



Single Electricity Market and Introduction of the EU Directive 2003/54/EC

**Proposed Conditions of the Licence to Participate in the Transmission of
Electricity (NIE) – Second Consultation**

Response to Industry Comments

18th May 2007

(AIP/SEM/07/174)

1. Background

On 7 March 2007 the Regulatory Authorities published a consultation on the “Proposed Conditions of the Licence to Participate in Transmission to apply to NIE from November 2007”¹. In response to this consultation the RAs received non confidential submissions from:

- Airtricity
- ESB
- NIE

In light of these responses, following further consideration of the licences the RAs are now issuing a second draft of the Licence to Participate in Transmission for NIE for consultation along with a consultation paper outlining our responses to individual suggestions or queries raised.

Depending upon the nature of the comments received, it is envisaged that this consultation process will be the final opportunity for comment on the enduring conditions of these licences.

Comments on this licence draft or the consultation paper are requested by 8th June 2007 and should be sent, preferably in electronic format, to Barbara.Cantley@ofregni.gov.uk

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¹ <http://www.allislandproject.org/GetAttachment.aspx?id=c1ec2925-7b02-42fd-aa00-cd39462331d6>

2. Changes to Licences

The conditions that it is proposed should apply to NIE's transmission licence have been updated following a review of the comments on the previous consultation, further consideration of the matters by the RAs and to reflect developments in the SEM/Directive implementation initiatives as a whole.

It is noted that a number of structural changes have been proposed to the licence conditions, these are:

- The deletion of the previous Condition 11 (Compliance with the Supply Competition Code – reflecting the proposal to run this document off).
- The inclusion of a new condition 16 (Single Electricity Market Trading and Settlement Code) reflecting the need for the TO to comply with the TSC.
- [Update on PSP Condition as appropriate]
- A new Condition [24] relating to Payment Security Policy (required in relation to the recovery of distribution charges).
- A new condition [25] relating to the document expected to govern the interface between the TO and the PPB activity. It is noted that this document is expected only to cover limited temporary arrangements arising from the separation of the PPB activity from NIE T&D.
- A new condition [26] requiring the licensee to comply with the Grid Code in its capacity as owner and operator of the distribution system (the transmission ownership arrangements are dealt with under the TIA)
- An expanded condition [27] relating to the interim Distribution Code (more detail has now been included in this condition)
- A new condition 33 relating to Supplier of Last Resort Payment Claims (this links into the arrangements now anticipated for SOLR which are essentially based on those in place in GB).

Attention is drawn particularly to the proposed amendments to Condition 28 (Market Registration Service and Market Data Service) which has been amended to reflect drafting which, it has been suggested, is appropriate to accompany the changes made to support the roll-out of supply-side competition. Comments are invited particularly on these changes.

3. Next Steps

Following a consideration of the responses to this consultation and other relevant matters (for example consequential changes arising from the consideration of other consultations etc.) it is expected that the enduring conditions of the licence proposed to apply to NIE's T&D activity will be finalised for implementation from SEM/Directive Go-active, planned for 3rd July 2007. It is noted that the

transitional amendments to the licence (which are also intended to apply from go-active) are the subject of a separate consultation.

4. Response to Comments from Interested Parties

Condition as per original consultation ¹	Comment	Respondent	Regulatory Response
Part 1	NIE's transmission licence is not a new licence, but a continuation of the current transmission licence and it is anticipated that the licence to be held by NIE Energy will be a continuation of the current supply licence of NIE with the addition of conditions specific to PPB. Any discontinuity in the licensing arrangements for NIE or NIE Energy could impact on existing contractual arrangements.	NIE	It is expected that the licence to participate in transmission held by NIE T&D will be an amended version of its existing transmission licence.
Part 1	In line with arrangements in GB, a legislative power to transfer licences should be included in the proposed new legislative arrangements currently being drafted by DETI to facilitate this. NIE's comments both on NIE's transmission licence and the supply licence are based on this assumption.	NIE	It is the RAs understanding that this will be provided for. DETI's recent consultation on the further implementation of the EU Directive 2003/54/EC refers.
Condition 1 (Interpretation)	It is noted that it is intended to match equivalent definitions in the MO and SO licences with definitions used in this licence. A further review of definitions should be conducted as there are still	ESB	A consistency review has been undertaken and some consequential amendments made to the licence in this consultation version.

