



Single Electricity Market

Proposed Conditions of the Market Operator Licences

Conclusions Document Following the Second Consultation

3rd May 2007

AIP-SEM-07-130

1. Background

On 26th February 2007 the Regulatory Authorities published a second consultation on the “Proposed Conditions of Market Operator Licences”¹. In response to this consultation the RAs received non-confidential submissions from:

- NIE
- ESB
- ESBI
- Viridian Power and Energy

In light of these responses, following further consideration of the licences by the RAs and additional discussions with the Eirgrid and SONI, whom it continues to be assumed will carry out the MO role as part of the introduction of the SEM, the RAs are now issuing a conclusions document setting out the enduring licence conditions that it is proposed would apply to the MO licensees under the SEM.

¹ <http://www.allislandproject.org/en/single-market-operator-overview.aspx?article=1fd2b5ff-ce2b-464e-8332-eafa06438ba2>

2. Response to Comments from Interested Parties

Condition	Comment	Respondent	Regulatory Response
General	We still have concerns about the delay in Viridian's divestment of SONI to 2008 and take the view that this should happen before Day 1 of the SEM.	ESBI	The RAs remain of the opinion that whilst divestment of SONI is an important issue, it is not necessary for the implementation of the SEM to be delayed until the divestment has taken place.
General	We would also like more clarification on how the contractual joint venture will work and how the SMO's performance indicators will be defined and the performance will be measured as the two licences differ in some respects.	ESBI	The RAs note that it is the intention that the Market Operator Agreement will be published, which should provide more detailed information on the relationship between the two MO licensees.
General	There should be an obligation on the Market Operator to act in a transparent manner and to publish all information subject to Regulatory Authority oversight.	Viridian	The RAs believe that a particular obligation to "act in a transparent manner" would lack specificity. The MO licences include a number of provisions which require the production of reports etc. for regulatory purposes. In addition, the TSC contains specific reporting obligations on the MO. To the extent that market participants require additional specific reporting the RAs view is that these matters should be progressed through amendments to the TSC. Finally it is noted that the objectives of the TSC include the provision of transparency in the operation of the SEM.
General	The Market Operator should have the right to sub-contract some or all of their activities but only after consultation with market participants and agreement with the Regulatory Authorities.	Viridian	The licences do not explicitly prevent the licensees from sub-contracting. To the extent that the licensee did sub-contract some of their work, this would not dilute the obligations on the license to ensure licence compliance. It is noted however that the licensed activity itself (as defined in the prohibition) cannot be sub-contracted

			without the sub-contractor being licensed (or exempt) to carry out the SEM Operator activity.
General/ TSC	If poor performance by the market operator results in material loss to one or a number of market participants, in a manner where that loss is not equally shared among market participants, then the market operator should make good that loss and recover this loss through its standard charging arrangements.	Viridian	The RAs are of the view that such matters should be dealt with under the Trading and Settlement Code and not under the licence. Where market participants are disadvantaged in the settlement process by a market operator error, they have the right to recover their losses under the TSC. In general however, the RAs are of the view that it would not be appropriate for the MO to be liable for consequential loss.
General/ TSC	The Market Operator should not have the right to withhold monies from market participants except where market participants have bad debts with the market operator. The amount withheld shall not exceed the level of bad debt of the market participant with the market operator.	Viridian	Again, this is not a licensing issue and is instead a matter for the detailed arrangements for bad-debt management under the TSC.
General/ TSC	It has been determined that the Trading and Settlement Code “shall be interpreted, construed and governed in accordance with the laws of Northern Ireland” (T&SC Section 2.1). In relation to licensing of the Market Operator as a joint venture it has been determined that in the event of a dispute with the Market Operator both SONI and Eirgrid are “jointly and severally liable” and there are two separate licences subject to differing legislative structures in the two jurisdictions. Could the Regulatory Authorities clarify how is this to be resolved	Viridian	Under the provisions of the TSC, the market participant would be permitted to pursue either or both SONI and Eirgrid as they are jointly and severally liable. Under the terms of the TSC, the laws of Northern Ireland will apply. The drafting of the TSC provides that claims can be brought in courts of either jurisdiction.

