



**Single Electricity Market  
(SEM)**

**Framework for NEMO Regulation from  
October 2019**

**SEM-19-019**

**01 May 2019**

## EXECUTIVE SUMMARY

A Consultation Paper, SEM-19-003, was published on 28 January 2019 which considered a number of options for the framework for regulation of NEMOs in Ireland and Northern Ireland from 3 October 2019, the date which the current designation held by SEMOpx is due to expire.

The Consultation Paper provided an overview of the background to the initial NEMO designation for the SEM and the legal and regulatory context under the EU Guideline on Capacity Allocation and Congestion Management, 2015/1222, including the regulatory framework which applied to SEMOpx between 2015 and 2019.

Three main areas of the regulatory framework and its application to NEMOs designated in the SEM were consulted on in SEM-19-003. These included the process for re-designation for SEMOpx and other potential applicants, whether price regulation should continue to apply to SEMOpx should it successfully seek re-designation and if price regulation should apply if other NEMOs offer day ahead and intraday trading services in the SEM in future. The Consultation Paper also noted that options in this area are constrained by a range of factors and the RAs' preferred approach was outlined for each issue. A total of four responses were received to the Consultation Paper and are published alongside this Decision Paper. Responses were received from the following stakeholders;

- ESB Generation and Trading (ESB GT)
- Aughinish Alumina Ltd
- Power NI Energy Limited Power Procurement Business
- SONI Ltd and EirGrid Plc

A number of areas of the regulatory framework for NEMOs, to apply from 3 October 2019, are outlined in this Decision Paper following consideration of responses from interested stakeholders to the RAs' proposals in SEM-19-003, including the timing and length of re-designation, the application of a price control and the details of regulation of one or more NEMOs in the Single Electricity Market. Based on the Decisions outlined in this paper, the regulatory framework which has been decided upon will apply in any of the following cases;

1. SEMOpx, which is currently designated to deliver NEMO services to the all-island market, seeks re-designation as NEMO for Ireland and Northern Ireland.
2. Another party is designated for Ireland and Northern Ireland as a SEM NEMO; or
3. Any additional NEMO seeks to operate in the Single Electricity Market (SEM) on the basis that they have been designated in another Member State.

A summary of the SEM Committee's decisions is provided in the table below.

<b>SEMC Decision 1:</b>	A time-limited designation of three years will be applied to any NEMO designated in Ireland or Northern Ireland to provide day-ahead and intraday trading services in the SEM from October 2019.
<b>SEMC Decision 2:</b>	In the event that SEMOpx successfully applies for re-designation a revenue control will apply to SEMOpx from October 2019. Such a revenue control will apply for an interim

	<p>period of three years regardless of whether another NEMO enters the SEM and competition arises in the market during this time.</p>
<p><b>SEMC</b> <b>Decision 3:</b></p>	<p>In terms of overall principles of revenue regulation applied to SEMOpX, the RAs will continue to apply an allowed revenue approach with efficient costs being underwritten.</p> <p>Any remuneration applied to SEMOpX in the absence of a sufficient RAB will be consistent with other parts of the licencees' activities as Market Operator.</p> <p>This will be considered in more detail as part of the Draft Determination and Final Determination papers for any further price control applied to SEMOpX.</p>

## Table of Contents

<b>1. Introduction</b> .....	5
1.1 Background.....	5
<b>2. Process for Re-designation of a NEMO</b> .....	6
2.1 Background.....	6
2.2 Summary of RA Proposals.....	6
2.3 Summary of Responses.....	8
2.4 RA Response.....	8
2.5 SEMC Decision.....	9
<b>3. Regulatory Framework and Timing</b> .....	10
3.1 Background.....	10
3.2 Summary of Proposals.....	10
3.3 Summary of Responses.....	12
3.4 RA Response.....	13
3.5 SEMC Decision.....	14
<b>4. Revenue Regime</b> .....	15
4.1 Background.....	15
4.2 Summary of RA Proposals.....	15
4.3 Summary of Responses.....	16
4.4 RA Response.....	16
4.5 SEMC Decision.....	16
<b>5. Arrangements for Multiple NEMOs</b> .....	18
5.1 Background.....	18
5.2 Summary of RA Proposals.....	18
5.3 Summary of Responses.....	19
5.4 RA Response.....	20
5.5 SEMC Decision.....	21
<b>6. Conclusion and Next Steps</b> .....	22

# 1. Introduction

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## 1.1 Background

The Commission Regulation (EU) 2015/1222 establishing a Guideline on Capacity Allocation and Congestion Management (CACM) entered into force on 14 August 2015. The CACM Network Code requires that a Nominated Electricity Market Operator (NEMO) is designated as responsible for Day Ahead (DA) and Intra-Day (ID) Market Coupling in each national or regional bidding zone.