¹ (Equivalent condition number of the revised licence in brackets if different and if applicable)

	discrepancies/differences between the terminologies used in the various documents e.g. "All-Island Networks".		
Condition 1	Northern Ireland Interconnector Definition: This definition should conform with the current definition of "Interconnector" and be consistent with the current version of the TSC. To achieve this, the word "solely" should be inserted after "used" on line 1.	NIE	This definition has been conformed with the definition in the SO licence.
Condition 1	"Total System" Definition: The words "the Licensee's" should be inserted before the word "transmission system" on line 1 and the words "the Licensee's" should be removed before "distribution system" on line 2.	NIE	This definition has been conformed with the definition in the SO licence.
Condition 2 (Preparation of Accounts)	Article 19.4 of the Directive requires the external auditor to verify the obligation to avoid discrimination and cross-subsidies. This requirement does not appear to be addressed in the licence. Condition 2.3(b) also refers. Does the RA intend to request the licensee to provide for disclosure of separate transactions between businesses that are material e.g. greater than £100k per transaction? Such information could be of assistance in assessing whether any cross-subsidies are being provided.	ESB	This requirement has now been included. Ref. Condition 2 paragraph (3)(d) which is based on the formulation of this condition in GB licences. This information is already provided in company accounts and the RAs have therefore taken the view that a specific condition is not necessary.

Condition 2 Paragraph 7	Will market participants be consulted on the reasonableness of the terms of the payment security policy?	ESB	A transitional obligation has been proposed for SONI's and NIE's licences requiring them to consult on the Payment Security Policy in the transition period. NIE and SONI will then be required to report back to the Authority by the end September with proposals (and a summary of comments) for our approval.
Condition 2 Paragraph 3(c)	The draft MO licence includes a requirement that the auditor should seek to verify, <i>"that the internal accounting and financial reporting arrangements of the Licensee are implemented in such a way as to ensure there is no discrimination or cross subsidisation between Separate Businesses²".</i> This requirement should be replicated across all NIE business licences.	Airtricity	This wording has been included in the form of that used in the GB DNO licences.
Condition 5 (Prohibition of Cross Subsidies)	The term "cross-subsidy" is not defined in the licence. Who will determine what constitutes a cross-subsidy?	ESB	The term "cross-subsidy" will be given its natural meaning. This term is used in a number of UK licences.
Condition 6 (Health and Safety)	Airtricity do not see any need for this condition as its objectives are more clearly and comprehensively addressed in safety and employment legislation.	Airtricity	This condition is a continuation of existing arrangements. The RAs view is that there is no clear need to remove this condition as a result of Directive or SEM implementation.
Condition 6	The Authority has agreed to changes to this condition (both in this licence and in other	NIE	The RAs do not view this as a SEM/Directive related change and believe that any general update to this

² Draft SONI MO licence 2.3 (d)

	<p>licences, as reflected in the draft TSO licence). Please reflect the wording proposed in the draft TSO licence in this licence. Note: This condition is generic to all NI licences. The need to modify it was referred to Ofreg (James Hutchinson) in August 2004 following discussion with the generators and the supplier's representative at the Grid Code Review Panel in May 2004. Ofreg agreed to the proposal and began the exercise by incorporating the revised licence condition in the new SONI licence. It was agreed to defer modifying the remaining licences until Ofreg carried out the NIE licence separation exercise required under the Electricity Directive</p>		<p>condition and equivalent conditions in existing licences will need to be progressed outside the remit of the SEM/Directive implementation.</p>
<p>Condition 7 (8) (Information to the Authority)</p>	<p>The provisions in relation to the costs of the General Consumer Council (as renamed) should be reinstated on the basis that the TO licensee pays a share of those costs. The remaining costs should be spread across all supply licensees who supply domestic customers. The wording in NIE's existing licence should be modified to read as follows: "the relevant proportion to be borne by the Distribution Business, as determined by the Authority from time to time, of the amount notified to the Authority by the General Consumer Council and approved by the Department as being the General Consumer Council's estimate of its likely costs during the year in question in the exercise of the functions</p>	<p>NIE</p>	<p>This change has been made to the second draft of the licence.</p>

	relating to electricity assigned to it by or under the Order and the Energy Order and any other such functions as it has been or may be required to exercise by the Authority or, in the event that the Authority shall not have received such notification by 31 July in the year in question, the relevant proportion of the amount being the Authority's estimate of such likely costs (having regard to any estimate of such costs in any forward work programme published by the General Consumer Council in respect of the year in question);"		
Condition 9 (Disposal of Relevant Assets)	We note that views of authorised electricity undertakings in the Republic of Ireland as well as Northern Ireland, and in both cases, liable to be materially affected, are to be taken into account. For consistency in the SEM arrangements, it would be important to ensure that a corresponding obligation also applies to the TO in the South.	NIE	The RAs note this comment.
Condition 9 Paragraph 8	We agree with the proposal in relation to existing financing arrangements, and suggest the following wording: "(b) whilst the Transmission System Operator is an affiliate of the Licensee, enter into arrangements with the Transmission System Operator for the purposes of intra-group financing arrangements, including loans".	NIE	It is accepted that it may be appropriate for certain specific arrangements in this area to continue to be permitted following initial SEM implementation. However, the RAs are of the view that the proposed wording is too generic and instead believe that it is appropriate for any such loans to require be approved by the Authority. A proposed amendment to this effect has been included in the second licence draft.

