



**Integrated Single Electricity Market
(I-SEM) and DS3 (Delivering a Secure,
Sustainable Electricity System)**

INFORMATION PAPER

**Mitigation measures for potential conflicts of
interest in the EirGrid group**

SEM-16-041

29 July 2016

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1 EXECUTIVE SUMMARY

The Integrated Single Electricity Market (I-SEM) and the European rules that underpin it require the establishment of a number of new roles and responsibilities as well as changes in the responsibilities of a number of existing electricity licensees. These licensees include the Market Operators (MOs), Transmission System Operators (TSOs)¹, interconnector (IC) owners, generators and suppliers.

At the same time, the TSOs are taking forward the DS3 programme (Delivering a Secure, Sustainable Electricity System) to support secure and reliable system operation as levels of wind generation increase to meet the 40% renewable target set for 2020 in Ireland and Northern Ireland. The DS3 programme includes the development under the oversight of the SEM Committee (SEMC) of a new framework for the procurement of system services by the TSO.

EirGrid plc and SONI Ltd² as MOs (under a contractual joint venture) & TSOs in Ireland and Northern Ireland have been assigned responsibility for key roles in the I-SEM and the new system services framework. These include the delivery and settlement of markets for capacity, day-ahead, intraday, balancing and system services.

As a result of the assignment of key roles in the market, concerns have been raised about potential conflicts between these roles and other activities carried out within the EirGrid group. These relate in particular to:

- the ability to favour interconnection that EirGrid may own, be developing or wish to develop; and
- the ability to excessively influence the design of detailed market rules and producers to suit the interests of its system operation responsibilities.

This information paper outlines a set of measures that the Regulatory Authorities (RAs) in Northern Ireland (the Utility Regulator, UR) and Ireland (the Commission for Energy Regulation, CER) will use to mitigate potential conflicts of interest in relation to the different functions that will be carried out by entities within the EirGrid group in relation to I-SEM and the procurement of system services (as part of the DS3 programme). The system services framework is at an earlier stage of development than the I-SEM programme. Once arrangements for the system services framework are further finalised, the need for any further mitigation measures can be reviewed.

¹ References to 'TSOs' in this paper relate solely to roles assigned to EirGrid plc TSO and SONI Ltd TSO. They exclude Moyle Interconnector which is also a certified TSO (and East-West Interconnector which is yet to be certified as a TSO).

² These are entities of the EirGrid group, which also includes EirGrid Interconnector Ltd and EirGrid Telecoms Ltd.

With respect to possible conflicts between I-SEM/DS3 roles and the ownership and development of interconnection, the mitigation measures can be described as follows (at a high level):

- rules on specific tasks that EirGrid plc and SONI Ltd must or must not carry out as part of their delivery roles for the I-SEM and system services (i.e. what they do and methodologies for doing it);
- general rules on the ways in which EirGrid plc and SONI Ltd should behave in carrying out their delivery roles for I-SEM and system services; and
- additional provisions relating to how EirGrid plc and SONI Ltd should behave in carrying out specific tasks that give rise to the biggest concerns about possible conflicts of interest.

These mitigation measures will be implemented through licence conditions, market rules documents (e.g. Capacity Market Code), public statements on procedures issued by EirGrid plc and SONI Ltd, and internal governance processes (within EirGrid plc and SONI Ltd).

Discussions with market participants have highlighted the importance of transparency in building confidence that there are sufficient safeguards in place that would stop EirGrid plc or SONI Ltd acting on any possible conflict of interests. Therefore, an important element in the package of mitigation measures is the requirement for EirGrid plc and SONI Ltd to actively demonstrate how they comply with the regulatory measures intended to mitigate any possible conflicts of interest (e.g. through an annual public compliance statement).

The second area of possible conflict is whether the roles assigned for I-SEM and system services contribute to the EirGrid group being able to tailor detailed market rules and procedures in the interests of its system operation responsibilities. In this area, the mitigation measures will be based on careful communication with industry about the appropriate roles played by the RAs and entities of the EirGrid group in the development of market rules and approval of methodologies. The RAs will pay specific attention to how market participants can appropriately feed into and receive feedback on discussions at European level regarding methodologies relevant to the System Operator (SO) or NEMO function.

It is important to the SEMC that any suite of mitigation measures should instil market confidence. The RAs will therefore include updates on progress on the implementation of these mitigation measures in the I-SEM quarterly project update reports. This next update of this report is scheduled for publication in October 2016.

2 BACKGROUND

The SEM Committee (SEMC) published an 'I-SEM Roles and Responsibilities' consultation (SEM-15-016) on 6 March 2015, regarding the allocation of key administrative roles and responsibilities amongst parties within the new market. This included making EirGrid plc and SONI Ltd (as MOs & TSOs) responsible for:

- Balancing Market Operation;
- Settlement of Imbalances;
- Capacity Market Delivery; and
- Capacity Market Settlement.

Under the DS3 programme, EirGrid plc and SONI Ltd as TSOs will be responsible for procuring system services.

The majority of respondents to that consultation raised concerns that the assignment of a number of I-SEM and DS3 roles to entities of the EirGrid group could give rise to conflicts of interest, while respondents also recognised merit in exploiting synergies where possible.

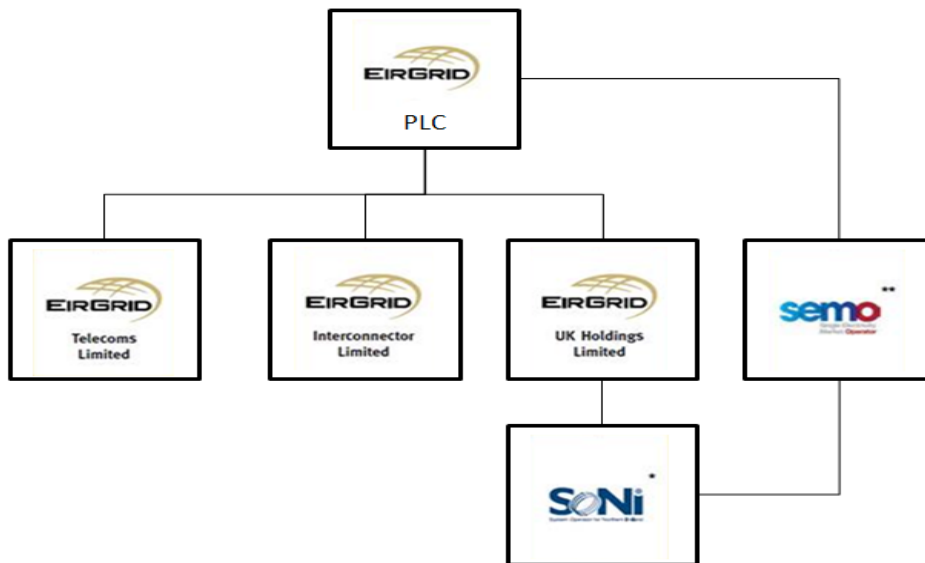
Figure 1 below illustrates the EirGrid group organisational structure. As illustrated in Figure 1, the EirGrid group holds a unique position given its multiple roles of being:

- the TSO in Ireland and in Northern Ireland,;
- the operator of the SEM on the island of Ireland;
- the owner of interconnection (East West Interconnector, EWIC), which can provide services in the markets for balancing, capacity and system services.

Having reviewed stakeholder responses to the I-SEM Roles and Responsibilities consultation document (SEM-15-06), the SEM Committee decided to introduce a Governance Review Process ('I-SEM Roles and Responsibilities Decision Paper', SEM-15-077). This process was designed to allow the SEM Committee to further explore synergies and potential conflicts of interest within the EirGrid group in the context of the new roles they are taking on in I-SEM and system services. This included face-to-face engagement with the EirGrid group and other stakeholders³.

³ It should be noted that some of the European Network Codes and Guidelines have not yet been finalised, and as such the assignment of roles as set out in this paper may be subject to change should the intent of the draft codes change.

Figure 1: Organisational structure of the EirGrid group⁴



This information paper outlines a set of measures that the RAs will use to mitigate potential conflicts of interest in the two areas as identified by the RAs and reinforced by feedback from industry. These relate to the perceptions around:

- the ability for EirGrid plc and SONI Ltd to favour interconnection that the EirGrid group may own, be developing or wish to develop; and
- the ability for the EirGrid group to excessively influence the design of detailed market rules to suit the interests of its system operation responsibilities.

In developing this set of measures, the RAs have taken into consideration:

- responses received to the 'I-SEM Roles and Responsibilities' consultation paper (SEM-15-016);
- extensive engagement with industry including bilateral meetings with 13 market participants (April 2016);
- working-level discussions with the EirGrid group through the Governance Review Process;
- a review of regulatory, institutional and governance arrangements in place for these functions in other electricity markets;
- a meeting with Ofgem to discuss the measures implemented to mitigate possible conflicts of interest arising from National Grid's new role as 'enhanced SO' as a result of the Ofgem decisions on its Integrated Planning and Transmission Regulation (ITPR) project.

