



27 April 2018

Mr Jody O'Boyle  
Utility Regulator  
Queens House  
14 Queen Street  
Belfast  
BT1 6ED

Dear Jody

**Ref: UR consultation on SONI CMA Costs and K term amendment**

The Consumer Council is a non-departmental public body (NDPB) established through the General Consumer Council (NI) Order 1984. Our principal statutory duty is to promote and safeguard the interests of consumers in Northern Ireland (NI). The Consumer Council welcomes the opportunity to respond to this Utility Regulator (UR) consultation.

The Consumer Council is of the opinion that the CMA appeals framework must safeguard the interest of consumers and contribute to minimise the cost of any appeal. The CMA Final Determination (FD) on costs<sup>1</sup> supports this view where it states that the CMA was “mindful of the need to incentivise appellants to spend prudently and in a proportionate manner in appeals”<sup>2</sup>. We welcome this UR consultation document as it aims to protect NI consumers by avoiding an over-recovery of costs by SONI relating to the CMA appeal.

In its FD the CMA disallowed a proportion of the costs that SONI<sup>3</sup> claimed because as it stated, “much of the expert material provided was not particularly helpful to the Appeal Group deliberations” and it “did not accept all the arguments put forward by SONI”<sup>4</sup>. As such we do not see how consumers can benefit from allowing SONI to recover any appeal costs that are not included in the CMA costs order. Therefore, The Consumer Council

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<sup>1</sup> <https://assets.publishing.service.gov.uk/media/5a733b70ed915d0e8e3986d7/soni-appeal-costs-determination.pdf>

<sup>2</sup> Point 72 of the CMA FD on costs.

<sup>33</sup> The actual costs figures were omitted from the CMA’s final determination on costs.

<sup>4</sup> Points 71 and 70 if the CMA FD on costs.

agrees with the UR assessment in point 15 of the consultation that “It is not appropriate for the costs incurred by SONI in relation to the CMA appeal to be passed on to customers to any greater extent than provided for in the CMA Costs Order.”

The UR proposes to achieve this outcome through a modification on SONI’s transmission licence that would exclude appeal costs from the 50:50 cost risk sharing mechanism. We believe that this modification provides protection to consumers and a precedent for future appeals. Therefore we support the modification.

We note that the cost figures the UR has included in the consultation paper are not based on SONI’s actual CMA appeal costs. The Consumer Council is concerned about this lack of consistency and transparency. It is important that the regulatory process is consistent, open and transparent, and in our view this requires disclosure of information relevant to consumers, such as SONI’s costs that consumers may be asked to pay. The Consumer Council asks the UR to address and clarify this in its decision paper.

If you require further information or you wish to discuss any aspect of this response please contact Paulino Garcia on 02890 251645 or [Paulino.Garcia@consumercouncil.org.uk](mailto:Paulino.Garcia@consumercouncil.org.uk).

Yours sincerely

PAULINO GARCIA

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