Information Paper

on Modifications to the EirGrid Market Operator Licence
and EirGrid Transmission System Operator Licence,
necessitated to implement the Integrated Single Electricity
Market (I-SEM)

Reference: CER/16/368
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1. Foreword

1.1 Purpose of this document

On 20 April 2016, the Commission for Energy Regulation (CER) in Ireland and the Utility Regulator (UR) in Northern Ireland, collectively referred to as the Regulatory Authorities (RAs), published the first of a suite of statutory licence modification consultations resulting in changes to the EirGrid plc and SONI Ltd Transmission System Operator (TSO) and Market Operator (MO) licences. These modifications were considered necessary to give effect to the Integrated Single Electricity Market (I-SEM) design and in particular to comply with SEM Committee (SEMC) decisions relating to the I-SEM. This was followed by publication of decisions on 1 July 2016\(^1\) with the licence modifications taking effect on 1 September 2016.\(^2\)

The CER has now published notices pursuant to section 20 of the Electricity Regulation Act 1999 (as amended) (the Act), stating that it proposes to make a number of further licence modifications to the EirGrid MO and TSO licences, required to implement the I-SEM, stating the nature of the modifications and the reasons supporting them. The notices include a call for representations and objections to the CER with respect to these proposed licence modifications.

This supporting information paper is published in order to provide background information and detailed rationale in respect of the proposed licence modifications set out in the notices. Any representations or objections regarding the proposed licence modifications are welcomed and will be taken into account by the CER when reaching its decisions on them. Details of how to respond can be found within the notices published in accordance with the statutory licence modification process.

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2 The decision of 1 July gave effect (as of 1 September) to TSO licence conditions concerning the Capacity Market Code, Transitionary arrangements and typographical amendments to the existing Grid Code condition in the SONI TSO licence. It also gave effect to a Transitionary Arrangements condition in the MO licences.
1.2 Document structure

This Information Paper is structured as follows:

- Chapter 1 (Foreword) outlines the purpose and structure of this document, the approach taken to engagement when developing the licence modifications, and the statutory licence modification process being followed by the CER;

- Chapter 2 (Introduction) provides background on the current SEM arrangements and information on the European requirements for market reform leading to the development and implementation of the I-SEM. It also provides a summary table of the proposed licence modifications to the EirGrid TSO and MO licences on which representations and objections are invited;

- Chapter 3 (TSO Licence Modification Proposals) sets out the background for the proposed licence modifications to the EirGrid TSO licence along with an outline of the nature of the modifications and the reasons for the proposed changes;

- Chapter 4 (MO Licence Modification Proposals) sets out the background for the proposed licence modifications to the EirGrid MO licence together with an outline of nature of the modifications and the reasons for the proposed changes;

- Chapter 5 (Next Steps) provides information on key dates concerning the statutory licence modification process, as well as providing an indicative forward look at timelines for future licence modifications and consultations scheduled in relation to industry codes to implement I-SEM.

1.3 Regulatory approach to licence modifications

In the interest of transparency and in line with best practice regulation, we consider it important to give the TSOs/ MOs appropriate notice of any licence modification which we intend to make and offer adequate opportunity for engagement on such proposals. As such, we have provided EirGrid with details on the proposed licence modifications, including advance sight of the proposed changes to its licences at as early a stage as possible. Significant engagement has taken place with EirGrid and SONI to explain the reasons for the modifications and to gain an understanding of the TSOs’/ MOs’ perspective of the impact of such proposed changes.

This publication of the statutory notices presents a further opportunity not only for EirGrid and SONI but also for all other interested stakeholders to submit representations or objections on the
proposed modifications. All representations and objections received in respect of the notices will be considered before we reach our decision on each of the proposed modifications.

Pursuant to Section 20(9) of the Act, as the modifications relate to the Single Electricity Market, the CER shall have due regard to the desirability of similar modifications (including similar modifications in Northern Ireland) having effect at the same time. This is reflected in the relevant ‘switch on’ provisions that are contained in a number of the licence modifications as these provisions will enable both RAs to co-ordinate bringing those conditions into substantive effect in both jurisdictions at the same time.

1.4 Licence Modification Process and the Licence Notices

The licence modification processes being carried out in parallel in Ireland and Northern Ireland are subject to the respective statutory requirements in each jurisdiction.

In Ireland, the legal basis for the proposed licence modifications is set out in Section 20 of the Act and in Northern Ireland is set out in Article 14 of the Northern Ireland Electricity Order 1992 (NI Order).

The respective statutory provisions determine the procedures that must be followed in relation to the proposed licence modifications in each jurisdiction, and include the timeline within which representations or objections can be made.

The permitted minimum timeframe for the submission of objections or representations with respect to the proposed modifications is 28 days from the date of the publication of the statutory notices by the CER in the Irish Times and Belfast Gazette. Given that this notice period falls within the Christmas holiday period, the CER have allowed an additional nine days for interested parties to make any representations or objections to the notices that they may wish to make. As set out in the notices, representations or objections are due no later than 17:00 on Monday, 23 January 2017.

The CER has set up a mail box to receive all such representations or objections, namely: isemlicences@cer.ie. For further details, please view the notices.

The CER will give consideration to all representations or objections made during this period and will follow the statutory procedure prescribed in sections 19-22 of the Act as regards its subsequent decision making.
Any representations or objections regarding the published notices should be notified to the CER in accordance with the notices as published in the Irish Times and Belfast Gazette. The notices as published in both the Irish Times and Belfast Gazette contains details on the nature of and the reasons for the proposed licence modifications. For the avoidance of doubt in the event of conflict between the terms of this Information Paper and the terms of the notices, the latter will take precedence.
2. Introduction

2.1 Background

The Single Electricity Market (SEM) for the island of Ireland went live on 1 November 2007. It consists of a centralised and mandatory all-island wholesale pool market through which generators and suppliers trade electricity.

The current SEM arrangements are provided for in:

- licences for generators, suppliers, Transmission System Operators (TSOs), Distribution System Operators (DSOs), Market Operators (MOs) and Interconnectors in Ireland and Northern Ireland; and
- a suite of arrangements (set out primarily in the SEM Trading and Settlement Code, Bidding Codes of Practice, Grid Codes and Metering Codes).

The all-island SEM is regulated jointly by the CER in Ireland and the UR in Northern Ireland.

The European Union (EU) is building an internal market for electricity and gas to help deliver energy supplies that are affordable, secure and sustainable. This is underpinned by the implementation of the EU Target Model arising from the EU’s Third Energy Package. The Third Package of European energy reforms created a new legal framework to promote cross-border trade, in response to the European Commission’s inquiry into competition in electricity and gas markets published in January 2007. The inquiry found that there was insufficient integration between Member States’ markets and highlighted a number of issues. These included the fact that insufficient or unavailable cross-border transmission capacity and different market designs were hampering integration. In order to rectify this, a number of legally binding network codes and guidelines have been and are being established. These network codes and guidelines are designed to promote the creation of liquid markets, the efficient use of cross-border transmission capacity and the integration between Member States’ gas and electricity markets.

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These EU legislative requirements take legal precedence over existing domestic legislation. Therefore, in order to ensure alignment with the EU Target Model, the SEMC is committed to implementing what has been commonly referred to as the Integrated Single Electricity Market or "I-SEM" on the island of Ireland. Implementing I-SEM requires the existing legal and regulatory framework and industry processes to be modified.

The I-SEM will more fully facilitate coupling with the electricity markets in the rest of Europe. The I-SEM will update and (in some respects) replace the current SEM arrangements and will:

- introduce Day-Ahead and Intra-Day trading through designated Nominated Electricity Market Operators (NEMOs) in each jurisdiction;
- introduce a new Balancing Market through which the TSOs will accept offers and bids from participants to move away from their traded position in order to balance generation and demand on a minute by minute basis;
- introduce a new Capacity Remuneration Mechanism which will include the introduction of a new Capacity Market Code; and
- introduce the necessary changes to the Grid Codes and other impacted SEM regulatory arrangements.

On 17 September 2014, the SEMC published its decision on the High Level Design for the I-SEM (SEM-14-085a), which was driven by the EU Target Model. Since then, the I-SEM project has entered a ‘design and implementation’ phase. In order to ensure effective implementation, amendments to existing legislation, and modifications to licences, codes and possibly other rules are required in Ireland and Northern Ireland.

On 23 February 2016, the SEMC published an ‘Information Note on the I-SEM Regulatory Framework’ (SEM-16-007). The aim of that paper was to:

- provide clarity on the overarching regulatory framework, comprising legislation, licence changes and market rules which will implement the market design referred to as I-SEM;
- provide insight on the provisional timeline and proposed consultation process regarding licence changes and the introduction of revised (and new) market rules; and
- provide initial thinking on NEMO regulation and enforcement.
This paper provides additional information on the second set of proposed modifications to the EirGrid plc TSO licence and EirGrid MO licence which will be required to implement I-SEM.

