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Communications Regulation

Proposal to Extend the Duration of Existing Interim GSM 900 MHz Rights of Use.

Consultation and Draft Decision

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Chapter 1

1 Introduction

1.1 In May 2011, ComReg granted interim GSM 900 MHz rights of use (“Interim 900 MHz Rights”) to each of Vodafone Ireland Limited (Vodafone) and Telefónica O2 Ireland Limited (Telefónica) (together “the Interim Licensees”). These Interim 900 MHz Rights of use are for the provision of GSM Mobile Telephony Services only and they were granted:

- pursuant to the substantive decisions set out in ComReg Document 11/29 (following consideration of responses from interested parties to ComReg’s proposals set out in Consultation Document 11/11); and
- under the Wireless Telegraphy (Interim GSM Mobile Telephony Licence) Regulations 2011 (“Interim GSM Regulations”).

1.2 These Interim 900 MHz Rights commenced on 16 May 2011 and, having been renewed in 2012, they are due to expire on 31 January 2013¹.

1.3 In Document 11/29, ComReg stated that its Interim 900 MHz Rights Proposal (“Interim Licensing Proposal” or “ILP”):

“...should be viewed as a facilitating measure that is needed in the particular, current, circumstances to maintain and safeguard existing competition and eliminate probable serious disruption to consumer services for the time being, and until such time that ComReg can finalise its broader spectrum release decision-making, implement same, and make available liberalised spectrum in a manner that would not distort competition.” (at page 4).

1.4 As interested parties will be aware, ComReg’s Multi-Band Spectrum Award (MBSA) process is currently in progress (in accordance with the substantive decisions set out in Document 12/25 and the processes and procedures set out in the Information Memorandum (Document 12/52) and associated documents)). While the majority of the MBSA process has now been completed

¹ Of particular relevance in present circumstances is Regulation 5(4) of the Interim GSM Regulations which provides:

“Notwithstanding paragraphs (1), (2) and (3) of this Regulation, a Licence granted or renewed under these Regulations shall in any event, terminate on 31 January 2013, or on such earlier termination date as may be decided upon by the Commission and given effect by way of a Licence amendment under Regulation 7(2).”

and ComReg announced the results of the Main Stage and Assignment Round² in the MBSA process on 15 November 2012,³ a number of stages remain to be done, including the Transition Phase which is the phase required to facilitate the network adjustments required by the Existing GSM Licensees (and potentially Winning Bidders in Time Slice 1) to relocate their networks to the new spectrum assignments determined by the MBSA process (the “Transition Phase”).

- 1.5 As discussed further in chapter 2 of this paper, it now appears unlikely that the relevant Transition activities in the 900 MHz band (specifically Relocation⁴ activities) can be completed before 1 February 2013. On this basis, an extension to the duration of one or both Interim Licensee’s Interim 900 MHz Rights is likely to be required to facilitate the timely and efficient implementation of these Transition activities, while avoiding the potential for significant competition and consumer concerns to arise.
- 1.6 The purpose of this document is, therefore, to set out, and invite comments from interested parties on, ComReg’s proposal to extend the duration of the Interim 900 MHz Rights held by the Interim Licensees by the minimum period necessary to achieve the above objectives. Additionally, this paper also discusses the future possibility for extension of duration of the 1800 MHz Rights held by Telefónica.
- 1.7 It is not possible at this stage to identify what exact duration of extension might be required for each of the Interim Licensees because:
 - the specific frequency assignments of each of Vodafone and Telefónica’s liberalised 900 MHz rights of use are not yet known (as the

² The results of the Assignment Round are subject to an on-going Negotiation Phase.

³ Document 12/123, “Results of the Multi-Band Spectrum Auction”, Information Notice published 15 November 2012

⁴ Given the outcome of the Main Stage of the MBSA process it is now clear that only Relocation activities (and no Retuning activities) are required in the 900 MHz band. Note:

“*Relocation*” refers to the situation where an Existing GSM Licensee obtains an equal amount or a greater amount of spectrum rights in the 900/1800 MHz band and has to relocate its network to this new spectrum location: footnote 81 in Document 12/52; and

“*Retuning*” refers to the situation where an Existing GSM Licensee obtains less or no spectrum in the 900/1800 MHz band and has to retune its network to a point within this new spectrum bandwidth: footnote 82 in Document 12/52.

provisional frequency assignments might change due to the Negotiation Phase of the MBSA process);

- the detail of the Transition Project Plan has yet to be finalised. Among other things, ComReg would expect this Plan to set out the order in which the Relocation activities of Existing GSM 900 MHz Licensees (being Vodafone, Telefónica and Meteor) would occur, and the milestones and timeframes for each Relocation activity; and
- the actual timeframes required for these Relocation activities could vary from those set out in the settled Transition Project Plan due to unforeseen circumstances arising in the during the Transition process.

1.8 Despite these uncertainties, ComReg is conscious of the limited time left before the expiry of the Interim 900 MHz Rights. To enable sufficient time for proper consultation on and implementation of Transition proposals, ComReg is therefore consulting on the following interim licensing proposal in advance of the required duration of any extension being known, or being capable of more detailed calibration:

- a **primary extension** of sufficient duration to enable each of the Interim Licensees to complete their respective Relocation activities in accordance with the timeframes and milestones that will be set out in the Transition Project Plan; and
- a discretion on ComReg's part to grant up to **two additional extensions** of up to 2 months' duration each further to receipt of written applications from one or both Interim Licensee(s) and where demonstrated to be objectively justified and proportionate by such Interim Licensees to the satisfaction of ComReg.

