

Utility Regulator SONI TSO Governance Consultation Paper

EirGrid Response

25 June 2021



Executive Summary

1. EirGrid plc. (“EirGrid”) is the licensed Transmission System Operator (“TSO”) and Market Operator (“MO”) for Ireland. We are the 100% owner of SONI Ltd¹ (“SONI”), the company which is the subject of this consultation in relation to its governance. Together with SONI Ltd., we operate the Single Electricity Market (“SEM”) on the island of Ireland through *both* the Market Operator Agreement (“MOA”) and System Operator Agreement (“SOA”). Given our role, and the impact of the Utility Regulator’s (“UR”) proposals on our business and activities, it is important that our views are heard and taken into account in respect of this consultation.
2. EirGrid acknowledges and supports the separate response to this consultation by SONI Ltd. EirGrid’s submission deals with matters more particular to EirGrid as the sole shareholder and parent, as the holder of licences which were amended by the SEM Committee at the time of acquisition of SONI by EirGrid, as operators of the SEM and the SEM impact from the proposals.

EirGrid’s Concerns

3. At the outset we wish to state that we are extremely concerned with the proposals set out in this consultation and their implications. These implications extend not only to SONI, and to EirGrid, but would specifically have an adverse impact on electricity consumers in both Northern Ireland and Ireland. If implemented, they would have significant implications for the SEM. They are also in direct contradiction of the energy policy of both the UK and Irish governments.
4. Given our role, we are very disappointed that there has been no specific engagement or even correspondence by the UR with EirGrid or its Board on these proposals. The UR expresses concerns regarding the effectiveness of the SONI Board, yet it has never written to our Board or engaged with us concerning this. We are not even listed in the UR paper as a body to whom the consultation might be deemed to be of interest. We contrast this with other regulatory reviews of corporate governance, such as that conducted by Ofwat, where shareholders were specifically consulted, or your own review of the governance of Mutual Energy Limited, an unregulated entity but shareholder of a number of regulated licensed businesses. Moreover, given our specific role and remit as set out above, our role is much more than that of simply shareholder.
5. As a company, and as a Board, we have a specific duty to exercise our functions in a manner which seeks to take into account and to protect the interests of consumers of electricity in *both* Ireland and Northern Ireland. This is enshrined in our Memorandum and Articles of Association and in our Directors’ Code of Conduct. It is a specific licence requirement provided for in our TSO licence granted to us by the Commission for Regulation of Utilities (“CRU”) in respect of the exercise of *all* of our functions under that licence². The Board takes this duty extremely seriously

¹ Through our 100% owned subsidiary, EirGrid UK Holdings Ltd.

² [Condition 3 General Functions 1\(j\)](#) of the EirGrid TSO Licence states “*the Licensee shall...when carry out the functions...at all times have regard to the need to protect the interest of consumers of electricity in Northern Ireland and Ireland*”

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and acts in the interest of Northern Ireland consumers and Ireland consumers in the exercise of all its functions.

6. The UR's Consultation Paper is premised on the concept of a jurisdiction-based Transmission System Operator model. It talks about two TSOs, each to look after "their own customers".
7. This concept of approaching the operation of the transmission system and of the SEM, which is a requirement under both EirGrid and SONI's TSO licences on a jurisdictional basis, and in a manner separate to the SEM, runs counter to government policy, underpinned by the All-island Energy Market Development Framework³ in Ireland and in Northern Ireland. If implemented, it would have a real and material impact on the SEM. This impact cannot be overstated. A matter which has a material impact on the SEM is under the legal frameworks in both Ireland and Northern Ireland a matter for the SEM Committee.
8. The legislation underpinning the Single Electricity Market, including the Northern Ireland legislation⁴, specifically refers to a single electricity Transmission System Operator⁵ as part of the Single Electricity Market and single power system. Regulators operate within the confines of the legislation and are subject in the discharge of their functions to the will of the legislature. They do not and cannot set policy; rather they must operate within it.

The UR's Proposed Options and their Impacts

9. Under each of the proposed options as set out, the UR through its jurisdictional approach could potentially reset or rewrite policy which would lead to a divergence in approach. This exceeds the regulatory mandate and is a matter for the Department for the Economy in Northern Ireland and the Department of Environment, Climate and Communications in Ireland and the Ministers of both.
10. An inevitable consequence of this revised approach to a subset of SONI's regulated activities, specifically those covered under its licence to Participate in the Transmission of Electricity, is that SONI and its governance is explicitly proposed to be 'cleaved' in two. This alone goes against every principle of corporate governance; that the directors of a corporate entity must exercise their duties on behalf of the entire corporate.
11. In EirGrid's case its customers under its TSO licence are those in Ireland and Northern Ireland. In SONI's case it is proposed in the UR's Consultation Paper to include a licence condition for this to specifically require SONI to exercise its functions in the interest solely of Northern Ireland and Northern Ireland customers. Such a dichotomy whereby EirGrid would have an obligation in respect of customers across the island but SONI in respect of solely Northern Ireland would be simply unsustainable.

³ [All-island Energy Market Development Framework](#)

⁴ The Electricity (Single Wholesale Market) (Northern Ireland) Order 2007
<https://www.legislation.gov.uk/nisi/2007/913/contents>

⁵ Paragraph 10(c) of the Explanatory Memorandum of Electricity (Single Wholesale Market) (Northern Ireland) Order 2007
<https://www.legislation.gov.uk/nisi/2007/913/memorandum/contents>

12. The UR's proposal to rewrite policy is based on an assertion or assumption that there is some form of conflict of interest between EirGrid and SONI. This conflict has not been evidenced and does not in fact exist. Indeed, quite the contrary. The UR has explicitly stated in the Consultation Paper it has not identified any 'harm' or specific performance issues which have given rise to the need for measures to be taken in the current arrangements. The UR recently reconfirmed this in evidence to the Northern Ireland Assembly Committee for the Economy.⁶
13. If implemented, the proposals set out by the UR would require a re-drafting of the EirGrid licences and the specific conditions consulted upon and inserted by the SEM Committee within the EirGrid licences to ensure that Northern Ireland customers' interests were specifically protected.
14. These changes to the EirGrid licences, and to the SONI licences also, were implemented at the time of and in the context of EirGrid's acquisition of SONI⁷. There has been no suggestion EirGrid has not fulfilled or honoured these requirements under its licence.
15. Indeed we have previously specifically written to the CRU seeking confirmation and assurance that it was comfortable we were so doing. The CRU expressed no concerns in this regard. EirGrid is furnishing a copy of this response to the CRU.

Benefits of EirGrid acquiring SONI

16. Contrary to there being a conflict of interest or a concern that somehow EirGrid has not supported SONI, EirGrid has in fact been a supportive shareholder, whose interests are aligned with those of SONI in seeking to ensure the all island arrangements and the SEM operate effectively. In the 12 years since EirGrid acquired SONI no dividend has ever been taken or paid and all monies have been reinvested in the business.
17. Since EirGrid's acquisition, capital investment in SONI of over £45⁸ million has been facilitated. Employment numbers in Belfast have grown from 75 to 123. SONI's office building at Castlereagh House has been refurbished and expanded.
18. EirGrid has continued to support the SONI business through provision of a £10m Parent Company Guarantee callable under both the SONI licences. For some 3½ years SONI was entirely reliant on financial support from EirGrid to continue to fulfil its functions until SONI was accorded a financeable framework only following an appeal to the Competition and Markets Authority in London. Pending the securing of independent bank funding for SONI, the value of this support in December 2018 was some £■ million.

⁶ NI Assembly – Committee for the Economy Meeting - Wednesday 21 April 2020; the UR state that their "report identified risks for Northern Ireland consumers in a number of areas but no actual evidence of harm".

⁷ [SEM-08-176 Condition 32, page 11](#)

⁸ An exchange rate of £1 = €1.12 has been applied throughout this document

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19. The direct sharing and pooling of knowledge systems and expertise has enabled both EirGrid and SONI to become world leaders in terms of the integration of non- synchronous renewables on a small islanded synchronous system. An [REDACTED] has increased the level of cyber-resilience against an ever-increasing threat for the benefit of citizens in both jurisdictions.
20. We want to contrast this with the unsupported assertions made against EirGrid in the paper— that there is somehow an overcharging of Northern Ireland customers, that EirGrid is not discharging its functions under the SOA or that EirGrid has somehow acted in inappropriate fashion. We categorically refute these and deal with them in the main body of the response.
21. As highlighted above, the UR did not engage with EirGrid prior to publishing its paper, put these so called ‘facts’ to EirGrid, seek an explanation or response, or provide EirGrid with an opportunity to respond to them.
22. The Call for Evidence (CfE) run by UR identified no specific evidence of harm. Yet in the absence of evidence the UR now proposes measures to address the harm unidentified.
23. The Single Electricity Market has been a real success story in terms of the benefits it has brought to customers and in terms of all island co-operation. These benefits are articulated by the SEM Committee itself in terms of the cost benefit analysis it itself has undertaken both in relation to its original introduction and subsequently in moving to the Integrated Single Electricity Market (ISEM).
24. These benefits are not articulated in the UR’s Consultation Paper; nor is the significant harm to the SEM, and to customers in Northern Ireland, which will be caused by the measures set out.
25. This harm, or SEM impact, is set out in the main body of the response but extends to implications, and increased cost, inefficiency and reduced effectiveness in terms of the energy balancing market, the capacity market, the arrangements for system services and for the North South Interconnector project.
26. Simply put, on the basis of that proposed, the current overall cost sharing and cost allocation rules which have underpinned arrangements to date would become untenable. Effectively there would need to be a re-attribution of costs to reflect the jurisdictional approach.
27. To take just one example; since the introduction of ISEM approximately 40% of the payments under Dispatch Balancing Costs⁹ have been paid to Northern Ireland participants in the SEM. Consumers in Northern Ireland have paid for c. 25% of the costs. That is, this one cost reallocation would cost Northern Ireland customers c. £35m more each year.

⁹ The Dispatch Balancing Costs make up the majority of the Imperfections Costs; in 2019/20 the total Imperfections Costs for the island was £228 million, of which circa £91 million was paid to Northern Ireland participants.

28. The costs of provision of operating reserve today are shared across customers on the island with all customers making equal contribution based on their energy consumption. Two TSOs operating independently would however be expected to allocate costs based on a causer pays system impact. With the smaller consumption base in Northern Ireland relative to the size of largest units (the primary driver of reserve costs) costs in Northern Ireland would rise, and rise significantly. A 10% increase in reserve requirements would give rise to a minimum 10% increase in reserve costs.
29. Moreover this would not simply represent a reallocation, as the jurisdictional approach would itself drive significantly higher costs overall. All the options proposed by the UR include a licence condition specific to the SONI TSO licence in respect of Northern Ireland consumers. This would inevitably cause a separation between EirGrid and SONI. If SONI and EirGrid had separate forecasting, planning and operational procedures the costs would be greater, compared to both parties utilising and apportioning the cost of an all-island system.
30. Two TSOs operating independently would procure or seek procurement of a different overall level of capacity as in fulfilment of their obligation to consider not the interests on the island but on a jurisdictional basis with a lesser reliance on the other. We estimate that an additional 500MW of capacity, at an estimated future total annual cost of approximately £25 million¹⁰, would be required to address the inevitable shortfall in the respective jurisdictions; overall costs across both jurisdictions would rise as a result.
31. In addition to the very significant policy implications, the proposals also have significant implications in terms of the exercise of corporate governance and oversight by EirGrid in relation to SONI as subsidiary, particularly under Options B, C and D. This includes the ability for the non-executive members who sit on the EirGrid Board to continue to discharge their appropriate governance and oversight over both EirGrid as parent and SONI as subsidiary. These are of significant concern to the EirGrid Board. It is our view that these options must be ruled out on this basis. We further articulate these governance concerns in the paper.

Future Impacts

32. EirGrid fully supports the principle of SONI as a strong TSO and Market Operator for Northern Ireland within the all island context. We cannot and do not however support these proposals and, for the avoidance of doubt, do not support *any* of the options as set out in the UR's paper. The main body of this response further articulates why this is the case in terms of the impact and the degree to which they are premised on misunderstanding and misassertion.
33. The UR's Consultation Paper suggests that under all options it has set out that SONI would continue to be owned by EirGrid. However, were that proposed by the UR within its paper to be implemented, the underlying policy proposition and benefit which could be delivered to

¹⁰ Based on an assumed average price per MW of £50,000. Average price per MW for 2023/24 T-4 SEM Capacity Market Auction Results [here](#) and 2024/25 T-4 SEM Capacity Market Auction Results [here](#) of £46,855 and £47,131 respectively.

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customers on the island as a result of EirGrid's continued ownership of SONI would effectively be called into question.