The statutory process underway in Ireland will run in parallel with the corresponding statutory process in Northern Ireland which is being led by the UR. While not an exact mirror of each other, the effect of the proposed licence modifications in both jurisdictions is generally the same (although there are a few minor differences).

2.2 Summary of Modifications

Our approach when identifying modifications necessary for the implementation of I-SEM has been one of minimum change, i.e. only proposing modifications we consider necessary to implement I-SEM in accordance with EU legislative requirements. The nature of, and reasons for, the proposed modifications to the EirGrid TSO and MO licences are described in chapters 3 and 4 but are summarised for ease of reference in the table below.

Table 1.0. Nature of and Reasons for the Proposed Modifications

<table>
<thead>
<tr>
<th>Licence Type</th>
<th>New/Modified</th>
<th>Condition</th>
<th>Indicative Change</th>
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</table>
| EirGrid TSO Licence| New          | Condition 10A: Central Dispatch | This condition will oblige EirGrid as TSO in conjunction with SONI to:  
  - schedule SEM Generation and ensure that instructions for the dispatch of SEM Generation are issued;  
  - undertake operational planning as detailed in the proposed modification;  
  - establish and operate a merit order system for the Balancing Market.  
This new central dispatch condition will replace the existing central dispatch condition (Condition 10) and is designed to take account of the different way in which generation will be dispatched in I-SEM. Condition 10 will be ‘switched off’ at the
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<th>Licence Type</th>
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<td></td>
<td></td>
<td>Condition 10A: Balancing Market Principles Statement</td>
<td>A new licence condition requiring EirGrid (acting in conjunction with SONI) to prepare a Balancing Market Principles Statement for approval by the CER, which is to be developed in accordance with Terms of Reference published by the CER. The statement will describe EirGrid’s scheduling and dispatch process within the Balancing Market.</td>
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<td>New</td>
<td>New Condition 10B: Balancing Market Principles Statement</td>
<td>A new licence condition requiring EirGrid (acting in conjunction with SONI) to prepare a Balancing Market Principles Statement for approval by the CER, which is to be developed in accordance with Terms of Reference published by the CER. The statement will describe EirGrid’s scheduling and dispatch process within the Balancing Market.</td>
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<td>New</td>
<td>Condition 21A: Compliance and Assurance Officer</td>
<td>A new licence condition requiring EirGrid to appoint an independent Compliance and Assurance Officer to report on compliance with other existing licence conditions concerning Non-Discrimination, Restriction on the Use of Certain Information and Prohibition of Subsidies and Cross-Subsidies. The proposed introduction of a Compliance and Assurance Officer role is as a result of the SEMC’s governance review process which considered potential conflicts of interest within the EirGrid group.</td>
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| EirGrid TSO Licence | Modified | Condition 1: Interpretation and Construction | Paragraph 8 (b) of this condition is to be modified to oblige EirGrid TSO (when discharging its obligations under the Licence) to take into account the aim to facilitate the transmission system being made available to suppliers and generators on terms which facilitate competition in the supply or generation of electricity on the
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<td>‘Island of Ireland’ as a whole. Facilitation</td>
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<td>of competition between all resources, in the</td>
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<td>long-term interest of consumers was noted</td>
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<td>Information paper SEM-16-041.</td>
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<td>Note that no corresponding licence</td>
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<td>modification is proposed in Northern</td>
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<td>Ireland as Article 12 of the NI Order already</td>
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<td>obliges SONI to facilitate competition in</td>
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<td>modifications to existing definitions to give</td>
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<td>proper legal effect to the new and modified</td>
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<td>conditions for implementation of I-SEM.</td>
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<td>New definitions are:</td>
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<td>- Balancing Market;</td>
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<td>- Capacity Market Code;</td>
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<td>- Market Operator Licence; and</td>
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<td>- NEMO Activity</td>
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<td>- Ancillary Services; and</td>
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<td>Transmission System Operation Business.</td>
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<td>Modified</td>
<td>Condition 1A:</td>
<td>Transition</td>
<td>A modification to reflect an amendment to</td>
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<td>the date on which this Transition Condition</td>
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<td>shall cease to have effect, which shall be</td>
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<td>31 December 2018 to align with the</td>
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<td>updated implementation date for I-SEM.</td>
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<td>A few minor typographical errors have been identified and corrected and the condition placed as Condition 1A in the licence.</td>
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<td>Modified</td>
<td>Condition 3: General functions</td>
<td>A modification to the current condition to reflect that, in I-SEM, EirGrid as TSO will perform the functions assigned to it by CER in relation to the establishment and operation of the Capacity Market and the Balancing Market.</td>
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<tr>
<td>Modified</td>
<td>Condition 6: Single Electricity Market Trading and Settlement Code</td>
<td>This condition is to be modified to reflect that in I-SEM the TSO will also comply with the TSC in its capacity as operator of the Capacity Market and the Balancing Market.</td>
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<td>Modified</td>
<td>Condition 6A: Capacity Market</td>
<td>This condition is to be placed as licence condition 6A and a few typographical errors are to be amended.</td>
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<td>Modified</td>
<td>Condition 10: Central Dispatch</td>
<td>As set out above, modification is to be made to the current central dispatch condition to specify that the condition will cease to have effect on a date determined by the CER. This date will be the same date as the CER determines that the new Central Dispatch condition (Condition 10A) will come into effect. The new Central Dispatch condition will replace the current condition and will account for different objectives for I-SEM in relation to the operation of the Balancing Market.</td>
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<td>Modified</td>
<td>Condition 11: Economic Procurement of Assets, Services and Ancillary Services</td>
<td>This modification extends the application of the terms of the existing condition relating to the economic procurement of assets to include NEMO Activity.</td>
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<td>Licence Type</td>
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<td>EirGrid MO Licence</td>
<td>Modified</td>
<td>Condition 21:</td>
<td>The modification is to include additional obligations on EirGrid regarding the transfer of staff amongst entities of the EirGrid group in order to manage situations where proposed staff transfers could result in an unfair commercial advantage arising. The modifications include specific requirements for a cooling-off period in relation to specified staff transfers.</td>
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<td></td>
<td>New</td>
<td>Condition 3A:</td>
<td>A new licence condition to set out the duties of the MO in its capacity as holder of the NEMO Designation including:</td>
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<td>Nominated Electricity Market Operator (NEMO)</td>
<td>- obligation to comply with CACM and the terms of its designation;</td>
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<td>- preparation of and compliance with NEMO exchange rules setting out terms on which the NEMO Activity will be carried out;</td>
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<td>- requirement to charge in accordance with NEMO Statement of Charges (to be approved by the CER);</td>
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<td>- establish and maintain a NEMO website; and establish to the extent practicable a single point of contact for market participants when interfacing with the NEMO Business.</td>
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<td></td>
<td>New</td>
<td>Condition 3B:</td>
<td>A new licence condition requiring the MO to provide an Agent of Last Resort service for renewable and de-minimis generators. The service is to facilitate trading in the Day-Ahead and Intra-Day markets through the</td>
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<tr>
<td>Licence Type</td>
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<tr>
<td>EirGrid MO Licence</td>
<td>Modified</td>
<td>Section A Condition A: Transition Condition</td>
<td>A modification to reflect an amendment to the date on which this Transition Condition shall cease to have effect, which shall be 31 December 2018 to align with the updated implementation date for I-SEM. The definition of ‘revised SEM arrangements’ is to be moved to Condition 1 and paragraph b) amended so that it refers to both TSO and MO licences. A few minor typographical errors are to be corrected and the condition placed as Condition A in (Part 2) of the licence.</td>
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|               | Modified | Section B Enduring Conditions Condition 1: Interpretation and Construction | This condition is to include the following new definitions to give effect to the modifications proposed to the licence for I-SEM:  
  - CACM Regulation;  
  - Ex-Ante Markets;  
  - Gate Closure;  
  - NEMO Activity;  
  - NEMO Business;  
  - Northern Ireland NEMO Activity;  
  - SMO & NEMO Business; and  
The following definitions will be modified: |
<table>
<thead>
<tr>
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<tbody>
<tr>
<td>EirGrid MO Licence</td>
<td>Modified</td>
<td>Condition 2: Market Operator Agreement</td>
<td>This condition is to be modified to reflect that the scope of the Market Operator Agreement is to include provision in relation to NEMO Activity as well as Market Operation Activity. The condition will also extend the obligation on EirGrid to publish the Market Operator Agreement on the website for the NEMO Business (as well as website for the Single Market Operation Business) if required by CER.</td>
</tr>
<tr>
<td>Modified</td>
<td>Condition 3: Market System and the Single Electricity Market Trading and Settlement Code (TSC)</td>
<td>A modification to oblige the MO to adopt such amendments to the Trading and Settlement Code as the CER may direct for the implementation of I-SEM and also, to reflect the inclusion of the settlement arrangements for the new capacity market within the TSC.</td>
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<td>Modified</td>
<td>Condition 4: Market System Development Plan</td>
<td>This condition is to be modified to require EirGrid to publish the Market System Development Plan.</td>
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<td>Licence Type</td>
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<td>Condition</td>
<td>Indicative Change</td>
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<td>Development Plan on the website for the NEMO Business (if required by CER).</td>
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<td>Modified</td>
<td>Condition 5: Procurement of Assets and Services</td>
<td>The modification will extend the requirements with respect to the procurement of assets and services to include the NEMO Activity as well as the Market Operation Activity. In addition, the scope of the condition is to be amended such that EirGrid shall be required to procure assets and services as may be necessary to discharge its obligations under the CACM Regulation (as well as other specified legislative provisions).</td>
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<tr>
<td>Modified</td>
<td>Condition 7: Additional Use or Disposal of Relevant Market Assets</td>
<td>This modification will extend the scope of this condition to include NEMO Business as well as the Single Market Operation Business.</td>
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<tr>
<td>Modified</td>
<td>Condition 9: Duty of Non-Discrimination</td>
<td>This modification ensures that the obligations of Condition 9 relate to both the Market Operation Activity and the NEMO Activity.</td>
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<tr>
<td>Modified</td>
<td>Condition 11: Prohibited Activities</td>
<td>This modification reflects that the provision of Agent of Last Resort services under new Condition 3B shall not contravene the requirements of this Condition.</td>
<td></td>
</tr>
<tr>
<td>Modified</td>
<td>Condition 12: Restriction on Use of Certain Information</td>
<td>This condition is to be modified to extend its scope to include NEMO Activity as well as Market Operation Activity.</td>
<td></td>
</tr>
<tr>
<td>Modified</td>
<td>Condition 13: Separate Accounts for Separate Businesses</td>
<td>This condition is to be modified to reflect the role of EirGrid as NEMO for Ireland and to provide for the provision of accounts with</td>
<td></td>
</tr>
<tr>
<td>Licence Type</td>
<td>New/Modified</td>
<td>Condition</td>
<td>Indicative Change</td>
</tr>
<tr>
<td>--------------</td>
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</tr>
<tr>
<td></td>
<td>Modified</td>
<td>Condition 14: Prohibition of Subsidies and Cross-subsidies</td>
<td>This condition is to be modified to extend its scope to include NEMO Activity including prohibiting subsidy or cross-subsidy between the Market Operation Activity and the NEMO Activity.</td>
</tr>
<tr>
<td></td>
<td>Modified</td>
<td>Condition 20: Health and Safety</td>
<td>This condition is to be modified to cover both the Market Operation Activity and the NEMO Activity.</td>
</tr>
</tbody>
</table>