1.9 The rationale for this proposal is discussed in Chapter 4 of this document.

1.10 ComReg's proposal to potentially extend the duration of the Interim 900 MHz Rights would be pursuant to Regulation 11 of the Authorisation Regulations. Regulation 11(1) provides that where ComReg considers that the duration of existing rights of use of radio frequencies should be extended other than in accordance with the terms specified in the rights of use it shall, without prejudice to sections 13 and 37 of the 2002 Act:

- a) give due weight to the need to maximise benefits for users and to facilitate the development of competition, and

- b) give all interested parties, including users and consumers, the opportunity to express their views in accordance with Regulation 12 of the Framework Regulations.

1.11 Where ComReg decides that the number of rights of use for radio frequencies should be limited, it is also required to grant such rights of use on the basis of selection criteria which are objective, transparent, non-discriminatory and proportionate and which give due weight to the achievement of the objectives set out in section 12 of the Act of 2002 and Regulations 16 and 17 of the Framework Regulations (Regulation 11(2)). In addition, Regulation 15(1) of the Authorisation Regulations permits ComReg to amend conditions attached to rights of use provided that any such amendment is made in objectively justified cases and in a proportionate manner.

1.12 In relation to the above two provisions, ComReg also notes that it is required to:

- publish any decision to limit the granting of rights of use or to extend the duration of existing rights of use and include the reasons for the decision (Regulation 11 (3)); and
- give notice, in such manner as it considers appropriate, of its intention to make an amendment and invite interested parties, including users and consumers, to make representations on the proposed amendment within such period as may be specified in the notice but not being, except in exceptional circumstances, less than 28 days from the date of the notice, and have regard to any representations made to it (Regulation 15(4)).

1.13 ComReg also sets out, in Annex 2, a summary of its statutory functions, objectives and duties in relation to the radio frequency spectrum.

1.14 The remainder of this consultation paper and its annexes is structured as follows:

- **Chapter 2** – Background - Interim GSM 900 MHz licensing process, ComReg's MBSA process, transition activities and timeframes;
- **Chapter 3** - Draft Regulatory Impact Assessment (RIA);
- **Chapter 4** - Specifics of ComReg's proposal (including extension duration, and licensing aspects such as licence conditions and licence fees) and consideration against other relevant statutory obligations;
- **Chapter 5** - Draft decision;
- **Chapter 6** – Next Steps
- **Annex 1** – Glossary;

- **Annex 2** - ComReg's statutory functions, objectives and duties in relation to the radio frequency spectrum; and
- **Annex 3** - Draft amending Statutory Instrument;

1.15 For the avoidance of doubt, any term used in this document should be interpreted in accordance with the Information Memorandum unless otherwise provided for in this document.

Chapter 2

2 Background

2.1 Interim Licences in the 900 MHz band

- 2.1 In Document 10/71⁵, a joint award process for spectrum rights of use in both the 800 MHz and 900 MHz bands was proposed by ComReg. That proposal identified two possible approaches for the release of spectrum rights in the 900 MHz band.⁶ One approach involved making rights in the 900 MHz band available shortly after the proposed joint award in mid-2011 and the other involved making these rights jointly available with rights in the 800 MHz band, which was expected to be early 2013.
- 2.2 In the same document, it was noted that the existing GSM 900 MHz licences of Vodafone and Telefónica would expire in May 2011 - before the expected availability of rights in the 900 MHz band under ComReg's joint award proposal. Accordingly, ComReg proposed in Document 10/71 to grant Interim 900 MHz Rights to these licensees for the period from May 2011 to the then expected availability date of 900 MHz and 800 MHz spectrum in early 2013.⁷
- 2.3 In arriving at this view, ComReg first set out a number of assumptions⁸ framing its Interim Licence Proposal ("ILP") and then assessed its ILP in the context of its statutory functions, objectives and duties. Based upon this assessment, ComReg stated that "*the Interim Licensing Proposal would, on balance, be an objectively justified and proportionate means of addressing the temporal issue*

⁵ Document 10/71, "800 MHz, 900 MHz & 1800 MHz spectrum release", Consultation paper, 17 September 2010.

⁶ Subsequently Document 10/105 proposed that the 1800 MHz band be incorporated into the award process. The award process subsequently became known as the Multi-Band Spectrum Award (MBSA) process for the 800 MHz, 900 MHz and 1800 MHz bands.

⁷ It should also be noted that ComReg considered the option of allowing the existing GSM 900 MHz licences of the Licensees to expire naturally without implementing any appropriate interim measure(s) in advance of its proposed joint award process. However for the reasons set out in section 3.2 of Document 10/71, ComReg discounted this as a viable regulatory option.

⁸ The assumptions were that any Interim 900 MHz Rights would be for GSM-only services and granted on a once-off non-renewable basis. In addition the licence conditions and fees for any such Interim 900 MHz Rights of use would be based upon those set out in the Licensee's existing GSM 900 MHz licences.

identified. In particular, by facilitating the full, competitive release of the 800 and 900 MHz band, safeguarding existing competition until full 800/900 MHz spectrum availability, avoiding undue effects on the sustainability of the businesses of Vodafone and O2 and protecting end users by avoiding what would otherwise be significant disruption to GSM consumer services in the interim period.”