34. SONI Ltd., our subsidiary company, is furnishing a parallel response to this Consultation process. In that response, which we have the opportunity to have sight of, SONI clearly sets out why the issues in this Consultation Paper do not fall within the *vires* of the UR acting alone and must represent SEM Committee matters.
35. EirGrid supports SONI's submission that the UR does not have the *vires* to implement said proposals. If implemented they would have significant negative impacts on the SEM and on customers in both Ireland and Northern Ireland.
36. It is time for this to move from a regulatory discussion in relation to a single licensee, to its rightful place as a wider discussion with both Regulatory Authorities and the SEM Committee and wider stakeholders as to the future of the SEM and the all island energy framework.

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1. Introduction and Background

37. EirGrid plc was established under Irish Statutory Instrument 445/2000. EirGrid plc. is the licensed Transmission System Operator (“TSO”) and Market Operator (“MO”) for Ireland. We are the 100% owner of SONI Ltd¹¹, the company which holds corresponding licences in Northern Ireland and which is the subject of the UR’s consultation in relation to its governance.
38. Together with SONI Ltd. we operate the Single Electricity Market (“SEM”) on the island of Ireland through *both* the Market Operator Agreement (“MOA”) and System Operator Agreement (“SOA”).
39. The SEM is underpinned by a Memorandum of Understanding between the government of Ireland and the government of the United Kingdom¹². Specific legislative frameworks and construct to support the operation of the SEM have been passed by the legislature in both jurisdictions¹³.
40. The legislation which underpins the SEM flowed from the All-island Energy Market Development Framework (2004)¹⁴, a joint policy statement of the two governments. That policy statement has never been superseded and it remains the extant policy of the two governments today.
41. The All-island Energy Market Development Framework provided for consideration of a single electricity Transmission System Operator on the island of Ireland. This was further called out as the backdrop to the passing of the Northern Ireland Order 2007¹⁵ and as part of the Explanatory Memorandum which accompanied and underpinned that legislation.
42. The legislative arrangements put in place at the time of SEM establishment in both Ireland and Northern Ireland are clear. Where a matter is a SEM matter then any relevant function of the UR or the CRU shall be exercised by its SEM Committee¹⁶.
43. The SEM Committee of the UR comprises up to three UR members appointed by the Department for Economy up to three CRU members appointed by the Department¹⁷ with approval of the Irish Minister, an independent member and a deputy independent member¹⁸. The SEM Committee of the CRU is similarly constituted¹⁹.

¹¹ Through our 100% owned subsidiary, EirGrid UK Holdings Ltd.

¹² [Memorandum of Understanding](#)

¹³ Paragraph 10c, Explanatory Memorandum of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 <https://www.legislation.gov.uk/nisi/2007/913/memorandum/contents>

¹⁴ All-Island Energy Market: A Development Framework, DETI, Department of Communications, Marine and Natural Resources, NIAER, CER, November 2004

¹⁵ Electricity (Single Wholesale Market) (Northern Ireland) Order 2007–

<https://www.legislation.gov.uk/nisi/2007/913/contents> referred to as the Northern Ireland Order 2007 in this document

¹⁶ Northern Ireland Order 2007 – [SEM Committee Article 6.\(3\)](#)

¹⁷ “the Department” means the Department of the Environment, Climate and Communications.

¹⁸ Northern Ireland Order 2007 Schedule 2.1

¹⁹ Electricity Regulation (Amendment) (Single Electricity Market) Act 2007 Section 8A

44. Where the SEM Committee of the UR exercises its functions it must do so not in the interests of consumers solely in Northern Ireland alone but in the interests of consumers in Northern Ireland and Ireland taken together²⁰.
45. The SEM is much broader than simply those functions operated by the SEM Operator (“SEMO”) and encompasses many of the functions undertaken under EirGrid’s and SONI’s TSO licences. This includes the operation of the all island Capacity Market, all island Scheduling and Dispatch arrangements, the procurement of all island System Services under the DS3 programme, and the responsibilities stemming from the implementation of European Network Codes. These have driven the significant changes relating to system operation, generator requirements and domestic and cross-border markets. Due to the heavy dependencies between both System Operators, it is vital that SONI’s and EirGrid’s systems work seamlessly together. For the UR to suggest changes to SONI’s TSO licence, which could invariably impact market functions operated under the TSO licence, or SEM, is a concern for EirGrid such changes would be considered a matter for the SEM Committee by EirGrid, not least due to their likely impact on the SEM.
46. This acknowledgement that System Operator-to-System Operator co-operation is required to effectively deliver the SEM is further apparent by the fact that *both* System Operator and Market Operator licensees (i.e. EirGrid as System Operator and Market Operator and SONI likewise) are party to the System Operator Agreement and are required to be a party to that agreement under licence.
47. The assets to deliver the Integrated SEM (ISEM) in 2018 sit in their entirety on the Transmission System Operator Asset Registers and Regulatory Asset Bases (RABs) and not that of SEMO. Were these ISEM assets not related to the exercise of functions under the TSO licences this simply could not be the case. The licences would prohibit it²¹. As opposed to questioning it, both Regulatory Authorities have in fact endorsed it.
48. In total 24 (48% of the total) licence conditions within SONI’s Licence to Participate in the Transmission of Electricity require it to work in co-operation with or in conjunction with EirGrid as licensed Transmission System Operator for Ireland. Similarly, there are 14 (38% of the total) licence conditions within the EirGrid TSO Licence requiring co-operation with SONI as licensed Transmission System Operator for Northern Ireland. The majority of the licence obligations in SONI’s Licence to Participate in the Transmission of Electricity that don’t require work in co-operation with or in conjunction with EirGrid’s TSO licence represent standard licence architecture, that is largely applicable to all utility licences.

²⁰ Per Article 9(1) of the Northern Ireland Order 2007 - <https://www.legislation.gov.uk/nisi/2007/913/contents>.

²¹ [Condition 5.1](#) of the SONI TSO licence states the Licensee shall procure that the TSO Business gives no cross-subsidy to, and receives no cross-subsidy from, any other business of the Licensee or of any affiliate or related undertaking of the Licensee. [Condition 23.1](#) of the EirGrid TSO licence states that the Licensee shall procure that the Transmission System Operator Business shall not give any subsidy or cross subsidy (direct or indirect) to any Separate Business of the Licensee and/or any affiliate or related undertaking of the Licensee.

49. The SOA is designed to enable both EirGrid and SONI to facilitate these functions. The SOA extends to the arrangements for connections to the transmission system in both Ireland and Northern Ireland, to Use of System, to the governance of technical documents such as Grid Codes, to the oversight and delivery of network planning and to operational activities such as scheduling and dispatch²².
50. In its Consultation Paper the UR itself states the SOA is a SEM requirement and overseen by the SEM Committee²³. A matter is a SEM matter - and for the SEM Committee to determine – if the SEM Committee determines that that exercise of a relevant function of the UR in relation to that matter materially affects, or is likely materially to affect, the SEM. All of the issues set out within the SOA – connections, network planning, scheduling and dispatch etc. are therefore stated by the UR to be SEM affecting and thus SEM matters.
51. It is a condition of EirGrid’s licence and that of SONI also, that the SOA be designed such as to seek to ensure protection of the interests of consumers of electricity in Northern Ireland and Ireland; this wording was specifically inserted in the licence by the SEM Committee following EirGrid’s acquisition of SONI in 2009²⁴; there is no suggestion that SONI should seek to protect Northern Ireland consumers’ interests and EirGrid should seek to protect Ireland consumers’ interests as is intimated by the UR in its Consultation Paper.
52. This is the same as for the functioning of the SEM Committee itself – there is no suggestion within the SEM Committee framework that it is for the UR to protect solely the interests of Northern Ireland consumers and the CRU solely those of consumers in Ireland. Rather both are aligned and required to protect the interests of consumers in Ireland and Northern Ireland as whole. Any other construct would be dysfunctional. If this is the case for the regulation of the SEM, it is equally the case for its operation.
53. The UR’s consultation seeks to draw a line between the governance of the discharge by SONI Ltd of its functions under its Licence to Participate in the Transmission of Electricity and its functions under its Licence to Act as SEM Operator and to suggest that their regulation is somehow separate or distinct²⁵. No such line exists or can exist and to suggest it either may or should exist is fundamentally flawed.
54. Given the context as set out above we wish to state that EirGrid is extremely concerned with the proposals set out in this consultation and their implications. These implications extend not only to SONI, and to EirGrid, but will specifically adversely impact electricity consumers in both

²² Condition 24.1(e)(a) of the SONI TSO licence states that the SOA should ‘*facilitate the planning, development, maintenance and operation of the transmission system as part of efficient, economical, co-ordinated, safe, secure and reliable All-Island Transmission Networks*’.

²³ As per Section ‘Resources in SONI to support the Board’, paragraph 20, “*The SOA remains SEMC policy and has remained unchanged, following review by the TSOs themselves from SEM to new SEM*”. We return below to the statements made by the UR concerning the discharge of the SOA.

²⁴ SEM-08-176, December 2008, paragraph 32, page 11.

²⁵ The Consultation Paper creates a dichotomy of the two by means of section i) *SONI as TSO*, paragraphs 1.19-1.23; and ii) *SONI as SEMO*, Sections 1.24-1.29.

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Northern Ireland and Ireland. They would if implemented have significant negative implications on the SEM.

55. We are particularly disappointed that there has been no specific engagement or even correspondence by the UR with EirGrid plc or its board throughout this consultation process in relation to these proposals. We contrast this with other reviews of regulatory governance, such as that conducted by Ofwat, where shareholders were specifically consulted, and in the review of Mutual Energy Ltd's governance where, to the best of our knowledge, a consultation process or call for evidence was not conducted and engagement was carried out directly by the UR with the company. EirGrid would welcome the opportunity to meet with the UR to discuss this matter further.
56. Moreover, given our specific role and remit as set out above, our role is much more than that of simply shareholder. Yet we are not even listed in the UR paper as a body to whom the consultation might be deemed to be of interest.
57. Given our role, and the impact on our business and activities by that proposed, it is important that our views are heard and taken into account in respect of our response to this consultation.

2. Background to EirGrid's Acquisition of SONI

58. EirGrid acquired SONI in 2009. The acquisition of SONI by EirGrid was the subject of both consultation and licence modifications by the SEM Committee. It was deemed to be a SEM matter²⁶ as it was considered that *“the purchase of SONI and the exercise of certain regulatory functions in connection with the matter constitute SEM Matters”*.²⁷
59. The disposal of SONI Ltd by Viridian was designed to ensure the appropriate independence of SONI in its capacity as Transmission System Operator from generation and supply interests, in compliance with European Law.
60. This independence was subsequently confirmed through SONI's Certification as an independent TSO. In the Certification decision the European Commission commented specifically on the 'strong independence' of SONI in enabling the Certification of the Northern Ireland arrangements under Article 43(8)²⁸ and that *‘the links between EirGrid and SONI support regional integration and effective independence of transmission system operation [in Northern Ireland]’*,²⁹
61. This contrasts with the arrangements for NIE Networks which remained, and remains to this day, part of a Vertically Integrated Undertaking. As a result, as part of the Certification arrangements and in its licences it was deemed appropriate that a level of business separation and ring fencing was retained between NIE Networks and ESB. The ring-fenced board compositions in ESB and NIE Networks are understandable due to the competing generation and supply aspects of their business.
62. This ring-fencing was specifically considered and called out by the UR in its governance review of NIE Networks as ESB could potentially *“take advantage of its privileged position in networks”* if NIE was not ring-fenced.³⁰
63. For SONI and EirGrid, this *“privileged position”* does not exist. They are not in competition with each other. Indeed, both TSOs perform better and provide a better service to Ireland and Northern Ireland consumers through their integrated systems.

²⁶ A SEM Matter is a matter which the SEM Committee determines that the exercise of a relevant function of the Authority in relation to that matter materially affects, or is likely materially to affect, the Single Electricity Market. The knock-on impact of the options proposed by the UR will have on the all-island framework will affect the SEM, as such, this is considered a SEM matter.

²⁷ SEM-08-176, The Proposed Acquisition of SONI Limited by EirGrid plc, paragraph 5

²⁸ Formerly Article 9(9) of Directive 2009/72/EC.

²⁹ [EU Commission Decision pursuant to Article 3\(1\) of Regulation \(EC\) No 714/2009 and Article 10\(6\) of Directive 2009/72/EC – United Kingdom \(Northern Ireland\) – SONI / NIE – 12th April 2013](#)

³⁰ As per CEPA's 2011 report on behalf of UR on the Assessment of ESB Corporate for SEM Committee, it states *“Without ring fencing, ESB would potentially be able to take advantage of its privileged position in networks to give favourable treatment to its businesses operating in the liberalised supply and generation markets.... Ring fences, implemented through licence requirements, are in place to isolate ESBN from all other Business Units (BUs), but also to separate generation businesses and to separate supply and generation”*.