Nominated Electricity Market Operators (NEMOs) are defined under the CACM Regulation as entities 'designated by the competent authority to perform tasks related to single day-ahead or single intraday coupling'. The CACM Regulation requires designated NEMOs to establish and operate single day ahead and intraday coupling in coordination with TSOs and other NEMOs. It also sets out a governance framework for NEMOs.

The core NEMO functions are receiving orders from market participants, having overall responsibility for matching and allocating orders in accordance with the single day-ahead coupling and single intraday coupling results, publishing prices and settling and clearing the contracts resulting from the trades according to relevant participant agreements and regulations. The detailed roles and responsibilities of NEMOs are set out in Article 7 of the CACM Regulation.

The RAs (the Commission for Regulation of Utilities and the Utility Regulator) were each required to designate a NEMO to carry out the functions of the NEMO in 2015, within four months of the entry into force of the CACM Regulation. Under CACM, both EirGrid and SONI were each designated as NEMO for Ireland and Northern Ireland respectively, and were tasked, through the contractual joint venture of SEMOpx, to deliver NEMO services across the all-island bidding zone.

CACM sets out that NEMOs shall be designated for an initial term of four years. On this basis, the governance arrangements around the initial designation were developed by the RAs for an interim four-year period while the I-SEM project was still in a design phase. This four-year designation period ends on 3 October 2019.

Each of the following sections of this Decision Paper outlines SEMC decisions on the following areas of consultation with stakeholders;

1. The process and timelines for NEMO re-designation from 3 October 2019.
2. The regulatory framework to apply to any NEMO which is designated in Ireland and Northern Ireland.
3. The principles of the revenue regime to apply to SEMOpx, should it be designated from 3 October 2019.
4. Arrangements for multiple NEMOs operating in the SEM in light of these decisions.

## 2. Process for Re-designation of a NEMO

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### 2.1 Background

Under Article 4(2) of CACM, NEMOs are designated for an initial term of four years and Member States should allow applications for designation at least annually. As per Article 4(4) of CACM, there should be no discrimination by the RAs between non-domestic and domestic applicants for designation.

On 2 October 2015 the CRU designated EirGrid as the Designated NEMO for Ireland under Article 4 of CACM and the UR designated SONI as the Designated NEMO for Northern Ireland. Under the initial regulatory framework, EirGrid and SONI as the designated NEMOs (which work together through a Contractual Joint Venture, SEMOpx, to jointly deliver NEMO services) are required to confirm before the expiry of the initial designation term of four years if they wish to continue to be designated in Ireland and in Northern Ireland, and submit evidence demonstrating how EirGrid and SONI continue to comply with the designation criteria.

It was stated in the Consultation Paper that if an application is submitted to the RAs by either SEMOpx or another NEMO, this will be assessed to ensure compliance with CACM with a decision concerning the NEMO designation in both Ireland and Northern Ireland to be made before the expiry date of the current designation on 3 October 2019. Any such designation will be conditional on the NEMO being compliant with the criteria of Article 6 of CACM.

The Consultation Paper also noted current limitations concerning the operation of multi-NEMO arrangements in the SEM. Under Articles 45 and 57 of CACM, TSOs operating in a relevant bidding zone are required to develop and implement a proposal regarding cross-zonal capacity allocation and other necessary arrangements in Bidding Zones where more than one NEMO is designated and/or offers trading services. Arrangements are required to allow the matching of market participants' orders and also to enable interconnector capacity to be accessible to both NEMOs in the bidding zone. The TSOs' proposal on this was approved by the CRU and UR and the RAs understand that work is ongoing to put arrangements in place to facilitate multiple operational NEMOs in the SEM.

There is no guidance in CACM on the length of time any subsequent designation should apply for and how a NEMO may cease to be designated if it so wishes, so these issues were considered in the Consultation Paper in order to provide clarity to potential applicants for designation.

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### 2.2 Summary of RA Proposals

As part of the Consultation, the RAs invited feedback from interested stakeholders on whether the next term of designation (from October 2019) should be time limited and for how long. It was also noted that under Article 4(5) of CACM, a NEMO designated in one Member State shall have the right to offer day-ahead and intraday services with delivery in another Member State, without the need

for designation, so any NEMO 'passporting' into the SEM to offer day ahead and intraday services could do so as long as they remain designated in another Member State.