- 2.4 Given this assessment, Document 10/71 set out ComReg’s proposal that any Interim 900 MHz Rights of use granted to the Interim Licensees would:
- be for GSM-use-only;
 - be granted on an once-off, non-renewable basis;
 - have spectrum usage fees based on the licence fees paid by the Interim Licensees for their existing GSM 900 MHz licences, but updated to current price levels;⁹ and
 - have licence conditions based upon the applicable licence conditions in the Licensee’s respective GSM 900 MHz licence.
- 2.5 In Document 11/11,¹⁰ ComReg set out its response to consultation and draft decision on its ILP. This document considered the submissions received from interested parties and, amongst other things, set out ComReg’s draft Regulatory Impact Assessment (“RIA”) and an assessment of its preferred option against other relevant considerations.
- 2.6 In the draft RIA, four options were considered (being ComReg’s ILP and three proposed by interested parties¹¹) in terms of their likely impact on industry

⁹ In light of the data available, this indexation was based on the change in the consumer price index (CPI) from the commencement date of the original licences.

¹⁰ Document 11/11, “*Interim Licences for the 900 MHz band*”, Response to Consultation and Draft Decision, 17 February 2011.

¹¹ The four options considered in the draft RIA in Document 11/11 were:

- “*Option 1: being ComReg’s Interim Licence Proposal, which is to issue GSM-only interim licences (in respect of 2 x 7.2 MHz of 900 MHz spectrum) to Vodafone and O2 that would operate from 16 May 2011 until 31 January 2013;*
- *Option 2: proposed by O2 and being a variant of Option 1, such that interim licences would be issued on a GSM-only basis to Vodafone and O2 that would operate from 16 May 2011 until the expiry of Meteor’s 2G licence in 2015 (i.e. co-termination of existing GSM 900 MHz licences);*

stakeholders, competition and consumers. Based upon this analysis and other analysis set out elsewhere in Document 11/11, ComReg stated that: *“on balance, the approach that it proposed in Consultation 10/71 on interim measures, modified with the addition of a specific end date of 31 January 2013, is the most proportionate and desirable option that is reasonably open to ComReg in the current circumstances.”*

2.7 Amongst other things, ComReg noted that its ILP would:

- *“provide for the use of this spectrum in the period from May 2011 onwards, and up until 31 January 2013, thereby maintaining competition and eliminating probable serious consumer disruption during that period;”* and
- *“allow ComReg to continue to develop its proposals and give appropriate consideration to all of the materials submitted to it in the context of its wider consultation process on spectrum release in respect of the 800 MHz, 900 MHz and 1800 MHz bands, and to proceed to a final decision on which spectrum bands to release and how these will be assigned for the period currently proposed as 2013 to 2030.”*

2.8 A draft decision and draft Statutory Instrument to provide for the implementation of the ILP were also set out in Document 11/11.

2.9 In Document 11/29 and Decision D03/11,¹² ComReg set out its response to consultation and decision on Interim Licences in the 900 MHz band. In that document, ComReg set out its response to further submissions received and, following this assessment, ComReg stated its position that: *“the Interim Licence Proposal - which it emphasises holds out the prospect of early liberalisation of the 900 MHz band if that can be achieved without significant distortion of competition - is calibrated in the most proportionate way, and represents a*

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- *Option 3: proposed by Vodafone and being a further variant of Option 1, such that interim licences (in respect of 2 x 7.2 MHz of 900 MHz spectrum) would be issued on a liberalised basis. In interpreting this proposal, ComReg assumes that this proposal would also include the liberalisation of Meteor’s existing GSM 900 MHz licence on the basis of ensuring that there is no distortion to competition or discrimination; and*
 - *Option 4: proposed by H3GI, being a variant of Option 3 such that there would also be a grant of an interim license to H3GI in respect of one 2 x 5 MHz block on a liberalised basis, where H3GI’s assignment would be either block A or B. ComReg has, for the purposes of the draft RIA, interpreted H3GI’s proposal to mean a short-term administrative assignment of liberalised rights of use (i.e. May 2011 to January 2013) so as to enable a fair and reasonable comparison with other proposed interim measures.”*

¹² Document 11/29 and Decision D03/11, *“Interim Licences for the 900 MHz band”*, Response to Consultation and Decision, 13 April 2011.

proportionate measure by ComReg in the performance of its functions, having regard to its objectives.”

2.10 The decision to implement ComReg’s proposal (Decision D03/11) was set out in Annex 2 and a draft Statutory Instrument was set out in Annex 3 of Document 11/29.

2.11 Subsequent to the publication of Document 11/29:

- on 20 April 2011, the Minister for Communications, Energy and Natural Resources (“the Minister”), gave his consent to the making of the Wireless Telegraphy (Interim GSM Mobile Telephony Licence) Regulations 2011 (SI No. 189 of 2011) to provide for the licensing of Interim 900 MHz Rights of use;
- on 21 April 2011, ComReg set out the application procedure (Document 11/30)¹³ and the application form (Document 11/31)¹⁴ for obtaining Interim 900 MHz Rights of use;
- on 3 May 2011, ComReg received applications from each of the Interim Licensees;
- on 13 May 2011 ComReg granted Interim 900 MHz Rights of use to each of the Interim Licensees and made this information public in Document 11/36;¹⁵ and
- on 26 July 2011 the non-confidential versions of the Interim 900 MHz Rights of use that were granted to the Interim Licensees were published on ComReg’s website (see Document 11/50a and Document 11/50b).¹⁶

¹³ Document 11/30, “*Application Procedure for a Wireless Telegraphy (Interim GSM Mobile Telephony) Licence*”, Information Notice, published 21 April 2011.