64. As such this structural separation is not required in the case of SONI being owned by EirGrid. In fact precisely the opposite. NIE Networks, and the ring-fencing arrangements which pertain for NIE Networks are designed to enhance and guarantee independence through separation from affiliates and/or related entities. For SONI that independence from generation and supply is further assured and enhanced through its closer co-operation and integration with EirGrid³¹.
65. Indeed as part of the acquisition of SONI by EirGrid the SEM Committee considered if any licence or governance changes were required to the SONI or EirGrid licences to ensure the European legislation requirements for independence from generation and supply were maintained. Contrary to the situation that pertained for ESB and NIE Networks, the SEM Committee determined that:
“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.”
66. Moreover the SEM Committee then went on to state:
*“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.”*³²
67. These licence changes included an insertion into EirGrid’s Transmission System Operator licence to provide that it carries out its functions at all times having regard to the need to protect the interests of consumers of electricity in Northern Ireland *and* Ireland.³³
68. This licence Condition was introduced by the SEM Committee to seek to ensure Northern Ireland consumers’ interests were protected. There is no evidence or suggestion that EirGrid has not fulfilled this condition.
69. EirGrid has gone so far as to seek assurance from the CRU that the CRU is satisfied the Condition is being fulfilled by EirGrid³⁴. The CRU has never identified any licence-non-compliance by EirGrid in this regard. EirGrid provides a full licence compliance submission to the CRU on an annual basis.
70. This requirement, to protect the interests of consumers of electricity in Northern Ireland and Ireland, is also specifically required by our Memorandum and Articles of Association and in our Directors’ Code of Conduct.

³¹ European Commission Decision of 12.4.2013 pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of Directive 2009/71/EC – United Kingdom (Northern Ireland) – SONI / NIE.

³² SEM-08-176, *The Proposed Acquisition of SONI limited by EirGrid plc*, SEM Committee, paragraph 34

³³ [Condition 3.1\(j\)](#) of the EirGrid TSO Licence

³⁴ Letter from EirGrid to the CRU dated 31 July 2019; Letter from EirGrid to the Director of Water and Compliance at the CRU dated 30 August 2019.

71. In addition the EirGrid Board has increased in strength and number following the acquisition and a number of Non-Executive Directors (NED) with specific Northern Ireland experience and background were appointed. Since 2009 there has always been at least two such directors on the EirGrid Board. There are currently three, two of whom also serve as NEDs in respect of SONI Ltd.
72. Parallel licence conditions were introduced in the SONI licences. This includes the change to Condition 24 of the SONI Licence to Participate in the Transmission for Electricity regarding the SOA which requires SONI to protect the interests of consumers of electricity in Northern Ireland and Ireland.³⁵
73. The SOA is not designed to create a ‘natural tension’ between the interests of Northern Ireland on the one hand and Ireland on the other as suggested by the UR in their Consultation Paper. Quite the opposite. The SOA is designed to ensure EirGrid and SONI work together to enable each other to discharge their functions with a view to *“at all times protect the interests of consumers of electricity in Northern Ireland and Ireland”*³⁶ pursuant to their licence obligations.
74. We understand that in June 2013, SONI Ltd wrote³⁷ to the UR concerning the SOA and advising that *“the bringing together of SONI and EirGrid under a single governance structure has effectively internalised the requirement to enable each other to fulfil the other’s functions and therefore overcomes many of the obstacles that could potentially be present under separate governance”*. Therefore, whilst the SOA continues in existence, the single governance structure ensures the requirements of licence are fulfilled while also ensuring the protection of the interests of consumers in Northern Ireland and Ireland.
75. The introduction of the ISEM has only served to increase the need for closer co-operation between EirGrid and SONI in their capacity as licensed TSOs. New responsibilities include the discharge of the all island capacity market and the preparation and adherence to of the Balancing Market Principles Statement.
76. In addition with ISEM the line between the role of licensed Transmission System Operator and Market Operator has become less distinct as by design, it is the Transmission System Operators which function as the Balancing Market Operators. It is the role of SONI and EirGrid as TSOs to deliver many of the SEM functions. They do so in accordance with the European Directives, Regulations and Network Codes.
77. Within the European constructs all such functions are accorded to the electricity Transmission System Operators. There is no concept of the Market Operator as provided for within the island of Ireland context and which has existed in the market arrangements pre-dating the revised SEM Arrangements.

³⁵ *“The Licensee shall... in conjunction with the Republic of Ireland System Operator... (e) is designed so as to at all times protect the interests of consumers of electricity in Northern Ireland and Ireland.”*

³⁶ SONI TSO Licence, Condition 24.1 (e)(a)

³⁷ SONI Letter to the UR, re: Compliance Report for SONI Ltd’s licence to Participate in the Transmission of Electricity, 28 June 2013

78. The requirements of the European Network Code Regulations – to which both Ireland and Northern Ireland subscribe – encourages market integration. The level of separation proposed by the UR does not fit within the revised SEM arrangements and the proposed separation between the Transmission System Operator and Market Operator functions does not make sense in this context.

3. Impact on the EirGrid licences

79. Under each of the proposed options set out in the Consultation Paper, the expected outcomes could effectively reset or rewrite the policy approach to the all island arrangements. This exceeds the regulator's mandate and is a matter for the Department for the Economy in Northern Ireland and the Department in Ireland and the Ministers of both.
80. The UR's proposals seem to be based on an assumption that there is some form of conflict of interest between EirGrid and SONI. This conflict has not been articulated. Indeed, quite the contrary. The UR has explicitly stated in the paper it has not identified any 'harm' or specific performance issues which have given rise to the need for measures to be taken in the current arrangements. The UR recently reconfirmed this in evidence to the Northern Ireland Assembly Committee for the Economy.³⁸
81. The options set out by the UR all propose to introduce a licence condition, and therefore an obligation, on SONI Ltd. to operate and to discharge its duties on behalf of Northern Ireland customers, and to do so in a manner 'independent' of EirGrid. Were this to be the case it would be untenable that EirGrid plc could continue to retain the existing licence obligations to discharge its functions *"on behalf of consumers in both Ireland and Northern Ireland."*³⁹
82. As a result if any of the measures as now proposed by the UR are implemented, it would inevitably require a set of corresponding changes to the EirGrid plc licences. In particular the text as set out in Condition 3 would need to be amended to remove the requirement on EirGrid to discharge its functions with a view to protecting the interests of consumers in Ireland and Northern Ireland and replace it with a specific obligation to discharge its functions on behalf of Ireland. Such changes, which would reverse the changes made at the time of EirGrid's acquisition of SONI, would need to be made by the CRU's SEM Committee.
83. The creation of this distinction in outlook between EirGrid and SONI as regards compliance with licence duties on a jurisdictional basis would be tantamount to reinterpreting the existing government policy, underpinned by the All Island Energy Market Development Framework in Ireland and in Northern Ireland. If implemented, it would have a real and material impact on the SEM. This impact cannot be overstated and is outlined in Section 4.
84. A matter is a SEM Matter – and for the SEM Committee to determine – if the SEM Committee determines that that exercise of a relevant function of the UR or the CRU in relation to that matter materially affects, or is likely materially to affect, the SEM. As such, the relevant licence condition amendments should be considered and decided upon by the SEM Committee, which has the exclusive competence to do so.

³⁸ NI Assembly – Committee for the Economy Meeting - Wednesday 21 April 2020- The UR stated that their *"report identified risks for Northern Ireland consumers in a number of areas but no actual evidence of harm."*

³⁹ Condition 3(1)(j) of <https://www.cru.ie/wp-content/uploads/2017/07/CER17036c-Eirgrid-Transmission-System-Operator-March-2017-clean-version.pdf>

85. It should be noted that as a subsidiary of a state owned company certain approvals such as the execution of borrowing agreements will continue to lie with the Irish Minister of Environment, Climate and Communications as shareholder regardless of the governance structures of SONI. Therefore, any approvals requiring ministerial consent will always apply to the SONI business and cannot be devolved to the SONI Board under any of the Options.

4. Setting out the implications in terms of the SEM

86. The proposed options included in the UR's Consultation Paper are of serious concern to EirGrid. The options, if implemented, would have a material impact on the SEM and harmful to customers in Ireland and Northern Ireland.
87. In this section, EirGrid sets out the implications on the SEM if the options proposed in the UR's consultation paper be introduced. In doing so EirGrid liaised with SONI to assess these possible implications.
88. Underpinning the UR's proposals is a fundamental requirement for the two SEM Transmission System Operators to change their operating strategies. At present, all of the TSOs' actions are based on a core assumption that all-island considerations are made when balancing security of supply obligations with the need to deliver value for consumers; each of the TSOs would instead have to unilaterally assess its system state, and plan for independent operation against its own system conditions, in advance of any inter-TSO engagement
89. The ensuing changes to operational practices would have a bearing on the investment required in generation plant in both jurisdictions. EirGrid would need to review domestic generators' frequency, voltage, inertia, reserve and restoration characteristics, so as to balance the system's requirement in a way that manages the tension between the solutions in an economic way. The end result would be a need to facilitate further investment in supplementary generation. SONI likewise.
90. This immediate investment in both infrastructure and plant that would address the security of supply challenges would not only represent significant capital outlay to consumer, but would also impact Ireland's and Northern Ireland's decarbonisation objectives. Specifically, generation plant with the capability to address the short-term adequacy issue that Ireland's system would face would not be renewable in its nature; thus the percentage of the generation mix from green sources would be significantly reduced.
91. In parallel, the unavoidable changes to EirGrid's current operational tools and practises would require additional capital expenditure. Hence, EirGrid's TSO Price Review 5 determination by the CRU would need to be reconsidered, so as to ensure that this new, large-scale exercise is captured appropriately in the revenue framework. The SONI price control likewise.⁴⁰
92. Inter-TSO cooperation between EirGrid and SONI would need to be designed in accordance with the principles more akin to that which the two TSOs currently interact with National Grid ESO.

⁴⁰ Both EirGrid and SONI's Price Control submissions included an explicit assumption that there shall be no changes resulting from the UR's Call for Evidence in respect of SONI governance which either directly increase costs to SONI or which restrict or diminish SONI's ability to operate efficiently and effectively as part of the wider EirGrid Group. In particular, both the baseline costs and business cases as set out in this submission are to a significant extent based on an allocation of costs for Group wide solutions

Based on the aforementioned principles of each TSO ensuring that it adheres to its domestic obligations relating to security of supply and economic and efficient operating of its system, this has the potential to increase operating costs. This cost stems from each TSO's need to account for the real-time risks on neighbouring networks, at a time when the TSO has limited information concerning the system state at any given point in time.

4.1 Context: SEM regulatory frameworks and decarbonisation

93. The all-island wholesale electricity market is approaching a key moment in its progression towards a network that can truly rely on renewable energy to meet the demand of consumers. The achievements to date position the SEM among the world leaders of renewable integration, as demonstrated in the increase in the percentage of *System Non-Synchronous Penetration* (SNSP) increasing to 75%.
94. All activities carried out to reach the milestones achieved to date have been informed by policy makers' cost-benefit assessments; these assessments have been predicated on all-island system operation and include a core assumption that the costs associated with this operation will be apportioned in line with relevant sharing keys. Looking forward, such an assumption would no longer be appropriate, under the proposals of the UR, and each jurisdiction would therefore need to consider the cost-benefit assessment in the specific context of its own jurisdiction, potentially yielding a different conclusion to an all-island equivalent.
95. The resultant potential for different results could drive divergence in policy objectives between Ireland and Northern Ireland; such divergence would have unavoidable negative consequences for both jurisdictions, both in terms of their respective decarbonisation aspirations and the inevitable increase in costs of core system operation activities.
96. The shift in focus by the TSOs to operate on a more jurisdictionally independent basis will inevitably increase costs, ultimately impacting the end consumer. EirGrid would expect to see an increase in jurisdictional specific operational costs; procurement and execution of the Capacity Market; and procurement and delivery of System Services. These would be on top of the direct capital costs.
97. This scale of such changes, and the linked increase in capital outlay and operational costs, would render the cost-benefit analyses undertaken for a number of SEM initiatives redundant. There would be a need for a full revaluation of revenue streams available to wholesale electricity market participants in Ireland, to recalibrate the balance between the investor proposition and consumer value.
98. In addition, a review of the SEM's regulatory frameworks would be required to ensure that they reflect any changes to the SEM TSOs' obligations. As well as the jurisdiction-specific industry frameworks (such as the respective Grid Codes), this review would need to include the Price Review 5 determination by the CRU, as EirGrid's revenue request included a number of initiatives to be delivered jointly with SONI, so as to achieve cost savings to Irish and Northern Ireland

customers, and any regulatory framework in the SEM that includes an assumption relating to inter-TSO sharing of costs and resources.