In the first instance, the RAs considered whether the next term of designation should apply on an enduring basis. If this option was to be put in place, a process for any designated NEMO to terminate its designation would need to be developed. It was considered that once this process was put in place, the designated NEMO could potentially request for its designation to cease to be effective at any time, which could lead to uncertainty for market participants.

The second option which was considered was the application of a time-limited period of designation from October 2019. Under this option, at the end of the period, the designated NEMO would have the option to re-apply for the next term of designation. This was presented as the RAs' preferred option as it would provide certainty to market participants for this period and could potentially align with the application of a price control if the same conditions of the first price control were to continue, i.e. if SEMOpx successfully applied for re-designation and was the only NEMO operational in the SEM, at least initially.

A time-limited designation period of three years was proposed by the RAs for designation from October 2019 for any NEMO designated for Ireland and Northern Ireland. It was stated that if, following consultation, it was decided that a price control should continue to apply to SEMOpx, this could be linked to the designation period of three years.

Responses from stakeholders to Consultation Question 1 are outlined in Section 2.3 below. This set out two options, with Option 1 providing for the next term of designation to apply on an enduring basis and Option 2 proposing that it could apply on a time-limited basis of 3 years from October 2019.

**Consultation Question 1:**

The RAs invite feedback on whether the next term of designation should be time limited and for how long.

Option 1: The RAs are considering whether the next term of designation (from October 2019) will apply on an enduring basis. If this option is put in place, a process for any designated NEMO to terminate its designation would need to be developed.

Option 2: A time-limited designation could be applied from October 2019. At the end of this period, the designated NEMO would have the option to re-apply for the next term of designation. This is currently the RAs' preferred option as it would provide certainty to market participants for this period and could align with the application of a price control. A period of three years is proposed by the RAs for designation from October 2019.

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## 2.3 Summary of Responses

Aughinish Alumina expressed a preference for the second option presented in the Consultation Paper, as a time-limited designation period would offer certainty to market participants. Power NI PPB also consider this option to be appropriate and agree that alignment with the price control period would be a sensible approach. One issue highlighted by Power NI PPB concerned the need for a process to ensure sufficient notice is provided if the designated NEMO is not going to re-apply at the end of this three-year period, to ensure that there is time for an alternative designation to be completed.

In their response, ESB GT also agreed with Option 2 and stated that a time-limited three-year designation is the most appropriate way forward at this time, as this is simple to implement and removes the requirement to determine a termination process and also provides more certainty to market participants. ESB GT stated that this should be reviewed in future to understand if there is a more efficient framework than a time limited designation.

In SONI and EirGrid Plc's response, it was stated that the application of Option 1 would be of concern in the absence of a clearly defined process for a NEMO to be able to terminate its designation. In their view, Option 2, which provides a fixed term for designation of three years seems prudent, but only in combination with an appropriate regulatory revenue framework in order to provide certainty to SEM participants in the medium term while ensuring that EirGrid and SONI are not locked into obligations for an extended period of time that could be commercially difficult to maintain.

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## 2.4 RA Response

All responses to this Consultation Question supported the application of Option 2, involving a time-limited designation period of three years being applied to any NEMOs which are successfully designated from October 2019. In the RAs' view this option provides the greatest certainty for market participants and allows for a reassessment of market conditions towards the end of this designation period to assess whether changes to the regulatory framework for NEMOs operating in the SEM are required.

The RAs note the concern highlighted by Power NI PPB that a process should be in place to ensure sufficient notice is provided if the designated NEMO is not going to re-apply at the end of this three-year period. The RAs intend to keep the regulatory framework outlined in this Decision Paper under review in order to assess its continued applicability at the end of the three-year designation period if there are multiple NEMOs operating in the market and to provide certainty to market participants for the next designation. As proposed by ESB GT, this will assess the efficiency of this approach versus other alternatives at this time. At the end of this designation period, as long as a NEMO can demonstrate continued compliance with CACM, there would be nothing to preclude re-designation for another period of time.

The application of a time-limited designation does not affect the potential for NEMOs designated in other Member States to offer day-ahead and intraday services with delivery in the SEM, so any NEMO 'passporting' into the SEM do so as long as they remain designated in another Member State.

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## 2.5 SEMC Decision

A time-limited designation of three years will be applied to any NEMO designated in Ireland or Northern Ireland to provide day-ahead and intraday trading services in the SEM from October 2019.