Condition 9	This condition does not address the situation where it is proposed to use the transmission and distribution assets for interests other than or in addition to the specified functions of the licensee. For example if assets are permitted to be used by a third party for revenue generation, this should be notified to the RA, who should approve the proposed use and determine the benefit to accrue to the customer if the use is permitted.	ESB	The RAs do not view this as a SEM or Directive implementation change and therefore falls outside of this consultation. However the RAs are of the view that this has already been captured as the definition of “disposal” is broad.
Condition 10 (Restriction on use of information)	This condition should not restrict information flows between the combined parts of the transmission and distribution business. We note that the reference to “Separate Businesses” could have that effect. The references to the Separate Businesses in this condition should therefore be amended to refer to the Transmission and Distribution Business.	NIE	The RAs are not seeking to restrict information flows unnecessarily and therefore the proposed amendment has been made. The amendment treats the transmission and distribution businesses as one for the purposes of this condition however it remains the case that information may only be shared with authorised recipients.
Condition 10 Paragraph 2	This Condition would require NIE to procure compliance from affiliates and related undertakings. As NIE has indicated, it is not appropriate for the licences in the new arrangements to seek to impose obligations indirectly in this way on the wider group. To the extent that such obligations should be placed on different entities within the Group, this is a matter for direct regulatory enforcement and not for indirect enforcement of such obligations via NIE. The relevant obligations should be in each of the relevant	NIE	The Authority is of the view that this condition is not as general as suggested. As protected information is defined as that obtained by the licensee in the course of the licensee's business, the RAs continue to be of the view that it is appropriate for the specific licensee to continue to be responsible for ensuring that affiliates to whom the information is passed continue to treat the information appropriately.

	licences and enforced directly. There is in NIE's view no Electricity Directive or SEM justification for imposing the obligations in this way, which would then entail contractual arrangements being required between different Group companies that are contractually enforced. This provision should therefore be deleted from this Condition.		
Condition 10	The definition of "protected information" should be expanded to include information about the activities of the licensee itself which if disclosed in a discriminatory manner would be commercially advantageous. This is required by Article 16 of the Directive.	ESB	The RAs are of the view that relevant information about the licensee itself is already captured in the definition of protected information and consequently that not such amendment is required.
Condition 10	The licence does not specify what remedies are available to the RA where a breach of this condition has occurred. In the ROI the legislation has provided for the possibility of legal proceedings to be taken against the individual in the courts.	ESB	It is not practice for the licence to refer to the remedies of a breach. These are set out in the Energy Order.
Condition 10 Paragraph 1(a)	It is unclear why the word "unfair" has been included in this draft. Almost by definition the use of protected information for commercial advantage of an affiliate is unfair. Therefore inclusion of the word will only result in unnecessary debate in the event of a complaint and it should be removed to avoid such ambiguity.	Airtricity	This wording is contained in the existing licence. The RAs are of the view that the existing arrangements are sufficiently clear and the removal of the word "unfair" as proposed would not constitute a SEM or Directive change.

Condition 10 Paragraph 5	From experience it would appear that staff involved in the business of licensees often have only the broadest awareness (if any) of licence conditions to which their employers are subject. We therefore believe that it is in the interests of all parties that this condition should include an obligation to develop, maintain and enforce an employee code of conduct, to ensure that staff are aware of their obligations and to facilitate the licensee in the discharge of its obligations.	Airtricity	The RAs consider that breach of licence conditions is a serious matter and that it is the responsibility of the licensee to ensure that the necessary steps to ensure compliance have been taken. The RAs do not accept that it is appropriate to include additional obligations in order to doubly ensure compliance or to prescribe in detail the way in which the licensee should comply with its obligations solely for the purpose of ensuring compliance with higher level obligations.
Condition 11 (Compliance with SCC) (N/A in new draft)	If the SCC is run off as proposed, there will be a need to consider transition issues in relation to the SCC.	NIE	The RAs agree with this statement.
Condition 11	The proliferation of regulatory documentation is more likely to undermine effective regulation than strengthen it. Having a range of documents to consider in different circumstances introduces the risk of a relevant requirement being overlooked by a user or other affected party. Multiple documents are also more difficult to maintain in a coherent and comprehensive state. The purpose of the SEM is to address the failings of current arrangements and a great deal of work is going in to licence developments that will deliver correct behaviour by market participant. We therefore consider that this licence condition should be removed and that any SCC runoff provisions, including a sunset provision, be	Airtricity	Again the RAs agree with this statement.