99. The introduction of such wide-scale reform would decrease the probability of Ireland's Climate Action Plan (which has been designed to ensure at least 70% of Ireland's electricity is generated by renewable means by 2030) being achieved. It would also impact on Northern Ireland's ability to deliver on any targets which may emerge from the Strategic Energy Framework.

4.2 SEM System Operation: Real-time dispatch, Interconnection and inter-TSO Cooperation

100. At present, the roles associated with the system operation of the SEM are alternated between EirGrid and SONI. While one TSO looks after the real time operation of the system, the other TSO looks after the forward looking elements and forecasting. These roles change between EirGrid and SONI on a regular basis.
101. The two TSOs work seamlessly together. EirGrid and SONI have put in place all-island mechanisms which optimise efficiencies and resiliency, including all-island training and decision making. This allows both TSOs to have all the necessary information required to make dispatch decisions, preserve system security and operate the balancing market as efficiently as possible on an all-island basis.
102. Hence, EirGrid and SONI, as TSOs, also provide mutual support in the event of system stress on either network. This goes beyond the principles of inter-TSO support detailed in EU legislation, such as the System Operation Guideline and the Emergency Restoration Network Code, and therefore manifests itself differently to the inter-TSO support presently provided to National Grid ESO by the SEM system operators.
103. This ensures that all customers in Northern Ireland and Ireland have a secure supply of electricity at the most efficient cost. When considered against the principles of the EU legislation on this subject, the SEM TSOs' approach delivers the additional benefits of unconditional MW assistance in times of jurisdictional stress, generous voltage and reactive support near and at the interfaces between the two systems and a truly harmonised approach to outage management.
104. In response to the requirements placed on to EirGrid and SONI as a consequence of the proposals outlined in the Consultation Paper, each TSO would be required to undertake its forecasting, planning and operation activities on a jurisdictional basis so as to demonstrably prioritise local requirements, rather than by optimising the pool of resources available to the SEM community as a whole. In response, one TSO may adopt an operational strategy that requires it to retain additional local units in reserve as there is less confidence that inter-jurisdictional support will be fully available if called upon. It is expected that both TSOs could easily retain an additional 10% of reserve capability in response to the jurisdiction-focussed approach, thus incurring a minimum of an additional 10% of costs overall.

105. The balancing market operations are a TSO function under the pan-European arrangements. Therefore any divergence between EirGrid and SONI TSO operations into a more jurisdictionally focused TSO could cause a separation of the balancing markets in Ireland and Northern Ireland, with these markets independently setting balancing prices. Not only would this drive significant initial capital costs associated with the development of new systems, but there would also be additional operational costs and industry obligations associated with the governance of the new rules. Furthermore, a separation of collateral requirements and the removal of the netting Ireland and Northern Ireland positions would drive an additional exercise to establish, and manage, jurisdictional collateral.
106. EirGrid and SONI designate certain units as ‘Reliability Must Run’ (RMR)⁴¹. Any out of merit costs are socialised and ultimately borne by end consumers. Assessment of the requirement for RMR units is presently performed on an all-island basis, with current plans to move to seven (7) RMR units. If each TSO must separately assess and procure RMR units for its region, the number would likely revert to nine (9) units, of which six (6) would be in Ireland.
107. Local security policies will drive greater run hours and operation of local plants. This will ultimately reduce operating margins and increase the risk of supply shortages. Furthermore, the unavoidable narrower view of local security issues will reduce the utilisation of renewable asynchronous plants, subsequently increasing reliance on older and less reliable conventional plants.
108. This new operational practice on interface flows management would drive the need for an Inter-TSO Cooperation Agreement, as both EirGrid and SONI would need to commercially protect their systems on a jurisdictional basis. The Inter-TSO Cooperation Agreement would formally detail the specific approaches to be followed by the two TSOs during the course of operation including defined operational limits on the assistance provided by either TSO in extreme cases, the operational parameters that voltages and power flows will have to be maintained and specific agreements on coordinating relevant generator and network outages.
109. The impact of this change would extend to the utilisation of current and prospective interconnectors on the SEM-GB border, including Greenlink. Currently the ramping capability of the full all-island generation portfolio is used to set an overall limit on the rate at which power flows can change across the East-West and Moyle interconnectors (with the present value set at 10MW/min; this capability is split evenly between the two links by default, with each having 5MW/min). A jurisdiction-based approach would result in a more conservative approach to interconnector ramp rates in both jurisdictions; this would mean that the revenues of current, and planned, SEM-GB interconnectors would need further supplementing by the consumers in either jurisdiction and, in turn, significantly impact the cost-benefit analysis of these links. In turn, this reduction in efficiency would reduce wind exports (and therefore increase wind curtailment), increase security of supply issues when margins are tight and increase *ex-ante* and balancing market prices for customers across the island.

⁴¹ Reliability Must Run units are generation facilities the availability of which is necessary during certain operating conditions for system security reasons.

4.3 All-Island System Support Arrangements: System Services and the Capacity Market

110. The Delivering a Secure, Sustainable Electricity System (“DS3”) programme has created an attractive investment platform for investors in renewable generation, which has helped shape the all-island generation mix and facilitate the delivery of the Climate Action Plan. This, alongside the SEM Capacity Market, has created a platform on which to build more renewable plant and has been a key enabler in the SEM’s progression towards 75% SNSP levels.
111. Furthermore, the development of system services, which is predicated on an all-island approach, is intrinsically-linked with cost reductions associated with other key system operator activities. Dispatch Balancing Costs are reduced and capacity payments will also be more economical as a result of the availability of system-critical services procured through the all-island DS3 framework. An approach to system services that placed the emphasis on jurisdiction-specific requirements would yield an increase in the amount of services procured within the SEM. For example, each jurisdiction might require that the current all island minimum number of sets to be at least maintained and quite possibly increased. While this mindset may serve to maintain a secure power system, it would not facilitate the higher RES levels that are seen today, as additional conventional sets would be online all the time consuming system ‘space’ which could otherwise be accorded to renewables.
112. The SEM Capacity Market, meanwhile, is underpinned by an all-island requirement, with the Demand Curve, which is used to clear the Capacity Auction and set the Auction Clearing Price, based on an unconstrained all-island adequacy assessment so as to fully utilise the all-island generator portfolio.
113. A move towards a jurisdiction-focussed approach would likely result in both TSOs taking a cautious approach to inputs; specifically, assumptions may be premised on higher jurisdictional demand forecasts, pessimistic forecasts of generator outage performance and later forecast commissioning dates for new plant. As a result, a greater all-island requirement would then be used to set the Auction Clearing Price and Locational Capacity Constraints requirements would be reviewed; in response, the inter-jurisdictional cost sharing arrangement would need to be assessed to ensure that consumers in both jurisdictions are protected.
114. EirGrid estimates that the resultant all-island Capacity Requirement is at least 500 MW lower than that which would be calculated by simply adding each jurisdiction’s individual requirements together. This aligns with the expectation of the SEM Committee (SEM-15-103), which highlighted that achieving the same adequacy standard on a smaller system is likely to drive a higher cost of capacity.

4.4 Summary

115. The underlying assumptions that EirGrid TSO would apply to its planning and dispatch activities would change significantly were the UR's proposals to be implemented, given the need for EirGrid and SONI to assess their own independent system conditions in advance of any all-island considerations being made. These changes would require initial capital outlay, combined with significant increases in operational costs.
116. These changes will subsequently drive necessary amendments to technology requirements in both jurisdictions and revenue opportunities for SEM market participants. It is the view of EirGrid that this would not only be uneconomical in nature, but would also put Ireland's and Northern Ireland's decarbonisation goals under serious threat given the uncertainty that investors in renewable plant will inevitably face.
117. Future plans to deliver against the targets outlined in Ireland's Climate Action Plan have been underpinned by an assumption of all-island system operation. The specific actions relating to network planning and routes to market for renewables would need to be reconsidered in any new context.
118. A full review of the regulatory frameworks that currently facilitate activities in the SEM would need to be undertaken; these are currently premised on system operation on and all-island basis and the obligations, and underlying assumptions, thereof would need to be considered in light of the renewed focus of the TSOs. This includes the TSO revenue frameworks in both jurisdictions.

5. Implications of proposed changes on corporate governance / fiduciary duties

119. EirGrid plc was established under Irish Statutory Instrument 445/2000. EirGrid plc is a commercial state body in Ireland; as such EirGrid and its subsidiary companies must act with reference to the Code of Practice for the Governance of State Bodies as set out by the Irish Government,⁴² which is based on the UK Corporate Governance Code (“UKCGC”).
120. It is therefore clear that the governance framework in which EirGrid and its subsidiaries operate is one which already has regard to principles of good governance and compliance. It is also clear in the area of corporate governance that the applicable legal obligations binding EirGrid and SONI are closely aligned.
121. SONI Ltd is a wholly owned subsidiary of EirGrid UK Holdings Ltd which itself is a wholly owned subsidiary of EirGrid plc. SONI is a privately owned subsidiary whereby the EirGrid plc shares in SONI are owned by the Irish Government and are not traded on any stock exchange. SONI Ltd has a Net Asset Value at 30 September 2020 of £38 million and has an employee base of 123 (at March 2021).
122. In this section, we set out how appropriate corporate governance arrangements are already in place within both EirGrid and SONI, thereby removing the need for any change in arrangements as proposed by the UR. We will also address the appropriateness of the proposed changes both in consideration of SONI’s size and in consideration of the operability of options B, C, and D and in particular the importance of Company Directors being able to exercise appropriate governance and oversight with respect to subsidiary companies.

5.1 Importance of Good Governance

123. Paragraph 3.8 of the UR’s Consultation Paper sets out the UR’s vision for good governance in achieving a trusted relationship. The UR recognises that “...when considering governance in any utility there is a balance to be struck between oversight by the parent and the autonomy needed by the subsidiary.” Additionally the UR states that “...in this case the subsidiary is also a regulated TSO and therefore the interface with the regulator who safeguards the interests of consumers is particularly important.” EirGrid agrees with both of these points.
124. EirGrid believes that SONI’s current governance structures, with reference to Paragraph 3.9 of the UR’s Consultation Paper, currently “...encourage and enable it to:
- *Play a proactive role in the implementation of NI government policy, e.g. energy transition;*
 - *Provide clear, accurate, and timely information for the regulator and other stakeholders as appropriate; and*
 - *Ensure compliance with licence conditions and other legal obligations.”*

⁴² <https://govacc.per.gov.ie/wp-content/uploads/Combined-Code-Online-Version.pdf>

125. Paragraph 3.10 of the UR's Consultation Paper states that SONI's governance should provide for "Collaboration on the basis of a formal agreement with clear rules" and "Mechanisms to resolve disputes between the TSOs". EirGrid agrees with these points and asserts that the System Operator Agreement as required, under licence in place since 31 October 2007 with a view to ensuring the interests of consumers in Northern Ireland and Ireland are protected is that formal agreement, and provides for dispute resolution measures where required.
126. In Paragraph 3.16 of the UR's Consultation Paper, the UR concludes "...that the scope of authority of the SONI Board is extremely limited and therefore not designed to empower that Board to provide leadership for the company, set its strategic direction or provide oversight of the discharge of SONI's licence obligations."
127. EirGrid refutes this statement and the evidence supporting this refutation lies in SONI's own licence compliance record which has not been called into question by the UR. In the 12 years since EirGrid acquired SONI the UR has never written to the EirGrid Board to express any concerns regarding the scope of authority of the SONI Board.
128. In the context of the TSO activities, the SONI Board, as currently incorporated, has considerable control over the operation of the TSO business, underpinned by the requirement under Condition 3 of SONI's TSO licence for the holder of the licence to have available to it adequate resources to fulfil its licence functions. These resources are not only those employed by or contracted directly to SONI but also those provided by or contracted to other entities within the EirGrid Group.

5.2 UK Corporate Governance Code

129. The UR places notable emphasis on the UKCGC in the Consultation Paper. The UKCGC sets out key principles of good governance, and EirGrid acknowledges the importance of the UKCGC.
130. However, it is important to view the context in which the UKCGC was developed and the corporate entities to which it is intended to apply to. The UKCGC applies to premium listed companies on the London Stock Exchange and was not designed for subsidiary companies.