¹⁴ Document 11/31, “*Application Form for a Wireless Telegraphy (Interim GSM Mobile Telephony) Licence*”, Application Form, published 21 April 2011.

¹⁵ Document 11/36, “*Grant of a Wireless Telegraphy (Interim GSM Mobile Telephony) Licence to each of Vodafone Ireland Limited and Telefonica Ireland Limited*”, Information Notice, published 13 May 2011.

¹⁶ Document 11/50a – Telefonica O2’s licence schedule for its Interim 900 MHz Rights of use.

Document 11/50b – Vodafone’s licence schedule for its Interim 900 MHz Rights of use.

2.2 The Multi-band Spectrum Award (MBSA) process

2.12 Since the grant of Interim Rights to the Interim Licensees in May 2011, ComReg finalised its decision on the MBSA process (see Document 12/25 and Decision 04/12¹⁷) and set out its procedures and rules for the competitive selection process for the award of spectrum under the MBSA process (see Document 12/52¹⁸ as amended). The MBSA process is currently in progress and, at this point in time, the majority of the MBSA process has now been completed. In particular, the outcome of the Main Stage and Assignment Round has recently been made public in Document 12/123 (see further details below).¹⁹

2.13 The remaining stages of the MBSA comprise of:

- the Negotiation Phase²⁰ which is on-going and will result in the finalisation of the spectrum assignments for each of the Winning Bidders and Existing GSM Licensees;
- the submission of the Transition Project Proposal by the Existing GSM Licensees and the finalisation of the Transition Project Plan by ComReg. The Transition Project Plan will specify the processes and timelines for Existing GSM Licensees (and possibly Winning Bidders of Liberalised Use Licences in relation to Transition activities before Time Slice 2) to adjust part of their existing networks to the specific frequency assignments determined by the MBSA process; and
- the notification and grant of Preparatory Licences and Liberalised Use Licences to Winning Bidders and the amendment of Existing GSM Licences in accordance with the outcome of the MBSA process.

¹⁷ Document 12/25 and Decision 04/12, “Multi-band Spectrum Release. Release of the 800 MHz, 900 MHz and 1800 MHz Radio Spectrum Bands”, Response to Consultation and Decision, published March 2012.

¹⁸ Document 12/52, “Multi-band Spectrum Release. Information Memorandum”, published 25 May 2012.

¹⁹ Document 12/123, “Results of the Multi-Band Spectrum Auction”, Information Notice published 15 November 2012.

²⁰ The Negotiation Phase is the two week period allowed after the Assignment Round where Winning Bidders and Existing GSM Licensee can discuss and submit alternative assignment locations for the spectrum rights of use won in the MBSA process or retained as part of a Licensee’s existing GSM Licence.

2.14 Each of the final stages of the MBSA process is discussed further below insofar as they are relevant to the proposed extension of Interim Rights of use.

2.2.1 Outcome from the Main Stage and the Assignment Round in the MBSA process

2.15 On 15 November 2012 ComReg publicly announced the outcome of the Main Stage and the Assignment Round of the MBSA process. This information is set out in Document 12/123 and is summarised in Table 1 below.

		Meteor		Telefónica O2		Vodafone		H3GI	
		TS1	TS2	TS1	TS2	TS1	TS2	TS1	TS2
800 MHz	MBSA Lots won	2	2	2	2	2	2	0	0
	Provisional Lot Assignment	A, B	A, B	C, D	C, D	E, F	E, F	N/A	N/A
900 MHz	MBSA Lots won	1	2	2	2	2	2	1	1
	MBSA Lots Retained as GSM900	1	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Provisional Lot Assignment	A, B	A, B	C, D	C, D	E, F	E, F	G	G
1800 MHz	MBSA Lots won	2	3	0	3	3	5	2	4
	Lots Retained as GSM1800	2	N/A	3	N/A	0	N/A	N/A	N/A
	Provisional Lot Assignment	L, M, N, O	M, N, O	A, B, C	A, B, C	F, G, H	D, E, F, G, H	D, E	I, J, K, L

Table 1: Outcome from the Main Stage and Assignment Round in MBSA Process

2.16 In **Table 1** above it should be noted that:

- “MBSA Lots retained as GSM900” and “MBSA Lots retained as GSM1800” indicate the Lots that have been maintained for GSM purposes under an existing GSM Licence; and
- the Lot spectrum assignments are provisional as the Negotiation Phase of the Assignment Stage has yet to be completed.

2.17 The outcome from the Main Stage and the Assignment Round of the MBSA process clarifies a number of important factors which influence the final stages in the MBSA process and are relevant to the issue of Interim Rights of use. From **Table 1** above, it is now apparent that:

- in the 900 MHz band no Retuning activities are required for Time Slice 1, as all the Existing GSM Licensees (Meteor, Telefónica O2 and Vodafone) will have rights to two Lots in the 900 MHz band in Time Slice 1;
- in the 900 MHz band, it appears that Vodafone may not have to carry out any Transition activities in advance of Time Slice 1 as its existing spectrum assignment²¹ would fall within its provisional Lot assignment of Blocks E and F, provided that:
 - a) Vodafone maintains its provisional assignment following the outcome of the Negotiation Phase; and
 - b) either the operator using Block D deploys GSM technology in that Block in Time Slice 1 or Vodafone reaches a technical co-existence agreement with that operator (Telefónica O2, if the provisional assignments are maintained) that would permit it to use less stringent technical parameters than those set out in the Annex to EC Decision 2009/766/EC as amended.