	incorporated in revisions to the SCC itself.		
Condition 13 (Independence) (12 in new draft)	This Condition has the potential for wide-ranging impacts on NIE's business. It is therefore important that it be properly circumscribed so that it does not prevent proper functioning of NIE's business. We note the scope of this provision potentially goes beyond the requirements of the Electricity Directive or what is required for the purposes of the SEM. The overall obligation in paragraph 1 needs to be qualified to ensure that it is no wider than the obligation for operational and managerial independence required by the Electricity Directive. To the extent that there is a particular requirement that goes beyond the Electricity Directive which is thought to be needed for SEM purposes, for clarity it would be helpful if these were set out separately. As drafted, the Authority can require changes to the compliance plan that do not need to relate either to the Electricity Directive or to the SEM.	NIE	The RAs do not accept that the proposed changes go beyond what is needed for the purposes of the Electricity Directive or the SEM. However the RAs do not accept that the arrangements should necessarily be the minimum changes required by the Directive. Appropriate arrangements for independence of the transmission sector are an important part of facilitating competition.
Condition 13	The three month "gardening leave" restriction imposed by paragraph 3(e)(ii) is inappropriate as a blanket requirement for all employees. The wording in parentheses starting on line four should be changed to provide the requisite flexibility to enable the appropriate approach to be taken to different types of employees: "(being a period of 3 months or such shorter	NIE	This condition only refers to employees involved in management or operations. The RAs have amended this wording slightly to require a minimum 3 month period in relation to employees previously engaged in management and 3 months or as otherwise specified in the Compliance Plan in relation to those engaged in operation.

	period as the Authority may direct in respect of any person or class of persons)".		
Condition 13 (d)	Full separation is required, including separate branding. The licensee should not through any advertising, logo, trademark, website address, or in any other way, give the impression that in the discharge of its licence obligations, it is in any way functionally associated with an affiliate or Separate Business.	Airtricity	The RAs agree that in time separate branding is appropriate. This will be progressed in the NIE Energy or relevant supply licences.
Condition 13 Paragraph 3(d)	Meeting rooms can be construed as including shared canteens. We believe it is wrong in principle to contemplate any sharing of facilities, as the risk of inadvertent or casual exchange of protected information cannot be eliminated if staff share any common facilities.	Airtricity	The wording has been revised to incorporate these comments.
Condition 13 (d)	Call centres and telephone numbering systems should also be organisationally and physically separated and internal telephone lines between NIE T&D and other Viridian businesses should be barred. Sharing of IT systems and facilities should not be permitted, even if "firewalled" to prevent sharing of data.	Airtricity	The RAs feel that the current provisions are sufficiently robust. Any further issues can be dealt with in detail through the compliance plan.
Condition 13 (c)	The Compliance Manager should also be required to facilitate, as well as investigate, complaints and representations. This change would create a more proactive outlook by the manager and ensure that the complaints process is made fully visible and is	Airtricity	The RAs believe that this Condition is already sufficiently robust and do not believe that it is necessary to make such an additional amendment at this time.

	straightforwardly accessible to, affected parties.		
Condition 13	Article 15 of the Directive also places significant emphasis on the requirement to exclude discriminatory behaviour. This requirement has not been adequately addressed.	ESB	Non-discrimination is dealt with in Condition 15.
Condition 13 Paragraph 3	Should provide for specific separation of websites for the licensee and associated businesses.	ESB	This is implicitly dealt with in Condition 13.
Condition 13 Paragraph 3 (e)(ii)	We note that a quarantine periods of at least 3 months is provided for. We take this to mean that the RA may consider a longer period if the particular transfer merits it, as could arise in foreseeable instances.	ESB	We agree that in circumstances a period longer than 3 months may be appropriate.
Condition 13 Paragraph 4	The purpose of the Compliance Plan should be to outline how independence of the separate business is to be achieved and to outline specific measures required to ensure that the licensee does not engage in discriminatory behaviour. This obligation is set down in Article 15 (d) of the Directive. As drafted the condition focuses on measures to ensure independence but does not deal adequately with the prohibition on discriminatory behaviour. The plan should: <ul style="list-style-type: none"> ▪ Specify measures designed to ensure that the company does not engage in discriminatory behaviour. 	ESB	The RAs consider that steps to ensure independence are the only practical means by which influences that might cause a licensee to discriminate can be minimised. The obligation not to discriminate is contained in a separate condition.