⁴ EirGrid Telecoms Ltd is not subject to review for the purposes of this paper. SEMO is a contractual joint venture between EirGrid plc and SONI Ltd, and so does not have its own Board.

The RAs are of the view that any proposed mitigation measures are enhanced by the regulatory arrangements already in place for the TSOs, including licence obligations, price controls and behavioural stipulations. The suite of regulatory provisions will encourage the TSOs to act efficiently and in the best interests of consumers.

2.1 GUIDING PRINCIPLES FOR ADDRESSING CONFLICT OF INTEREST ISSUES

The following principles have guided the work of the RAs in developing the mitigation measures set out in this paper. These principles will be used in consideration of any issues about other possible or perceived conflicts:

1) Identification of potential to detrimentally affect consumers in the All-Island Market

The SEMC will consider whether action is needed to address issues arising from the exercise of the functions of a licensed entity, which is identified as being perceived to have an incentive and an ability to act in such a way that could:

a) negatively impact on the ability of competition to deliver benefits to consumers: e.g. by distorting exit/entry decisions by competing resources because of fears that they would not compete on a level playing field. Any assessment of the need for action by the SEMC would consider whether the licensed entity had a regulated revenue stream (which would for example affect its bidding behaviour), and whether the same group is the (monopoly) buyer of the service as well as competing to provide the service.

b) negatively impact on the ability of regulation to deliver benefits to consumers: e.g. by having undue influence over the market rules so that they are not in the best interests of consumers, and/or allowing the licensed entity to unduly out-perform regulatory incentives.

2) Development of appropriate mitigation measures

The following principles, based on those used for the assessment of the I-SEM High Level Design, have guided the development of appropriate mitigation measures for each possible conflict of interest that has been identified:

a) Effective: The SEMC must be confident that the measure sufficiently weakens perceived as well as actual ability and/or incentive to act on any conflict.

b) Transparent: Wider market participants must have confidence in the ability of the licensed entity to demonstrate compliance and in the ability of the SEMC to monitor and enforce compliance.

c) Efficient: The upfront and ongoing direct costs of compliance, including monitoring, must be proportionate to the magnitude of possible consumer harm arising from the conflict.

d) **Proportionate:** Any indirect costs to consumers through reduction in synergies must be proportionate to the magnitude of possible consumer harm arising from the conflict⁵.

e) **Equitable:** There must be no harm to other parties in the same category as the licensed entity to which the conflict does not apply.

f) **Practical:** The mitigation measures should be capable of being implemented sufficiently in advance of I-SEM Go-Live.

g) **Consistent:** The mitigation measure must be consistent with SEMC decisions in other areas of work.






h) **Stable:** The mitigation measures must be consistent with expected future developments in the all-island and European energy markets.

2.2 ASSESSMENT OF STATUS OF MITIGATION MEASURES

This paper describes the current implementation status of each of the proposed mitigation measures according to the legend set out in Table 1. This scoring legend will be used in the progress updates on the implementation of the mitigation measures that will be included in the I-SEM quarterly update reports.

⁵ Respondents to the consultation on I-SEM Roles and Responsibilities were supportive of the principles of a single body carrying out multiple functions within a small market. One example given was the synergies of a single body responsible for settlement across different markets.

Table 1 – Legend for scoring of status of mitigation measures

<u>SCORE</u>	<u>SUMMARY</u>
	Sufficient mitigation measure already fully operational.
	The SEMC has previously taken decision to introduce sufficient mitigation measures, but they have not yet been implemented.
	This mitigation measure exists but needs amendment to be sufficient.
	Some aspects of the mitigation measure will exist (based on current decisions) but gaps will remain (based on current decisions).
	No development to date on the design or implementation of any aspects of mitigation measure.

3 EIRGRID CORPORATE GOVERNANCE

As part of the I-SEM/ DS3 Governance Review Process, and in order to relieve any incentive at a corporate level to act on a potential conflict of interest, the RAs have reviewed and engaged with EirGrid group to discuss Board membership of its entities. The SEMC, as part of the proposals for mitigations to address potential conflicts of interest, wish to have Board structures within the EirGrid group changed to better demonstrate good governance. In addition the UR Board has sought some changes to the SONI Board following the transfer of network planning and certification and these are also reflected below.

3.1 EIRGRID GROUP BOARD CHANGES

Following consideration of market participants' views and information tabled by RAs, the SEMC recommends changes to acknowledge concerns, particularly in relation to the TSOs and the East West Interconnector.

Within the EirGrid group, current Board membership is as follows:

EirGrid plc	
Non-Exec Director (Chair) EirGrid plc CEO (CEO) 7 Non-Exec Directors (2 with extensive NI backgrounds and normally resident in NI) 1 Staff representative	
EirGrid Interconnector Ltd (EIL)	EirGrid UK Holdings Ltd
EirGrid plc CEO (Chair) EirGrid Director, Grid Development & Interconnection EirGrid Group CFO	EirGrid plc CEO (Chair) General Manager SONI Ltd
	SONI Ltd
	EirGrid plc CEO (Chair) EirGrid Director, Grid Development & Interconnection EirGrid Group CFO General Manager SONI Ltd

In order to mitigate against the potential for conflicts of interest, and following discussion with EirGrid group, changes to the various Board memberships have been agreed as depicted below:

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EIRGRID GROUP

EirGrid plc	
Non-Exec Director (Chair) EirGrid plc CEO (CEO) 7 Non-Exec Directors (2 with extensive NI backgrounds and normally resident in NI; 1 of whom will be Deputy Chair) 1 Staff representative 1 Company Secretary	
EirGrid Interconnector Ltd	EirGrid UK Holdings Ltd
EirGrid Director, Grid Development & Interconnection (Chair) EirGrid plc CEO (Chair) EirGrid Group CFO	EirGrid plc CEO (Chair) General Manager SONI Ltd
	SONI Ltd
	General Manager SONI Ltd (Chair) EirGrid plc CEO (Chair) EirGrid Director, Grid Development & Interconnection EirGrid Group CFO SONI Ltd senior employee

These changes will mean that:

- The Chair of the EIL Board will no longer also be on the SONI Ltd (TSO) Board. The aim of this change is to help to alleviate any concerns regarding potential conflicts of interest on decisions made by the TSO and Interconnector businesses.
- The CEO of EirGrid plc will no longer chair the SONI Ltd Board. This will help to instil a sense of independence of SONI Ltd from EirGrid plc. The Board of SONI Ltd can discharge its corporate governance responsibilities separately from EirGrid plc. (while recognising that there is a need for the companies to co-operate as TSOs and to support the efficient and effective functioning of the SEM/ I-SEM).
- The Chair of the SONI Ltd Board will not be a member of the EirGrid plc Board and the majority of the SONI Ltd Board will no longer consist of EirGrid employees. This will help to create a more NI-focused Board for SONI Ltd.

A clear protocol should apply to the EirGrid CEO and CFO in respect of business being discussed at EIL which relates to any other parts of the EirGrid group on which either of them serve as Board members.

The changes agreed in terms of corporate governance will be reviewed by the SEMC once I-SEM has been implemented to assess if the revised board structures within the EirGrid group provide satisfactory assurances to potential conflicts of interest being addressed. In addition, the Utility Regulator will review the governance of

SONI Ltd to ensure that it continues to adequately address the requirements of an independent TSO for Northern Ireland.

4 INTERCONNECTOR OWNERSHIP/DEVELOPMENT AND I-SEM/DS3 FUNCTIONS

4.1 IDENTIFICATION OF POTENTIAL CONFLICT

The TSO licensees within the EirGrid group (EirGrid plc and SONI Ltd) have been given the responsibility for delivery of three aspects of the new electricity market arrangements, namely:

- Capacity Market (CM);
- Balancing Mechanism (BM), as part of the Electricity Trading Arrangements (ETA) and;
- System Services (SS) as part of the DS3 programme.

Market participants have raised concerns about the (perceived) scope for conflicts of interests to arise between the EirGrid group carrying out these functions and its activities in the ownership/development of interconnection.

These concerns particularly relate to the potential ability of the EirGrid group to favour its own existing and possible future Interconnector(s)(ICs) through actions in three specific areas:

- **Analysis** (CM, SS), e.g. calculation of the capacity factors for IC and/or foreign generation in the CM, the allocation of the pot between different system services.
- **Product design** (CM, BM, SS), e.g. the nature of the delivery obligation for non-domestic resources providing capacity or system services etc.
- **Operation of allocation mechanism** (CM, BM, SS), e.g. sharing between TSOs and EWIC of non-public information on bids received, scope for discretion/judgement in selection of bids in BM or SS.

The perception amongst many market participants is that EWIC will have an unfair advantage in the CM and system services auctions given the roles of EirGrid as auctioneer and single buyer. In addition, it has been noted that the EirGrid employees working on TSO and EWIC functions work in the same building and share the same communal areas. This means that there is a perception of increased risk of information being shared informally, even if such disclosure would be in breach of licence obligations and expose the licensees to regulatory enforcement action.