*"The Code is applicable to all companies with a premium listing, whether incorporated in the UK or elsewhere.[] For parent companies with a premium listing, the board should ensure that there is adequate cooperation within the group to enable it to discharge its governance responsibilities under the Code effectively. This includes the communication of the parent company's purpose, values and strategy."*⁴³

131. The UR recognises this and explicitly noted same in its Call for Evidence paper, in which it stated that "it is not mandatory for the UK Corporate Governance Code to be applied to subsidiary companies"⁴⁴. Indeed Compliance with the principles and provisions of the UKCGC for non-

⁴³ UK Corporate Governance Code 2018, Financial Reporting Council, page 3

⁴⁴ SONI Governance A Call for Evidence, Utility Regulator, paragraph 7.16

premium listed companies is voluntary. As SONI is a small subsidiary of a larger Group, applying the UKCGC to SONI would not be appropriate and would be disproportionate.

132. In addition, the UKCGC applies to legal entities, not to the individual licences operated within the legal entity. Therefore, any corporate governance structure in place applies to SONI Ltd as a whole and not just to SONI's Transmission System Operator business.

133. The fact that the UKCGC is completely silent on subsidiary governance is significant in the context of the UR review. This is as a result of the acceptance that parent company treatment of subsidiaries is a matter for the Board of the parent company.

134. As such, extending the UKCGC to SONI is unnecessary, given that EirGrid plc is a commercial state body in Ireland, it and its subsidiary companies, regardless of where they are based, must comply with the Code of Practice for the Governance of State Bodies as set out by the Irish Government. This Code of Practice is modelled on the appropriate provisions of the UKCGC.

5.2.1 The Inapplicability of the UK Corporate Governance Code with Respect to SONI Governance

135. The UK Corporate Governance Code is applicable to public limited companies with a premium listing on the London Stock Exchange i.e. companies which have at least 25% of their shares owned by multiple investors and traded on the stock exchange. The top 10 premium listed utility companies on the London Stock Exchange have market capitalisations ranging from £0.69 billion to £29.87 billion as of 30 November 2020.

136. SONI Ltd's shares are not traded on a stock exchange. SONI Ltd is a privately owned subsidiary company of EirGrid plc. EirGrid plc shares are owned by the Irish Government and are not traded on any stock exchange. SONI Limited Net Asset Value at 30 September 2020 was £38 million.

137. In contrast the comparator companies outlined by the UR in its Consultation Paper are not equivalent or appropriate comparators. They are multi-billion investor-owned entities that pay multi-million dividends to their shareholders each year.

- Electricity System Operator GB – owned by National Grid plc which has a Net Asset Value of £19,860 million, paid dividends of £1,413 million in 2020/21 to its shareholders⁴⁵
- Elia Transmission Belgium – listed on the Euronext stock exchange since 2005 and has net assets of approximately £1,987 million, paid dividends of £16.875 million in 2020⁴⁶ to its shareholders
- United Utilities Water Limited – in 2020 had net assets of £2,067.4 million, paid dividends of £513.2 million to its parent company in 2020⁴⁷

⁴⁵ National Grid Annual Report and Accounts 2020/21, section 3 Financial Statements

⁴⁶ *Financial Report 2020*, Elia Transmission Belgium, fx rate of £1/€ 1.12 applied

⁴⁷ *Annual Report and Financial Statements 31 March 2020*, United Utilities Water Limited,

Redacted Version for Publication

- Severn Trent Water Limited – in 2020 had net assets of £2,488.9 million and paid dividends of £244 million to its parent company in 2020⁴⁸
- Southern Water Services Limited – in 2019 had net assets of £837.7 million and paid dividends of £34.8 million to its parent company in 2019⁴⁹
- NIE Networks – in 2020 had net assets of £425 million and paid dividends of £18.0 million to its parent company in 2020.⁵⁰

138. For a regulated entity, the revenue paid by the customers, that it generates is determined by the Regulator. The effective level of returns available to a regulated entity's shareholder(s) are also be determined by its Regulator.

139. Dividends are paid by a company to its shareholder out of retained profit (revenues less costs) that the Directors can either re-invest in the business or return to shareholders. SONI Ltd has never paid a dividend to its shareholder since its acquisition by EirGrid plc.

140. Other companies regulated by the UR across the sectors it regulates have paid substantial dividends to their shareholders. These dividend payments have ultimately been funded by the Northern Ireland consumers.

141. For example, Northern Ireland Water, a Northern Ireland Government owned Company whose ultimate controller is the Department for Infrastructure – paid a dividend of £28.3 million⁵¹ to its shareholder in 2019/20.

5.3 SONI: A Subsidiary of a Parent Company, EirGrid

142. The options proposed by the UR also have significant implications in terms of the exercise of corporate governance and oversight by EirGrid plc in relation to its subsidiary which are of significant concern to the EirGrid Board.

143. The UR has stated *“when considering governance in any utility there is a balance to be struck between oversight by the parent and the autonomy needed by the subsidiary”*⁵²; however, in the options proposed the UR has not struck a correct balance. The proposed options are however not workable as they limit the oversight by EirGrid of its subsidiary in such a crucial way so as to impinge on the fulfilment by both EirGrid and SONI of their respective licence functions.

144. The important relationship between parent companies and their subsidiaries is highlighted by CEPA in the report which was carried out on behalf of the UR in 2011 –

“Parent companies have a legitimate interest in the business strategy, performance, financing and governance of their subsidiaries. As such, it is relatively common practice for senior

⁴⁸ Annual Performance Report, Severn Trent Water

⁴⁹ Annual Report & Financial Statements 2018–19, Southern Water

⁵⁰ Annual Report & Financial Statements 12 months ended 31 December 2020, NIE Networks

⁵¹ Annual Integrated Report & Accounts 2019/2020, Northern Ireland Water

⁵² UR - SONI Governance Consultation Paper, Section 3.8

*managers/ group board directors from the parent company to sit on the subsidiary board, alongside independent directors and perhaps the Managing Director and Finance Director of the subsidiary.*⁵³

145. Just as the fiduciary duties of the EirGrid Board are to EirGrid plc, the fiduciary duties of the SONI Board are to SONI Ltd in its entirety and not to a portion or subset of its functions. As such any consideration of the governance arrangements in place for SONI, in the context of the consultation or generally, must start from SONI Ltd's nature as a corporate entity and be appropriate and proportionate to the scale of the SONI Ltd business and by reference to its subsidiary status. The governance of a subsidiary is different to the governance of a standalone entity. The UR must assess SONI and its governance in the context of its status as a subsidiary company where no conflict exists between them.
146. EirGrid understands and fully supports the importance of the SONI Board fulfilling its fiduciary duties. However, as set out in the UK Corporate Governance Code, it is important that *"the parent company's purpose, values and strategy"* are communicated effectively to all subsidiary companies. If EirGrid does not appoint the Board of SONI it is questionable whether it will meet the test of control of SONI (as defined by International Financial Reporting Standard 10). This would have serious implications for EirGrid as it would not be permitted to include the financial results of SONI Ltd in its consolidated Group Results. We would expect this to be of concern to providers of finance facilities to SONI and to have an adverse impact on the availability and pricing of future funding.
147. The appointment of members to the SONI Board must remain with EirGrid plc as its shareholder. Any other proposal effectively impinges on EirGrid's rights as owner and shareholder. This alone specifically rules out Options B, C and D. Options C and D are also in direct contradiction of the licence modifications made by the SEM Committee on EirGrid's acquisition of SONI.
148. It is unrealistic to expect directors of a subsidiary (particularly a wholly owned subsidiary) to ignore the interests of the group in their deliberations. Parent companies must have the necessary control and visibility to reduce operational risks across all risk categories that the subsidiary's actions or inactions pose. Parent Boards need to provide stewardship on the governance 'underneath' as well as on the governance at the top of the group.
149. We do not agree with the UR intimating that *"the matters reserved to the SONI Board are very limited"*.⁵⁴ Amongst the matters the SONI Ltd. Board currently has oversight of are:
- Price Control;
 - Approval of the SONI Ltd Strategy
 - Review of risks via the SONI MD Board reports;
 - Operational issues via the SONI MD reports; and
 - Quarterly financial reporting.

⁵³ Northern Ireland Authority for Utility Regulation Assessment of ESB Corporate Governance for SEM Committee, CEPA Report, November 2011, Section 6.1

⁵⁴ UR – SONI Governance Consultation Paper, Section 3.15

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- Approval of all SONI funding facilities
- Approval of SONI TSO budgetary principles and final SONI TSO annual budget for recommendation to the EirGrid plc Board
- Approval of annual compliance report
- Approval of SONI Ltd Statutory Accounts and Regulatory Accounts

150. There have been a number of measures taken to strengthen the SONI Board. Since the Call for Evidence, the purpose of which was to provide the evidential base for the UR's proposals, three Non-Executive Directors from the EirGrid Board, two of whom have significant Northern Ireland background and standing, now also sit on the SONI Board, one of whom acts as the SONI Chairperson. This has further instilled appropriate good governance within SONI and should address the concerns raised by the UR in their CfE.

151. The UR refers to the governance review carried out by Ofwat for many of its comparisons regarding corporate governance between the consumer and shareholder interests. This governance review is not comparable to the SONI Governance review by the UR for a number of reasons –

- In the case of the GB water companies, there was evidence of harm and these changes came on the back of “significant service failures” for a number of companies which had damaged public trust in the sector. There has been no wrongdoing in terms of corporate behaviour by EirGrid and SONI. In addition, there have been no significant service failures experienced by either TSO.
- Ofwat regulates large water companies many of which are owned by private equity, which is not reflective of the role EirGrid has with SONI as a benign shareholder which has provided financial support and never drawn a dividend.

5.4 All-island Framework

152. The parent company strategy to be represented in the subsidiary as required by the UKCGC and as noted by CEPA at Paragraph 144 above, is applied via EirGrid plc Board representation on the SONI Ltd. Board. A fully independent SONI Ltd. Board would not enable this requirement to be achieved.

153. EirGrid and SONI fulfil their functions under the SOA. In fact, as a result of the integrated organisational model, both licence holders have benefitted from working under a single governance structure which has effectively internalised the requirement to enable each other to fulfil the other's functions and subsequently overcome the obstacles that could potentially be present under separate governance.

154. The UR's Consultation Paper is premised on a fundamental change on the overall approach pertained from the all-island framework. It effectively seeks to instil a tension between EirGrid and SONI where none exists, nor need exist. This effectively comes back to the absence of performance issues, or 'harm', as identified in the paper.

155. The nature of the SEM is, as mentioned, that it covers the entire island with EirGrid and SONI serving the island's consumers. There is no jurisdictional divide regarding delivery of the SEM; nor is there any divide in its regulation. The proposed changes would materially impact the delivery of SEM as well as impacting the operational functioning of the market where TSOs have traditionally co-operated together in alignment with the all-island framework.

5.5 Financial Expectations of EirGrid as Shareholder

156. The UR dismisses, as without evidence, the suggestion that EirGrid's ultimate ownership by the Irish Government causes harm to electricity consumers in Northern Ireland. There is no evidence to support this, and in fact, the opposite is the case.

157. At no point since the acquisition in 2009 has EirGrid received a dividend from SONI Limited, nor has it received any other form of remuneration. There is compelling evidence that EirGrid has been a very supportive shareholder of SONI. Rather than draw a dividend, EirGrid has re-invested all SONI profits in the business.

158. Contrary to there being a concern that somehow EirGrid has not supported SONI or the interest of Northern Ireland consumers, EirGrid has in fact been a benign shareholder, driven by the public interest and in seeking to ensure the all island arrangements and the SEM operate effectively.

159. Since EirGrid's acquisition, capital investment in SONI of over £45m has been facilitated. Employment numbers in Belfast have grown from 75 to 123. SONI's office building at Castlereagh House has been refurbished and expanded.

160. EirGrid has continued to support the SONI business through provision of a £10m Parent Company Guarantee callable under both the SONI licences. For some 3 ½ years SONI was entirely reliant on financial support from EirGrid to continue to fulfil its functions until SONI was accorded a financeable framework only following an appeal to the Competition and Markets Authority in London.

161. EirGrid has continued, through its actions as shareholder, to ensure that SONI fulfils its licence obligations, including in instances when SONI financeability was not assured, for example during SONI's recent appeal to the CMA. During this period, EirGrid extended loans to SONI to ensure ISEM delivery on behalf of EirGrid and SONI. Without this financial support (which totalled £ million in December 2018), SONI would not have been able to meet its investment commitments to the ISEM project as at the time banks simply wouldn't lend to it on a standalone basis given the regulatory revenue framework the UR proposed.

162. When SONI Limited was acquired in 2009 the facilities and systems were in need of refurbishment, reflecting a lack of investment over a number of years. The offices in Castlereagh were in serious need of refurbishment and expansion. This was done at a cost of some £3 million

and SONI staff now work in modern fit for purpose accommodation. There has been a corresponding investment in IT systems and infrastructure.