Accompanying tracked-change versions of each of the respective licence modifications are published in Annex 2⁴ (with respect to TSO licences) and Annex 3⁵ (with respect to MO licences).

### 2.3 Related Documents

The proposed licence modifications described in this paper are intended to implement the market revision envisaged in the following SEMC policy decisions:

- I-SEM High Level Design Decision (SEM-14-085)
- I-SEM Energy Trading Arrangements Markets Decision Paper (SEM-15-065)
- I-SEM Energy Trading Arrangements Building Blocks Decision Paper (SEM-15-064)
- I-SEM Energy Trading Arrangements Aggregator of Last Resort (SEM-15-063)
- I-SEM Roles and Responsibilities Decision Paper (SEM-15-077)

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⁴ See CER16370 Proposed EirGrid TSO licence modifications
⁵ See CER16369 Proposed EirGrid MO licence modifications
• NEMO Designation Decisions for Ireland and Northern Ireland
  (SEM-15-073)
• Assignment of TSO Obligations for Ireland and Northern Ireland under Article 1(3) of CACM (SEM-15-079)
• I-SEM/DS3 Mitigations for potential conflicts of interest in EirGrid group (SEM-16-041)
• Information paper on Regulatory Framework for NEMOs operating in I-SEM (SEM-16-053)
• Modifications to EirGrid Market Operator Licence and Transmission System Operator Licence, necessitated to implement the Integrated Single Electricity Market (CER/16/128)
• Decision on Modifications to the SONI Market Operator Licence and SONI Transmission System Operator Licence, necessitated to implement the Integrated Single Electricity Market
• BMPS Terms of Reference Decision Paper (SEM-16-058)

Information on the CER’s role and relevant legislation can be found on the CER’s website at www.cer.ie
3. EirGrid plc Transmission System Operator Licence Modification Proposals

3.1 Introduction

On the island of Ireland, the TSO function is carried out by:

- EirGird plc in Ireland, licensed to ‘operate the transmission system to transmit electricity’ by the CER; and

- SONI Ltd in Northern Ireland, licensed to ‘participate in the transmission of electricity’ by the Department for the Economy (previously the Department of Enterprise, Trade and Investment (DETI)).

The RAs have collaboratively reviewed the detail of the EirGrid TSO licence, the SONI TSO licence and the decisions of the SEMC in relation to the I-SEM in order to determine what modifications to the conditions of the licences are needed. Separate modifications have been published for SONI Ltd in Northern Ireland.

The CER proposes to modify the EirGrid TSO licence and has sought to propose only those modifications to the EirGrid plc TSO licence which will be required as a result of the implementation of I-SEM.

A narrative to explain the nature of the proposed modifications and the reasons therefore is provided in the sections below. Legal drafting for the proposed new and modified conditions in EirGrid TSO licence can be sourced in Annex 2.
3.2 New Licence Conditions Proposed in the EirGrid TSO licence

In line with SEMC decisions regarding the I-SEM, the CER proposes that a number of new licence conditions be added to the EirGrid TSO licence. These are outlined below as follows:

3.2.1 Condition 10A: Central Dispatch

Nature of the modification:

Unlike current practice in the SEM, where the scheduling and dispatch process is largely independent of the market scheduling process, in I-SEM, participant balancing quantities and imbalance prices in the Balancing Market will be directly affected by the scheduling and dispatch process. This requires a new approach to the development of a merit order with new objectives. The new objectives will include:

- minimising the cost of diverging from physical notifications;
- allowing the ex-ante energy markets to resolve energy imbalances ahead of gate closure; and
- minimising the cost of non-energy actions in the context of ongoing ex-ante energy markets.

The new condition will account for these changes in objectives. In addition it is necessary to include new parameters in the software used by the TSOs to support the scheduling and dispatch process. These parameters whose function is to delay the need for scheduling and dispatch action as late as possible to allow participants to resolve their energy imbalances in the ex-ante markets, will initially include:

- Long Notice Adjustment Factors (LNAF); and
- System Imbalance Flattening Factors (SIFF).

LNAF and SIFF will be used by the software to avoid early dispatch decisions. It will also be necessary for the TSO to review the performance of these parameters and to propose changes to the CER that it believes to be necessary to improve the effectiveness of their scheduling and dispatch and the extent to which participants have been enabled to resolve energy imbalances through the ex-ante markets. It will also be necessary for the TSO to propose initial values of LNAF and SIFF for approval by CER.
Due to the fact that the proposed licence change will create a different approach to scheduling and dispatch objectives, it is necessary to switch off the existing central dispatch condition (Condition 10) at the same point in time as the new condition (10A) is switched on.

Reason for the modification:

The SEMC ETA decision paper (SEM-15-065) contains a number of guiding principles related to the scheduling and dispatch process for I-SEM. Scheduling and dispatch is the process by which, based on commercial bids and offers submitted by market participants and other market and system information, the TSOs determine requirements and take actions (issue dispatch instructions) to facilitate the operation of the market, maintain system security, maximise the output of priority dispatch generation and meet other statutory requirements.

The objectives of the scheduling and dispatch process for I-SEM are different to those in the current SEM. Whereas in SEM the goal of the scheduling and dispatch process is to minimise the cost of dispatch, a new set of objectives needs to be reflected in the TSO licence that reflects the evolution of the scheduling and dispatch process into a more market-oriented process under which the market itself will resolve energy imbalances with the TSO seeking to minimise the cost of non-energy actions taken by it to resolve constraints.
3.2.2 Condition 10B: Balancing Market Principles Statement

Nature of the modification:

The BMPS condition will place a requirement on EirGrid (in conjunction with the Northern Ireland TSO) to prepare a statement (for approval by CER) which describes the scheduling and dispatch process in the Balancing Market, as well as requiring the reporting of occasions when the TSO has acted in exception to the processes set out in the BMPS.

The new condition will:

- Require the TSO to prepare a BMPS (in accordance with the Terms of Reference) and publish it following approval;
- Enable the TSO to propose changes to the BMPS in accordance with a specified procedure which will ensure that market participants are given an opportunity to submit representations;
- Require the TSO to ensure that the submitted BMPS is an accurate statement of the scheduling and dispatch process and report exceptions against it.