EWIC is subject to a regulated revenue stream, which means that EirGrid is considered to be revenue neutral to changes in EWIC revenue⁶. Despite EirGrid's inability to financially gain from increased interconnector revenue, (for example, by participating in the CM or selling system services), there are still reasons for a

⁶ This is consistent with the statement made in the Public Information Note on East West Interconnector Revenue Requirement (CER/12/149) that "In this context it should be noted that EirGrid is not allowed to benefit from interconnector, apart from the regulated rate of equity it invested in the EWIC."

perception that the EirGrid group could wish to favour its own existing and possible future IC(s) in carrying out its I-SEM and system services roles⁷, namely:

- Trust/familiarity with IC asset and staff, which leads to EWIC being considered more favourably when the EirGrid group is finalising the detailed design of the CM or system services framework.
- Increased commercial revenue for EWIC could enhance its reputation and thereby its investment potential for future interconnection. However, EirGrid plc does not directly financially gain from increased interconnector revenue.

Indeed, in the bilateral discussions, market participants indicated that they were aware that EirGrid plc did not receive a direct revenue benefit from EWIC receiving more commercial revenue. However, there was a general perception that the EirGrid group would see it as a good thing if interconnection was seen to be commercially valuable.

If the EirGrid group was to act on these potential conflicts, the immediate short-term impact would be to reduce market efficiency and/or distort distribution of consumer welfare. However, even if the EirGrid group was not to act on any potential conflict, the perception that it could do so may distort exit/entry decisions by competing resources. This would reduce long-term efficiency.

4.2 SUMMARY OF MITIGATION MEASURES

Figure 2 summarises the package of mitigation measures that the RAs/SEMC propose to address the issues around the possible conflicts of interests that may arise between the EirGrid group carrying out the I-SEM and system service functions and its activities in the ownership/development of interconnection.

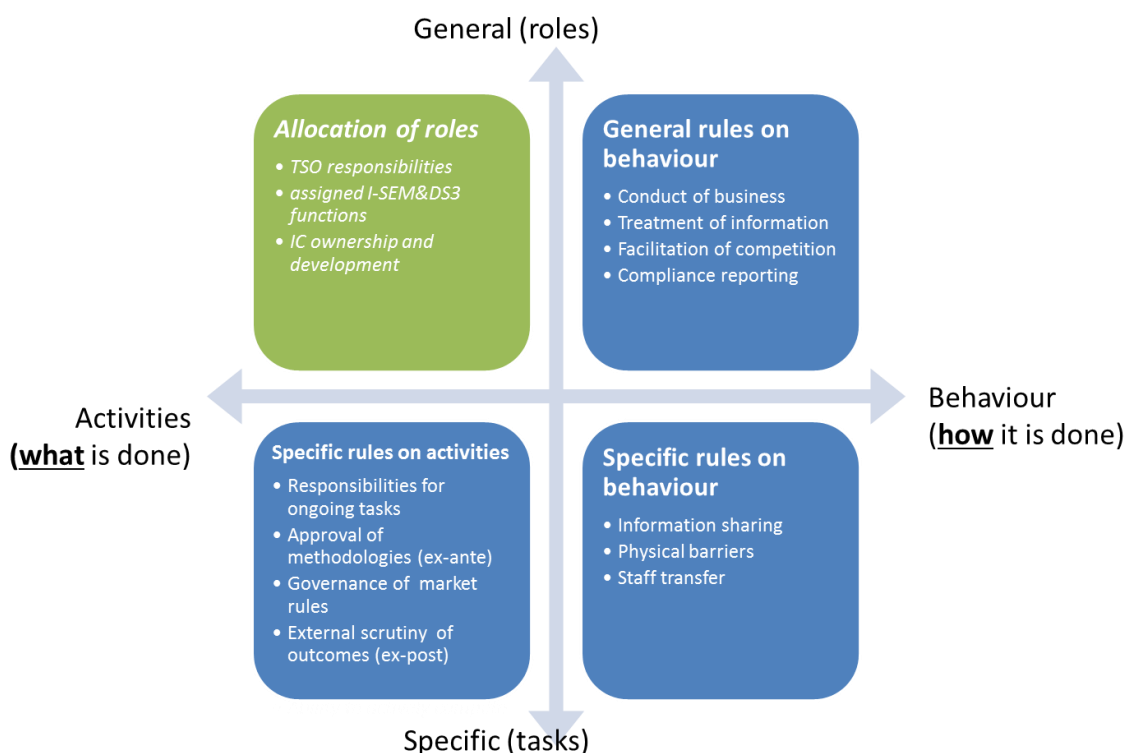
The blue boxes in Figure 2 represent the three main elements of the mitigation measures applied to the possible conflict between the I-SEM/DS3 delivery roles and interconnector owner and developer. These are differentiated by:

- whether the measure applies to an activity (what EirGrid plc/ SONI Ltd should do) or behaviour (how EirGrid plc/ SONI Ltd should carry out the activities) – this is shown on the horizontal axis.
- whether the mitigation measure is general (i.e. relating to a role or function) or is specific (i.e. relating to a task or activity) – this is shown on the vertical axis.

The green box in Figure 2 shows the allocation of the I-SEM and DS3 roles that have given rise to these possible conflicts.

⁷ There are a range of other aims that the EirGrid group has in carrying out its role as owner of EWIC e.g. minimising costs of operation and ensuring efficient technical operation. However, these are not relevant for the issues covered in this information paper

Figure 2 – Summary of package of mitigation measures



The behavioural-type measures are intended to mitigate against any ability or incentives to act on a potential conflict, particularly at a working level. This overall approach is similar to the strategy used by Ofgem in its mitigation of possible conflicts associated with National Grid being given an enhanced SO role as a result of the Integrated Transmission Planning and Regulation (ITPR) project.

The proposed approach will be underpinned by public reporting requirements placed upon EirGrid plc and SONI Ltd on its compliance with the mitigation measures, and effective, comprehensive monitoring of such compliance by the RAs. The RAs recognise that their monitoring strategy should be consistent with any changes which have applied to other licensees.

4.3 SPECIFIC RULES ON ACTIVITIES

This category of mitigation measures includes specific rules on the activities that EirGrid plc/ SONI Ltd must or must not carry out as part of their I-SEM or system services delivery roles (i.e. what they do).

These constraints will be put in place as part of the policy framework for each market. They include:

- Allocation of responsibilities for specific tasks to other parties, e.g. RAs to be responsible for decisions on the de-rating values for interconnectors in the CRM.

- Consultation on and regulatory approval of methodologies, e.g the Balancing Market Principles Statement (BMPS).
- Governance of market rules, e.g. as set out in the Capacity Market Code.
- External scrutiny of outcomes, including requirements to publish information, external audits, and cost-effective mechanisms for market participants to challenge outcomes (before formal court proceedings).

Many of these measures are primarily driven by good regulatory practice (e.g. transparency, industry engagement) which have the spin-off benefits of helping to mitigate any perceived conflicts of interest.

The regulatory focus will be on ensuring the implementation of these provisions (alongside any associated licence conditions), which will be contained in the following market codes and statements of principles:

- Capacity Market Code (CMC);
- Trading and Settlement Code (relevant for the BM although it covers ETA more widely);
- Balancing Market Principles Statement (BMPS); and
- System Services Procurement Principles and Procedures.

Table 2 summarises the current position on the implementation mitigation measures in this category. Further details are included in the annex in Section 7.

For the CM and the BM, the position is largely that decisions have been taken to introduce specific governance arrangements in the form of:




- Licence conditions e.g. to set out the requirements for the CMC and the BMPS.
- Market rules documents e.g. the Trading and Settlement Code (TSC) and the CMC that include provisions for the roles of industry and the RAs in the governance process of each document.
- Public methodologies to be approved by the SEM Committee e.g. CMC and BMPS, which will include provisions around the activities to be undertaken by the RAs (e.g. de-rating of IC, and the approval of CM parameters).

However, these measures have not yet been implemented. Some of the licence conditions (e.g. on the BMPS) are yet to be consulted on and the market rules and public methodologies have not been finalised.


For SS, a number of measures have been set out in decision papers issued by the SEMC. As well as the requirement for the SEMC to approve the volumes of each service to be procured, these measures include the development of a public methodology to be approved by the SEMC (System Services Procurement Principles and Procedures). This methodology will also include the information that the TSOs must publish in its system services delivery role.

Although there is not an overall market rules document for system services, there has been a consultation on the standard bilateral contract between the TSOs and the providers of system services. As these are bilateral contracts that will follow from a public procurement process carried out in line with the Utilities Directive, any challenge to the process would be taken under the terms of the Directive.