	in the event of a dispute between a Market Participant and the Market Operator in the discharging of their function? With which entity should the dispute be raised and which jurisdictional law will apply?		
Condition 17 (SONI) and Condition 10 (Eirgrid)	We consider that the Regulatory Authorities should be the party charged with undertaking the role of proposing the performance criteria for subsequent consultation as an objective party, and not the Market Operator (i.e. the licensees) who would be naturally conflicted in proposing their own performance criteria. Condition 17 Paragraph 1 of the SONI licence and Condition 10 Paragraph 1 of the Eirgrid licence should be reviewed to reflect this.	Viridian	The currently drafted conditions provide for the RAs to direct amendments to the proposed criteria. It is also implicit that the RAs may elect to undertake their own consultation on any criteria proposed by the licensees. The RAs do not believe that it is fundamentally wrong for the licensees to be required to propose the criteria in the first instance, and believe that given the licence drafting, it is entirely possible that the criteria actually used are different from those initially proposed. The RAs are therefore of the view that the arrangements are sufficient to ensure that the criteria are set objectively.
General	We note there has been some development from the initial draft MO licences but that the draft licences still do not address the important issue of transition.	NIE	The RAs propose to consult separately on the transitional amendments to licences.
General	This is the second and last consultation on the MO Licences. There are, however, a number of other licences either out for consultation or soon to be out for consultation. Where there are further developments in relation to these licences these will also need to be reflected in the MO Licences where	NIE	The RAs accept that this is the case and acknowledge that such changes may need to be reflected in the MO licences.

	applicable. Overall there needs to be consistency across all licences.		
General/ TSC	There also needs to be consistency between the MO Licences and the obligations on the MO contained in the SEM Trading and Settlement Code.	NIE	The RAs agree that generally such consistency is required, although note that the licence and the TSC serve different purposes and in some cases similar issues are deliberately dealt with slightly differently (but not inconsistently).
SONI condition 10	It may be necessary to allow sharing of premises between the MO/SO and an associated business for a limited period, subject to secure access arrangements being in place.	NIE	The RAs acknowledge that this may, to a limited extent, be necessary in the transitional period. This will be consulted upon as part of the transitional licence changes.
SONI condition 15, Eirgrid Condition 3	Paragraph 1 refers to the MO “establishing” the SEM Trading and Settlement Code, whereas it is our understanding that the SEM Trading and Settlement Code is being prepared and will be established by the Regulatory Authorities.	NIE	The RAs accept that the MOs are not “establishing” the Trading and Settlement Code and have made changes to reflect this.
SONI condition 15, Eirgrid Condition 3	In the list of objectives in paragraph 4, the terms “Single Electricity Market” and “electricity wholesale market” are both used. These terms are synonymous and, to avoid any possible confusion, only one should be used.	NIE	The RAs agree and have made changes accordingly.
SONI condition 20 and Eirgrid	We note that the Charging and Revenue Restriction Condition has yet to be developed and look forward to reviewing that in conjunction with	NIE	The RAs do not expect that the enduring revenue restriction conditions will be put in place for go-active. Instead, it is intended that these will be developed and implemented in the transitional period in time for go-