5.6 Conclusion

163. SONI's existing corporate governance arrangements (both at the level of SONI Ltd and within the wider EirGrid Group) are robust and have evolved to respond to the uniqueness of SONI's corporate and regulatory environment.
164. EirGrid's authority to both appoint and remove directors is derived from SONI's articles of association (the Articles). The Articles provide that, alongside appointment and removal by ordinary resolution and by the board of SONI, any holder or holders for the time being of more than half of the ordinary shares of SONI have the power to appoint, by notice to SONI, a director, or to remove a director.
165. There have been a number of measures taken by EirGrid to strengthen the SONI Board. Since the Call for Evidence, which provided the evidential base of the UR's proposals, three Non-Executive Directors from the EirGrid Board, two of whom have significant Northern Ireland background and standing, now also sit on the SONI Board, one of whom acts as the SONI Chairperson. This has further instilled appropriate good governance within SONI and should be more than sufficient to address the concerns raised by the UR in their CfE.
166. There is an obligation on the holding company (EirGrid plc) to exercise control over its subsidiary (SONI Ltd). This obligation is reflected in various corporate governance codes which require the holding company to have in place a sound system of internal control and risk management and require the board of the parent company to provide effective leadership and strategic direction.
167. EirGrid was surprised by the content included in the UR consultation claiming that there is a *"lack of, or diminished transparency in how the costs reported by SONI TSO relate to the actual costs incurred in delivering the SONI TSO licence."*⁵⁵ No evidence was provided to back up this statement. SONI has made all necessary financial returns to the Utility Regulator in accordance with its Licence and the Cost Allocation and Recharge Policy has been furnished to it, most recently on 1 November 2019. This is further set out in Section 6.2 below.
168. EirGrid is concerned that the UR in its consultation, and in regard to the proposals set out, fails to recognise or address SONI Ltd as the corporate entity that it is. Rather the UR appears to be applying, or seeking to apply, corporate governance arrangements, intended as guidance to premium listed companies on the London Stock Exchange, not even to SONI Ltd as a subsidiary company but by reference to one of the licenced activities that SONI Ltd carries out.
169. It is clear from the above that the corporate governance procedures currently in place are appropriate for the parent and subsidiary relationship between EirGrid and SONI. For the UR to suggest that EirGrid and SONI should be *"representing their own customers"*⁵⁶ is concerning for

⁵⁵ UR – SONI Governance Consultation Paper, Section 4.10

⁵⁶ UR – SONI Governance Consultation Paper, Section 3.10

EirGrid, both as SONI's parent company and as licence holder of the other TSO licence on the island. The EirGrid Board actively fulfils its functions in ensuring the protection of the interests of consumers in Ireland and Northern Ireland. The options proposed by the UR are inappropriate and EirGrid does not agree with any of the proposed approaches. In particular, options B, C, and D, which would restrict EirGrid's rights as owner and shareholder.

170. The UR's Consultation Paper suggests that under all options it has set out that SONI would continue to be owned by EirGrid. However, were that proposed by the UR within its paper to be implemented, the underlying policy proposition and benefit which could be delivered to customers on the island as a result of EirGrid's continued ownership of SONI would effectively be called into question.

6. Material Corrections and Omissions

171. EirGrid finds it necessary to address the number of misassertions and allegations made against EirGrid in the paper. In this section, EirGrid addresses each in turn to ensure there is no ambiguity or misunderstanding. Some of the statements included are very concerning.

6.1 Conflicts of Interest

172. The UR asserts that non-executive members of the EirGrid Board who also sit on the SONI Board may *“be impaired or could appear to be impaired”*, in their *“ability to manage any conflict of interest between the needs of NI and Irish consumers”*.⁵⁷

173. EirGrid is unclear what conflicts of interest could arise, either between SONI and EirGrid as TSOs or between consumers of Ireland and Northern Ireland. The UR has failed to clearly set out what potential conflicts of interest, if any, exist. EirGrid feels it necessary to highlight that a detailed governance review was carried out in 2016 prior to the launch of the revised SEM arrangements which considered perceived conflicts of interest to ensure that any such conflicts were addressed. It is not clear what changes, if any, have taken place since 2016 which might give rise to a concern with respect to conflict of interest.

174. The UR’s Consultation Paper proposed 4 options regarding SONI Governance. EirGrid does not agree with any of the proposed options, as the need for same is based on misassertion and misallegation. As part of Option A, the UR states that if the SONI Board has EirGrid Non-Executive Directors *“the SONI Board may overlap with that of EirGrid (through the sharing of Non-Executive Directors), with potential conflicts of interest”*.⁵⁸ Options B, C and D all include an independent SONI Board.

175. EirGrid rejects the above statement. The perceived *“non-independence”* of individuals holding directorships on parent and subsidiary company boards is an allegation taken very seriously by EirGrid. The statutory duties directors owe to the company of which they are a director ensures that this does not happen.

6.2 Potential Overcharging of Electricity Customers

176. The UR implies that the EirGrid Group is somehow overcharging Northern Ireland customers, and that EirGrid and SONI are not discharging their functions under the SOA or that EirGrid has somehow acted in an inappropriate fashion.

177. The EirGrid Group prides itself on working to the highest standard, ensuring all obligations under each of its different licences are adhered to. We regularly submit licence compliance reports to the relevant regulator under each of our licences, and have never once received a penalty for breach of licence. The UR raises the issue of possible overcharging of Northern Ireland electricity

⁵⁷ UR – SONI Governance Consultation Paper, Section 3.13

⁵⁸ UR – SONI Governance Consultation Paper, Section 7.2

consumers. This is baseless. In support of this assertion, the UR refers in Table 1 of the Consultation Paper a net charge from EirGrid to SONI of £17 million in 2018.

178. Each year in accordance with its licence, SONI includes a schedule in its TSO Regulatory Accounts giving details of financial transactions with other EirGrid Group businesses. The 2018 accounts submitted to the UR in March 2019 showed a net charge from EirGrid TSO and SEMO to SONI in 2018 of £17m. Surprisingly, given its values of being targeted and proportionate, the UR never raised any query on the breakdown of this significant charge. Instead it speculated in its Consultation Paper that - *“This may reflect the centralisation of services and resources at an EirGrid Group level or a change in cost model within the Group”*⁵⁹.
179. The reality is that, of the £17 million, £8.7 million related to charges to SONI in 2018 for its 25% share of IT project capital costs, most of which related to ISEM implementation. A further £5.7 million related to the re-balancing of Generator TUoS charges on an all-island basis. Both of these matters are in compliance with regulatory-approved direction and associated cost allocation principles and are not “broad brush cost allocations” as suggested in the UR’s paper. The balance of the £17m is made up of a number of other equally valid transactions. We trust that in its Decision Paper, the UR will take the opportunity to make the required correction regarding that statement that “inappropriately higher prices” are being charged to customers in Northern Ireland.
180. Throughout its paper the UR questions the application of the Cost Allocation and Recharge Policy. It repeats the claim that SONI procures services from EirGrid that could be competitively sourced from elsewhere. The majority of sales and purchase recharges are administered in accordance with specific regulatory decisions, relating to matters such as Generator TUoS, interconnection, Harmonised Ancillary Service Reserve Rebalancing and capital project investment as mentioned above. The recharges from EirGrid do also include some charges for shared management resources and the cost of services such as insurance and IT maintenance and licence costs that are jointly procured on behalf of SONI and EirGrid. The adoption of a joint procurement approach delivers real savings to SONI. The UR’s speculation regarding “gold plating” is without substance and no supporting evidence has been cited. Moreover, the appropriate counterfactual is that of SONI operating on a separate and standalone basis. This would clearly result in significantly higher costs.⁶⁰
181. By its nature, a group cost allocation policy is a best endeavours basis for costs to be shared. It is not a line by line examination of each supplier invoice. However, it is designed to be fair and reasonable so as to satisfy the requirements, not only of an economic regulator, but also to

⁵⁹ UR – SONI Governance Consultation Paper, Section 4.10

⁶⁰ By way of example EirGrid has been advised of SONI’s Zt submission to the UR on ISEM Implementation Costs seeking recovery of SONI’s proportion of the costs (25% of the total project cost as set out plus SONI TSOs Neutral Adjustment); EirGrid understands that SONI’s proportion was approved for recovery by the UR in their letter dated 23 August 2019 (Ref. NET/E/TH/134) <https://www.uregni.gov.uk/files/uregni/media-files/2019-08-23%20ISEM%20Implementation%20-%20Special%20Project%20Approval.pdf>

ensure that it complies with the Group's taxation obligations to ensure there is no inappropriate cross-jurisdictional movement of funds. We note the UR's comment that the design of the policy has not been approved by the SONI Board. There is no necessity for this to be the case.

182. The SONI Board, in common with the Boards of all Group companies, relies on the oversight and periodic review of the policy by both Internal Audit and the external auditors. Further comfort is got from the SONI Compliance Officer confirming on an annual basis, in accordance with Condition 5 of its TSO Licence, that SONI "*gives no cross-subsidy to any other business of the Licensee or any affiliate or related undertaking of the Licensee*". We are surprised that this strong statement of governance compliance is not referenced in the UR's paper. Given the nature of its activities, the EirGrid Group is regularly subject to audit by external independent auditors, and there has never been an issue regarding cross subsidisation.

6.3 Allegations of Harm

183. The UR advises they "*do not need to identify a source of existing harm before [the UR] can act*⁶¹". It is important however that the UR also acts in accordance with its own values which it sets out at the start of its paper – to be transparent, consistent, proportionate, accountable and targeted, to be professional, to listen and explain and to act with integrity.

184. Given the absence of harm identified in the context of the measures proposed, and the inconsistency in terms of the review of governance of other utilities regulated by it and where such governance has been reviewed the measures as proposed,⁶² the proportionality of the proposed measures must be questioned. In addition given the distinctly different treatment of other utilities regulated by the UR the consistency of approach is also called into question. EirGrid would welcome further engagement with the UR on this and would ask that the UR specifically set out how its proposals are consistent with its own values in any response to this consultation process.

185. EirGrid has an explicit obligation to "*at all times protect the interests of consumers of electricity in Northern Ireland and Ireland*" within its constitutional documents. Provisions have been included in the EirGrid and SONI TSO licences to ensure the protection of interests of the Northern Ireland consumers through the development of the all-island framework, both at the time of acquisition and at the implementation of the new SEM arrangements. No harm has ever been identified by the UR or the CRU during this time.

186. The Call for Evidence responses also did not raise any concerns which required mitigation under licence. There was no evidence of wrong doing by SONI or by EirGrid as its parent company. In Paragraph 5.3 of the UR's Consultation Paper, the UR sets out its assessment of mitigation measures in the current SONI TSO licence taking cognisance of "*the perceived harm or risk of*

⁶¹ UR – SONI Governance Consultation Paper Executive Summary, page 8

⁶² For example, the UR concluded a review of the governance of Mutual Energy Limited. Following the review the UR made no comment and proposed no changes to the Boards of Moyle Interconnector Limited or Premier Transmission Limited, both subsidiary companies of Mutual, even though the Boards of both these companies are identical and indeed identical with that of Mutual itself.

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harm which has been distilled from the CfE".⁶³ EirGrid does not agree with the UR's analysis of the effectiveness of the existing licence in mitigating the concerns raised within the CfE. It is EirGrid's view that the UR's analysis is without basis.

187. It remains unclear to EirGrid what "*potential, and increasing potential, for harm*" could arise from the current drafting of the SONI TSO Licence. EirGrid would ask that the UR elaborate on this point and indeed as set out elsewhere in this response. EirGrid would be happy to meet the UR to see how it could address any concerns in this regard.

188. The UR states that "*...responses to the CfE allowed the identification of three potential areas of harm...*"⁶⁴ :

- Inappropriately higher prices for Northern Ireland consumers;
- Misalignment of Northern Ireland policy and the SONI approach to network development and
- Barriers to competition.

EirGrid responds to each of the areas further below.

6.3.1 Inappropriately Higher Prices

189. EirGrid has serious concerns regarding the allegation that there is potential for the scale of prices charged to users of the network to be higher than they should be in Northern Ireland. The SONI and EirGrid TSO price controls are determined by the UR and the CRU respectively, taking cognisance of applicable regulatory direction, consistent with standard practice applicable to similar regulated entities in Northern Ireland, Ireland and other jurisdictions. In terms of lack of transparency, financial and other information is provided by SONI as per the form requested by the UR and/or stipulated in licence.