## 3. Regulatory Framework and Timing

### 3.1 Background

SEM-19-003 described the regulatory framework which applied during the initial designation period for SEMOpx. The aim of this section of this Decision Paper is to provide clarity on the application of this framework to NEMOs from 3 October 2019. In summary, to date this framework has included;

- (a) Licence Modifications to the EirGrid and SONI Market Operator Licences, under which the NEMO services are jointly provided through SEMOpx.
- (b) Revenue Principles applied to SEMOpx.
- (c) NEMO Regulation through the Trading and Settlement Code.

While this overall regulatory framework was established for the initial four-year designation period from 2015, this Decision does not set out any revisions to the Market Operator Licences or changes to the Trading and Settlement Code that were put in place for the purpose of NEMO Regulation. In the RAs' view, these elements are still warranted for the next phase of regulation.

Within the Market Operator licences under EirGrid and SONI, a number of provisions relate to SEMOpx while the NEMO designation is in effect. These include provisions for RA approval of the SEMOpx Market Rules and approval of SEMOpx's statement of charges.

Under Section B.8 of the Trading and Settlement Code, there is an obligation on all NEMOs operating in the SEM to be party to the Trading and Settlement Code. This means that NEMOs party to the Code must comply with the requirements of the Code. This applies to both NEMOs designated in Northern Ireland and Ireland and NEMOs designated in other Member States wishing to offer trading services in the SEM.

The revenue principles to apply to SEMOpx for the initial designation period were consulted on in the context of SEMOpx being the only NEMO in the SEM. The Consultation (SEM-17-018) on these principles considered the fact that SEMOpx was a de-facto monopoly business, with no certainty that another NEMO would enter the market and the importance of access to the day ahead and intraday markets to market participants as a single route to ex-ante trading in the SEM. On this basis, a price control was applied to SEMOpx from May 2018 until October 2019, i.e. until the end of the initial designation period.

### 3.2 Summary of Proposals

The RAs' proposals for changes to this regulatory framework considered three scenarios;

1. An application for re-designation is received from SEMOpx.
2. An application for re-designation is received from one or more additional parties.
3. Any additional NEMO seeks to operate in the SEM on the basis that they have been designated in another Member State.

The RAs did not propose any modifications to the NEMO licence conditions in the MO licence<sup>1</sup> and noted that such licence conditions apply only to SEMOpx and do not apply to other NEMOs. There was also no proposed change to the requirement for any NEMO operating in the SEM to become party to the Trading and Settlement Code.

In the Consultation Paper, the RAs proposed to apply a price control from October 2019 should SEMOpx successfully re-apply for designation, to apply for three-year period regardless of whether another NEMO enters the SEM during this time. This was presented as the RAs' preferred option on the basis that the circumstances which led the RAs to put in place licence conditions and an associated regulatory framework had not changed. In addition, given the SEM market is dependent on day ahead and intraday services as the exclusive routes to an ex-ante position for market participants, the cost efficiency of NEMO services is important. The RAs also set out their view that if a price control were to continue to apply to SEMOpx, it should be put in place for a limited period of time to account for any changes that may be required should additional NEMOs become operational in the SEM. It was also proposed that this could be linked to the next period of designation.

Another option which was outlined was to cease the application of a revenue control if more than one NEMO entered the market and reached a certain threshold of market share. An alternative considered in the Consultation Paper would involve a price control ceasing to apply to SEMOpx at the end of the initial designation period on 3 October 2019, with SEMOpx setting its own fees from this date if designated. If more than one NEMO enters the market on this basis, fees could be adjusted based on competitive pressures.

Responses from stakeholders to Consultation Questions 2 and 3 are outlined in Section 3.3 below.

**Consultation Question 2:**

Option 1: In the event that SEMOpx successfully applies for re-designation and no other NEMO is operational at that point in time, it is proposed that a price control would apply to SEMOpx from October 2019. Such a revenue control would apply for an interim period of three years regardless of whether another NEMO enters the SEM and competition arises in the market during this time. This is the RAs' preferred option at present.

Option 2: Should SEMOpx successfully re-apply for designation, a revenue control could apply for an interim period of three years. However, if more than one NEMO entered the market and reached a certain threshold of market share, revenue regulation would cease.

Option 3: Alternatively, a price control could cease to apply to SEMOpx at the end of the initial designation period, with SEMOpx setting its own fees if designated. If more than one NEMO enters the market on this basis, fees could be adjusted based on competitive pressures.

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<sup>1</sup> However if a price control ceased to apply to SEMOpx along with RA approval of SEMOpx's statement of charges in future, some changes to condition 3A of the EirGrid Market Operator Licence and 15A of the SONI Market Operator Licence may be required.