	<ul style="list-style-type: none"> Specify the obligations on management and staff of the company that will ensure that such behaviour does not happen. 		
Condition 13 Paragraph 4	Should include provisions designed to ensure that the professional interests of those managing the DSO are to be taken into account (e.g. remuneration not linked to performance of generation or supply interests) to allow them to discharge their obligation to maintain the independence of the subsidiary.	ESB	This will be dealt with as part of the Compliance Plan as required.
Condition 13 Paragraph 4	The procedures required by the Compliance Plan should explicitly cover the transfer of staff to/from Associated Businesses and rules of conduct covering how commercially sensitive information will be protected particularly when shared with the holding company.	ESB	This comment is noted.
Condition 13 Paragraph 4	The Compliance Manager is required by the Directive to report annually on the measures taken to avoid discriminatory behaviour and the licence should state this (Article 15(d) refers).	ESB	The licences provide generally for the Authority to require information from the license and consequently this is therefore implicit in the licence draft.
Condition 13 Paragraph 14	The Compliance Manager should be required to include details and outcomes of any other investigations carried out by other relevant third parties e.g. competition authorities during the relevant period.	ESB	The RAs are of the view that matters of such detail may be dealt with in the compliance plan.
Condition 14	The proposal to allow NIE to own and operate	ESB	NIE already own and operate generation for such

(Prohibited Activities) (13 in new draft)	generation specifically for the purposes of carrying out the T&D activity is unusual and is not adequately justified in the paper. Explanatory commentary is needed.		purposes and consequently this is simply a continuation of existing arrangements. This represents a very limited amount of plant used to support the operation of the transmission/distribution system in very limited circumstances.
Condition 14 Paragraph 4	The “carve out” in paragraph 4 needs to include the generating sets on Rathlin Island. We suggest the following re-wording: “For the avoidance of doubt, the restriction in paragraph 2 shall not apply to generation sets which are used solely for the purposes of the Transmission and Distribution Business, including all mobile generation sets and the generation sets on Rathlin Island.”	NIE	This amendment has been made.
Condition 15 (Ring Fencing) (14 in new draft) Paragraph 8	The paragraph reference in line 2 should be a reference to paragraph 6 not 8.	NIE	This amendment has been made.
Condition 15	The relevance of the date 8 February 1998 should be set out. It is not clear how the proposed approach is consistent with the MO and SO licences as stated in the consultation paper.	ESB	This is an historic date not impacted by SEM/Directive changes.
Condition 16 (15 in new draft) (Non-Discrimination)	The condition lists 10 specific conditions to which this obligation applies. The issue here is that the list may not be complete. The wording should include a general obligation not to engage in discriminatory behaviour.	ESB	The RAs are of the view that this list captures the main obligations of the Licensee and is therefore sufficiently wide.

<p>Condition 16</p>	<p>The Consultation Paper notes that this is based on the existing NIE licence. The existing NIE Licence does not contain a broad-brush non-discrimination obligation in this way, but rather ensures that the obligation is set out in the appropriate context.</p> <p>The key obligation is set out in Condition 15(2) Part II of the existing NIE licence where the obligation relates to “the provision of top-up or standby or use of system or in the carrying out of works for the purpose of connection to the licensee’s system” and the obligation contains an important exception “except insofar as any difference in the amounts charged for or any other terms or conditions of such provision or carrying out of works reflects, to the satisfaction of the Authority, the difference between the costs or other circumstances of such provision or carrying out to one person or class of persons and another.”</p> <p>The list of Conditions subject to the non-discrimination obligation is not explained or justified in the Consultation Paper. The drafting is based on the GB precedent, which is limited (e.g. in Condition D5 of the Scottish Power licence) to:</p> <ul style="list-style-type: none"> “(a) in meeting its obligations under standard condition D2 (Obligation to provide transmission services); (b) in meeting its obligations under 	<p>NIE</p>	<p>The RAs have reviewed the proposed list of specific non-discrimination obligations and accept that give the separate regulatory approval processes in relation to the charging statements, the nature of the document and precedent elsewhere it is not necessary to include these in the list.</p> <p>Furthermore the RAs also accept that given the nature of the content of the Distribution Code and precedent elsewhere that this can also be removed from the list.</p> <p>Finally, the RAs accept that given the more specific non-discrimination provisions relating to Market Registration, there is no need for additional generic obligations in this regard in Condition 15.</p> <p>The RAs therefore propose that reference should continue to be made in Condition 15 to:</p> <ul style="list-style-type: none"> (a) Condition 17 (Transmission Interface Arrangements) (b) Condition 18 (Obligation to Provide Transmission Services) (c) Condition 19 (Operation of the Distribution System and the System Security and Planning Standards) (d) Condition 20 (Obligations in Relation to Offers by the Transmission System Operator); and (e) Condition 30 (Requirement to Offer Terms for Connection and Use of the Distribution System).
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	<p>standard condition D3 Transmission system security standard and quality of service);</p> <p>(c) in meeting its obligations under standard condition D4A (Obligations in relation to offers for connection etc); and</p> <p>(d) in meeting its obligations under standard condition B12 (System Operator - Transmission Owner Code).”</p> <p>On the basis of the precedent, please delete the following:</p> <p>“(e) Condition 22 (Transmission Charging Statement);</p> <p>(f) Condition 25 (Distribution Code);</p> <p>(g) Condition 26 (Market Registration Service and Market Data Service);</p> <p>(h) Condition 27 (Market Registration Arrangements);</p> <p>(i) Condition 28 (Requirement to Offer Terms for Connection and Use of the Distribution System); and</p> <p>(j) Condition 30 (Basis of Charges for Use of and Connection to the Distribution System).”</p> <p>In relation to the MRC, Condition 26(4) already contains a non-discrimination requirement</p>		
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	<p>specifically crafted for that provision.</p> <p>For distribution connection and use of system, a provision based on the existing Condition 15(2) would be appropriate, rather than the GB precedent which is based on a pure transmission owner licence context. For example, under the condition as currently drafted would NIE be obliged to charge the same regardless of voltage levels?</p>		
Condition 17 (Transmission Interface Arrangements)	Does the RA intend to publish the proposed arrangements for comment prior to approval?	ESB	The RAs do intend that the proposed arrangements will be published for comment.
Condition 17	We agree with the suggestion that this condition be expanded to address the interface between the TSO and the Distribution business, particularly as separation of the Distribution and Transmission Grid Codes may well introduce requirements that are specific to each business and therefore require different interface arrangements.	Airtricity	The RAs note this comment.
Condition 17	The Transmission Interface Arrangements are currently under development. It is important that they contain what is required to enable the parties to the document to be able to comply with respective legal and regulatory obligations. This Condition may therefore need to be revisited once the full scope of that document is settled, and any changes to the	NIE	We expect that the TIA will provide explicitly for detailed levels of information exchange between licensees. In particular the RAs expect that the TIA will include an exclusive list of the data stating that which may only be sent by the SO to the TO.