2.18 Should the above come to pass this would mean that only two Existing GSM Licensees (Meteor and Telefónica O2) would be required to carry out Relocation activities in the 900 MHz band in advance of Time Slice 1.

- in the 1800 MHz band,²² it appears that Meteor²³ may not have to carry out any Transition activities in advance of Time Slice 1 (assuming that it

²¹ Specifically, under its Interim Licence in the 900 MHz band, Vodafone is currently assigned 900.1 - 907.3 MHz paired 945.1 - 952.3 MHz (2 x 7.2 MHz).

²² Material in relation to Transition Activities in the 1800 MHz band is set out in the interests of clarity only as there is no requirement for Interim Licences in this band in advance of the commencement of Liberalised Use Licences with Lots in 1800 MHz band in Time Slice 1.

maintains its provisional assignment in the outcome of the Negotiation Phase) as its existing spectrum assignment²⁴:

- c) would fall within its provisional Lot assignment of Blocks L, M, N and O; and
- d) may comply with the technical parameters set out in the Annex to EC Decision 2009/766/EC, as amended.

2.19 Should the above come to pass this would mean that only two Existing GSM Licensees (Vodafone and Telefónica O2) would be required to carry out Relocation activities in the 1800 MHz band in advance of Time Slice 1;

- the potential need for interim rights of use in the 1800 MHz band remains an issue for consideration. In this regard, ComReg notes that while Telefónica O2 won liberalised 1800 MHz spectrum rights in Time Slice 2, it did not avail of the Early Liberalisation Option in relation to its existing GSM 1800 MHz rights in Time Slice 1. This means that there remains a six and a half month gap between the expiry date of its existing GSM 1800 rights and the start date of its 1800 MHz spectrum rights of use in Time Slice 2. The potential issue of Interim 1800 MHz rights is discussed in section 2.3.3 below;
- a Transition Project Plan for the Transition from Time Slice 1 to Time Slice 2 in relation to the 1800 MHz band is likely to be required. Given the provisional spectrum assignments as set out in Table 1 above, two Winning Bidders (Meteor, H3GI) would be required to carry out Transition Activities in the 1800 MHz band between Time Slice 1 and Time Slice 2.
 - Meteor would be required to carry out Retuning activities in the 1800 MHz band in order to adjust its network from 4 Lots in Time Slice 1 (Blocks L, M, N and O) to 3 Lots in Time Slice 2 (Blocks M, N and O); and
 - H3GI would be required to carry out Relocation activities in the 1800 MHz band in order to adjust its network from 2 Lots in Time Slice 1 (Blocks D, E) to 4 Lots in Time Slice 2 (Blocks I, J, K, and L).

²³ Noting that Meteor has yet to identify the Lots that it wishes to retain as part of its existing GSM Licence.

²⁴ Specifically, under its GSM Licence in the 1800 MHz band Meteor is currently assigned 1765.5 - 1779.9 MHz / 1860.5 - 1874.9 MHz (2 × 14.4 MHz).

2.2.2 Remaining MBSA Stage: The finalisation of the Assignment Stage

2.20 As set out in the Information Memorandum (the "IM"), the purpose of the Assignment Stage is to determine the location of the spectrum assignments for Winning Bidders and Existing GSM Licensees (if applicable). In addition it determines the Additional Price that is to be paid for these specific locations.

2.21 The Assignment Stage consists of two separate parts:

- an **Assignment Round** which determines the provisional spectrum assignment of the Winning Bidders and Existing GSM Licensees. In addition it determines the Additional Price to be paid. As discussed above, the results of the Assignment Round have now been made public in Document 12/123; and
- a **Negotiation Phase** where the Winning Bidders and Existing GSM Licensees can negotiate a re-organisation of the provisional spectrum assignments won in the Assignment Round. The Negotiation Phase is on-going and the deadline for the completion of this phase and the notification of any revised spectrum assignments to ComReg is 28 November 2012.

2.22 Once the Negotiation Phase is completed, the final spectrum assignment locations of the Winning Bidders and Existing GSM Licensees will be known. The final spectrum assignment locations are a key input into the Transition Phase of the MBSA process as this can influence the amount of Transition activities required in a band and thus the time required to carry out these Transition activities. The Transition Phase is discussed below.

2.2.3 Remaining MBSA Stage: The finalisation of the Transition Phase

2.23 The Transition Phase of the MBSA process refers to the period of time required to facilitate the network adjustments required by the Existing GSM Licensees (and potentially Winning Bidders in Transitioning from Time Slice 1 to Time Slice 2) to retune or relocate parts of their networks to the new spectrum assignments determined by the MBSA process.

