1740

Email: martina.maguire@niaur.gov.uk

- 5 The Committee has, pursuant to Articles 14(3)(b) and 14(4) of the Order respectively served a copy of this notice on the Licensee and sent a copy to the Department of Enterprise Trade and Investment.

Dated this 18 December 2008

Dermot MacCann

For and on behalf of the SEM Committee

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PART 2 - NOTICE FOR MODIFICATION OF SONI MO LICENCE

NOTICE UNDER ARTICLE 14(2) OF THE ELECTRICITY (NORTHERN IRELAND) ORDER 1992

In pursuance of its duties and powers under Article 6(2) of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 and Article 14(1) of the Electricity (Northern Ireland) Order 1992 (as amended) (the “**Order**”) the Single Electricity Market Committee (the “**Committee**”) having obtained the consent of the Licensee, hereby gives notice on behalf of the Northern Ireland Authority for Utility Regulation under Article 14(2) of the Order as follows:

- 1 It proposes to modify the market operator licence (the “**Licence**”) held by SONI Limited (the “**Licensee**”) by:
 - a. modifying the existing licence conditions as set out in Appendix 1 part 2 to the consultation paper on the proposed acquisition of the Licensee by EirGrid plc dated 18 December 2008; and
 - b. including a new condition 3A relating to the giving of a parent company undertaking by EirGrid plc as set out in Appendix 1 part 2 to the consultation paper on the proposed acquisition of the Licensee by EirGrid plc.
- 2 The reasons for the proposed modifications are:
 - a. to permit the proposed acquisition of the Licensee by EirGrid plc;
 - b. to ensure that following the acquisition the obligations of the ultimate controller before the acquisition apply to EirGrid plc following the acquisition;
 - c. ensure the operational independence of the Licensee; and
 - d. maintain and bolster the financial security of the Licensee.
- 3 The effects of the proposed modifications will be to permit the acquisition of the Licensee by EirGrid plc and ensure that appropriate and robust licence conditions are in place from the date of acquisition.
- 4 Representations or objections with respect to the proposed modifications (which are available on the All Island Project or NIAUR websites or can be obtained by contacting the person named below) may be made on or before **5pm on Friday 30th January 2009** to:

The SEM Committee care of: Martina Maguire
The Northern Ireland Authority for Utility Regulation
Queens House
14 Queen Street
Belfast
BT1 6ER

Tel: 028 9031 1575
Fax: 028 9031 1740

E Mail: martina.maguire@niaur.gov.uk

- 5 The Committee has, pursuant to Articles 14(3)(b) and 14(4) of the Order respectively served a copy of this notice on the Licensee and sent a copy to the Department of Enterprise Trade and Investment.

Dated this 18 December 2008

Dermot MacCann

For and on behalf of the SEM Committee

PART 3 - NOTICE FOR MODIFICATION OF THE EIRGRID SO LICENCE

Notice of a modification to the Transmission System Operator licence under the Electricity Regulation Act 1999, as amended

In accordance with the modification procedures outlined in Section 20 of the Electricity Regulation Act 1999, as amended (the "Act") and Section 8A(4) of the Electricity Regulation (Amendment) (Single Electricity Market) Act 2007, the Single Electricity Market Committee (the "Committee") on behalf of the Commission for Energy Regulation proposes to amend the Transmission System Operator licence issued to EirGrid plc under Statutory Instrument No. 445 of 2000. This modification is suggested so as to enable the proposed acquisition of SONI Limited by EirGrid plc, to enshrine the principle of protection of the interests of consumers of electricity in Northern Ireland and Ireland in the EirGrid plc licence and in the performance of the system operator's agreement.

The Committee has, pursuant to Articles 19(4) and 19(5) of the Act respectively, served a copy of this notice on EirGrid plc and sent a copy of this notice to the Department of Communications, Energy and Natural Resources.

Comments on this proposal may be e-mailed or sent in writing by 5 pm on 30 January 2009 to;

Jamie Burke,
Commission for Energy Regulation,
The Exchange,
Belgard Square North,
Tallaght,
Dublin 24.

E-mail: jburke@cer.ie
Tel: +353 (0)1 4000 800
Fax: +353 (0)1 4000 850