	Condition also reflected in the licence of the Transmission System Operator. As a corollary to that, it is also important that the Interface Arrangements remain within the boundaries of what they are seeking to achieve, rather than allowing ancillary matters to be dealt with in that document. For example, paragraph 3(c)(ix) should be amended to insert criteria around the information to flow between the Licensee and the TSO, namely, that it should be as required only in order to comply with the respective licences, as well as each party being so authorized to disclose.		
Condition 17 Paragraph 3(c)(vi)	Reference to “All-Island Networks” should be replaced with “All-Island Transmission Networks”.	NIE	This change is accepted.
Condition 17	There may be instances where payments must be made in relation to, for example, the exchange of information under paragraph 3(c)(ix). Therefore paragraph 3(c)(viii) should be included as the last item on the list of terms for inclusion in the Transmission Interface Arrangements to allow for this.	NIE	This amendment has been made to provide for more general drafting.
Condition 18 (System Security and Planning Standards)	The word “Transmission” should be included before the words “Interface Arrangements” in the first line.	NIE	The RAs agree with this statement.

(19 in new draft)			
Condition 18	What role does the TSO have in relation to maintenance of the transmission system?	ESB	The TSO will have a limited role. Detailed arrangements on maintenance will be contained in the TIA.
Condition 19 (Transmission Services) (18 in new draft)	<p>Two new obligations are required;</p> <ul style="list-style-type: none"> an obligation to develop the system in order to facilitate the objectives of the SEM, and an obligation to consult with the TSO during development of plans for works that will impact the flow of electricity on the system. <p>The first of these is required to ensure there is a link between the level, prioritisation and nature of investment in the Transmission system in a way that addresses constraint and other costs associated with the physical system and that result in higher than necessary costs to final customers.</p> <p>The second obligation is required to ensure that the TSO is fully aware of licensee plans, with sufficient lead time to co-ordinate generation outages and all-island system operation in the most effective, and therefore least cost way. In complying with condition 16, the licensee should interpret the requirement as meaning that, where possible, it will amend plans for works on the system, if requested to do so by the TSO for material operational</p>	Airtricity	<p>The RAs generally agree with these comments, although they are reflected in the drafting of the new condition 19 (System Security and Planning Standards and Operation of the Distribution System).</p> <p>Paragraphs 1 and 2 of the new Condition 19 refer.</p>

	reasons.		
Condition 19 Paragraph 6	This report should be published by the RA.	ESB	There is nothing in this Condition that prevents the RA from publishing this report. This is a role forward of existing obligations.
Condition 19	The equivalent condition to this in the SO licence is entitled “Operation of the transmission system and the System Security and Planning Standards”. Therefore, for consistency, condition 19 in the Transmission Licence should be entitled “Operation of the distribution system and the System Security and Planning Standards”.	NIE	This amendment has been made.
Condition 19 Paragraph 1	The draft TSO licence makes a reference to “coordinating and directing the flow ...transmission system”. Paragraph 1 of condition 19 in this Transmission licence makes a reference only to “...operate ...the distribution system”. Under the current proposals there is an implied gap between the two licences in terms of who “co-ordinates and directs the flow on the distribution system”. This condition needs to be amended to provide that such co-ordination is carried out by the Licensee.	NIE	This amendment has been made.
Condition 19 Paragraph 1(b)	This condition relates to System Security and planning standards or, as provided for by paragraph 1(b) “such other standards of planning and operation”. NIE T&D will not be a	NIE	This amendment has been made replacing Grid Code with Transmission Interface Arrangements.