**Consultation Question 3:**

If a price control continues to apply to SEMOpx (should SEMOpx successfully re-apply for designation), it is proposed that this is applied for a three-year period, linked to a time-limited designation period. Responses from interested stakeholders are invited on this proposal.

### 3.3 Summary of Responses

In their response, Aughinish Alumina stated that their preference in terms of Consultation Question 2 would be Option 1, where a price control would apply to SEMOpx should they successfully apply for re-designation, regardless of whether competition arises in the market during this time. Aughinish Alumina also agreed with applying a price control for a limited three-year period.

Power NI PPB agreed that Option 1 should be the default option however they noted that if sufficient competition were to develop during this three-year time period, there should be no reason why the designated NEMO could not seek early termination of the price control and the RAs could consult on such a request should it materialise. Power NI PPB also agreed that the price control period should align with the time-limited designation period.

In their response to Consultation Question 2, ESB GT stated that the coexistence of a regulated NEMO and competitive NEMOs within the same bidding zone has the potential for complex regulatory issues to arise, for example if SEMOpx had lower volumes of trading under regulated tariffs resulting in higher tariffs the following year. ESB GT's view is that any correction factor to SEMOpx's price control should only be contained within a ring-fenced business unit. In their view SEMOpx should set its own competitive fees and if there is no competition, fees levied across Europe by other NEMOs can be used as a benchmark. On this basis, ESB GT supports Option 3 whereby a price control would cease to apply to SEMOpx at the end of the initial designation period, which would result in a competitive, comparative process being developed.

In response to Consultation Question 3, ESB GT responded that a price control should not be applied in future and should a price control continue, it would be imperative that any new entrant NEMO would not be disadvantaged or end users burdened with duplicated costs.

In response to Consultation Question 2, EirGrid and SONI support Option 1 in the event that they are re-designated as NEMOs, subject to a revenue control providing an appropriate allowed revenue model. In their view aligning a revenue control to the designation period provides certainty to market participants in the medium term, however they note that such an approach would need to consider tariffing and fee structures to ensure they are flexible in the event of another NEMO entering the market.

EirGrid and SONI are not in support of Option 2 and in their view a subjective decision about when competition is sufficient to trigger the change in revenue control is not appropriate. This should be based on a clear framework which should be consulted on. In their response, it was also noted that the provision of interim intraday market services is not a CACM requirement at present but is currently provided through SEMOpx. If a threshold for market share and revenue regulation was put

in place, this could lead to one or more NEMOs withdrawing its NEMO services or targeting specific participants, which may lead to a scenario where not all participants are able to maintain access to day-ahead and intraday services.

EirGrid and SONI also stated that they see some value in Option 3, which would allow SEMOpx to have commercial independence over its own fees but recognise that this may be of concern to SEM participants as it is likely there would be limited competition in place at the start of the designation period. Option 3 would also require changes to the wider regulatory framework applied through requirements in each of the Market Operator Licences.

In terms of the Consultation Question 3 concerning the proposed three year period for a price control to be applied to SEMOpx, linked to a time-limited designation period, Eirgrid and SONI stated that they would be supportive of this proposal subject to an appropriate allowed revenue model, inclusive of a remuneration framework, being established and arrangements pertaining to the associated tariffing and fee structures being suitably flexible in the event of another NEMO entering the market.

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### 3.4 RA Response

The RAs note that overall, three of four respondents to the Consultation support to application of Option 1, whereby a revenue control would apply to SEMOpx for a period of three years should it successfully apply for re-designation, linked to a time limited designation period.

The RAs set out the rationale for this proposed approach in SEM-19-003. Currently, SEMOpx operates as a de-facto monopoly and there is a need for a revenue control to ensure all market participants are assured of efficiently incurred costs and appropriate fees, at least until effective competition between NEMOs has been established. This approach takes account of the specific circumstances related to the operation of SEMOpx in the SEM and its importance in terms of providing a route to access the day ahead and intraday markets.

In their response, Power NI PBB noted that if sufficient competition were to develop there should be no reason why the designated NEMO could not seek early termination of the price control. The RAs are of the view that should a price control apply for a three-year period linked to the designation of three years, there should be no provision to change or revoke this however the RAs would be open to reconsidering the regulatory framework at the end of this period.

ESB GT set out its view that SEMOpx should set its own fees and in the absence of competition that these should be benchmarked against fees across other NEMOs in the EU. As part of the fees proposed by SEMOpx to the RAs for the initial price control, benchmarking of fees for other NEMOs operating in other Member States was carried out and it was noted that within the SEM, there is a high number of smaller participants and a different participant mix to other Member States. SEMOpx's fees were developed in order to provide access to the day-ahead and intraday markets for all market participants and this provides an example of a reason revenue regulation is appropriate in this case given the importance of access to trading in these markets.