190. With regard to the level of inter-company recharges, it is understood by EirGrid, that an updated version of the Cost Allocation and Recharge Policy was shared with the UR on 1 November 2019 as part of SONI's Business Plan Submission for 2020-2025⁶⁵ and SONI responded to the UR's queries on the policy and its application in practice as the UR's queries arose.

191. The recharge costs which were included in the UR's Final Determination on the Price Control were based on the Cost Allocation and Recharge Policy. The UR does not comment on or express concern regarding the Cost Allocation and Recharge Policy in the UR's Final Determination.

192. It is further noted that Condition 5 of SONI's TSO Licence and Condition 23 of EirGrid's TSO Licence prohibit cross-subsidies, with the independent Compliance and Assurance Officer, as required under licence, reporting on an annual basis to the UR and CRU respectively in relation to compliance with same. In addition, appropriate assurances are afforded to the relevant taxation

⁶³ UR – SONI Governance Consultation Paper, Section 5.3

⁶⁴ UR – SONI Governance Consultation Paper, Section 4.4

⁶⁵ Final submission: *Transform the Power System for Future Generations: SONI TSO Business Plan 2020-2025*

authorities in each jurisdiction and financial statements are independently audited as required in accordance with the applicable legislation.

193. In Table 1 of the UR's Consultation Paper, Operating Profit as a % of Total Revenue and sales, purchase and net recharges from 2011-2018 are detailed. The UR states that "*Analysis...shows the overall scale of recharges between SONI TSO and EirGrid for both sales and purchases has doubled year on year since 2015, whilst operating margin had diminished.*"⁶⁶ It also states that the trend "[...] may reflect the centralisation of services and resources at an EirGrid Group level or changes in cost model within the Group and highlights the importance of a robust cost allocation policy."⁶⁷

194. It is important to note that most of these recharges are administered in line with regulatory decisions. For example, from 2016 to 2020, over 75% of SONI TSO's sales recharges and over 70% of SONI TSO's purchase recharges were administered to give effect to specific regulatory decisions. Furthermore, net recharges account for only a small portion of SONI's total cost base, averaging under █% of total costs from 2016 to 2020⁶⁸.

6.3.2 Misalignment of Northern Ireland policy and the SONI Approach to Network Development

195. It is not correct to say that there is a "one-size fits all" approach to investment and operational decision-making. Network development decision-making is carried out taking account of the planning, environmental, technical and other frameworks applicable to each jurisdiction, as a result of which a "one-size fits all" approach is impossible.

196. There is no basis for the assertions of "denial of difference" or "unconscious bias" in the context of network development by the UR in their Consultation Paper. These concepts are mentioned in the context of potential to increase the risk of harm in this area and are seemingly based solely on suspicion.

197. EirGrid has always supported SONI Ltd in fulfilment of its TSO functions both in Northern Ireland and on an all-island basis. When it comes to Northern Ireland network development, SONI Ltd has led and continues to lead on a number of matters for example:

- a. In 2019, SONI launched its Strategy 2020-25⁶⁹ to transform Northern Ireland's Power System forming the basis for SONI's 2020-2025 Business Plan.
- b. SONI's 14 week public consultation on "*Shaping our Electricity Future*"⁷⁰ which closed on 14 June 2021 detailing four innovative potential approaches to fundamentally change

⁶⁶ UR – SONI Governance Consultation Paper, Section 4.10

⁶⁷ Ibid

⁶⁸ It should be noted that both sales and purchase recharges include capital and operating expenditure elements. Operating profit is calculated after accounting for some, not all, recharges, since capital expenditure is depreciated over a number of years. As a result, comparing operating margin and aggregate recharges as set out in UR's Consultation Paper is unsound.

⁶⁹ <https://www.soni.ltd.uk/about/strategy-2025/>

the grid to achieve Northern Ireland’s clean energy ambitions, while maintaining an affordable and secure supply for consumers involved comprehensive plan for SONI stakeholder engagement including a wide spectrum of the Northern Irish community.

- c. SONI, in partnership with NIE Networks, has to date played and will continue to play a key part in supporting the delivery of the Energy Strategy for Northern Ireland: Consultation on Policy Options⁷¹ the final version of which is expected to be published by the end of 2021, carrying out detailed scenario modelling, participating in Department for the Environment (DfE) workshops and assisting the DfE in the preparation of their consultation papers.
- d. SONI is responsible for the SONI Grid Code which sets out the principles governing SONI's relationship with transmission system users including the technical standards applicable to SONI and transmission system users. The SONI Grid Code is not the same as the Grid Code which applies in Ireland.

6.3.3 Barriers to Competition

198. The UR recognises that SONI is a monopoly provider and as such SONI “*does not face competition itself*”.⁷² SONI does however have a role to play in the facilitation of competition. In summary, Paragraph 4.14 of the UR’s Consultation Paper states that there is no evidence of any harm with respect to economic dispatch and the UR refers to System Service Procurement (which is administered in accordance with the applicable framework as approved by the Regulatory Authorities via the SEM Committee). As such, it is not clear what potential/actual barriers to competition the UR is referring to. The UR seems to imply that procurement in compliance with the requirements published in the Official Journal of the European Union (“OJEU”) might increase the risk of barriers to competition when the opposite is the case in practice.

199. There is repeated reference to “Denial of differences” without specificity or detail. If there was a denial of differences in the systems of Northern Ireland and Ireland, the UR notes that this “*...could lead to requirements and contracts for System Services being drafted in a way that limits the effective participation of service providers in NI.*”⁷³ However, the System Service Procurement regulatory framework is administered as per SEM Committee direction, recognising the differences between Northern Ireland and Ireland’s systems as required.

200. As a result of the above, it is the view of EirGrid that the UR’s assessment of the residual potential for harm given the current drafting of the Licence and statutory duties is unclear, without basis and at times very misleading.

6.4 Conclusion

201. The fact that the UR finds it necessary to include these unsupported accusations within its Consultation Paper rather than the full facts gives cause for serious concern. At no time did the

⁷⁰ <https://www.soni.ltd.uk/the-grid/shaping-our-electricity-f/>

⁷¹ <https://consultations.nidirect.gov.uk/dfe/energy-strategy-for-northern-ireland-consultation-1/>

⁷² UR – SONI Governance Consultation Paper, Section 4.14

⁷³ Ibid

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UR engage with EirGrid prior to publishing its Consultation Paper, put its views to EirGrid, seek an explanation or response, or provide EirGrid with an opportunity to respond to them.

202. The UR identifies no specific evidence of harm following the Call for Evidence. Yet in the absence of evidence, the UR now proposes measures to address the harm unidentified.

7. Benefits of the Current Arrangements

203. EirGrid and SONI, and ultimately customers in Ireland and Northern Ireland, benefit from the economies of scale gained through the current arrangements. The all-island system allows EirGrid and SONI to leverage capacity benefits, costs for both parties being allocated from all-island system is more beneficial than the total sum of two single-jurisdiction functions.
204. A concern of the UR included in the consultation is that the management and decision making being performed on a shared basis, could potentially be to the detriment of Northern Ireland consumers⁷⁴. EirGrid does not agree with this statement. Both the EirGrid and SONI TSO licences require the licence holders to carry out their licence obligations “*in co-operation with*”, and “*in conjunction with*” the other TSO licence holder. There are 24 conditions in the SONI TSO licence (48%) that require both parties to work together to be benefit of Ireland and Northern Ireland consumers, and similarly 14 (38%) of the licence conditions within the EirGrid TSO licence requiring same for Ireland consumers.
205. The integrated structure allows for key decision making and brings together the real time day to day operations across both systems. Shared management that could potentially be to the detriment of Northern Ireland consumers is not an accurate reflection on the TSO activities. The UR provides no basis for this statement; no evidence was submitted during the CfE that support these allegations. Indeed, EirGrid believes that the opposite is in fact true, that the Northern Ireland consumers benefit from the efficiencies gained through the shared management system.

7.1 Procurement

206. There are multiple benefits in having a centralised system for procurement, HR, finance, cyber security, IT Capital and Operating costs (as most recently experienced with the implementation of the ISEM).
207. The UR suggests that there is a risk that things are procured on a group basis may be “gold plating” or have to be “retro-fit” to work with the systems in Northern Ireland.
208. EirGrid disagrees with this statement. As part of the recent call for evidence published by the UR, there was no evidence that the procurement systems in place risked “gold plating” or “retro-fitting” systems to the detriment of SONI. Many of the systems procured must be done so on an all-island basis, as a result of the licence conditions, requiring collaboration between both TSOs and ensure that all systems procurement fulfil the needs of the TSOs.

⁷⁴ We refer to the modification made to Condition 12 of SONI’s Licence to participate in the transmission of electricity and Condition 10 of SONI’s SEM Operator Licence at the time of acquisition by EirGrid. In the SEM Committee’s paper SEM-08-176 “managerial independence” was struck out, with the SEMC acknowledging that “*nothing within the applicable 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.*”

209. Procurement by the EirGrid Group is governed by the EU Directive 2014/25/EU, “Procurement by Group Entities in the water, energy, transport and postal service sectors”. Under EU guidelines, EirGrid is required to tender under OJEU. EirGrid’s procurement policies are also framed by the Irish Government’s National Public Procurement Policy Framework. As such, EirGrid is required to adhere to strict procurement guidelines to ensure transparency and fairness is applied to all procurement tendered.

210. When services are required on an all-island basis, the EirGrid Group benefits from one tender competition which is led out by the Group Procurement function. This allows the EirGrid Group to maximise efficiencies and secure greater volume discount compared to if the services were to be required separately by EirGrid and SONI. Currently between 80% - 90% of the IT systems are provided on an all-island basis.

211. There have been significant enhancements to the group IT systems over the past number of years. This allows better purchasing operating as a Group covering both initial purchase, cost of installation and ongoing support requirements.

7.2 Cyber Security

212. Cyber security is very important to both EirGrid and SONI, in particular regarding the national infrastructure they provide and operate. As such, it is crucial that the EirGrid and SONI systems have the necessary protection to ensure the transmission systems and market operations are not threatened or potentially put at risk due to poor cyber security.

213. Given the high level of integration and dependencies between the EirGrid, SONI and SEMO IT systems, delivery of cyber security at a group level ensures there is a consistent approach being applied across the entire business and all of its licences. If SONI were to apply the same standard of cyber security on an individual basis, it would be a lot more expensive for SONI than its share of the EirGrid Group costs.

7.3 Transmission System Operations

214. Pooling of resources allows for industry expertise being available across the EirGrid Group. This allows for significant cost savings and enhanced performance for both TSOs, ultimately to the benefit of the Ireland and Northern Ireland customers. It reduces the requirements to:

- a. secure external consultants;
- b. avoids duplication of roles; and
- c. allows for system integration

215. It also allows for greater functionality be available compared to SONI TSO procuring the expertise individually.

216. With the introduction of ISEM, there is increased participation by the TSOs in their role as Balancing Market Operator. This requires increased communication and collaboration across the two TSOs.

217. There have been a number of projects that EirGrid and SONI have been able to leverage the experience of the other to ensure the highest standard of service is provided, for example, their work on the North-South interconnector.
218. The direct sharing and pooling of knowledge systems and expertise has enabled both EirGrid and SONI to become world leaders in terms of the integration of non-synchronous renewables on a small islanded synchronous system. An [REDACTED] has increased the level of cyber-resilience against an ever-increasing threat for the benefit of citizens in both jurisdictions.

7.4 Financing

219. SONI has greater access to funding from banks and financial institutions as a subsidiary of EirGrid. EirGrid's support of SONI has allowed for the £[REDACTED] million Dispatch Balancing Costs (DBC) facility. This is in addition to the £[REDACTED] million facility secured for EirGrid itself. EirGrid provides a direct financial guarantee to SONI for £10m improving SONI's financial resilience.
220. SONI also benefits from the expertise of the Group Treasury function, its relationship with financial institutions and the wider financial stability of the EirGrid Group. As a small independent company it would be very challenging for SONI to access the financial support it currently enjoys.

7.5 Decarbonisation

221. Although the NI Energy Strategy has yet to be announced, the UK's Climate Change Act 2008⁷⁵, as amended in 2019, commits the UK to net zero emissions by 2050. Both EirGrid and SONI are working towards decarbonisation on the island of Ireland. Benefits will be gained from cost savings / lessons learned / aligned approach to ensure maximum effectiveness in decarbonisation targets (already seen in EirGrid and SONI's company strategies).
222. The development of the North-South interconnector will further strengthen Ireland and Northern Ireland's grid infrastructure. On top of that, both TSOs can leverage internal expertise in the introduction of new and emerging technologies on the grid over the coming years, for example batteries.
223. Both EirGrid and SONI have recently carried out "*Shaping our Electricity Future*" consultations. The feedback and outcomes from both consultations will be key in the future development of the grid. Being part of the EirGrid Group will allow for both parties to assess any common trends across the island of Ireland and how they can be addressed in the most efficient manner. Were SONI to carry out this project under a separate governance, the economies of scale that could potentially be utilised as part of the EirGrid Group would not be available.