	party to the Grid Code and the Distribution Code is dealt with in a separate condition of this licence. Therefore references to the Grid Code and Distribution Code should be removed from paragraph 1(a).		
Condition 19 Paragraph 2(c)	The reference to "Transmission Owner" should be replaced with a reference to "Transmission System Operator".	NIE	The RA agrees with this comment and the appropriate amendment has been made.
Condition 19 Paragraph 5	This requires that the Licensee sets out criteria by which "performance of the Licensee in maintaining transmission system security, distribution system security and availability and quality of service may be measured". As currently drafted, it is not clear whether the availability and quality of service requirement is to apply to the distribution system or to the transmission system also. It is assumed that availability and quality of service apply to the distribution system only, however this needs to be clarified in the Licence and also reflected in the SO licence as appropriate in relation to the reporting on transmission availability and quality of service.	NIE	The Licensee will be required to report on both the transmission and distribution systems. The transmission system reporting will be done in consultation with SONI.
Condition 20 (Offers by TSO)	Consideration needs to be given as to whether distribution works are dealt with differently, from a contractual perspective, from the main transmission work. Following a further review of this issue as part of the transmission	NIE	This comment is noted however the RAs are of the view that this condition remains appropriate.

	interface arrangements, there may be a need to reconsider the proposed licence drafting in due course.		
Condition 20 Paragraph 2	A new paragraph 2 (d) “the carrying out of works (if any) on the transmission system as are required for the installation of such switchgear or other apparatus (if any) as may be required for the interruption of supply“ should be included to maintain consistency with Condition 28 paragraph 2(d).	NIE	This change has been made.
Condition 20	The possibility that applicants for connection to the transmission system may seek independent quotations for the construction of their connections is not provided for. Neither does the licence address what happens if the TSO rescinds an agreement due to a material breach by the licensee. Will the TSO have step in rights to arrange for the construction of the connection?	ESB	The RAs are of the view that this is not a SEM or Directive related issue and should therefore be raised outside of this consultation.
Condition 23 (Land Bank)	In relation to the Land Bank Business, this is currently carried out by the power procurement business. NIE is considering the implications of retaining the Land Bank Business within NIE plc or transferring the business to SONI Limited. We agree that as a preliminary view the Land Bank Business may sit with NIE plc, and that this should be the current working	NIE	The RAs are of the view that it is appropriate for the land bank business to sit with NIE T&D and consequently believe this condition is appropriate in this licence.

	assumption.		
Condition 25 (Distribution Code) (27 in new draft)	NIE considers a practical interim solution is the approach of a “short form” Distribution Code which, in its context, cross-refers to the Distribution level related elements of the Grid Code. The Code would need to be binding on distribution connected parties and parties using the Distribution System, and referred to in respective licences and in the appropriate Connection and Use of System Agreements. In due course, a fuller Distribution Code should be created, and the Grid Code amended to take out the Distribution related issues which will no longer be appropriate. There will also be a need, for the interim period until a full separate Distribution Code is in place, for the SO licence to be amended to provide (in relation to Distribution Code elements of the Grid Code) for a specific procedure for change, to ensure that a change to the Grid Code does not inadvertently have an effect on the Distribution Code provisions.	NIE	The RAs accept this and note that a short-form Distribution code is being progressed for implementation from SEM/Directive go-live.
Condition 26 (MRS) (28 in new draft) Paragraph 2	Further consideration needs to be given in the context of unmetered suppliers and in aspects that may become irrelevant under SEM, for example, market settlement characteristics. For instance, in paragraph 2(d) after the word “customer”, the words “in the case of permanently metered supplies,” needs to be	NIE	The RAs have updated this condition to reflect comments received. Comments are particularly invited in relation to the new proposed wording of this condition.

	included to reflect this.		
Condition 26 Paragraph 3	May need updating once T&D functions after the implementation of the SEM in relation to the Market Data Service have been finalised.	NIE	The RAs accept that this is the case.
Condition 26	This is an extremely sensitive area and should be subject to independent audit/review of process and procedures. The outcomes of such reviews should be made available to market participants. In addition, staff working in this area should sign specific Trust and Confidentiality Agreements to underline the sensitivity of the information in their business area.	ESB	The Regulatory Authorities agree with the respondent that provision of the Market Registration Service and the Market Data Service are commercially sensitive, and note that the respondent suggests various measures that are implemented in ROI within ESB Networks. However, the Regulatory Authorities also note that these measures are not mandated by the licence condition in ROI covering the Meter Point Registration Service provided by ESB Networks. Instead the measures stem from more general conditions relating to the separation of businesses. The proposed licence for NIE T&D contains equivalent provisions under 'Condition 10: Restrictions on the Use of Certain Information', and the Regulatory Authorities consider that it would be inappropriate to be more prescriptive in this particular licence.
Condition 26 Paragraphs 2(a) and 2(c)(ii)	It is not clear why the PPB is specifically mentioned as being in particular need of market registration services and data when, on the basis of it being properly ring fenced in compliance with the regulatory design of the market, it is a business exactly analogous to independent suppliers and generators. We consider that continued reference to PPB suggests that business is in some way a special case requiring special treatment.	Airtricity	The RAs agree with this and reference to PPB has been deleted.