Table 2 – Summary of specific measures on activities that are part of the I-SEM and system services roles assigned to EirGrid plc/ SONI Ltd (TSO)

MITIGATION MEASURE	SUMMARY	CURRENT POSITION
<p>Responsibilities for ongoing regular tasks</p> 	<p>CM: RAs to have specific responsibilities for IC de-rating, and general parameters. This means that the TSOs will not be able to attribute a de-rating factor for EWIC that could be to its benefit in the CM.</p> <p>SS: RAs to have specific responsibility for approval of system service volumes to be procured. SEMC will approve tariffs.</p>	<p>The SEMC has taken decision to introduce these measures. The CM provisions will be codified in the CMC, which remains to be finalised.</p> <p>The requirement for RA approval of the SS volumes may be included in the SS Procurement Principles and Procedures when it is finalised. A high level version of the SS Procurement Principles and Procedures for the interim is due to be finalised in August 2016.</p>
<p>Approval of methodologies (ex-ante)</p> 	<p>CM de-rating methodologies to be included in the CMC.</p> <p>Balancing Market Principles Statement (BMPS).</p> <p>SS Procurement Procedures and Principles.</p>	<p>The SEMC has taken decision to introduce these measures.</p> <p>The RAs have consulted on the Terms of Reference for the BMPS (SEM-16-028). However, the associated licence conditions remain to be implemented for the CMC and the BMPS.</p> <p>The CMC and the BMPS themselves still need to be finalised.</p> <p>SONI Ltd TSO licence has been revised to include requirement for UR approval of the SS Procurement Procedures and Principles (LC 29.4). No similar requirement is proposed for inclusion in the EirGrid plc TSO licence.</p>
<p>Governance of market rules</p> 	<p>RAs develop framework for markets for balancing, capacity and system services</p> <p>Industry/RA involvement in change process</p>	<p>The SEMC has set out decisions on the design of the CM, BM and system service. Decisions in remaining areas will be issued in the coming months.</p> <p>The market rules for the BM (TSC) and CM (CMC) are under development (with industry involvement) but are yet to be finalised.</p> <p>The RAs have consulted on the form of the standard bilateral contract between</p>

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	Requirements to comply with European rules (e.g. Balancing Regulation)	<p>the TSOs and system services providers. The TSOs will be required to consult on material changes to the Agreed Protocols.</p> <p>The European Regulation on Electricity Balancing is yet to be finalised.</p>
External scrutiny of outcomes (ex-post) 	<p>Independent audits</p> <p>Publication of information</p> <p>Scope for legal challenge</p>	<p>The SEMC has consulted on a requirement for the audit of the operation of the CM auction (in line with approved methodology). There is expected to be an audit of the BM as a continuation of the existing audit of the SEM. However, details remain to be finalised on the scope of the audits.</p> <p>No proposal has yet been made for any requirements for an audit of the operation of the SS arrangements.</p> <p>Provisions around the publication of information will be included in the TSC, BMPS, CMC and SS Procurement Principles and Procedures. These all remain to be finalised.</p> <p>Regulatory dispute mechanisms will be developed for the BM (the TSC) and the CM (CMC). No such mechanisms will be developed for SS as these are bilateral contracts between the TSO and the SS provider.</p>

4.4 GENERAL RULES ON BEHAVIOUR

This category of mitigation measures includes rules on the general behaviour of EirGrid plc/ SONI Ltd as TSOs, the definition of which will be expanded to cover all of the I-SEM and system service functions assigned to the TSOs⁸.

This particularly relates to:

⁸ These measures only include industry-specific requirements, and do not include general legal provisions such as those related to competition law which could also apply.

- conduct of business in the interests of consumers in Ireland and Northern Ireland;
- treatment of information;
- facilitation of competition; and
- reporting on compliance with requirements designed to mitigate possibility for conflicts of interests.

In general, these restrictions can be described as being heavily reliant on ‘ex-post’ enforcement, i.e. the threat of heavy sanctions if breaches are detected provides a strong disincentive for entities of the EirGrid group to act upon any possible conflicts.




The restrictions on behaviour can come from a number of different sources, such as European legislation, jurisdictional statutes and licence conditions. The regulatory focus will be on amending licence conditions to clarify the scope of the existing requirements.

These will be supported by internal procedural documents within the EirGrid group demonstrating the high importance of reducing the risk of breaches in these areas. Codes of Conduct are already in place but will be reviewed to ensure that they remain fit for purpose under the new market arrangements and regulatory framework.


There will also be a new licence condition in relation to the monitoring and public reporting on compliance with the requirements set out in relation to managing possible conflicts of interest. This public reporting is an important element of the package of mitigation measures. This will place an onus on EirGrid to demonstrate how it enforces any procedures (e.g. in Codes of Conduct) beyond just stating that a Code of Conduct exists. The resulting transparency will help to address perceptions of possible conflicts of interests, as well as any actual possibility for conflicts to be acted on.

Table 3 summarises the current position on mitigation measures in this category. Further details are included in the annex in Section 8.

Table 3 – Summary of general rules on behaviour that apply to EirGrid plc/ SONI Ltd as TSOs

MITIGATION MEASURE	SUMMARY	CURRENT POSITION
<p>Conduct of business</p> 	<p>Specific regulatory provisions require EirGrid plc/ SONI Ltd to carry out business in interests of consumers</p>	<p>Regulatory provisions already exist in this area but need amendment to be sufficiently strong given the new I-SEM and system service roles.</p> <p>Therefore, scope of regulatory provisions will be clarified to reflect new functions.</p> <p>The EirGrid group will update any associated procedural documents (such as Code of Conduct) to reflect new I-SEM and system service roles and regulatory provisions.</p>
<p>Treatment of information</p> 	<p>Teams within EirGrid plc/ SONI Ltd cannot access any information that equivalent external parties would not have</p>	<p>Regulatory provisions already exist in this area but need amendment to be sufficiently strong given the new I-SEM and system service roles.</p> <p>Licence conditions will be clarified to emphasis requirement for safeguards on internal sharing of information as well as external.</p> <p>The EirGrid group will update any associated procedural documents to reflect new functions and regulatory provisions.</p>
<p>Facilitation of competition</p> 	<p>General requirements on EirGrid plc/ SONI Ltd :</p> <ul style="list-style-type: none"> • attitude of seeking to facilitate competition. • treat 'equally' all related 'activities' competing with external resources • conduct in procurement activities 	<p>Regulatory provisions already exist in this area but need amendment to be sufficiently strong given the new I-SEM and system service roles.</p> <p>Licence conditions (and other regulatory provisions) will be updated to cover competition between different types of resources (i.e. interconnection, DSR, generation).</p>

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Compliance reporting 	Licence requirements for (independent) compliance officer, and public compliance report This will apply to reporting of compliance with general and specific rules on behaviour in relation to mitigating conflicts of interest.	No proposed provisions currently exist in this area (in relation to 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 on external reporting). New licence condition will be developed to specify the requirements for a compliance officer and public report. This will specify the regulatory measures against which compliance is to be reported.
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4.5 SPECIFIC RULES ON BEHAVIOUR

This element of the package of mitigation measures will put in place specific rules on how EirGrid plc and SONI Ltd should behave in carrying out particular tasks as part of their I-SEM and system services delivery roles. These rules will be focused around safeguards to ensure adequate separation between the interconnector ownership and/or development activities, and any specific tasks that are identified as giving rise to major concerns of conflict of interest. Any provisions will be defined as narrowly as possible so as to avoid unintentional destruction of wider synergies.



Any detailed separation safeguards will be covered in the new licence condition and associated statement about compliance with measures intended to mitigate conflicts of interest. Details of the arrangements will be included in the compliance report that will be approved by the RAs. This will allow the arrangements to evolve more easily than if detailed provisions are specified directly in the licence.

Table 4 summarises the current position on mitigation measures in this category. Further details are included in the annex in Section 9.

Table 4 – Summary of specific rules on how EirGrid plc/ SONI Ltd behave in carrying out specific tasks which are part of their I-SEM and system service delivery roles

<u>MITIGATION MEASURE</u>	<u>SUMMARY</u>	<u>CURRENT POSITION</u>
Information sharing 	Specifically ring-fence relevant information for the I-SEM and system service delivery roles	EirGrid plc and SONI Ltd have some general information separation procedures in place. However, they will need to update these procedures to be sufficiently granular.

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		<p>A new licence condition will be put in place requiring a compliance statement that includes details of additional separation safeguards for particular tasks.</p> <p>EirGrid plc and SONI Ltd will then develop this public compliance statement for approval by the RAs.</p>
<p>Physical barrier</p> 	<p>Physical barriers to 'informal' discussions between I-SEM and system service delivery roles, and EirGrid IC teams</p>	<p>EirGrid plc and SONI Ltd have scope for restricting access to different team areas (through access passes). However, they will need to update these procedures to be sufficiently granular.</p> <p>A new licence condition will be put in place requiring a compliance statement that includes details of additional separation safeguards for particular tasks.</p> <p>EirGrid plc and SONI Ltd will then develop this public compliance statement for approval by the RAs.</p>
<p>Staff transfer</p> 	<p>Ensure that internal staff transfers does not undermine restrictions on information sharing and 'informal discussions' (physical barriers)</p>	<p>No current policy in place on the restriction of transfer of staff between particular tasks.</p> <p>A new licence condition will be put in place requiring a compliance statement that includes details of additional separation safeguards for particular tasks.</p> <p>EirGrid plc and SONI Ltd will need to develop policy, and describe it in the approved compliance statement.</p>

5 ROLE OF TSO IN MARKET DESIGN

5.1 CONTEXT

The Market Operator (MO) licensees within the EirGrid group (EirGrid plc, and SONI Ltd) have been given the responsibility for settlement of three aspects of the new electricity market arrangements, namely CM, Imbalance/BM, and SS.