2.24 ComReg's position on the MBSA Transition Phase is set out in chapter 6 of Document 12/25 and section 3.8 of the IM and this took account of, amongst other things, the expert technical advice provided by Red-M Wireless Limited

and Vilicom Limited (“Red-M/Vilicom”). This advice was provided in the form of a number of joint-technical reports.²⁵ In particular, Red-M/Vilicom noted that:

- a project to Relocate an operator’s spectrum assignment would generally have planning, implementation and verification phases. The start date of this project is relatively arbitrary because operators can commence the planning phase in advance of knowing the results of the MBSA process;
- for Relocation activities in the 900 MHz band, Existing GSM Licensees should be able to modify their networks within a timeframe of approximately 5 months;
- for Relocation activities in the 1800 MHz band, Existing GSM Licensees should be able to modify their networks within a timeframe of approximately 4-5 months;
- in the circumstances where an operator is required to Relocate in both the 900 MHz and 1800 MHz bands, such Relocations could be carried out simultaneously or separately;
 - for simultaneous Relocation activities in the 900 MHz and 1800 MHz bands, an estimated minimum of one additional month would be required, bringing the total estimated timeframe to 6 months; and
 - for separate Relocation activities in the 900 MHz and 1800 MHz bands, this would effectively double the time required for Relocation activities compared to the case of Relocation in one band only.

2.25 The Transition Rules for the MBSA process²⁶ were formulated in line with ComReg’s position as set out in chapter 6 of Document 12/25, and envisage the formulation of a Transition Project Plan which, amongst other things, will set out the steps and timeframes for the completion of all Transition activities. This Transition Project Plan is to be formulated in a two-step approach where:

²⁵ See in particular Documents 12/22, 10/105b and 10/71c.

²⁶ In particular, see section 3.8 of Document 12/52 and ComReg’s answers to questions 17, 39, 40, 45 and 65 of Document 12/73.

- step 1 entails the submission of a Transition Project Proposal by Existing GSM Licensees (and potentially in conjunction with other interested parties, such as other Winning Bidders²⁷); and
- step 2 is the finalisation of a Transition Project Plan by ComReg, following discussion and appropriate consultation.

Step 1: The Transition Project Proposal

2.26 On 14 November 2012, ComReg notified the Existing GSM Licensees and the Winning Bidders that:

- the 4-week period for collectively formulating and submitting a Transition Project Proposal for Time Slice 1 had now commenced and the deadline date for the submission of any such proposal is 12 December 2012 unless some shorter period is considered sufficient and agreed to by the Existing GSM Licensees and notified to ComReg in the interim;²⁸
- “ComReg would strongly encourage the Existing GSM Licensees to involve all Winning Bidders in communications aimed at preparing the Transition Project Proposal to the extent that it could result in more efficient Transition activities and minimise any delay in the availability of Lots to any or all Winning Bidders”; and
- In line with footnote 83 of the IM, “ComReg is currently reviewing the deadline date for the completion of Transition activities in the 900 MHz and 1800 MHz bands”.

2.27 As stated in section 3.8 of the Information Memorandum, the Transition Project Proposal (and subsequently the Transition Project Plan) should consider all the Transition activities required for the completion of this Transition phase and in particular it should satisfactorily address the matters set out in paragraph 3.159 of Document 12/52.²⁹

²⁷ Now confirmed as H3GI following the publication of the MBSA Results in ComReg Document 12/123.

²⁸ Following the outcome of the Assignment Stage, ComReg will notify the Winning Bidders in Time Slice 1 whether there is a need to formulate a Transition Project Proposal for the Transition from Time Slice 1 to Time Slice 2.

²⁹ Paragraph 3.159 of Document 12/52 states that: “ComReg envisages that this Transition Project Proposal should satisfactorily address at least the following matters:

Step 2: Finalisation of the Transition Project Plan

2.28 Paragraphs 3.160 to 3.163 of the IM set out the steps that ComReg will follow in finalising the Transition Project Plan for the 900 MHz and 1800 MHz bands for Time Slice 1.³⁰

2.29 Assuming a Transition Project Proposal is submitted by the deadline of 12 December 2012, ComReg envisages that the earliest date that a Transition Project Plan could be finalised would be late December 2012 or early January 2013. This timing would, of course, depend on the level of agreement on the

-
- *the identification of all Transition activities to be undertaken by the Existing GSM Licensees and the order of each activity in each band (or coordinated across both bands);*
 - *the setting of milestone dates for each Transition activity identified. Unless otherwise indicated by ComReg all Transition activities for both bands are to be completed by the commencement date of Time Slice 1, and the Transition Project Proposal will ensure same;*
 - *where the Transition activities of one Existing GSM Licensee is dependent upon the Transition activities of another, this will be clearly identified in the Transition Project Proposal such that any consequential delays by one party due to the delay of another party can be clearly attributable to the responsible party;*
 - *a robust and transparent mechanism to allow ComReg (including any of its agents or servants), Existing GSM Licensees, Winning Bidders and other Interested Parties to monitor compliance with the Transition activity milestones and deliverable dates (subject to non-disclosure of properly confidential information); and*
 - *attribution and acceptance of liability for liquidated damages payable by the Existing GSM Licensee(s) to ComReg in the event of non-compliance by it/them with the Transition activity milestones identified in the plan (as further described below), where such Existing GSM Licensee(s)' actions or omissions caused the non-compliance with the relevant milestone date.*

³⁰ Paragraphs 3.160 to 3.163 of Document 12/52 state that:

- *“3.160 Following receipt of a Transition Project Proposal, ComReg will progress the matter in consultation with Winning Bidders and Existing GSM Licensees with a view to finalising a Transition Project Plan. This may take the form of written consultation and/or multilateral and/or bilateral meetings with same.*
- *3.161 In the event that Existing GSM Licensees are unable or unwilling to submit a Transition Project Proposal by the stipulated time, ComReg will formulate and implement a Transition Project Plan, following appropriate consultation or discussion with Winning Bidders and Existing GSM Licensees. In any case, ComReg will take appropriate and effective measures to ensure that there is no undue delay in the availability of liberalised spectrum.*
- *3.162 ComReg reserves the right to make a final and binding decision on any and all matters following appropriate consultation. In line with ComReg’s Decision as set out in ComReg Document 12/25, all Winning Bidders and Existing GSM Licensees are required to abide by the Transition Project Plan.*
- *3.163 Once the Transition Project Plan is finalised, it will be published on ComReg’s website, having regard to the provisions of ComReg’s Guidelines on the Treatment of Confidential Information as set out in ComReg Document 05/24. ComReg reserves and retains the discretion to vary the Transition Project Plan as appropriate.”*

timeframes and milestones in the Transition Project Proposal between Existing GSM Licensees and other Winning Bidders.

2.30 If a Transition Project Proposal is not submitted by the deadline, ComReg would envisage setting out its own Transition Proposal for consultation as soon as practicable following the above deadline.

2.31 As mentioned above the Transition Project Plan should satisfactorily address the items set out in paragraph 3.159 of Document 12/52 including the identification of the Transition activities required and the overall timeframe for the completion of these. While ComReg envisages that the overall timeframe required for the completion of the Transition phase is likely to be a few months,³¹ it should be noted that ComReg is not in a position to identify these Transition activities, milestones and timeframes required until the Transition Project Plan is finalised.

2.32 Where the finalised Transition Project Plan sets out Transition activities for Time Slice 1 with a completion date later than 1 February 2013, or should there be unforeseen circumstances arising which prevent the achievement of the Transition activities and milestones set out in the Transition Project Plan, this will clearly have consequences in relation to:

- the expiry of existing Interim Rights on 31 January 2013; and
- the commencement date of liberalised use rights for specific Lots in Time Slice 1. In that regard, ComReg would draw interested parties' attention to section 2.2.2 of the IM, which explicitly sets out the possibility of delayed commencement, section 3.7 of the IM which discusses the Notification and Grant stage of the MBSA process (as discussed further below), and section 2.2.6, which provides for refunds or adjustment of liberalised use fees in these circumstances.

2.2.4 Remaining MBSA Stage: Notification and Grant stage

2.33 Section 3.7 of the IM sets out the rules for the Notification and Grant stage of the MBSA process. This stage can only occur following the finalisation of the specific frequency assignments in the Assignment Stage, which is expected to be completed by 28 November 2012.

³¹ In Document 12/123 ComReg stated that *"the availability of Lots in the 900 MHz and 1800 MHz bands is subject to the completion of Transition activities to allow the Existing GSM Licensees in these bands, to adjust or 'relocate' their respective networks to the new spectrum assignments determined by the Auction. This is likely to take a few months and is being progressed in accordance with section 3.8 of the Information Memorandum (ComReg Document 12/52)."*

- 2.34 During this stage, ComReg will notify Winning Bidders of their entitlement to apply for and be granted a Preparatory and a Liberalised Use Licence in accordance with the outcome of the MBSA process, subject to certain conditions including the payment of outstanding licence fees.
- 2.35 In line with paragraph 3.152 of the IM, in this notification ComReg will amongst other things “specify the expected commencement date of each Lot in the Liberalised Use Licence notwithstanding the possibility for the commencement date of a Liberalised Use Licence to be brought forward under the advanced commencement process or delayed beyond the expected start date of Time Slice 1”; [emphasis added]
- 2.36 Noting that the Transition Project Plan remains to be finalised, and the achievement of the Transition activities and milestones set out in the Transition Project Plan remains to be completed, given the results of the Main Stage and the provisional spectrum assignments from the Assignment Round, ComReg can make the following observations in relation to the expected commencement date of Lots in the 800 MHz, 900 MHz and 1800 MHz bands.
- 2.37 In the 800 MHz band all Blocks are currently unused. ComReg would therefore expect the commencement date for these Lots to be 1 February 2013, or earlier should advanced commencement be sought.
- 2.38 In the 900 MHz band in Time Slice 1:
- Meteor has a provisional assignment for Blocks A and B. As these Blocks are currently unused and given ComReg’s assumption that these Blocks would not be required for Transition purposes by any Existing GSM Licensee other than Meteor, ComReg would expect the commencement date for these Lots to be linked to the completion date of Meteor’s Transition to Blocks A and B;
 - Telefónica O2 has a provisional assignment for Blocks C and D. As these Blocks are currently occupied by Meteor, it appears that Meteor would first have to vacate these Blocks in order that Telefónica O2 could then relocate to them. On this assumption, ComReg would expect the commencement date for these Lots to be linked to the completion date of Telefónica O2’s Transition to Blocks C and D, which in turn would appear to be dependent upon prior vacation of these Blocks by Meteor;
 - Vodafone has a provisional assignment for Blocks E and F. Block E is currently occupied by Vodafone and Block F is currently occupied by both Vodafone and Telefónica O2. Noting that Vodafone may

potentially³² have to carry out Transition activities to comply with the technical conditions set out in the Annex to EC Decision 2009/766/EC as amended and that Telefónica O2 would be required to vacate Block F, it appears that the expected commencement date for these Lots³³ is linked to potential Transition activity of Vodafone and the prior vacation of Block F by Telefónica O2; and

- H3GI has a provisional assignment for Block G. As this Block is currently occupied by Telefónica O2, it appears to ComReg that Telefónica O2 would first have to vacate this Block in order for it to be made available to H3GI under its Liberalised Use Licence. ComReg would therefore expect the commencement date for this Lot to be linked to the required Transition activity of Telefónica O2 to vacate Block G.

