



## **DETERMINATION OF MERGER NOTIFICATION M/08/028 - EirGrid/SONI**

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### **Section 21 of the Competition Act 2002**

**Proposed acquisition by EirGrid plc of SONI Limited (System Operator for Northern Ireland Limited).**

**Dated 25/09/2008**

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### **Introduction**

1. On 10 September 2008, the Competition Authority (the "Authority"), in accordance with section 18(1)(a) of the Competition Act, 2002 ("the Act") was notified, on a mandatory basis, of a proposed acquisition by EirGrid plc ("EirGrid") of the entire issued share capital of SONI Limited (System Operator for Northern Ireland Limited) ("SONI"). The proposed transaction involves the acquisition of sole control by EirGrid of SONI.

### **The Undertakings Involved**

#### ***The Acquirer: EirGrid***

2. EirGrid, formed in 2001, is the independent licensed electricity Transmission System Operator ("TSO") and the licensed Market Operator ("MO") in the State. EirGrid has held the TSO licence since 2006, and the MO licence since the Single Electricity Market ("SEM") was established on the island of Ireland in 2007. EirGrid is a publicly limited company and is wholly-owned by the Irish State.
3. EirGrid's role as licensed TSO is independently to provide services to all users of the State's electricity system, including all generators, suppliers and high voltage customers. It does this by facilitating the development, maintenance and operation of the transmission system. EirGrid, as TSO, is prohibited under the Electricity Regulation Act 1999 from engaging in the generation, distribution or supply of electricity in the State.
4. In addition to its TSO role, EirGrid is the licensed MO in the State which together with SONI operates the SEM. EirGrid is fully regulated and its activities are overseen by the Commission for Energy Regulation ("CER"). In accordance with the regulatory requirements in both the State and Northern Ireland, EirGrid exercises its MO function on an all-island basis through an unincorporated contractual joint venture with SONI, known as the Single Electricity Market Operator ("SEMO"). Since its inception in November 2007, SEMO has been responsible for operating the all-island wholesale market for electricity, or SEM. EirGrid and SONI each hold separate MO licences but SEMO is jointly regulated on a cooperative basis in both jurisdictions by CER and the Northern Ireland Authority for Utility Regulation ("NIAUR").

5. For the financial year ended 31 December 2007, the consolidated worldwide turnover of EirGrid was approximately €290 million, and in the same financial year, the turnover of EirGrid in the State was approximately €[...] million.

### **The Target: SONI**

6. SONI is the licensed TSO and the MO in Northern Ireland. SONI is primarily tasked with ensuring the safe, secure and economic operation of the high voltage electricity grid in Northern Ireland and the all-island transmission network in conjunction with EirGrid. SONI is incorporated as a limited liability company under the laws of Northern Ireland and is a wholly-owned subsidiary of Northern Ireland Electricity plc ("NIE"), part of the Viridian Group plc. SONI is fully regulated by the NIAUR. SONI is authorised to conduct its MO business on an all-island basis through its separate SEMO licence in NI.
7. For the financial year ended 31 March 2008, SONI achieved turnover of GBP £47.6 million (approximately €60.3 million<sup>1</sup>). Its entire turnover was achieved from its activities in Northern Ireland.

### **The Rationale for the Transaction**

8. The proposed acquisition affords EirGrid the opportunity to further build on the recent establishment of SEM on the island of Ireland, by giving it the opportunity to [further enhance its operation of an] efficient, reliable and cost-effective electricity transmission system. The independently licensed TSO and MO functions of SONI are integral to the efficient operation of SEM on the island of Ireland.
9. The transmission network in Northern Ireland is owned by NIE and operated by SONI. The seller, NIE, has agreed with NIAUR and the Department of Enterprise, Trade & Investment ("DETI") to divest SONI in order to further the independence from generation and supply of SONI's TSO and MO roles within SEM.

### **Views of Commission for Energy Regulation**

10. The CER indicated to the Authority that it considers the proposed acquisition to be desirable as it will create opportunities for synergies in the electricity transmission system from both a planning and operational perspective.