In addition, EirGrid plc, and SONI Ltd have been designated as a Nominated Electricity Market Operator (NEMO) in Ireland and Northern Ireland respectively; in this role, the NEMO will be responsible for the development and operation of the day-ahead and intraday markets under the European Target Model.

As part of their analysis, the RAs have carried out an initial review of the relationship between TSOs and MO/settlement in other European markets. This review has highlighted the importance of distinguishing between different aspects of market operation/settlement. This is a particular issue given the changing nature of SEMO's operational activities under the future I-SEM design.

The existence of the NEMO means that operational functions of SEMO will be different from today. Therefore any consideration of possible conflict and mitigation, including from international experience, needs to focus on whether the activity is a specific task carried out by the PX (which only covers Day-Ahead (DA) or Intraday (ID) markets), or by SEMO (which could cover DA, ID or balancing markets).

In most European markets, balancing market settlement is carried out within the TSO function. There are some examples of separate bodies carrying out the role, although these are still under TSO ownership with differing degrees of operational and governance independence (with ELEXON in GB being at the most separate end of the spectrum).

The RAs have identified other examples where a NEMO is owned within the same group as a TSO, or has TSO ownership (such as NordPool Spot). These NEMOs are still operationally separate (in terms of day to day activities of operating the day-ahead and intraday markets) although the TSO has a role in the governance of the NEMO.

The RAs will continue to engage with EirGrid/SONI on how they will manage the relationship with EPEX, the external power exchange carrying out many of the day-to-day activities of the NEMO. The RAs' current understanding is that the responsibilities will be split as follows:

- **SEMO:** customer relationship management; setting of fees; registration; representation at main (non-technical) European committees; and interaction with RAs
- **EPEX:** operation of trading platform; settlement calculation; central counterparty (which makes it hard to have shared collateral arrangements across day-ahead, intraday and balancing markets).

It is clear that the operational activities of the NEMO (e.g. receiving and processing bids, participating in the market coupling processes) are expected to be carried out in the EPEX offices, providing natural separation from the TSO activities of EirGrid plc/ SONI Ltd.

5.2 IDENTIFICATION OF POTENTIAL CONFLICT

In consultation responses and bilateral discussions, market participants have indicated concerns about the scope for conflicts of interests to arise between EirGrid carrying out the functions of Imbalance/BM settlement, SS settlement, NEMO, and its system operation role.

These conflicts relate to the strengthening of the ability of the EirGrid group to favour its system operation role through actions on product design, and market rules. The primary concern is that the market operator's voice is not sufficiently independent in external discussions about changes to products or market rules (i.e. any tensions between efficient market operation and settlement may be resolved internally within the EirGrid group).

Market participants felt that the detailed design and implementation of the new markets for energy, capacity, and system services were excessively weighted towards what was needed by the TSO rather than what was needed by market participants, for example, the design of interim intraday markets or 'flagging and tagging rules'.

Two possible reasons have been identified for the EirGrid group to favour its system operation role:

- make it easier for the TSO to operate the system to maintain secure supplies; or
- make it easier for the TSO to out-perform any incentives that may be in place under I-SEM for efficient operation of the system (e.g. balancing costs).

If the EirGrid group was to act on these potential conflicts, the immediate impact would be to reduce market efficiency and/or enable it to benefit under price control incentives at the expense of consumers.

In theory, the NEMO may be able to share non-public information with the system operation function, e.g. on bids from particular market participants. However, market participants did not highlight concerns about conflicts of interest from the joint operation of the system and markets.

Rather, market participants were concerned that there would be insufficient exploitation of synergies for market participants from the EirGrid group, being a single point of customer interface for the operation and settlement of day-ahead, intraday and balancing markets. In particular, market participants raised concerns about the ability to share collateral and credit requirements across different market timeframes. This issue is being considered as part of the working group developing detailed market rules for the Day-ahead, Intraday and Balancing markets. These rules will be embodied in the Trading and Settlement Code.

5.3 MITIGATION MEASURES

There are two constituent parts to the mitigation measures that will be put in place to address this conflict:

1. Communication with industry on the working methodologies of the RAs and the EirGrid group to develop, adopt, and approve market rules and on roles; and providing clarity on the functions within the EirGrid group that is being represented in public interfaces.
2. Appropriate engagement by the RAs and EirGrid group with market participants on discussions at ACER and ENTSO-E at a European level

The first element is communication with industry on the working methodologies of the RAs and the EirGrid group to develop, adopt and approve market rules. Industry confidence in the transparency of the development of market rules is vital to the market. In particular, the confidence of industry is essential in relation to the effectiveness of the mitigation measures relating to checks and balances on the specific activities to include the role of the EirGrid plc/ SONI Ltd as BM delivery body, CM Delivery Body, system services Delivery Body and as Interconnector owner/ developer.

It is important to note that the RAs are of the view that considerable regulatory oversight has been apparent through the development of the rules working groups through the Energy Trading Arrangements workstream. The RAs have worked with EirGrid and SONI's market operator teams to develop a timeframe for the discussion of eleven groupings of issues each over a five week cycle. Working group meetings have been chaired by the RAs. Feedback from market participants was facilitated and contributed to by the RAs. An escalation process was developed to allow market participants to raise queries with the RAs. Notwithstanding this, the RAs are cognisant that there may be times when market participants may question a potential conflict of interest or the ability of EirGrid plc to act in the interest of EirGrid group, given the number of different roles and licenced activities performed by entities of the EirGrid group in the market.

The RAs are of the view that the most appropriate way to counteract misunderstandings in this regard is for EirGrid group to be clear in its dealings with market participants and the public more generally as to which entity it is representing in a given situation. Furthermore, the RAs are of the view that correspondence and publications should equally specify which function within the EirGrid group is being represented in each case.

Equally, in the existing market and going forward in the SEM redesign, it is important that the Trading and Settlement Code Modifications Panel reflect the distinction between EirGrid/ SONI as Market Operator and EirGrid/ SONI as Transmission Systems Operator. Although these entities have separate voting rights under the Trading and Settlement Code (TSC), the RAs would like to emphasise the important role to be played by SEMO, providing the secretariat function to the Modifications Panel in the SEM and going forward in the balancing market. It should also be noted

that the RAs will continue as required by the TSC, to act as a non-voting member to the TSC Modifications Panel, providing regulatory oversight and noting perspectives of industry to ensure that balanced, evidenced-informed decisions are taken by the SEMC on any Trading and Settlement Code modifications proposed by the Modifications Panel.

Similarly, the EirGrid group will consider how to appropriately deal with and communicate with industry regarding tensions between the economic concerns of the Market Operator function and the technical concerns of the Transmission Systems Operator without losing the synergies of having both SO and MO functions operate within the same entities.

Secondly, the RAs consider that it is important that market participants should be facilitated in appropriately contributing to discussions at a European level on issues relating to the European Network Codes including matters relating to the Nominated Electricity Market Operator (NEMO). To this end the RAs are working with EirGrid and SONI to re-establish an All-Island Forum for EU Stakeholders to meet at least quarterly on network code related issues. This will allow market participants to feed into discussions on European Network Codes, facilitate presentations by industry representative groups, and ensure that the TSOs and/or RAs present issues including decisions on network code related methodologies at the appropriate juncture to industry. The RAs will oversee the effectiveness of this forum. Improvements in communication in this area will help to build confidence within industry that the EirGrid group is adequately representing the interests of the all-island market rather than its own interests as a TSO. The importance of the effectiveness of this type of feedback mechanism means that the RAs will continue to monitor developments in this area, and will review at the start of 2017 whether further specific measures are required.

It should also be noted that concerns as to how designated NEMOs should be appropriately regulated is being considered across Europe and by the RAs. In addition, all NEMOs across Europe have been obliged under CACM to agree a Market Coupling Operator Agreement (MCO) Plan to detail how NEMOs should deal with each other in deliver the market coupling operator function.

6 TIMETABLE FOR NEXT STEPS

The mitigation measures set out in this paper will be implemented through a range of actions including:

- modification and addition of licence conditions;
- development and approval of market rules documents (e.g. Trading and Settlement Code, Capacity Market Code);
- development and approval of public statements on procedures issued by EirGrid plc and SONI Ltd (e.g. Balancing Market Principles Statements, System Services Procurement Principles and Procedures); and
- updating of internal governance processes (within EirGrid plc and SONI Ltd).