The licence condition promotes transparency via publication of the BMPS. The drafting of this condition includes wording to reflect an obligation to ensure that the BMPS is up-to-date to the extent possible.

Reason for the modification:

This is a proposed new condition, required because the SEMC supported the development of a Balancing Market Principles Statement (BMPS) by the TSOs to ensure consistency, transparency and comprehensibility of TSO decision-making in the Balancing Market in I-SEM.

The BMPS licence condition has been proposed because it will place a requirement on the TSO (in conjunction with the Northern Ireland TSO) to develop a BMPS in line with the agreed Terms

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of Reference and to publish the BMPS following approval, as supported by the SEMC decision on the Terms of Reference of the BMPS.

The SEMC was of the view that the BMPS should evolve from a BMPS Terms of Reference decision document which would be consulted on by SEMC. This BMPS Terms of Reference Decision Paper was published in October 2016\(^7\) and states that the BMPS will be approved by the SEMC after consultation with market participants.

The need for transparency and predictability of TSO actions in the Balancing Market is considered vital in the I-SEM. The BMPS will be a document which promotes such transparency by providing clarity and certainty to market participants on the timing and nature of TSO actions and requiring reporting of exceptions against it.

3.2.3 **Condition 21A: Compliance and Assurance Officer**

**Nature of the modification:**

The effect of this licence condition requiring the appointment of an independent ‘Compliance and Assurance Officer’ will be to increase transparency, to address perceptions of, and mitigate against, any possible conflicts of interests, as well as ensuring an environment where any potential conflicts of interest, to the extent that they exist, will not be acted on.

**Duties and tasks of the Compliance and Assurance Officer will include:**

- providing relevant advice and information to the TSO to ensure compliance with existing conditions in the licence relating to Non-Discrimination (Condition 17), Restriction on the Use of Certain Information (Condition 21) and Prohibition of Subsidies and Cross-Subsidies (Condition 23);

- monitoring the TSO’s compliance with the aforementioned conditions and providing assurances around this;

- reviewing the processes followed and ensure that due process has been applied to the investigation of any complaint in respect of matters arising under or by virtue of the specified conditions;

- recommending and advising on the remedial action which any such investigation has demonstrated to be necessary or desirable;

- reporting annually to the directors of the TSO on his activities during the period covered by the report and the investigations conducted. The report shall be submitted in a form approved by the CER in advance and shall include the Compliance and Assurance Officer’s assessment of the compliance of the TSO with the requirements of the specified conditions and shall include an explanation of the practices, procedures and systems adopted to effect compliance with those conditions.

The annual report produced by the Compliance and Assurance Officer together with the TSO’s response to it will be submitted to the CER before being published for stakeholder visibility. The format of the report is yet to be confirmed but it is envisaged that as a minimum, will provide the Compliance and Assurance Officer’s verification and assurances regarding:
• how the TSO complies with the regulatory measures intended to mitigate any possible conflicts of interest;

• provide details of separation safeguards regarding ring-fencing of information;

• provide details of separation safeguards regarding physical barriers to ‘informal’ discussions between I-SEM and system service delivery roles, and EirGrid Interconnector teams;

• provide details regarding treatment of staff transfers within the EirGrid group.

This public annual reporting is an important element of the package of mitigation measures. It will place an onus on EirGrid to demonstrate how it enforces any procedures, for example in codes of conduct etc beyond merely stating that such a code of conduct exists. The resulting transparency will help to address perceptions of possible conflicts of interests.

Reason for the modification:

This is a proposed new condition, to implement the SEMC decision set out in the Information paper on Mitigation Measures for Potential TSO Conflicts of Interest in the EirGrid group (published on 29 July 2016). When proposing mitigation measures, the SEMC was mindful of the need to strike the right balance between maximising synergies and mitigation measures for real or perceived conflicts of interest so that the long term interests of consumers are protected.

The introduction of a new compliance role is designed to alleviate stakeholder concerns around potential conflicts of interest in the EirGrid group.

No provisions currently exist in relation to potential conflicts of interests around I-SEM and system service roles. There is an existing role of Head of Internal Audit and Compliance in the EirGrid group but responsibilities are internally focused, rather than on external reporting. The inclusion of this condition is designed to deal with this lacuna.

The aim of this licence condition is to provide stakeholders with confidence in the high importance that the CER and EirGrid puts on compliance with behavioural restrictions designed to mitigate the possibility of internal conflicts of interest, thereby promoting transparency.

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3.3 Modifications proposed to the EirGrid TSO licence

In addition to the new conditions outlined above, the CER also propose to modify the following existing conditions in the EirGrid TSO licence:

3.3.1 Condition 1: Interpretation and Construction

Nature of the modification:

Incorporation of various new and amended definitions in the licence. Paragraph 8 (b) of this condition is also to be modified to oblige EirGrid TSO (when discharging its obligations under the Licence) to take into account the aim to facilitate the transmission system being made available to suppliers and generators on terms which facilitate competition in the supply or generation of electricity on the ‘Island of Ireland’ as a whole.

Reasons for the modification:

To give proper legal effect to the new and modified licence conditions. In terms of the modification to paragraph 8(b), facilitation of competition between all resources, in the long-term interest of consumers was noted as a mitigation measure in the published Information paper SEM-16-041.

The detail of the modifications to the definitions can be reviewed in Annex 1.

3.3.2 Condition 1A: Transition

Nature of the modification:

Although this condition was consulted on, on 20 April 2016, with a subsequent decision on 1 July 2016 which took effect on 1 September 2016, the CER is now proposing to position the Transition condition as ‘Condition 1A’ in the EirGrid TSO licence. Further modifications are also proposed to amend the date on which the condition shall cease to have effect (being 31 December 2018) as opposed to 30 June 2018 and also to fix a few typographical errors.

Reasons for the modification:

To place the condition in the licence, to amend typographical errors and to update the date on which the condition will cease to have effect to reflect the updated I-SEM go-live date.
3.3.3 **Condition 3: General Functions**

**Nature of the modification:**

A small modification to the general functions of the EirGrid TSO licence is proposed which is required to extend the general functions for I-SEM. This condition will be updated to oblige and empower the TSO to perform the functions assigned to it regarding the establishment and operation of the Capacity Market and the Balancing Market.

The modification also reflects a minor change of the reference to “ancillary services in paragraph 1(b) to “Ancillary Services”. This is to align with the defined term.

**Reason for the modification:**

General functions of the TSO are currently drafted in the licence to align with SEM. A modification is therefore to be made to the TSO licence to extend the general functions for I-SEM. This change is to ensure that the licensing framework is robust, relevant and up-to-date. Furthermore this change is required to ensure that the TSO is empowered to carry out its functions as specified in SEMC decisions under the revised SEM arrangements.

The capitalisation change with respect to “Ancillary Services” is to refer to the defined term as it is set out in the definitions section and is for the purpose of legal interpretation and transparency.

3.3.4 **Condition 6: Single Electricity Market Trading and Settlement Code**

**Nature of the modification:**

This is a modification of the licence condition to ensure that the existing obligation to accede to and comply with the TSC will include the performance of the TSO’s obligations in operating the Capacity Market and Balancing Market.

**Reason for the modification:**

The Single Electricity Market Trading and Settlement Code (TSC) sets out the rules by which market participants may operate. EirGrid TSO has an existing obligation to accede to and comply with the TSC in its capacity as system operator. The TSC is one of the regulatory documents undergoing revision to incorporate necessary changes for I-SEM and is currently subject to a consultation on the revised TSC (SEM-16-075a-u which was published on 15 November 2016). The TSOs have been assigned the Capacity Market delivery and Balancing Market Operator roles.
for I-SEM; this was communicated in SEM-15-077. For this reason, Condition 6 of the EirGrid TSO licence is to be modified to acknowledge this expanded role.

3.3.5  **Condition 6A: Capacity Market**

**Nature of the modification:**

The CER is proposing to position the Capacity Market condition as ‘Condition 6A’ in the EirGrid TSO licence.

The following small modifications are proposed to the Capacity Market Condition. Replace “island of Ireland” with “Island of Ireland” as per the capitalised defined term. Replace “Electricity Capacity” with “electricity capacity”. This reflects that the term “electricity capacity” is not defined. Paragraph 3 is to be amended. Rather than describing the capacity arrangements in paragraph 1(a) and arrangements for calculation/settlement of remuneration as the “Capacity Remuneration Mechanism”, it is to be described as the “Capacity Market”. The reference to ‘Transmission System Operation’ in paragraph 5 is to be amended to ‘Transmission System Operation Business’.

**Reasons for the modification:**

To place the condition in the licence and also to amend typographical / drafting errors. These changes relate to the consistency and accuracy of the condition to ensure robust legal interpretation of the condition.

3.3.6  **Condition 10: Central Dispatch**

**Nature of the modification**

The existing Central Dispatch condition is to be modified to allow the CER to ‘switch it off’ at the same point in time at which the new Central Dispatch condition, Condition 10A, a newly created condition required by the revised SEM arrangements, will become effective.