### **Analysis**

#### *Horizontal Overlap*

11. EirGrid and SONI are the licensed TSO of the transmission network and the licensed MO of the wholesale SEM in their respective jurisdictions. With respect to the island of Ireland, the parties do not overlap horizontally in their roles as licensed TSOs in their respective jurisdictions because they are strictly confined by law to only operate in their respective jurisdictions.

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<sup>1</sup> This figure was converted from UK Pound Sterling at the ECB's average annual exchange rate for 2007 of EUR 1 = GBP 0.68434.

12. The transmission system assets in the State are owned by ESB Networks (a division of ESB) and operated by EirGrid whilst the transmission system assets in Northern Ireland are owned by NIE and operated by SONI. Both ESB and EirGrid are State-owned, but entirely independently operated companies.
13. There are provisions in EirGrid's TSO licence which oblige it to act in conjunction with the Northern Ireland System Operator so as to ensure that the Irish and Northern Irish transmission system can be operated in a coordinated manner. To accomplish this goal, the parties have signed a System Operator Agreement ("SOA"), approved by CER and NIAUR, which governs their operational interaction with each other in respect to the carrying out of their TSO activities.
14. In relation to the role of MO, licences are separately granted in each jurisdiction by CER to EirGrid and by NIAUR to SONI. As outlined above, to ensure that SEM is operated effectively and efficiently, CER and NIAUR requested the parties to jointly manage their MO businesses via SEMO. Under the terms of their MO licences, both parties are, in particular, obliged to formally cooperate with each other within the framework of a Market Operator Agreement ("MOA").
15. In addition to this, the terms of EirGrid's MO licence prohibit it from disposing of any "Relevant Assets" which would adversely affect the ability of the Northern Irish MO licensee from fulfilling its statutory or licence obligations. The MOA which was signed between the parties, and approved by CER and NIAUR, is designed to ensure that each party is capable of complying with its obligations, by requiring each party to provide complimentary services and resources to enable SEMO to be established and operated.
16. EirGrid and SONI will continue to be fully constrained by law (i.e. by Statute and by their respective licensing regimes) once the proposed acquisition is put into effect.
17. Accordingly, the proposed acquisition will not lead to any horizontal overlap on the island of Ireland.

#### *Vertical Overlap*

18. With respect to the island of Ireland, the parties do not overlap vertically because they operate in different licensed geographic markets and their licensing conditions prohibit each of them from being active in any sector upstream or downstream from their licensed roles as TSOs and MOs. The operation of SEM will remain as currently structured and regulated and will thus be unchanged by the proposed acquisition.
19. It is a licensing requirement in respect of both parties that they be independent from other stakeholders in the energy sector. For this reason, EirGrid has, since its incorporation in 2001, been independent of the incumbent generator and supplier in the State, the ESB. As TSO, EirGrid is prevented by statute from engaging in the generation, distribution or supply of electricity in the State.
20. Accordingly, the proposed acquisition will not lead to any vertical overlap on the island of Ireland.

### *Conclusion*

21. The Authority considers that given the absence of any horizontal or vertical overlap between the activities of parties in the State, the proposed acquisition does not raise competition concerns in the State.

### **Ancillary Restraints**

22. The Authority also reviewed the restrictive arrangements agreed by the parties in their Share Purchase Agreement and referred to in the notification of the merger. The Share Purchase Agreement contains a non-solicitation clause for a [...] duration. The Authority considers that this clause is directly related and necessary to the implementation of the proposed acquisition.

### **Determination**

The Competition Authority, in accordance with Section 21(2)(a) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition by EirGrid plc of the entire issued share capital of SONI Limited (System Operator for Northern Ireland Limited) will not be to substantially lessen competition in markets for goods and services in the State and, accordingly, that the acquisition may be put into effect.

### **For the Competition Authority**

Dr. Paul K. Gorecki  
Member of the Competition Authority