Condition 27 (Market Registration Arrangements) (29 in new draft)	<p>This condition should be reworded to ensure that the market registration codes and agreements are developed by NIE acting on behalf of market participants. The documents should not be understood to be "owned" by T&D; they should be owned by the Authority in the same way that the T&SC is owned by the RAs and maintained by a licensee on their behalf.</p> <p>With this approach T&D would not be seen to have final say in developing and maintaining the content of these arrangements. Currently they are regarded in a proprietorial way by the licensee, as a result of drafting in the existing licence.</p>	Airtricity	The RAs do not believe that this change is one that is necessary as part of the introduction of the SEM/Directive.
Condition 27	Please clarify if changes are still required to this condition.	ESB	We are currently not aware of any further changes currently required but would welcome views on this.
Condition 27 Paragraph 6(a)(i)	Further consideration is required in the context of the development of Condition 25 (now 27 on the Distribution Code).	NIE	The Authority believes that this condition is now sufficient as drafted.
Condition 28 Requirement to Offer Terms UOD) (30 in new draft) Paragraph 2(g)	This condition implies that metering obligations (for special metering, telemetry or data processing equipment) will be set out in the Distribution Code. Until NIE has considered the scope of the short-form Distribution Code it is not possible to confirm the appropriateness of this condition.	NIE	Our expectation is that for Day 1 this will be done partly by cross-reference to Grid Code provisions from the Distribution Code.

Condition 28	As with paragraph 5 of condition 20, which makes provision for any necessary distribution work that could be associated with a transmission connection, a corresponding provision needs to be included as a new paragraph 7 in condition 28 [30] to deal with transmission works associated with a distribution connection. This would allow the consequential transmission works to be part of the offer permitted by the Licence. Separately, the transmission interface arrangements would provide for the interactions between the Licensee and the Transmission System Operator in relation to such transmission work. The wording of paragraph 5 of condition 20 should therefore be included with the appropriate modifications.	NIE	We accept that in principle this may occur and therefore we have accepted this change.
Condition 28	Consideration will also need to be given as to how relevant distribution connectees will be subject to the Grid Code. While this could be done through the Distribution Connection Agreement, an alternative would be to implement a separate Generator Transmission Use of System Agreement with SONI dealing with this. The final approach on this would need to be reflected once the approach on that is settled.	NIE	The RA expects there will be a line in the TIA which requires NIE to ensure that generators of an appropriate size will be made to apply to SONI for a UoS agreement. The RAs are of the view that it is not necessary to deal with this directly through the licence.
Condition 30	It is wrong to include a get out condition for	Airtricity	This is subject to the approval of the Authority and is taken

(Basis of charges for Connection to D System) (32 in new draft) Paragraph 7(a)	provision of information, based on the commercial interests of the licensee. The licensee is a monopoly and as such the release of commercial data can never be of any value to a third party; there are no competitors to take advantage of the information.		from the existing licence. Consequently the RAs do not believe that an amendment is necessary for SEM/Directive purposes.
Condition 30	Please note that this condition will be subject to further review once legislative changes have been developed.	NIE	This is noted but believes that the currently drafted condition is robust.
Condition 31 (Standards of performance) (34 in new draft)	Those who pay for use of the distribution system are reasonably entitled to be provided with a means of establishing whether or not the licensee has complied with this condition. It would therefore be reasonable to include an obligation to facilitate benchmarking of its performance against other similar businesses.	Airtricity	This condition is a continuation of existing arrangements; any changes would not be the result of SEM or Directive implementation. More generally enforcement of licence conditions is a regulatory matter, not a matter for other licensees.
Condition 31	We note that this condition will be reviewed again. We would expect to see incentive/penalties linked to performance standards.	ESB	This condition is a continuation of existing arrangements; any changes would not be the result of SEM or Directive implementation.
Condition 33 (Licensee's apparatus on customers' side of meter) (36 in new draft)	Please note that this condition will be subject to further review once legislative changes have been developed.	NIE	Noted.
Condition 39	Please indicate which changes, if any, are	NIE	The changes to the price control conditions will be made

(Charge Restriction Conditions) (42 in new draft)	considered to be necessary to the current T&D price control provisions as currently set out in Schedule 4 of the current licence.		in the transition period.
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