**Reason for the modification:**

The reason for the modification is that this condition needs to no longer have effect at the point in time when the new condition (proposed as Condition 10A) replaces it at I-SEM go-live.
3.3.7 **Condition 11: Economic Procurement of Assets**

**Nature of the modification**

The condition as currently in force reflects EirGrid’s obligations in terms of economic procurement of assets, services and Ancillary Services. The condition is to be modified to extend the scope of those obligations to apply to both the Market Operation Activity and NEMO Activity.

**Reason for the modification:**

This modification is required to ensure that the scope of the licence conditions includes NEMO Activity as well as the Market Operation Activity in I-SEM.

3.3.8 **Condition 21: Restriction on Use of Certain Information**

**Nature of the modification**

A new paragraph has been proposed within this condition to oblige the TSO to consider the potential impact of a proposed staff transfer from the TSO Business to another part of the EirGrid group. EirGrid will be obliged to inform the CER of proposed transfers where an unfair commercial advantage could arise and of the steps being taken to ensure that it does not. Given the particular sensitivities around transfers of any member of staff involved in the establishment of the Capacity Market to the Interconnector, the condition will also make such transfers subject to a cooling-off period of a duration to be agreed with the CER.

**Reason for the modification:**

As part of a ‘Governance Review Process’ tasked by the SEMC regarding a review of synergies and potential conflicts of interest within the EirGrid group, the RAs engaged heavily with EirGrid plc, SONI Ltd and industry to establish existing mitigations against potential conflicts, and to assess what further level of mitigation was needed. A key stakeholder concern was in respect to the ability of EirGrid/ SONI staff to fluidly move between departments or functions of the group, thereby transferring key knowledge which could unfairly advantage that department or function.

A modification has been proposed to the condition to add a new paragraph to oblige EirGrid to ensure that the CER is informed of any staff transfers made from EirGrid TSO to any Separate Business which might result in a commercial advantage, together with detail on steps being taken to ensure that no unfair commercial advantage will accrue to either business.
The CER has also proposed that a ‘cooling-off’ period be applied when appropriate (i.e. dependent on circumstances such as staff involved, time of transfer etc) to ensure that there are sufficient breaks between staff transferring between designated activities in relation to the capacity market with tasks associated with Interconnector ownership and/or development. The ‘cooling-off’ period will mean that staff working on ownership and/or development of interconnection cannot access the areas in which specific capacity market activities are carried out. The aim of such a provision is to instil confidence amongst participants that capacity market and interconnector related activities are sufficiently separate in terms of knowledge-share.

In addition, an obligation will now exist for a new Compliance and Assurance Officer (introduced for the purposes of reporting on measures taken within the EirGrid group to mitigate against the potential for any conflicts of interest being realised) to report, amongst other things, on actions taken by the TSO to evidence that any staff transferring ‘in-house’ within the EirGrid group will not result in effect any unfair commercial advantage. Further explanation can be found in the narrative for new Condition 21A (Compliance and Assurance officer).
4. EirGrid Market Operator Licence Modification Proposals

4.1 Introduction

The SEM is administered by the Single Electricity Market Operator (SEMO) formed through a contractual joint venture between EirGrid plc and SONI Ltd:

- EirGrid plc in Ireland, licensed to ‘undertake the role of single market operator of the Single Electricity Market’ by the CER; and

- SONI Ltd in Northern Ireland, licensed to ‘act as SEM Operator’ by the Department for the Economy (previously the Department of Enterprise, Trade and Investment (DETI)).

As with the TSO licences, the RAs have collaboratively reviewed the detail of the EirGrid MO licence, the SONI MO licence and the decisions of the SEMC in relation to the I-SEM in order to determine what changes to the conditions of the licence are needed. A separate licence modification process with respect to the SONI Ltd MO licence in Northern Ireland is being conducted by the UR in parallel to this process.

The CER proposes to modify the EirGrid plc MO licence and has sought to propose only those modifications to the EirGrid plc MO licence which will be required to implement I-SEM.

Since the passing of the Energy Act 2016, the definition of the Single Electricity Market has been broadened to allow for the revised arrangements required to implement I-SEM. The NEMO activity will be a core element of these new arrangements, and will be performed in Ireland by EirGrid for so long as it continues to be designated and in Northern Ireland, by SONI for so long as it continues to be designated. Given that only one NEMO has been designated for Ireland and one for Northern Ireland, the RAs consider that incorporating provisions in relation to the performance of the NEMO functions into existing MO licences is appropriate. This will provide a level of regulatory oversight (in addition to compliance with CACM).

A narrative to explain the nature of and the reasons for the proposed modifications is provided in the sections below. Legal drafting for the proposed new and modified conditions in EirGrid MO licence can be sourced in Annex 3.
4.2 New conditions proposed in the EirGrid MO Licence

In line with SEMC decisions the CER proposes that a number of new licence conditions be added to the EirGrid MO licence. These are outlined below as follows:

4.2.1 Condition 3A: Nominated Electricity Market Operator (NEMO)

Nature of modification

The new NEMO condition will oblige EirGrid for so long as it is designated to (i) fulfil its NEMO obligations under CACM (ii) maintain compliance with Article 6 of CACM; (ii) comply with the conditions of its designation and to comply with the “NEMO Exchange Rules.”

The exchange rules need to be approved by the CER. The NEMO Exchange Rules will be ‘off-the-shelf’ rules of agreed procedures and will include codes of conduct by which NEMOs must behave as well as providing clarity as to how market participants can use NEMO services in the ex-ante markets.

The NEMO Exchange Rules will exist outside of the TSC (since they will be commercial arrangements between NEMO service providers and participants in the Day Ahead and Intra-Day timeframes) but will feed into the TSC to provide the data needed for settlement in the Balancing Market which depends upon Day Ahead and Intra-Day trades, which also determine the Physical Notifications in the Balancing Market. Only parties who wish to trade in the Day Ahead or Intra-Day Markets will have to comply with the NEMO Exchange Rules. Both generators and suppliers will be required to trade in the Day Ahead and Intra-Day Markets only through the designated NEMO in their jurisdiction. The NEMO Exchange Rules should set out the terms on which EirGrid/SONI will carry out the NEMO activity and shall be consistent with the CACM Regulation, the Electricity Market Regulation\(^9\) and the Trading and Settlement Code. It should be noted that the CER, alongside UR, is cognisant of the fact that the Intra-Day solution (which is not compliant with CACM) will be in place until a date to be decided; a common sense approach to approval of the NEMO Exchange Rules will therefore be applied.

\(^9\) Electricity Market Regulation is defined as meaning “Regulation (EC) 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity.”
In addition to this, the new licence condition will require a NEMO ‘Statement of Charges’, to be published, after approval by the CER. The Statement of Charges will include a price list. As noted above, further specifications of the detail required in the Statement of Charges will be consulted on in due course by the CER as will the process by which EirGrid’s costs will be assessed, with further Market Operator licence modification processes ensuing where appropriate. The legal drafting also provides that the CER may from time to time make directions as to the content of the Statement of Charges.

The requirement for EirGrid to obtain approval of its Statement of Charges from CER may be disapplied in the event that the CER determines that there is sufficient competition for NEMO services. EirGrid will be under an obligation at all times to charge in accordance with its statement of charges.

Both EirGrid Plc and SONI Ltd will be obliged to cooperate and engage with each other for the purposes of NEMO activity in Ireland and Northern Ireland. The Market Operator Agreement is to be updated accordingly to reflect this.

Reason for modification:

“NEMO” is a role which arose as a result of the CACM Regulation which came into force on 14 August 2015.

On 2 October 2015, the CER and UR separately published designation notices for EirGrid plc and SONI Ltd as NEMOs in Ireland and Northern Ireland respectively. These designations mean that EirGrid plc and SONI Ltd are responsible for the operation of the ex-ante markets as NEMOs together with certain obligations prescribed in the CACM Regulation. These obligations are in addition to obligations which EirGrid and SONI will hold in I-SEM in terms of operation and settlement of the balancing market.

The SEMC published an Information paper on 30 August 2016 (SEM-16-053) regarding governance of the NEMOs.

From I-SEM go-live, only one NEMO will operate in Ireland and one in Northern Ireland (albeit as a ‘joint venture’ type arrangement), and as such, will effectively be conducting a monopoly activity

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in I-SEM. Although Article 4(5) of CACM allows for a NEMO which has been designated in another European member state to ‘passport across’ to operate in other member states, the RAs consider that there is no certainty (at least for the foreseeable future) that another NEMO will operate in the SEM. Accordingly, the RAs consider it appropriate to regulate this de facto monopoly to ensure value for the all-island consumers.