Condition 15.	the relevant MO charging provisions in the Trading and Settlement Code.		live. The licence changes to include the enduring restrictions would be made using enduring change management arrangements (thus affording the licensees the relevant procedural protection in these matters). It is also proposed that at go-active, a default condition would be imposed that would permit the MO licensees to recover amounts determined as reasonable by the Authority. This default would apply from go-live pending the resolution of any disagreement over the enduring revenue restriction proposed by the Authority in the transition period.
SONI condition 14 and Eirgrid Condition 2.	<p>The practicalities of the operation of the Contractual Joint Venture were raised in the first consultation and have not been adequately addressed in the second paper. This lack of clarity adds to the view that the SMO activity is not being carried out by a “single” entity. For example:</p> <ul style="list-style-type: none"> - Where is the business located/registered? - Will there be a single point of contact? - Will the employees be employed by the JV? - Will the JV have its own Bank Accounts etc 	ESB	<p>The RAs remain of the view that, given that the obligations to discharge the MO role is not contingency on the inter-MO arrangements, the detail of these arrangements is largely a matter for the MOs. Nevertheless, the RAs do intend that the MOA will be a public document.</p> <p>Communications on these matters continues to be progressed through the Business Liaison Group and Technical Liaison Group meetings which are held on a monthly basis. It is suggested that specific detailed questions of this nature are brought to these forums for consideration.</p> <p>In response to these specific questions, first, the RAs understanding is that Eirgrid and SONI will continue to be companies registered in ROI and NI respectively. Second, it is understood that there will be a single point of contact and that the MOs will be working together to further establish these arrangements in</p>

			the next few months. Third, the employees will be employed by Eirgrid or SONI and finally, there will be a number of bank accounts held for settlement purposes, some of which will be operated on behalf of the “SMO” activity.
SONI condition 4.	The dividend condition in the SONI licence was also raised but not explicitly addressed in the second consultation paper. We request that you address this matter in the response to the second consultation.	ESB	<p>The specific comments raised on the previous consultation in this regards were:</p> <p>Why is there a dividend condition in the SONI licence for a non-profit-making entity? Will accounts be prepared in both jurisdictions for the same businesses, where will taxes be paid, etc.,</p> <p>The reasons that these conditions exist is that SONI is not a non-profit-making entity. SONI is a limited company licensed (or to be licensed) to carry out MO and SO activities. Under the proposed licence conditions each of the MO licensees will be required to produce regulatory accounts for regulatory purposes relating to their individual businesses and additionally for the Single Market Operation Business. These regulatory obligations are in addition to any local statutory accounting obligations placed on the companies. Taxes will be paid in the jurisdictions in which each of the businesses carry out their business activity. In the case of SONI, this is expected to be Northern Ireland and in the case of Eirgrid, the Republic of Ireland (although the licences do not explicitly restrict where the companies are located for such purposes).</p>
SONI	We note Condition 2 of the draft EirGrid	ESB	Whilst the local licences continue to refer to “the

<p>Condition 14 and Eirgrid Condition 2.</p>	<p>MO license and Condition 14 of the draft SONI MO license provide for a dispute resolution mechanism where there is a change to the MOA that is not agreed. However, it is not clear that disputes will be dealt with by the joint regulatory authority. The licences should be explicitly drafted to reflect the actual mechanisms to be followed for <u>both</u> CER and NIAER to issue a binding determination.</p>		<p>Authority” and “the Commission”, it is implicitly part of the JRA arrangements in each of the two jurisdictions that matters relating to the SEM (which would include disputes in relation to the MOA) would be determined through the JRA.</p> <p>The RAs do not believe that in general it is appropriate for licences to be used to bind the RAs to follow particular process or mechanisms. Instead, their purpose is to govern the activities of licensees.</p>
<p>SONI Condition 17 and Eirgrid Condition 10.</p>	<p>[T]he current drafting of the relevant Conditions (Condition 10 of EirGrid draft license and Condition 17 of the SONI draft license) does not support the RA’s stated desire for transparency. The Conditions should be worded: (a) to be mirror images of each other; (b) explicitly require public consultation on the initial performance criteria proposed to the RA’s for approval; and (c) explicitly require consultation on any subsequent changes/amendments to the criteria prior to approval by the RA’s. The licenses should also explicitly require, not implicitly suggest, that the Performance Reports of the MO’s will be consulted upon by the RAs.</p>	<p>ESB</p>	<p>The RAs have reviewed these conditions once again in order to ensure that the conditions in each of the two licences are equivalent.</p> <p>The RAs are of the view that the drafting now developed is adequate to rely implicitly on the fact that the RAs may elect to undertake a public consultation on either the initially proposed criteria or on any subsequent changes. The RAs do not believe that the purposes of licence conditions is to place obligations on the RAs, and consequently that it would not be appropriate to explicitly require a consultation to be undertaken by the RAs on such matters. Nevertheless, it is noted that the RAs are governed by their statutory duties and that best practice dictates that consultation with affected parties be undertaken where relevant.</p>
<p>General</p>	<p>We note that the second consultation paper does not comment on the proposal for independent audits of the MOs’ processes and activities to be carried out</p>	<p>ESB</p>	<p>The Trading and Settlement Code provides for independent audits of the MO activities to be undertaken. The RAs are of the view that, in light of these arrangements, it is unnecessary to duplicate</p>