The RAs note the issue highlighted by ESB GT and EirGrid and SONI concerning tariffing and fees structures and the need to ensure that these are flexible to ensure that they can be flexible should another NEMO enter the market during this time. The RAs will engage with EirGrid and SONI on this issue should a price control be applied to SEMOpx and will consult further with interested stakeholders as part of any Consultation Process related to this.

EirGrid and SONI's comments related to an appropriate revenue model and remuneration framework are considered further in Section 4.

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### 3.5 SEMC Decision

In the event that SEMOpx successfully applies for re-designation a revenue control will apply to SEMOpx from October 2019. Such a revenue control will apply for an interim period of three years regardless of whether another NEMO enters the SEM and competition arises in the market during this time. This is linked to the SEMC's Decision for the designation from October 2019 to apply for a period of three years.

## 4. Revenue Regime

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### 4.1 Background

As detailed in SEM-19-003, the current revenue model for SEMOpx is based on an allowed revenue approach, where efficient costs associated with SEMOpx are underwritten. This applies to SEMOpx until 3 October 2019 and further detail can be found in SEM-17-096.

At the end of this price control, any over or under recovery of costs will be corrected through a k-factor mechanism, although the details of how this will be applied depend on whether SEMOpx continues to operate at the end of the designation period.

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### 4.2 Summary of RA Proposals

In the Consultation Paper, the RAs considered the potential revenue model to apply to SEMOpx from October 2019, should SEMOpx be re-designated. Comments were invited from interested stakeholders on the revenue model and form of remuneration to apply to SEMOpx, as the RAs noted that consideration would need to be given to some form of margin or remuneration in the absence of SEMOpx having a sufficient RAB to earn a return. The Consultation Paper also noted that this would be considered in more detail as part of the Draft Determination and Final Determination papers for any further price control applied to SEMOpx.

The aim of the decision in this area is to provide certainty on the high-level principles that would be applied to any price control for SEMOpx from 3 October 2019. In the event that another NEMO was designated and SEMOpx did not apply, the regulatory framework would need to be considered by the RAs.

Responses from stakeholders on Consultation Question 4 are outlined in Section 4.3 below.

#### **Consultation Question 4:**

The RAs are reconsidering the potential revenue model to apply to SEMOpx from October 2019, along with form of remuneration that should apply to SEMOpx. While this would be considered in more detail as part of the Draft Determination and Final Determination papers for any further price control applied to SEMOpx, comments on the form of remuneration SEMOpx should receive under an allowed revenue approach are invited.

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### 4.3 Summary of Responses

Aughinish Alumina had no comment on this proposal. In Power NI PPB's view, the existing allowed revenue approach should be retained for at least the next 3-year period and a margin would be an appropriate approach to provide remuneration to an asset-light business.

ESB Generation and Trading would not like to have a further price control applied to SEMOpx but would support the designated NEMO setting its own reasonable and competitive fees. In their view, this would allow competitive pressures to have a downward pressure on prices and in the absence of competition benchmarked price caps could be applied with efficiency factors.

In their response to this consultation question, EirGrid and SONI stated that at the time of the first price control they highlighted the need for SEMOpx to have an appropriate regulatory framework in place for an Asset Light Business. EirGrid and SONI welcome the fact that the RAs recognise in the Consultation Paper that should a price control apply from 3 October 2019, consideration will need to be given to remuneration to apply to SEMOpx that is consistent with remuneration provided from other parts of the licensees' activities as Market Operator.

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### 4.4 RA Response

The RAs note the general support from Power NI PBB and EirGrid and SONI for the continued application of an ex-ante allowed revenue approach to any price control applied to SEMOpx, broadly in line with the principles that were consulted on as part of the initial price control in SEM-17-044 (Revenue Recovery Principles for SEMO and Designated NEMO (SEMOpx)). Both respondents also supported additional consideration of the form of remuneration to be applied to SEMOpx, consistent with that applied under the Market Operator Price Control.

ESB GT reiterated their view that a price control should not be applied to SEMOpx and the RAs responses to this are set out in Section 3 of this Decision Paper.

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### 4.5 SEMC Decision

As discussed in Section 3 of this Decision Paper, Revenue regulation will continue to apply to SEMOpx from October 2019 should SEMOpx successfully apply for re-designation. In terms of overall principles, the RAs will continue to apply an allowed revenue approach with efficient costs being underwritten.