Under Article 6 of the CACM Regulation the CER will continue to ensure the compliance of EirGrid plc with the designation criteria set out in Article 6 of the CACM Regulation. However, as noted above, EirGrid plc and SONI Ltd are at present the only NEMOs designated in Ireland and Northern Ireland respectively. In the absence of legislation providing for NEMO activities as a specific licensable activity, the licensing of NEMO through modified Market Operator licences is considered a robust approach which will allow the most effective regulatory oversight.

The content of the licence condition has been drafted so that a set of rules (the ‘NEMO Exchange Rules’) are submitted to the CER for approval. The reason for the requirement to approve NEMO Exchange Rules is to ensure that a number of I-SEM specific requirements are dealt with and to ensure that the CER is updated on particular issues relating to the amendment of NEMO Exchange Rules.

The scope of the NEMO condition (as set out below) reflects the CER’s desire to balance the need to protect the interests of consumers and the desire not to interfere to a greater extent than necessary. As such, for so long as there is not considered to be sufficient competition for NEMO services, EirGrid will be required to obtain approval of its statement of charges from CER.

In addition, approval of NEMO Exchange Rules is to ensure regulatory oversight of the NEMO interaction with the Trading and Settlement Code and NEMO compliance with CACM.

### 4.2.2 Condition 3B: Agent of Last Resort

**Nature of modification**

The proposed licence modification introduces a new licence condition to describe the operations of an Agent of Last Resort (AOLR) and obligations arising to the Market Operator in this context.

The MO will be required to offer and provide AOLR services in accordance with the set objectives and scope and to develop, administer and maintain procedures pertaining to the operation of, and participation in, AOLR services.
A Service Notice will be submitted to the CER for approval which should outline the form of the contract which the AOLR will enter into with market participants. The licence condition also obliges the MO to prepare an annual report for submission to the CER.

It has also been necessary to propose a change to Condition 11 (Prohibited Activities) to clarify that the AOLR role is not so prohibited.

**Reason for modification:**

The High Level Design of the I-SEM stipulated that an Aggregator of Last Resort, now referred to as Agent of Last Resort shall be provided for in the new market design. AOLR is a new function designed for I-SEM. A licence condition is proposed to be inserted into the EirGrid MO licence to reflect the MO’s responsibilities under the AOLR role.

The SEMC published a Consultation Paper on the AOLR Framework on 5 December 2014, followed by a decision\(^\text{12}\) on 11 September 2015 which states that the AOLR will undertake the ‘passive approach’ as outlined in the Consultation Paper. This means that the AOLR will provide a mechanism for eligible participants to trade in the ex-ante markets, thereby assisting the route to market for smaller participants.

The proposed licence condition is drafted to acknowledge the objective of the AOLR and scope of its services. EirGrid will be obliged to submit an AOLR Contract to the CER for approval, and subsequently be obliged to publish that contract along with the AOLR procedures on its website. An annual report is also to be provided to the CER for publication on the website with a view to ensuring transparency.

It is anticipated that the scope of the AOLR service required under the licence condition will be such that the opportunity will exist for commercial aggregators to develop. This ‘passive’ AOLR will be an in-house function within the market systems. The objective of the AOLR services is to facilitate participation of renewable generators and de minimis generators in the ex-ante markets.

4.3 Modifications proposed to the EirGrid MO licence

4.3.1 Condition A: Transition Condition

Nature of the modification

The CER is now proposing to position the Transition condition as ‘Condition A’ in Part A of the EirGrid MO licence. Modifications are also proposed to amend the date on which the condition shall cease to have effect (being 31 December 2018 as opposed to 30 June 2018) and also to fix a few typographical errors. We have also proposed additional wording in paragraph (b) of the definition of revised SEM arrangements to acknowledge that the ‘revised SEM arrangements’ span both the SONI TSO and MO licences (not just the MO licence).

Reasons for the modification

To place the condition in the licence, to amend typographical and definitional errors and to update the date on which the condition will cease to have effect to reflect the updated I-SEM go-live date. The update to the definition of “revised SEM arrangements is to include reference to the TSO licence to reflect that the scope of the revised SEM arrangement includes the TSO licence (as well as the MO licence).

4.3.2 Condition 1 Interpretation and Construction

Nature of the modification

To incorporate various new and amended definitions in the licence. The legal drafting of the modifications relating to definitions can be reviewed in Annex 2.

In addition to this, a new paragraph has been added to address the consequential impact of revocation of the NEMO designation for EirGrid such that the provisions in the licence that refer to NEMO Activity and / or the NEMO Business shall be understood as relating thereto only in respect of the period in which Condition 3A is in effect.

Reasons for the modification

Definitions have been amended to proper legal effect to the new and modified licence conditions for implementation of I-SEM. In addition it is necessary to ensure that licence conditions which refer to NEMO can continue to have proper effect in the event that EirGrid is no longer a designated NEMO.
4.3.3 **Inclusion of NEMO Activity**

**Nature of the modifications:**

In addition to compliance with obligations in respect of ‘Market Operator Activity’, obligations in respect of ‘NEMO Activity’ and ‘NEMO Business’ have also been included in the following conditions:

- Condition 2: Market Operator Agreement;
- Condition 4: Market System Development Plan;
- Condition 5: Procurement of Assets and Services;
- Condition 7: Additional Use or Disposal of Relevant Market Assets;
- Condition 9: Duty of Non-Discrimination;
- Condition 12: Restriction on Use of Certain Information;
- Condition 13: Separate Accounts for Separate Businesses;
- Condition 14: Prohibition of Subsidies and Cross-subsidies;
- Condition 20: Health and Safety.

The above licence conditions are to be modified to acknowledge the MO’s responsibility to comply with its NEMO-related obligations. Drafting of the modifications can be viewed in Annex 2. Some additional information is given below in respect of Condition 2 (Market Operator Agreement), Condition 13 (Preparation of Accounts) and Condition 14 (Prohibition of Cross Subsidies).

**Reason for the modifications:**

Alongside the introduction of a new ‘NEMO’ licence condition in the MO licences, a number of modifications are necessary to existing conditions (including the definitions) to incorporate reference (where appropriate) to the NEMO Activity (and NEMO Business) as well as the Market Operation Activity (and Single Market Operation Business).

Given the importance of the ex-ante markets to the revised SEM arrangements, the CER considers that the framework for regulating NEMO Activity should in part sit within the Market Operator Licences of EirGrid plc and SONI Ltd. This explains at a high level why a number of modifications are proposed to the EirGrid MO licence.
Recent legislative changes in Ireland and in Northern Ireland have expanded the definition of SEM to allow for the provision of I-SEM related activities such as NEMO. For this reason, a number of existing definitions in the MO licences need to be amended to reflect the operation of NEMOs in the market and specifically to distinguish between obligations owing to EirGrid with respect to the Balancing Market and those existing with respect to NEMO activities.

4.3.4 Condition 2: Market Operator Agreement

Nature of the modification:

This condition is to be modified to reflect that the scope of the Market Operator Agreement is to include provision in relation to NEMO Activity as well as Market Operation Activity.

The condition will also extend the obligation on EirGrid to publish the Market Operator Agreement on the website for the NEMO Business (as well as website for the Single Market Operation Business) if required by CER.

Reasons for the modification

The Information Paper on the Regulatory Framework for NEMOs Operating in I-SEM (SEM-16-053) clarified that the RAs were of the view that to operate together as two designated NEMOs, one operating in Ireland and one operating in Northern Ireland, it is appropriate that the existing Market Operator Agreement be updated to reflect this.

4.3.5 Condition 3: Market System and the Single Electricity Market Trading and Settlement Code

Nature of the modification

A new sub-paragraph is to be added in paragraph 1 of the condition to oblige the MO to adopt amendments made to the TSC as directed by the CER (following such consultation as it considers appropriate) and the expanded scope of the TSC (as regards the settlement of capacity market) will also be included.

The amended scope of the TSC in I-SEM to include settlement arrangements in relation to the new capacity market will be reflected in the licence condition.

Reason for the modification:
EirGrid plc and SONI Ltd jointly currently carry out the SEMO function for the SEM. SEMO is responsible for the administration and operation of the TSC, and will remain as such for I-SEM. The TSC is undergoing revision to take account of I-SEM related market rules and it is essential that the MO adopts such changes as may be directed by the CER to implement the I-SEM arrangement. Similarly, the amended scope for the TSC in I-SEM to include settlement arrangements in relation to the new capacity marker needs to be reflected in the licence condition.

4.3.6 **Condition 11: Prohibited Activities**

**Nature of modification**

Wording has been added to paragraph 3 of the condition to note that “the provision of the Agent of Last Resort service in accordance with Condition 3B shall not be considered to be in contravention of the requirements of paragraph 1, which provides that the licensee shall not "engage in the generation, distribution or supply of electricity on the Island of Ireland."