	and their subsequent publication. This is a best practice issue and should be included in the licenses.		<p>audit requirements in the licence.</p> <p>It is also noted that there is a general right for the RAs to request information from the licensees. These powers may be used to support any supplementary audit arrangements that the RAs view as appropriate.</p>
SONI Condition 12	Condition 12 of the draft SONI MO licence has not been amended to remove the distribution activity as stated in the Consultation Paper.	ESB	<p>The RAs apologise for the fact that the statement in the previous conclusions document on this issue was somewhat confused.</p> <p>The RAs' view is that until such time as SONI is divested from NIE, it is not necessary for the transmission ownership or distribution activities of NIE to be treated as "Associated Businesses" for the purposes of Condition 10. This means that the constraints applying to Associated Businesses in condition 10 would <i>not</i> apply to the Distribution Business. Whilst the RAs have stated that they believe that SONI divestment is required, in the interim period, it is accepted that, as is currently the case, there may be some joint working between SONI and the T&D business of NIE. Given that both T&D and SONI will treat any generation or supply affiliates as Associate Businesses, the RAs are of the view that it would be both impractical (and unnecessary) for SONI to treat the T&D businesses as "Associated Businesses" in the interim period.</p>
SONI 10(b) and Eirgrid 16	Condition 10(b) of the draft SONI MO licence and Condition 16 of the EirGrid license refers. Is there any prohibition on the management or staff of the MO activity	ESBI	The RAs note that there is no specific constraint on such issues in the licence, but that such matters could be provided for in more detail in the compliance plan.

	holding or acquiring shares in a holding company of the licensee or in any electricity undertaking engaged in the generation or supply of electricity on the Island of Ireland? We are of the view that material shareholdings should be prohibited.		
SONI 10 and Eirgrid 17	Condition 10(13) of the draft SONI MO license refers. We propose that the Compliance Manager also report on staff movements into and out of the MO activity/CJV during the previous 12 month period to/from an Associated business.	ESB	This will implicitly form part of the compliance plan (given, for example specific restrictions in this regard are specifically included in the restrictions in the licence condition). For example condition 10(2)(e)(ii) of SONI's licence refers.

3. Next Steps

These “near-final” versions of the proposed enduring conditions of the MO licences remain subject to further change in the run-up to go-active. Whilst no major changes are currently anticipated (other than to incorporate the transitional amendments which will be the subject of a separate consultation), it is anticipated that changes of a minor and consequential nature may be made, for example in light of the finalization of conditions of other associated licences or following the ongoing pre-go-active review of all licence conditions.

It is anticipated that these licence conditions will be used by the Department of Enterprise, Trade and Industry (DETI) as the basis for a consultation on the granting of the MO licence by SEM go-active in Northern Ireland in addition to being used for equivalent process to be followed in the relation to the granting of the MO licence in the Republic of Ireland.