The expected timings of the implementation measures are as follows:

- from July 2016 onwards, EirGrid will work to improve its communication of how policy positions are formulated within the EirGrid group (i.e. taking account of internal tensions between teams);
- from July 2016 onwards, EirGrid and the RAs will work to improve their communication of how they work together on development of detailed policy;
- in September 2016, the RAs will consult on proposed modifications of the EirGrid and SONI TSO licences (and where appropriate the EWIC licence) for changes in the following areas:
 - explicit confirmation of the application of general behavioural rules to the functions/roles assigned to the TSOs for I-SEM/DS3 delivery;
 - clarification and tidying-up of general regulatory provisions around acting in the interests of consumers, treatment of information, and facilitating competition;
 - introduction of requirement for an independent compliance officer and annual report;
- by November 2016, the RAs will agree the details of a compliance officer and annual compliance report with EirGrid and SONI;
- by the end of 2016 (at the latest), EirGrid and SONI will have in place a mechanism to allow market participants to effectively feed into and receive feedback on the discussions they are involved in at a European level (as SO and as NEMO); and
- by February 2017, the RAs will approve the first annual compliance statement.

The RAs will include updates on progress on mitigation measures in the I-SEM quarterly update reports. These updates will be based on the colour-coded tables included in Chapter 3 (Table 2, Table 3 and Table 4).


6.1 CONSISTENCY WITH OTHER WORK ON POTENTIAL CONFLICTS OF INTEREST

This paper refers to functions carried out on an all-island basis under the I-SEM and DS3 framework. Within I-SEM there are no conflicts or perceived conflicts of interest between SONI Ltd and EirGrid plc fulfilling their functions as TSOs in operating the SEM. Additionally, in delivering compliance with the European Target Model, emphasis is placed on co-operation between TSOs.

From an NI perspective, the Utility Regulator (UR) is separately working to clarify independence clauses in both the SONI SO and SONI MO licences. The RAs will work together to ensure consistency of approach where relevant.


7 ANNEX: SPECIFIC MEASURES ON ACTIVITIES

Table 5 – Responsibilities for ongoing tasks

AIM	Remove (perceived) ability of EirGrid plc/ SONI Ltd to act in favour of its own (existing and prospective) IC assets, when carrying out specific tasks
SUMMARY	<p>The following tasks will be carried out by the RAs/SEMC:</p> <ul style="list-style-type: none"> • development and implementation of methodology for establishing IC de-ratings in CM; • setting and reviewing of parameters for CM; • approval of volumes of system services to be procured.
CURRENT POSITION ON PROPOSED MITIGATION MEASURE	<ul style="list-style-type: none"> • IC de-rating in CM: CRM Decision paper 2 (SEM-16-022) states “The SEM Committee has decided that the RAs should develop a methodology to determine the de-rating factors to be applied to interconnectors” • Parameters for CM: CRM Decision paper 2 (SEM-16-022) states “A number of decisions in this paper are subject to specific parameters that will be set (and kept under review) by the SEM Committee. These will be considered as part of Consultation 3 (and) as part of a separate consultation on CRM parameters”. • Requirement for approval of methodology for calculating volumes of system services to be procured was set out in SEMC Decision paper on system services framework (SEM-14-108)
STATUS	SEMC has taken decision to introduce sufficient mitigation measures but they have not yet been implemented. 
STRENGTHS OF PROPOSED MITIGATION MEASURE	<p>a) Effective: Directly removes the ability of the EirGrid group to act on any conflict for the derating of IC where there is no direct involvement of the EirGrid group.</p> <p>b) Transparent: Easy to demonstrate compliance, and RAs should be able to be carry out IC derating analysis without reliance on EirGrid plc/ SONI Ltd (compared to system services analysis where TSO expertise is essential)</p> <p>e) Equitable: Moyle can have confidence in equal treatment (and avoids risk that EirGrid would treat IC ‘harshly’ to demonstrate independence)</p> <p>f) Practical: measure can be implemented well before I-SEM Go-Live</p> <p>g) Consistent: Already set out in SEMC Decision papers</p>

WEAKNESSES OF PROPOSED MITIGATION MEASURE	b) Transparent: Market participants have concerns about the practical scope for themselves and/or the RAs to challenge EirGrid plc/ SONI Ltd on technical issues (e.g. system service volumes).
NEXT STEPS	<ul style="list-style-type: none"> • The RAs will ensure that these provisions are codified in the Capacity Market Code • The requirement for SEMC approval of the SS volumes may be included in the SS Procurement Principles and Procedures when it is finalised

Table 6 – Approval of methodologies

AIM	Reduce (perceived) ability of EirGrid plc/ SONI Ltd to act on any possible conflicts because have to act in line with approved methodologies
SUMMARY	<p>Eirgrid plc/ SONI Ltd will be required to consult on and seek approval from the RAs for the following methodologies:</p> <ul style="list-style-type: none"> • De-rating and volume calculation methodologies to be applied in CM (excluding IC derating) • Balancing Market Principle Statement (BMPS) • SS Procurement Procedures and Principles
CURRENT POSITION ON PROPOSED MITIGATION MEASURE	<ul style="list-style-type: none"> • De-rating (non-IC), and calculation of required capacity. Decision on Roles and Responsibilities set out that these methodologies will need to be approved by SEMC, which will be a requirement in the Capacity Market Code (CMC). • BM: ETA Markets Decision Paper (SEM-15-065) states requirement for SEMC approval of Balancing Market Principles Statement (BMPS). This is expected to be implemented through a licence conditions that the BMPS needs to be in line with ToR set by RAs, and will need RA approvals RAs have consulted on ToR for BMPS (SEM-16-028), which also sets out process for SEMC approval of the final document after consultation with market participants • SS Procurement Procedures and Principles: Requirement set out in revised LC29.4 of SONI TSO licence. No similar requirement is proposed for inclusion in EirGrid plc TSO licence.
STATUS	SEMC has taken decision to introduce sufficient mitigation measures but they have not yet been implemented. 
STRENGTHS OF PROPOSED	d) Proportionate: No obvious impact on synergies

MITIGATION MEASURE	<p>e) Equitable: No undue impact on Moyle</p> <p>f) Practical: Consultation process already underway of various methodologies</p> <p>g) Consistent: In line with decisions already taken in support of good governance</p> <p>h) Stable: European Network Codes/Regulations generally emphasise role of RAs in approving methodologies (developed by TSOs through public consultation)</p>
WEAKNESSES OF PROPOSED MITIGATION MEASURE	<p>b) Transparent: Concerns of market participants about RAs having resources/ability to challenge EirGrid plc/ SONI Ltd on methodology in technical areas</p>
NEXT STEPS	<ul style="list-style-type: none"> • RAs to implement proposed licence conditions requiring the development of the CMC, which will include approved methodologies • RAs to consult on and implement proposed licence conditions for the BMPS • CMC, BMPS and SS Procurement Principles and Procedures to be approved by the RAs

Table 7 – Governance of market rules

AIM	<p>Reduce (perceived) ability of EirGrid plc/ SONI Ltd to tailor detailed design features to unduly favour IC, particularly any that it owns or is developing</p>
SUMMARY	<ul style="list-style-type: none"> • The RAs are responsible for setting the main features of each market through its detailed decision papers • Arrangements will be in place to allow industry involvement, and where necessary, RA approval of detailed rules • European rules will constrain the discretion of EirGrid plc/ SONI Ltd, particularly in relation to the BM (under the Electricity Balancing Regulation)
CURRENT POSITION ON PROPOSED MITIGATION MEASURE	<ul style="list-style-type: none"> • The SEMC has set out decisions on the design of the CM, BM and system service. Decisions in remaining areas will be issued in the coming months as part of the completion of the Detailed Design stage of I-SEM. • Industry participants are involved in the working groups that are developing the TSC (ETA) and CMC (CM). • The RAs have consulted on the form of the standard bilateral contract between the TSOs and system services providers. The TSOs will be required to consult on material changes to the Agreed Protocols.

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	<ul style="list-style-type: none"> The Electricity Balancing Regulation is yet to be finalised at European level
STRENGTHS OF PROPOSED MITIGATION MEASURE	<p>d) Proportionate: No obvious impact on synergies</p> <p>e) Equitable: No undue impact on Moyle</p> <p>g) Consistent: In the interests of good governance, these governance process have to be operational sufficiently in advance of the start of I-SEM (independent of any concerns about conflict of interest)</p>
WEAKNESSES OF PROPOSED MITIGATION MEASURE	<p>b) Transparent: Market participants have concerns about the practical scope for themselves and/or the RAs to challenge EirGrid plc/ SONI Ltd on development of very detailed rules.</p>
STATUS	SEMC has taken decision to introduce sufficient mitigation measures but they have not yet been implemented 
NEXT STEPS	<ul style="list-style-type: none"> The RAs will oversee and approve the TSC and CMC, including provisions for industry participation in governance processes RAs to monitor developments in the Electricity Balancing Regulation RAs to work with EirGrid plc/ SONI Ltd to address industry concerns about undue influence of TSO on development of market rules (addressed under the second conflict described in this paper)

Table 8 – External scrutiny of outcomes

AIM	Increase likelihood of EirGrid plc/ SONI Ltd being discovered if act on conflict
SUMMARY	<ul style="list-style-type: none"> Independent (technical) ex-post audits of whether EirGrid plc/ SONI Ltd has carried out tasks in line with agreed methodology (rather than whether the methodology is right). The RAs will set the Terms of References and scope for each audit. Publication of as much information as possible by EirGrid plc/ SONI Ltd covering any analysis and results Facilitation of challenge to the results by market participants. Initial challenge through clear dispute resolution processes that facilitates speedy, cost-effective resolution, with backstop of legal challenge in only the rarest circumstances