**Reasons for Modification**

Paragraph 1 of Condition 11 provides that the licensee shall not “engage in the generation, distribution or supply of electricity on the Island of Ireland.” Paragraph 2 obliges the licensee to notify the Commission of any interests in any other electricity undertaking outside of Ireland. Given the SEMC’s assignment of the Agent of Last Resort role to the MO which will be responsible for facilitating participation of renewable generators and de minimis generators in the new Day Ahead and Intra-Day markets, the CER wishes to make it clear that the provision of such services will not be considered to be in contravention of this prohibition otherwise the objective of the AOLR condition could be frustrated.

4.3.7 **Condition 13: Separate Accounts for Separate Business**

**Nature of modification**

As detailed above, Condition 13 is to be amended to extend the obligations of EirGrid such that it will be required to prepare accounting records in respect of its NEMO Activity, separate from those in respect of its Market Operation Activity. A new paragraph 2a is to be introduced to specify that the first financial year shall run from the date on which the CER directs that Condition 3A (NEMO) shall take effect up to and including 31 December 2018.
Reasons for modification:

This amendment is required to ensure proper compliance with Article 6 of CACM as well as providing clarity and legal certainty for the licensee and to ensure transparency.

4.3.8 Condition 14: Prohibition of Subsidies and Cross-subsidies

Nature of the modification:

A modification has been proposed to extend the scope of the prohibition against subsidies and cross subsidies to include NEMO Activity including a prohibition against subsidies or cross-subsidies as between the Market Operator Activity and the NEMO Activity.

Reasons for the modification:

The SEMC Information Paper on Mitigation Measures against potential conflicts of interest within the EirGrid group focussed primarily on potential conflicts between the TSO business and the MO business and concerns about cross-subsidies between the MO and NEMO activities were not so significant. However, Article 4(5) of the CACM Regulation allows for a NEMO which has been designated in another European member state to ‘passport across' to operate in another member state (subject to that member state not disallowing it to carry out its operations there). The CER wants to ensure that EirGrid as designated NEMO in Ireland does not have the ability to benefit from any cross-subsidies as this would mean that there would not be a level playing field between EirGrid and passporting NEMOs.
5. Next Steps

The deadline for receipt of representations or objections to the licence modifications proposed in the notices is 17:00 on Monday, 23 January 2017.

In parallel with the development of these licence modifications, the RAs are also working with the TSOs to develop an amended Trading and Settlement Code and a new Capacity Market Code. A consultation process has opened with respect to an amended Trading and Settlement Code, the closing date for which is 10 January 2017. A similar consultation process on the Capacity Market Code is scheduled to take place in January 2017.

Further licence modifications on changes required to implement I-SEM are planned as follows:

- TSO licence modifications relating to the ‘Shipping Agent’ role and interfaces with the Interconnectors in Q1 2017;
- Interconnector licence modifications in Q1 2017;
- Generator and Supplier licence modifications in June 2017.

Note that the proposed licence modifications for generators and suppliers (currently scheduled for June 2017) are expected to include modifications required in respect of Forwards and Liquidity and Market Power.

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# Annex 1 – Licence Definitions

<table>
<thead>
<tr>
<th>Licence Type</th>
<th>New/Modified</th>
<th>Source</th>
<th>Definition</th>
<th>Indicative Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>TSO Licence</td>
<td>New</td>
<td>Condition 1</td>
<td>Balancing Market</td>
<td>has the meaning set out in the Single Electricity Market Trading and Settlement Code Part B</td>
</tr>
<tr>
<td>TSO Licence</td>
<td>New</td>
<td>Condition 1</td>
<td>Capacity Market</td>
<td>means the arrangements for securing generation adequacy and capacity described in Condition 6A and set out in the Capacity Market Code;</td>
</tr>
<tr>
<td>TSO Licence</td>
<td>New</td>
<td>Condition 1</td>
<td>Capacity Market Code</td>
<td>means the code of that name referred to in Condition 6A</td>
</tr>
<tr>
<td>TSO Licence</td>
<td>New</td>
<td>Condition 1</td>
<td>Ex-Ante Markets</td>
<td>means the day-ahead and intra-day markets for the trading of wholesale electricity in the Single Electricity Market prior to the relevant Gate Closure</td>
</tr>
<tr>
<td>TSO Licence</td>
<td>New</td>
<td>Condition 1</td>
<td>Gate Closure</td>
<td>has the meaning set out in the Single Electricity Market Trading and Settlement Code Part B</td>
</tr>
<tr>
<td>TSO Licence</td>
<td>New</td>
<td>Condition 1</td>
<td>Market Operator Licence</td>
<td>means the licence granted to the Market Operator Licensee pursuant to Section 14(1)(i) of the Act</td>
</tr>
<tr>
<td>TSO Licence</td>
<td>New</td>
<td>Condition 1</td>
<td>NEMO Activity</td>
<td>has the meaning given to that expression in the Market Operator Licence</td>
</tr>
<tr>
<td>TSO Licence</td>
<td>Modified</td>
<td>Condition 1</td>
<td>Transmission System Operation Business</td>
<td>means the business of the Licensee as operator of the transmission system, including but not limited to activities in relation to the Capacity Market and the Balancing Market</td>
</tr>
<tr>
<td>TSO Licence</td>
<td>New</td>
<td>Condition 10A</td>
<td>available</td>
<td>in relation to any generation units or Interconnector transfer, means a generation unit or Interconnector transfer which is available in accordance with the Grid Code or the Northern Ireland Grid Code (as applicable) and “availability” shall be construed accordingly;</td>
</tr>
<tr>
<td>TSO Licence</td>
<td>New</td>
<td>Condition 10A</td>
<td>central dispatch</td>
<td>means the process of scheduling and issuing direct instructions by the Licensee, in conjunction with the Northern Ireland System Operator, as referred to in paragraph 1;</td>
</tr>
<tr>
<td>TSO Licence</td>
<td>New Condition 10A</td>
<td>Interconnector transfer</td>
<td>means the flow of electricity across an Interconnector into, or out of, the Island of Ireland;</td>
<td></td>
</tr>
<tr>
<td>TSO Licence</td>
<td>New Condition 10A</td>
<td>Long Notice Adjustment Factor</td>
<td>means a multiplier applied to the start-up costs of generation sets which varies depending on the length of notice provided in any instruction from the Licensee to synchronise such generation set and which has greater values for greater lengths of notice;</td>
<td></td>
</tr>
<tr>
<td>TSO Licence</td>
<td>New Condition 10A</td>
<td>merit order system</td>
<td>means a system establishing economic precedence of electricity from available generation sets or Interconnector transfers to be delivered or transferred to the All-Island Networks (subject to other system needs);</td>
<td></td>
</tr>
<tr>
<td>TSO Licence</td>
<td>New Condition 10A</td>
<td>non-energy actions</td>
<td>means dispatch instructions issued with the intent of resolving constraints in the transmission system rather than balancing energy between demand and generation;</td>
<td></td>
</tr>
<tr>
<td>TSO Licence</td>
<td>New Condition 10A</td>
<td>Northern Ireland Grid Code</td>
<td>has the meaning given to the expression “Grid Code” in the Northern Ireland System Operator Licence;</td>
<td></td>
</tr>
<tr>
<td>TSO Licence</td>
<td>New Condition 10A</td>
<td>Northern Ireland Operating Security Standard</td>
<td>has the meaning given to the expression “operating security standard” in the Northern Ireland System Operator Licence;</td>
<td></td>
</tr>
</tbody>
</table>
| TSO Licence | New Condition 10A | Northern Ireland SEM Generation | means the available generation units of each relevant generator in Northern Ireland which:  
(a) are required to be subject to central dispatch instructions under the terms of any exemption granted under Article 9 of the Electricity (Northern Ireland) Order 1992 or any licence granted under Article 10 of the Electricity... |
<table>
<thead>
<tr>
<th>TSO Licence</th>
<th>New</th>
<th>Condition 10A</th>
<th>Northern Ireland total system</th>
<th>has the meaning given to the expression “total system” in the Northern Ireland System Operator Licence;</th>
</tr>
</thead>
<tbody>
<tr>
<td>TSO Licence</td>
<td>New</td>
<td>Condition 10A</td>
<td>physical notification</td>
<td>has the meaning set out in the Single Electricity Market Trading and Settlement Code Part B;</td>
</tr>
<tr>
<td>TSO Licence</td>
<td>New</td>
<td>Condition 10A</td>
<td>relevant generator</td>
<td>means: (a) a holder of a licence under Article 10(1)(a) of the Electricity (Northern Ireland) Order 1992; or (b) a person who is exempt from the requirement to hold such a licence in accordance with Article 9 of the Electricity (Northern Ireland) Order 1992, and whose generation set is connected to the total system.</td>
</tr>
<tr>
<td>TSO Licence</td>
<td>New</td>
<td>Condition 10A</td>
<td>Republic of Ireland SEM Generation</td>
<td>means the available generation units of each Generator which: (a) are required to be subject to central dispatch under the terms of any licence granted under Section 14(1) of the Act (as amended); or (b) are otherwise agreed by any such generator to be subjected to central dispatch;</td>
</tr>
<tr>
<td>TSO Licence</td>
<td>New</td>
<td>Condition 10A</td>
<td>scheduling and dispatch parameters</td>
<td>means the parameters to be used in the Licensee’s scheduling and dispatch support systems which shall be designed to defer central dispatch instructions to enable the maximum use by participants of the Ex-Ante Markets and shall include a Long Notice Adjustment</td>
</tr>
<tr>
<td>TSO Licence</td>
<td>New</td>
<td>Condition 10A</td>
<td>SEM Generation</td>
<td>means Republic of Ireland SEM Generation and Northern Ireland SEM Generation and available Interconnector transfers taken together; and</td>
</tr>
<tr>
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</tr>
<tr>
<td>TSO Licence</td>
<td>New</td>
<td>Condition 10A</td>
<td>System Imbalance Flattening Factor</td>
<td>means a multiplier applied to the start-up costs of generation sets which varies depending on the degree to which forecast generation including forecast imports and exports on Interconnectors is short of forecast demand and which has greater values for greater shortages.</td>
</tr>
<tr>
<td>TSO Licence</td>
<td>New</td>
<td>Condition 10B</td>
<td>BMPS Terms of Reference</td>
<td>means Appendix A of the document named “Balancing Market Principles Statement Terms of Reference” published by the SEM Committee on 7th October 2016 (SEM-16-058) or such other document replacing the same and published by the Authority from time to time.</td>
</tr>
<tr>
<td>TSO Licence</td>
<td>New</td>
<td>Condition 21</td>
<td>Member of staff</td>
<td>means an employee of the Licensee</td>
</tr>
<tr>
<td>TSO Licence</td>
<td>New</td>
<td>Condition 21</td>
<td>Cooling-off period</td>
<td>means a period of time during which a member of staff is not actively engaged in any work of the Licensee which requires access to confidential information.</td>
</tr>
<tr>
<td>MO Licence</td>
<td>New</td>
<td>Condition A</td>
<td>Northern Ireland authorised electricity operators</td>
<td>has the meaning given to the term “authorised electricity operator” in the Northern Ireland Market Operator Licence;</td>
</tr>
<tr>
<td>MO Licence</td>
<td>New</td>
<td>Condition 1</td>
<td>Ex-Ante Markets</td>
<td>means the day-ahead and intra-day markets for the trading of wholesale electricity in the Single Electricity Market prior to the relevant Gate Closure;</td>
</tr>
<tr>
<td>MO Licence</td>
<td>New</td>
<td>Condition 1</td>
<td>Gate Closure</td>
<td>has the meaning set out in the Single Electricity Market Trading and Settlement Code Part B</td>
</tr>
<tr>
<td>MO Licence</td>
<td>New Condition 1</td>
<td>Nominated Electricity Market Operator (or NEMO) Activity</td>
<td>means the activities of the Licensee in performing the activities required of a Nominated Electricity Market Operator for performance of day-ahead and intra-day market coupling under the CACM Regulation</td>
<td></td>
</tr>
<tr>
<td>MO Licence</td>
<td>New Condition 1</td>
<td>NEMO Business</td>
<td>means the NEMO Activity of the licensee together with the northern Ireland NEMO Activity</td>
<td></td>
</tr>
<tr>
<td>MO Licence</td>
<td>New Condition 1</td>
<td>Northern Ireland NEMO Activity</td>
<td>has the meaning given to the expression “NEMO Activity” in the Northern Ireland Market Operator Licence</td>
<td></td>
</tr>
</tbody>
</table>
| MO Licence | New Condition 1 | revised SEM arrangements | means:

a) any modifications made (or which the Commission has formally indicated are likely to be made) to the Licence, or to the licences of any electricity undertaking, for the purpose (in each case) of implementing the high level design set out in the document entitled, “Integrated Single Electricity Market (I-SEM): SEM Committee Decision on High Level Design”, with reference SEM-14-085a and published on 17 September 2014;

b) the conditions of the Transmission System Operator Licence and the Licence;

c) the terms imposed in any exemption granted pursuant to section 14(2F) of the Act that reflect a modification referred to in sub-paragraph (a); and

d) the matters that the Licensee knows (or should reasonably know) are envisaged by the modifications and conditions referred to in subparagraphs (a) and (b) (including, without limitation, the establishment, amendment or termination |
of, or the transfer of rights and obligations under, core industry documents; including, without prejudice to the generality, any of the provisions or matters described above by which the Licensee is bound (or intended to be bound).

<p>| MO Licence | Modified Condition 1 | Separate Business | Means any business or businesses of the Licensee, whether carried out directly or by an affiliate or related undertaking of the Licensee, other than the <strong>Single Market Operation SMO &amp; NEMO Business</strong> |
| MO Licence | Modified Condition 1 | Single Market Operation Business | Means the Market Operation activity and taken together with the equivalent activity of the Northern Ireland Market Operator Licensee as provided for in the licence granted under Article 10(1)(d) of the Electricity (Northern Ireland) Order 1992 |
| MO Licence | New Condition 1 | SEMO &amp; NEMO Business | means the Single Market Operation Business and the NEMO Business taken together |
| MO Licence | New Condition 1 | Transmission System Operator Licence | means the licence granted to the Licensee in its capacity as the licensed transmission system operator under Section 14(1)(e) of the Act. |
| MO Licence | New Condition 3 | Capacity Market | has the meaning given to that expression in the Transmission System Operator Licence; and |
| MO Licence | New Condition 3 | Capacity Market Code | has the meaning given to that expression in the Transmission System Operator Licence |
| MO Licence | New Condition 3A | Designation | Means the designation of the Licensee by the Commission (which took effect at 12:00 am on 3 October 2015) as NEMO for single day-ahead and intraday coupling in the Republic of Ireland as amended and/or replaced from time to time; |</p>
<table>
<thead>
<tr>
<th>MO Licence</th>
<th>New</th>
<th>Condition 3A</th>
<th>NEMO</th>
<th>has the meaning ascribed to it by the CACM Regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>MO Licence</td>
<td>New</td>
<td>Condition 3A</td>
<td>NEMO Statement of Charges</td>
<td>Means a list of the charges to be applied by the Licensee in respect of its NEMO Activity</td>
</tr>
<tr>
<td>MO Licence</td>
<td>New</td>
<td>Condition 3B</td>
<td>AoLR Contract</td>
<td>means the terms and conditions of the agreement to be entered into between the Licensees and each AoLR Participant for the provision of AoLR services, which exclude the AoLR Procedures as amended from time to time;</td>
</tr>
<tr>
<td>MO Licence</td>
<td>New</td>
<td>Condition 3B</td>
<td>AoLR Procedures</td>
<td>means the operational processes or procedures to be followed by the Licensee and /or the AoLR Participant when providing or receiving (as the case may be) AoLR services;</td>
</tr>
<tr>
<td>MO Licence</td>
<td>New</td>
<td>Condition 3B</td>
<td>AoLR Participant</td>
<td>means any eligible generator that utilises AoLR services provided by the Licensee</td>
</tr>
<tr>
<td>MO Licence</td>
<td>New</td>
<td>Condition 3B</td>
<td>De Minimis Threshold</td>
<td>has the meaning set out in the Single Electricity Market Trading and Settlement Code, Part B</td>
</tr>
<tr>
<td>MO Licence</td>
<td>New</td>
<td>Condition 3B</td>
<td>eligible generator</td>
<td>means: (a) any Generator Unit with a rated capacity lower than the De Minimis Threshold or (b) any Generator Unit producing energy from renewable sources as that term is defined in Article 2 of Directive 2009/28/EC</td>
</tr>
<tr>
<td>MO Licence</td>
<td>New</td>
<td>Condition 3B</td>
<td>Generator Unit</td>
<td>has the meaning set out in the Single Electricity Market Trading and Settlement Code, Part B</td>
</tr>
<tr>
<td>MO Licence</td>
<td>Modified</td>
<td>Condition 12</td>
<td>confidential information</td>
<td>means any commercially sensitive information held and / or obtained by the Licensee in the discharge of its functions as market operator under the Act, the Market Operator Agreement and this Licence (which shall include information in relation to the NEMO Activity)</td>
</tr>
<tr>
<td>MO Licence</td>
<td>Modified</td>
<td>Condition 12</td>
<td>permitted activities</td>
<td>means any activities directly connected with the discharge by the Licensee of its functions as market operator pursuant to this Licence (which shall include activities in relation to the NEMO Activity).</td>
</tr>
</tbody>
</table>
Annex 2 – Proposed EirGrid TSO licence modifications

Please view separate Annex 2 (CER-16-369) published alongside this information paper.
Annex 3 – Proposed EirGrid MO licence modifications

Please view separate Annex 2 (CER-16-370) published alongside this information paper.
Annex 4 – Statutory Notices

Please note that this Statutory Notice is annexed for information purposes only (CER-16-371)