

SONI Limited

-and-

The Northern Ireland Authority for Utility Regulation

Decision on Application for suspension of TSO Licence Price Control decision

The Northern Ireland Authority for Utility Regulation (the Utility Regulator) has modified the terms of the electricity transmission licence held by SONI Limited, in a decision dated 14 March 2017, *Decision on the Licence Modifications for the Price Control 2015-2020 of the Electricity System Operator for Northern Ireland (SONI)* and *Modifications to SONI Limited's Electricity Transmission Licence* (the Price Control Decision).

On 12 April 2017, at the same time as making an application for permission to bring an appeal against the Price Control Decision, SONI Limited applied to the CMA under paragraph 2 of Schedule 5A to the Electricity (Northern Ireland) Order 1992 (the Order) for a direction that the Price Control Decision is not to have effect, pending the determination by the CMA of the appeal.

On 28 April the Utility Regulator made representations and observations to the CMA on SONI Limited's application.

Paragraph 2(2) of Schedule 5A to the Order provides that the power to suspend a decision may only be given where the applicant would incur significant costs, if the decision were to have effect before the determination of the appeal, and that the balance of convenience does not otherwise require effect to be given to the decision, pending the determination.

SONI Limited submitted that it would clearly incur significant costs, but it also stated that it was difficult to assess what extra costs it would have to bear if it was obliged to give effect to the Price Control Decision. As regards the balance of convenience

test, SONI Limited stated that the financial harm it considered it would suffer if the Price Control Decision was not suspended, may result in it being unable to deliver the objectives set for it by the Utility Regulator, and that this would create significant harm to consumers.

I have taken into account that the Utility Regulator is a public body discharging its functions in accordance with the relevant enactments on behalf of consumers. Without wishing to express any view as to the merits of the appeal which SONI Limited is seeking permission to make, I note that any form of price control will limit the revenues that the entity subject to it is able to earn. Although SONI Limited has suggested that the implementation of the Price Control Decision would mean that it is not able to finance its activities, this appears to be linked primarily to the fact that SONI Limited has had problems in respect of the financing it has been seeking from its banks. Based on the information provided, it is not clear how suspending the Price Control Decision for a limited period during the appeal process would improve SONI Limited's prospects of obtaining such financing.

In considering an application to suspend the Price Control Decision which has been implemented by the Utility Regulator, I have to take into account where the balance of convenience lies. To make a decision to apply the power to suspend the price control, I would require evidence from the appellant of significant costs, which outweighed the public benefit of allowing the price control to operate, pending determination of SONI's appeal. I have also taken into account that, as the Price Control Decision covers the period up to 2020, whereas an appeal would be determined in 6 months, there may be opportunity for appropriate adjustments to be made, if any part of the Price Control Decision were to be successfully appealed. On balance, I consider that SONI Limited's application does not provide sufficient evidence to justify the use of the power to suspend the decision in this case.

I have, therefore, decided not to make a direction suspending the Price Control Decision and the application of SONI Limited is refused.

Anne Lambert
Authorised Member of the CMA
11 May 2017