<p>CURRENT POSITION ON PROPOSED MITIGATION MEASURE</p>	<ul style="list-style-type: none"> • Independent audits: CM: SEMC have decided to impose requirement for the review by Auction Monitor and Auction Auditor of the operation of the CM auction (in line with approved methodology) (CRM Decision 3, 16-039) BM: expectation is that arrangements will be in place along lines of current audit of SEM SS: No proposal has yet been made for any requirements for an audit of the operation of the SS arrangements. • Publication of information: BM: The TSC and Section [6] of the BMPS will include specific provisions on the publication of information (as proposed in SEMC consultation on ToR: SEM-16-028) • Challenge to results: The CMC (CM) and TSC (BM) will include regulatory dispute resolution procedures (modelled on the current TSC provisions) to reduce the need for costly court proceedings • SS: No regulatory dispute mechanisms will be developed for SS as these are bilateral contracts between the TSO and the SS provider
<p>STATUS</p>	<p>SEMC has taken decisions to introduce some aspects of the mitigation measure but gaps will remain (even after implementation of the existing decision) </p>
<p>STRENGTHS OF PROPOSED MITIGATION MEASURE</p>	<ul style="list-style-type: none"> a) Effective: Most effective when it is primarily a technical judgment on whether or not a process has been followed b) Transparent: Audit report can be published c) Efficient: Will require additional resource for auditing – although expected costs should be kept low compared to potential consumer benefits from increased confidence of (existing and prospective) market participants in ‘fairness’ of process d) Proportionate: not affect how EirGrid plc/ SONI Ltd organise themselves to carry out tasks, and should be consistent with good internal governance of the process e) Equitable: No undue impact on Moyle IC Ltd g) Consistent: In line with current regulatory approach (e.g. SEM audit)
<p>WEAKNESSES OF PROPOSED MITIGATION MEASURE</p>	<ul style="list-style-type: none"> a) Effective: less effective when judgement is involved in application of methodologies (since not ideal to second-guess decisions made in real-time – e.g. ‘tagging and flagging’)

	<p>b) Transparent: Requires market participants to have confidence in the methodologies that are being applied</p>
<p>NEXT STEPS</p>	<ul style="list-style-type: none"> • The RAs to oversee the development and implementation of details of CM and BM audits, including which tasks are to be covered - e.g. CM: pre-qualification, operation of auctions, performance monitoring); BM : how far back does the audit go – e.g. does it look at activities after ‘flagging and tagging’ only) • The RAs will consider the need for any required audits for system services with regards to of how the TSO has followed the approved methodology for either regulated tariffs (where focus would be on supporting analysis) and/or competitive auctions (where audit could cover supporting analysis or operation of auction) • The RAs will approve the detailed requirements for publication of information in the market code and/or statement of principles for each market (CM, BM and SS). • The RAs to approve details of dispute resolution mechanisms in TSC (BM) and CMC (CM)

8 ANNEX: GENERAL MEASURES ON BEHAVIOUR

Table 9 – General conduct of business

AIM	Require EirGrid plc/ SONI Ltd to carry out its I-SEM and system service roles for the widest benefits of interests of consumers in Ireland and Northern Ireland (rather than in the interests of the EirGrid group)
SUMMARY	Explicitly require EirGrid plc/ SONI Ltd to carry out its I-SEM and DS3 roles in the interests of consumers in Ireland and Northern Ireland.
CURRENT POSITION ON PROPOSED MITIGATION MEASURE	<ul style="list-style-type: none"> Provisions applying to EirGrid plc (TSO) LC 1.8 : EirGrid to take account of overall costs of generation, transmission, distribution and supply of electricity to final consumers on the Island of Ireland (when discharging its obligations under this Licence). LC3.1(h) requires EirGrid to have regards to the need to protect the interests of consumers of electricity in Northern Ireland and Ireland when carrying out the functions listed in (a) to (f), which does not explicitly include I-SEM and DS3 functions. Provisions applying to SONI plc (TSO) No specific provisions in licence in relation to how SONI should carry out its general TSO functions.
STATUS	Regulatory provisions already exist in this area but need amendment to be sufficiently strong given the new I-SEM and system service roles.
STRENGTHS OF PROPOSED MITIGATION MEASURE	<p>d) Proportionate: allows EirGrid plc/ SONI Ltd to decide how best to operate to deliver the benefits to consumers</p> <p>e) Equitable: No undue impact on Moyle</p> <p>g) Consistent: In line with overall objectives of the RAs and the SEM Committee</p>
WEAKNESSES OF PROPOSED MITIGATION MEASURE	b) Transparent: poor visibility to external parties of how the regulatory provisions specifically guide the behaviour of EirGrid plc/ SONI Ltd
NEXT STEPS	<ul style="list-style-type: none"> The RAs will consult on and then implement modifications of the EirGrid and SONI TSO licences to clarify the application of general behavioural rules to the functions/roles assigned to the TSO for I-SEM and system

	<p>service roles</p> <ul style="list-style-type: none"> • EirGrid group will update any associated procedural documents (such as Code of Conduct) to reflect new roles and regulatory provisions
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Table 10 – General approach to treatment of information

AIM	Reduce opportunities for teams within the EirGrid Group to access any information from other teams within the group that those teams would not gather or share with equivalent external parties
SUMMARY	Explicit licence provisions around the sharing of information internally and externally
CURRENT POSITION ON PROPOSED MITIGATION MEASURE	<ul style="list-style-type: none"> • Provisions applying to EirGrid plc (TSO) LC 21: obliges EirGrid to preserve the confidentiality of commercially sensitive information. This includes information only being released to employees who are authorised recipients. • Provisions applying to SONI plc (TSO) LC 11: restricts the use of information by SONI TSO. This include information only being released to employees who are authorised recipients. The licence conditions includes provision of information on performance to UR on request • REMIT restricts use of insider information in organised marketplaces. This designation will apply to balancing markets, system services (particularly over IC) and could apply to CRM • Each Business Unit within EirGrid plc/ SONI Ltd has its own area on the IT system that can only be accessed by employees within the Business Unit.
STATUS	Regulatory provisions already exist in this area but need amendment to be sufficiently strong given the new I-SEM and system service roles.
STRENGTHS OF PROPOSED MITIGATION MEASURE	<p>a) Effective: Licence conditions are back-stop measures in case any relevant information does not fall under scope of any detailed specific provisions for information separation. REMIT has heavy sanctions for any breach</p> <p>b) Proportionate allows EirGrid plc/ SONI Ltd freedom in how it organises itself to meet requirements</p>

	<p>e) Equitable: No undue impact on Moyle</p> <p>h) Stable Licence conditions will automatically cover new types of information that is collected as the market arrangements evolve</p>
WEAKNESSES OF PROPOSED MITIGATION MEASURE	<p>a) Effective: Focus in EirGrid plc /SONI Ltd has been on preventing external release of information, rather than also the need for care in internal sharing (e.g. judging from code of conduct)</p> <p>b) Transparent: at present, there is poor visibility to external parties of how the regulatory provisions specifically guide the behaviour of EirGrid plc/ SONI Ltd</p>
NEXT STEPS	<ul style="list-style-type: none"> • The RAs will consult on and implement modifications of the EirGrid and SONI TSO licences in relation to: <ul style="list-style-type: none"> ○ the application of general behavioural rules to the functions/roles assigned to the TSO for I-SEM and system service delivery; and ○ tightening of wording to ensure focus sufficiently on restricting inappropriate internal access to information as well as stopping inappropriate external release. • The EirGrid group will update any associated procedural documents to reflect new functions and regulatory provisions. These documents will describe how they designate ‘authorised recipients’, and how they restrict access to information to those parties only.