Any remuneration applied to SEMOpx in the absence of a sufficient RAB will be consistent with other parts of the licensees' activities as Market Operator. This will be considered in more detail as

part of the Draft Determination and Final Determination papers for any further price control applied to SEMOpX.

## 5. Arrangements for Multiple NEMOs

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### 5.1 Background

There is currently no competition between NEMOs in the SEM, and the RAs have no visibility over when, or if, competition will develop. The RAs view this as an important area of regulation given the exclusive route NEMOs provide to trading in the day ahead and intraday markets in the SEM for market participants. It is important to note that implementation of arrangements to facilitate multiple operational NEMOs will need to be completed to facilitate this. The RA proposals outlined in SEM-19-003 were made in this context, in order to ensure as far as possible that the designated NEMO's costs are efficiently incurred in the absence of any competition, which allows for a level playing field for potential new entrants to the market.

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### 5.2 Summary of RA Proposals

This proposal was tied to the options indicated as a preferred way forward by the RAs in terms of the designation of a NEMO from 3 October 2019 and the regulatory framework to apply. This includes the proposal for a three-year designation period to apply to any designated NEMO, and the proposal for a price control under a set of high-level principles to apply to SEMOpX should they be designated from October 2019.

The RAs' proposed that this overall framework would apply during this three-year period, regardless of any NEMO market entry, in order to give certainty to market participants while allowing for other NEMOs considering offering day ahead and intraday services in the SEM clarity on the regulatory arrangements that would apply during this period. Under this proposal, for any new market entrants, the RAs would adhere to the requirements of the CACM Regulation in terms of ensuring regulatory compliance of designated NEMOs. In addition, all NEMOs operating in the SEM would be equally required to be party to the Trading and Settlement Code.

The RAs also proposed that at the end of such a three-year designation period, the possibility of a transition to a regulatory model based on competition could then be considered. At its most limited level, regulation would simply align with the requirements of CACM, versus the current regulatory regime (which includes licence conditions, revenue regulation, approval of charges and approval of the Exchange Rules).

This assessment would be based on parameters including the number of operational NEMOs in the SEM, the market share of each NEMO and the traded volumes in the day ahead, intraday and balancing markets.

Feedback was requested from interested stakeholders on the overall proposal to apply revenue regulation to SEMOpx from October 2019 for a three-year period, should SEMOpx successfully apply for re-designation, to be aligned to a designation period of three years. These arrangements would not change regardless of whether another NEMO enters the market during this three-year period or not.

**Consultation Question 5:**

Consultation Question 1 indicated the RAs' preferred approach of applying designation from October 2019 on a time-limited basis, while Consultation Question 2 set out the RAs' preferred option whereby a revenue control, if applied to SEMOpx, would apply for an interim period of three years regardless of whether another NEMO enters the SEM and competition arises in the market during this time.

The RAs' preferred approach regarding Consultation Questions 1 and 2 will need to be considered in the context of this final proposal, as previous proposals discussed in the Consultation Paper are summarised together here in a proposed overall approach.

Based on this, feedback is requested from interested stakeholders on the overall proposal to apply revenue regulation to SEMOpx from October 2019 for a three-year period, should SEMOpx successfully apply for re-designation. It is further proposed that revenue regulation will continue to apply to SEMOpx from October 2019 for a three-year period, to be aligned to a designation period of three years. The RAs' final proposal is that these arrangements would not change regardless of whether another NEMO enters the market during this three-year period or not.

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## 5.3 Summary of Responses

In their response to the Consultation, Aughinish Alumina stated that they welcome any regulatory framework that encourages transparent and fair competition for any additional NEMOs entering the market and in their view it is the RAs' responsibility to ensure that all barriers to additional NEMO entry are removed as swiftly as possible.

Power NI PPB stated that publication of the approved TSO proposals for implementation of Multi-NEMO Arrangements, (which were approved by the RAs in May 2018), would have provided greater transparency on the process for facilitating multiple NEMOs. However, they agreed that the proposed approach is pragmatic and provides a stable framework for the regulation of the designated NEMO while no competition exists, providing certainty for market participants over the three-year period.

In Power NI PPB's view, if sufficient competition emerges during this period this could be re-considered and consulted on based on the circumstances at that point.

ESB GT disagrees with this proposal overall. In their view, the initial price control applied to SEMOpx was based on there being no viable competitor when the RAs put out an expression of interest and if

competitors do now exist the price control cannot continue. In this instance, competition should now drive the charges and operation of the NEMO service.

In their response, SONI and EirGrid were broadly supportive of this overall regulatory framework and see this as a balanced approach to maintaining the efficient and effective operation of the day-ahead and intraday markets, while considering the commercial realities of NEMOs and allowing for competition to evolve.