⁷⁵ UK Climate Change Act - <https://www.legislation.gov.uk/ukpga/2008/27/section/1>

8. Conclusion

224. EirGrid supports the principle of SONI as a strong TSO and MO for Northern Ireland within the all island context. EirGrid cannot and does not however support the UR's proposals and, for the avoidance of doubt, does not support *any* of the options as set out in the UR's Consultation Paper.
225. The options that the UR outlines in its Consultation Paper would fundamentally change the current EirGrid Group structure and the operation of the all island arrangements. The EirGrid Group has always worked to ensure the protection of the interests of consumers in Ireland and Northern Ireland and will continue to do so. It is obliged to do so. However, the proposed options would drive a natural separation between the two TSOs as a result of this increased jurisdictional focus. It would also have significant impacts on the SEM, both directly and indirectly.
226. There have been a number of measures taken to strengthen the SONI Board. Since the Call for Evidence, which sought to provide the evidential base of the UR's proposals, three Non-Executive Directors from the EirGrid Board, two of whom have significant Northern Ireland background and standing, now also sit on the SONI Board, one of whom acts as the SONI Chairperson. This has further instilled good governance within SONI which is appropriate for SONI's particular circumstances, and should be more than sufficient to address the concerns raised by the UR in the CfE.
227. The UR's Consultation Paper suggests under all options it has set out that SONI would continue to be owned by EirGrid. Given the seriousness of that proposed, EirGrid must reserve its position on this. We do not do this lightly but given that proposed, the underlying policy position and benefit which can be delivered to customers on the island as a result is effectively called into question.
228. EirGrid supports SONI's submission that the UR does not have the *vires* to implement said proposals. If implemented it will have significant impacts on the SEM and on customers in both Ireland and Northern Ireland.
229. It is time for this to move from a regulatory discussion in relation to a single licensee, to its rightful place as a wider discussion with both Regulatory Authorities and the SEM Committee and indeed a wider set of stakeholders as to the future of the SEM and the all island energy framework.

Annex 1 - Addressing the UR's questions

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

Paragraph 3.8 of the UR's Consultation Paper sets out the UR's vision for good governance in achieving a trusted relationship. The UR recognises that *"...when considering governance in any utility there is a balance to be struck between oversight by the parent and the autonomy needed by the subsidiary."* Additionally the UR states that *"...in this case the subsidiary is also a regulated TSO and therefore the interface with the regulator who safeguards the interests of consumers is particularly important."* EirGrid agrees with both of these points.

EirGrid believes that SONI's current governance structures, with reference to Paragraph 3.9 of the UR's Consultation Paper, currently *"...encourage and enable it to:*

Play a proactive role in the implementation of NI government policy, e.g. energy transition;

Provide clear, accurate, and timely information for the regulator and other stakeholders as appropriate; and

Ensure compliance with licence conditions and other legal obligations."

Paragraph 3.10 of the UR's Consultation Paper states that SONI's governance should provide for *"Collaboration on the basis of a formal agreement with clear rules"* and *"Mechanisms to resolve disputes between the TSOs"*. EirGrid agrees with these points and asserts that the System Operator Agreement, as required under licence and in place since 31 October 2007 with a view to ensuring the interests of consumers in Northern Ireland and Ireland are protected is that formal agreement, itself providing for dispute resolution measures where required.

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

The effectiveness of the existing licence in mitigating the majority of concerns raised within the CfE are addressed in Section 6.

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

EirGrid has an explicit obligation to *"at all times protect the interests of consumers of electricity in Northern Ireland and Ireland"* within its constitutional documents.

It remains unclear to EirGrid what *"potential, and increasing potential, for harm"* could arise from the current drafting of the SONI TSO Licence and the Licensee's statutory duties.

The alleged areas of harm, or potential harm, are addressed in Section 6 of this response.

It is EirGrid's view that the UR's assessment of the residual potential for harm given the current drafting of the Licence and statutory duties is unclear, without basis and at times misleading.

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

The governance of EirGrid plc., and that of its subsidiary companies, including SONI, is specifically set out in the EirGrid plc Annual Report⁷⁶. This includes the various sub committees of the EirGrid Board which oversee and discharge its corporate governance and oversight of SONI as a subsidiary company.

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

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

None of the above options are appropriate in respect of the creating an effective SONI Board. EirGrid believes that the current governance structures are appropriate. As indicated above, EirGrid considers the proposed governance changes to be a SEM matter. The SEM Committee made specific changes to the SONI licences at the time of acquisition to no longer require management independence between SONI and EirGrid. The proposals as set out effectively directly contradict the changes made by the SEM Committee at that time.

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

- **There should be a non-executive Chair of the SONI Board?**
- **The SONI MD should report to the SONI Board and not to the EirGrid CEO?**
- **The SONI TSO Licence should be strengthened to explicitly protect the interests of NI consumers and balance their interests with those of other stakeholders, and require the SONI TSO to maintain managerial and operational independence as appropriate from EirGrid?**

⁷⁶ <https://www.eirgridgroup.com/annual-report-2020/>

- **The SONI TSO Licence should also specify the scope and duties of the SONI Board ('matters reserved') and do you agree with those proposed duties?**
- **The UKCGC makes reference to the need for specific subcommittees in exercising good governance. Should these subcommittees be adopted for the SONI Board and should an additional sub-committee be required to discuss and approve NI network policy, development and investment plans and proposals?**

The current corporate governance structure implemented by EirGrid across the EirGrid Group facilitates the discharge by SONI of its responsibilities.

The current Chair of the SONI Board is a non-executive with the added benefit of also acting as Deputy Chair of the EirGrid Board. The integrated nature of the EirGrid Group allows the Group to streamline internal processes, improve internal efficiencies and deliver key strategic projects across the entire island.

EirGrid and SONI have worked very closely with both the CRU and the UR to ensure the most efficient all-island framework is in place to the ultimate benefit of consumers across the island. As set out in EirGrid's TSO licence, its customers and those it is required to protect in the exercise of all its functions are those in Ireland and Northern Ireland. If a specific obligation to customers is to be introduced within the SONI licence it should be a reciprocal one, to protect the interests of customers in Northern Ireland and Ireland.

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

EirGrid understands and fully supports the importance of the SONI Board fulfilling its fiduciary duties. However, as set out in the UK Corporate Governance Code, it is important that "*the parent company's purpose, values and strategy*"⁷⁷ are communicated effectively to all subsidiary companies. If EirGrid does not appoint the Board of SONI, as is the case in Options B, C and D, it could call in to question where EirGrid meets the test of control of SONI (as defined by IFRS 10). As a result SONI would no longer meet the definition of a subsidiary and, consequently, it would no longer be consolidated in the EirGrid Group results. [REDACTED]

As such, the appointing of members to the SONI Board should remain with EirGrid as its shareholder with any other proposal effectively impinging on EirGrid's rights as owner and shareholder. This alone specifically rules out Options B, C and D.

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

No, EirGrid does not agree with the UR's proposals in respect of the SONI management and resources. The EirGrid Group organisational structure facilitates economies of scale at a corporate level. It also ensures alignment of company goals and strategy across the executive, including the

⁷⁷ Per 'Purpose B' of *Board Leadership and Company Purpose, UK Corporate Governance Code*, Financial Reporting Council, page 4

SONI MD office. Due to the high level of integration between EirGrid and SONI operations both as TSO and MO, to introduce a separate independent SONI management structure would seriously curtail efficiencies within the business, both in terms of cost savings, synergies and delivery of economies of scale across the transmission system. It would also directly contradict the SEM Committee amendment to the SONI licences to not require management independence between the EirGrid and SONI businesses at the time of EirGrid's acquisition of SONI. Any change in these requirements would therefore be a SEM Matter.

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

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

The current governance arrangements in place for SONI accommodate the necessary structures to ensure clear and transparent governance between a parent and its subsidiary.

- EirGrid and SONI currently have in place an SOA in accordance with the requirements of licence and ensure it is operated with a view to protecting the interest of both bodies corporate and with a view to ensuring the protection of the interests of consumers in Northern Ireland and Ireland. The bringing together of EirGrid with SONI under a single ownership and common governance structure has effectively internalised the requirement to enable each other to fulfil the other's functions and therefore overcomes many of the obstacles that could potentially be present under separate governance and therefore helps ensure that these objectives are met.
- The EirGrid plc Group Whistleblowing policy is already effective, in fact more effective, to the extent it is applied to SONI. It specifically means that in the context of the exercise of whistleblowing that staff do not need to concern themselves as to whether they are specifically exercising functions in relation to SONI, or to EirGrid or to any other corporate entity within the Group but rather simply whether they believe there is behaviour which

warrants “blowing the whistle” or making a protected disclosure. Moreover, under the Group wide policy it is clear that staff can raise concerns regarding the discharge of SONI’s functions whether they specifically hold a contract of employment from SONI Ltd or from another corporate entity within the Group.

- The UR has failed to clearly set out what potential conflicts of interest, if any, exist. EirGrid is unclear what conflicts of interest it is therefore assumed by UR arise between SONI and EirGrid. Conflicts of interest were assessed by the SEM Committee for the EirGrid Group in 2016. It is not clear what has changed in the interim to give rise to a concern with respect to conflict of interest.
- Under Condition 23B of SONI’s TSO Licence, SONI is required to appoint a Compliance and Assurance Officer in place. Condition 21A of EirGrid TSO’s license places similar obligations on EirGrid. The Compliance and Assurance Officer is required to report annually to the RAs regarding both TSOs’ compliance with the relevant conditions. As a result, EirGrid does not consider it as necessary to consider introducing an additional annual review by an independent Compliance Officer. Moreover EirGrid would note that in consultation in 2010 the UR itself specifically noted that a separate independent compliance officer did not add any value in terms of the benefits to consumers.
- There is no need to amend the SONI licence to require access on a non-discriminatory basis to UK companies who provide services to SONI through EirGrid joint procurement as no such discrimination currently exists.

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

EirGrid does not believe the cost benefit analysis of the various options provided by the UR gives an accurate reflection of the implications that the proposed options provided by the UR will have on Northern Ireland customers should they be introduced and has specifically not set out the additional costs or harms which would arise to customers in both Ireland and Northern Ireland as detailed in Section 4 of this response.

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

It is clear that SONI benefits from being in the EirGrid Group. This includes:

- Shared corporate services, such as HR, Procurement, IT (e.g. Cyber Security)
- Pooled Expertise
- All-island system services

EirGrid understands that SONI goes into further detail on this matter in its response.

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

The cost of financing SONI as an individual entity would be significantly greater than the cost of financing SONI as part of the EirGrid Group. While SONI is independently funded in the sense that its borrowings are not guaranteed by EirGrid, it currently benefits from access to debt pricing that is

consistent with that available to EirGrid. Restriction of EirGrid's governance oversight of SONI and the exclusion of SONI's financials from the EirGrid group balance sheet could adversely impact on SONI's access to keenly priced funding.

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

EirGrid believes that any formal review on the effectiveness of SONI governance in the context of its ownership by EirGrid should be carried out by the SEMC and not by the UR. Moreover the uncertainty which any further forthcoming review would create regarding the further development and advancement by EirGrid and SONI, and of financiers to finance, the necessary investment, would be extremely damaging.

Annex 2 – Acronyms

CEO	Chief Executive Officer
CfE	Call for Evidence
CMA	Competition and Markets Authority
CRU	Commission for Regulation of Utilities
DBC	Dispatch Balancing Costs
DfE	Department for the Economy
DS3	Delivering a Secure, Sustainable Electricity System
ESBN	ESB Networks
ESO	Electricity System Operator
EU	European Union
GB	Great Britain
ISEM	Integrated Single Electricity Market
IT	Information Technology
MD	Managing Director
MO	Market Operator
MOA	Market Operator Agreement
MW	Megawatts
NED	Non-Executive Director
NI	Northern Ireland
OFWAT	Water Services Regulation Authority
OJEU	Official Journal of the European Union
RAB	Regulatory Asset Base
RMR	Reliability Must Run
SEM	Single Electricity Market
SEMC	Single Electricity Market Committee
SEMO	Single Electricity Market Operator
SLA	Service Level Agreement
SNSP	System Non-synchronous Penetration
SOA	System Operator Agreement
TSO	Transmission System Operator
TUoS	Transmission Use of System
UK	United Kingdom
UKCGC	UK Corporate Governance Code
UR	Utility Regulator