Table 11 – General approach to the facilitation of competition

AIM	Highlight importance of EirGrid plc/ SONI Ltd in actively facilitating competition between all resources, in the long-term interest of consumers
SUMMARY	<ul style="list-style-type: none"> • General regulatory provision on EirGrid plc /SONI Ltd to have attitude of generally seeking to facilitate competition • General regulatory provision on EirGrid plc/ SONI Ltd for ‘equal’ treatment of related ‘activities’, who are competing (directly or indirectly) with external resources • General regulatory provision on EirGrid plc/ SONI Ltd for conduct in procurement activities
CURRENT	<ul style="list-style-type: none"> • Attitude of generally seeking to facilitate competition

I-SEM MITIGATION MEASURES FOR POTENTIAL CONFLICTS OF INTEREST IN THE
EIRGRID GROUP

<p>POSITION ON PROPOSED MITIGATION MEASURE</p>	<p>Article 12 of NI Order (1992) obliges SONI to facilitate competition in generation and supply</p> <ul style="list-style-type: none"> • ‘Equal’ treatment of related activities EirGrid plc (TSO): LC17 includes requirement for compliance programme with annual compliance report provided to CER SONI Ltd (TSO): LC15 refers to non-discrimination but has no requirement for compliance programme or annual compliance report • Conduct in procurement: SONI Ltd (TSO): LC29 refers to system support services. Utilities Directive will apply in some circumstances
<p>STATUS</p>	<p>Regulatory provisions already exist in this area but need amendment to be sufficiently strong given the new I-SEM and system service roles.</p>
<p>STRENGTHS OF PROPOSED MITIGATION MEASURE</p>	<p>d) Proportionate allows EirGrid plc/ SONI Ltd freedom in how it organises itself to meet requirements</p> <p>e) Equitable: No undue impact on Moyle</p> <p>h) Stable Licence conditions will automatically cover new forms of competition amongst different resources that emerges as the market arrangements evolve</p>
<p>WEAKNESSES OF PROPOSED MITIGATION MEASURE</p>	<p>a) Effective: scope for interpretation of provisions only relating to narrow definition of competition</p> <p>b) Transparent: at present, there is poor visibility to external parties of how the regulatory provisions specifically guide the behaviour of EirGrid plc/ SONI Ltd</p>
<p>NEXT STEPS</p>	<ul style="list-style-type: none"> • The RAs will consult on and implement modifications of the EirGrid and SONI TSO licences to clarify: <ul style="list-style-type: none"> ○ requirements to facilitate competition to cover all areas of competition, and between all types of asset; and ○ the application of general behavioural rules to the functions/roles assigned to the TSO for I-SEM/DS3 delivery.

Table 12 – Reporting of compliance

AIM	Provide external parties with confidence in the high importance that EirGrid plc/ SONI Ltd puts on ensuring compliance with behavioural restrictions designed to mitigate possibility of internal conflicts of interest
SUMMARY	<p>Licence requirement on EirGrid plc/ SONI Ltd for an independent compliance officer to publish a compliance report (after approval by the RAs) that describes specific evidence of practical compliance with restrictions on behaviour in relation to:</p> <ul style="list-style-type: none"> • treatment of information • facilitating competition • specific separation restrictions between individual tasks
CURRENT POSITION ON PROPOSED MITIGATION MEASURE	<ul style="list-style-type: none"> • Some licence requirements for various compliance reports to be provided to the RAs. • EirGrid plc /SONI Ltd has a head of Internal Audit and Compliance, who produces internal reports for senior management on compliance. The reports are backed up by detailed database.
STATUS	No proposed provisions currently exist in this area (in relation to conflicts of interests around I-SEM and system service roles). 
STRENGTHS OF PROPOSED MITIGATION MEASURE	<p>a) Effective: EirGrid plc/ SONI Ltd proactively provides specific evidence of practical compliance, evidenced by actual behaviour capable of being verified in a compliance audit.</p> <p>b) Transparent: report will be published</p> <p>d) Proportionate allows EirGrid plc/ SONI Ltd freedom in how it organises itself to meet requirements</p> <p>e) Equitable: No undue impact on Moyle</p>
WEAKNESSES OF PROPOSED MITIGATION MEASURE	No weaknesses identified
NEXT STEPS	<ul style="list-style-type: none"> • The RAs will consult on and implement proposed modifications of the EirGrid and SONI TSO licences to include the requirements for: <ul style="list-style-type: none"> ○ appointment of an independent compliance officer; and ○ publication of annual compliance report by compliance offer.


	<ul style="list-style-type: none">• The condition should cover the following aspects:<ul style="list-style-type: none">○ role, resourcing and independence of compliance officer;○ content of report;○ list of practices, procedures and systems adopted in relation to separation of physical access, information and staff transfer;○ list of practices, procedures and systems adopted in relation to areas where additional separation safeguards are required;○ description of any breaches detected internally, and any remedial actions;○ description of review of and response to any complaints received from external parties, and any remedial actions;○ frequency of update/review of statement;○ approval by regulator (form and/or content); and○ release of annual report to external parties after regulatory approval (e.g. publication on website).• The RAs will work with EirGrid plc/ SONI Ltd on the details regarding the compliance officer and annual compliance report
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9 ANNEX: SPECIFIC RESTRICTIONS ON BEHAVIOUR

Table 13 – Information sharing


AIM	Remove the opportunities for the interconnector ownership/development team(s) and I-SEM or system services delivery teams to access any information from each team that is not gathered from or shared with external parties
SUMMARY	Ring-fence specific information between I-SEM and system service delivery roles, and the ownership/development of interconnection in terms of: <ul style="list-style-type: none"> • restrictions on shared electronic access, and on the transfer of information electronically; and • requirements for hard copies to only be kept in secure areas.
CURRENT POSITION ON PROPOSED MITIGATION MEASURE	No regulatory provisions in relation to the sharing of specific information between specific roles Each Business Unit within EirGrid plc/ SONI Ltd has its own area on the IT system that can only be accessed by employees within the Business Unit.
STATUS	Some aspects of the mitigation measure exist but gaps remain to be filled.
STRENGTHS OF PROPOSED MITIGATION MEASURE	<ul style="list-style-type: none"> a) Effective: additional layer of mitigation targeted at detailed areas of concern b) Transparent: statement will be published e) Equitable: No undue impact on Moyle
WEAKNESSES OF PROPOSED MITIGATION MEASURE	No weaknesses identified
NEXT STEPS	<ul style="list-style-type: none"> • RAs will consult on and implement modifications of the EirGrid and SONI TSO licences to include the requirement to conduct business in line with approved compliance statement. • RAs will work with EirGrid plc/ SONI Ltd on the content of the compliance statement with regards to additional safeguards for information separation between specific sensitive tasks.

Table 14 – Physical barriers

AIM	Reduce the opportunities for the interconnector ownership/development team(s) and I-SEM and system services delivery teams to have ‘informal’ discussions that would not be had with external parties
SUMMARY	<p>Ring-fence specific information between I-SEM and system services delivery roles and the ownership/development of interconnection in terms of:</p> <ul style="list-style-type: none"> • Restrictions to ensure that staff working on the ownership and/or development of IC cannot access the areas in which the specific I-SEM or system services delivery activities are carried out. • Restrictions to ensure that whilst they are carrying out I-SEM or system services delivery functions, staff in the EirGrid group cannot access the areas where teams are working on IC ownership and/or development.
CURRENT POSITION ON PROPOSED MITIGATION MEASURE	<p>No regulatory provisions in relation to the physical barriers between staff carrying out specific tasks</p> <ul style="list-style-type: none"> • Staff housed in same building when in Dublin or Belfast. • EWIC team in Dublin only, and on same floor as Grid Development team. However, the team is on a separate floor to the teams expected to be carrying out I-SEM and system services delivery roles. • Swipe cards issued to all staff can be used to access all areas (including other floors), apart from control centre and computer servers.
STATUS	<p>Some aspects of the mitigation measure exist but gaps remain to be filled</p> 
STRENGTHS OF PROPOSED MITIGATION MEASURE	<p>a) Effective: additional layer of mitigation targeted at detailed areas of concern</p> <p>b) Transparent: statement will be published</p> <p>e) Equitable: No undue impact on Moyle</p>
WEAKNESSES OF PROPOSED MITIGATION MEASURE	<p>No weaknesses identified</p>
NEXT STEPS (G&L)	<ul style="list-style-type: none"> • RA's will consult on and implement modifications of the EirGrid and SONI TSO licences to include the requirement

	<p>to conduct business in line with approved compliance statement.</p> <ul style="list-style-type: none"> • RAs will work with EirGrid plc/ SONI Ltd on the content of the compliance statement with regards to additional safeguards for physical separation between staff carrying out specific sensitive tasks.
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Table 15 – Staff transfer between sensitive tasks

AIM	Ensure that internal staff transfers does not undermine restrictions on information sharing and ‘informal discussions’ (physical barriers)
SUMMARY	Restrictions to ensure that there are sufficient break arrangements before staff can transfer between designated activities in I-SEM or system services, and responsibilities interconnection ownership/development
CURRENT POSITION ON PROPOSED MITIGATION MEASURE	<p>No regulatory provisions in relation to the transfer of staff between team.</p> <p>No internal restrictions in place. However, in practice, it takes some time to negotiate a transfer between teams in practice</p>
STATUS	No development to date on the design or implementation of any aspects of mitigation measure 
STRENGTHS OF PROPOSED MITIGATION MEASURE	<p>a) Effective: additional layer of mitigation targeted at detailed areas of concern</p> <p>b) Transparent: statement will be published</p> <p>e) Equitable: No undue impact on Moyle</p>
WEAKNESSES OF PROPOSED MITIGATION MEASURE	d) Proportionate: EirGrid concern about the impact of staff transfer restrictions on flexibility and efficiency of business operations.
NEXT STEPS	<ul style="list-style-type: none"> • RAs will consult on and implement modifications of the EirGrid and SONI TSO licences to include the requirement to conduct business in line with approved compliance statement. • RAs will work with EirGrid plc/ SONI Ltd on the content of the compliance statement with regards to additional safeguards for staff transfer between responsibilities for specific sensitive tasks.