In their response, EirGrid and SONI stated that there are a number of key issues which should be considered as part of this approach, including the need to provide certainty to SEM participants in an environment that access to the day-ahead and intraday markets will be provided, noting in particular that interim intraday auction services are not currently a prescribed NEMO activity under CACM. They also requested that clarity should be provided to EirGrid and SONI on a clear process by which SEMOpx can seek termination of its designation when an appropriate price control/revenue control arrangement is not in place.

EirGrid and SONI also highlighted the need for a level playing field between NEMOs when or if other NEMOs become active in the SEM, particularly in relation to licence obligations where a NEMO other than SEMOpx is designated and the need to ensure that any regulation of any NEMO should be fair and reasonable, proportionate and CACM compliant.

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## 5.4 RA Response

The RAs recognise the importance of ensuring that the regulatory framework outlined in this Decision Paper provides a level playing field for any NEMOs entering the market. In terms of arrangements for multiple NEMOs operating in the SEM, which all respondents noted the importance of, the Consultation Paper noted that arrangements to facilitate multiple operational NEMOs in the SEM were still in the process of being implemented.

The arrangements that practically enable more than one NEMO to operate in a bidding zone are generally regulated in Article 45 and 57 CACM. This includes the development of a pan-European solution to facilitate multiple NEMOs across all bidding zone borders that is due to be implemented this year which will allow for sharing of order books between NEMOs. Secondly, Articles 45 and 57 of CACM require the TSO(s) operating in a relevant bidding zone to develop a proposal regarding cross-zonal capacity allocation and other necessary arrangements in Bidding Zones where more than one NEMO is designated and/or offers trading services. A decision to approve the TSO's recommended arrangement for the implementation of a multi-NEMO approach was published by each Regulatory Authority on 14 May 2018. This approved methodology was published on EirGrid and SONI's respective websites and can be found [here](#). The RAs are engaging with the TSOs regarding timelines for implementation of these arrangements.

In addition, as noted in the Consultation Paper, the RAs have no visibility over when, or if, competition will develop between NEMOs in the SEM and in deciding on the regulatory framework to apply from October 2019, the RAs are cognisant of the importance of the NEMO function in the SEM as the exclusive route to trading in the day ahead and intraday markets in the SEM for a wide

range of market participants. In the RAs' view, it will be important to reconsider these circumstances following the three-year designation period in order to assess whether a regulatory model based on competition without any revenue regulation should apply.

In their response, SONI and EirGrid also noted that SEMOpx provides access to the intraday market although interim intraday auction services are not currently a prescribed NEMO activity under CACM. While the RAs understand the importance of ensuring NEMOs in the SEM can provide access to the interim intraday auctions, the RAs note that ACER recently published a decision on the intraday cross-zonal capacity pricing methodology under CACM, which includes includes three implicit intraday auctions at 15:00 on D-1, at 22:00 on D-1 and at 10:00 on the delivery day. These will apply in all bidding zones eligible to participate in single intraday coupling. This decision can be found [here](#).

The SEM Committee's decision is included below based on the considerations detailed here and in the preceding sections of this paper.

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## 5.5 SEMC Decision

This provides a summary of the SEMC decisions outlined in the preceding sections of this paper. The next designation from October 2019 will be applied on a time-limited basis of 3 years. Should SEMOpx successfully apply for designation, a revenue control will also apply for an interim period of three years regardless of whether another NEMO enters the SEM and competition arises in the market during this time.

## 6. Conclusion and Next Steps

This Decision Paper has outlined the regulatory framework to apply to NEMOs designated in Ireland and Northern Ireland during the next phase of regulation from 3 October 2019, following detailed consideration of the issues raised by the re-designation process and the implementation of multi-NEMO arrangements.

The next step in the process involves designation of a NEMO from October 2019 and it is envisaged by the RAs that a similar process will be followed as per the original designation in 2015, with the publication of a Decision once applications for designation have been assessed with close cooperation between the RAs to ensure that applicants meet the designation criteria set out in Article 6 of the CACM Regulation.

Designating authorities must apply the designation criteria set out in Article 6 of the Regulation regardless of whether one or more NEMOs are appointed and avoid discrimination between applicants. Article 6 of CACM states that an applicant shall only be designated as a NEMO if it complies with all ten listed requirements. Any designation will be conditional upon continued compliance with the NEMO designation criteria, the wider obligations and requirements set out in CACM and under EU, Irish and Northern Irish law and the regulatory framework set out in this Decision Paper.