2.39 In the 1800 MHz band in the Time Slice 1:

- Telefónica O2 has a provisional assignment for Blocks A, B and C. As these Blocks are currently unused and given ComReg's assumption that these Blocks would not be required for Transition purposes by any Existing GSM Licensee other than Telefónica O2, ComReg would expect the commencement date for these Lots to be linked to the completion date of Telefónica O2's Transition activities to relocate to Blocks A, B and C;
- H3GI has a provisional assignment for Blocks D and E. As these Blocks are currently unused and given ComReg's assumption that these Blocks would not be required for Transition purposes by any Existing GSM

³² As discussed in section 2.2.1 of this document, this would depend on whether the operator using Block D deploys GSM in that Block in Time Slice 1 or whether Vodafone reaches a technical co-existence agreement with its neighbouring Winning Bidder in Block D (namely Telefónica O2) that would permit it to use less stringent technical parameters than those set out in the Annex to EC Decision 2009/766/EC as amended.

³³ ComReg notes that, under certain circumstances, Vodafone may not be required to carry out any Relocation activities in the 900 MHz band prior to the commencement of Time Slice 1. One could therefore argue that, in these circumstances, Vodafone could request commencement on a liberalised basis of 2 x 7.2 MHz out of the 2 x 10 MHz won by it.

While ComReg would consider any such request from Vodafone in accordance with the terms of the IM, it notes that there might be issues with such a request, including that the MBSA process provides for the allocation of liberalised spectrum rights in 2 x 5 MHz Lots and all liberalised licence fees are based upon this Lot size.

Licensee, ComReg would expect the commencement date for these Lots to be 1 February 2013, or earlier should advanced commencement be sought;

- Vodafone has a provisional assignment for Blocks F, G and H. As these Blocks (and Block I) are currently occupied by Vodafone and given ComReg's assumption that these Blocks would not be required for Transition purposes by any Existing GSM Licensee other than Vodafone, ComReg would expect the commencement date for these Lots to be linked to the completion date of Vodafone's Transition activities to relocate to Blocks F, G, and H;
- Meteor has a provisional assignment for Blocks L, M, N and O. Block L is currently occupied by both Telefónica O2 and Meteor, Blocks M and N are currently occupied by Meteor and Block O is currently unused. While it is still unclear whether Meteor will have to carry out Transition activities in the 1800 MHz band,³⁴ it appears to ComReg that the expected commencement date for these Lots is linked to the potential Transition activity of Meteor and the required Transition activity of Telefónica O2 to vacate Block L.

2.40 While further information on the timeframes required for Transition will become available to ComReg over time, given ComReg's working assumption that the Transition activities in the 900 MHz and 1800 MHz bands are likely to take a few months to complete, it appears likely that some Lots in the 900 MHz and 1800 MHz bands will have a commencement date later than 1 February 2013.

2.3 Relevance of the MBSA process for Interim Rights

2.41 Given the above and, in particular the expected commencement dates for Lots in a Liberalised Use Licence in light of the outcome of the Main Stage and the Assignment Round, ComReg is now in a position to make a number of observations in relation to the potential issue of Interim Rights for the 900 MHz and 1800 MHz bands.

³⁴ As discussed in section 2.2.1 of this document, Meteor has yet to indicate to ComReg the Lot that it wishes to retain under its GSM Licence.

2.3.1 The possibility of extensions to the duration to Interim 900 MHz Rights

- 2.42 While ComReg envisages that the overall timeframe for the completion of the Transition phase is likely to only take a few months, given the limited time remaining between the outcome of the Assignment Stage expected on 28 November 2012 and the expected start date of Liberalised Use Licences on 1 February 2013, it appears unlikely that all relevant Transition activities in the 900 MHz band can now be completed before 1 February 2013.
- 2.43 On this basis, an extension to the duration of one or both Interim Licensee's Interim 900 MHz Rights is likely to be required to facilitate the timely and efficient completion of these Transition activities, while avoiding the potential for significant consumer disruption.³⁵
- 2.44 It should be noted that the timeframes and milestones for the completion of Transition activities in the 900 MHz band will be only be finalised once the Transition Project Plan is finalised. As discussed above, ComReg envisages that the earliest date that a Transition Project Plan could be finalised is late December 2012 or early January 2013.

2.3.2 The possibility of Interim 1800 MHz rights of use

- 2.45 Given that Telefónica O2 did not avail of the Early Liberalisation Option for their respective existing GSM 1800 MHz rights of use in Time Slice 1, but did obtain Liberalised Use rights of use in the 1800 MHz band in Time Slice 2, it is now clear that there will be a 6 and a half month gap between the expiry of its GSM 1800 MHz rights and the start date of its liberalised rights in Time Slice 2.
- 2.46 At the same time, ComReg notes that:
- there remains approximately 2 years until the expiry of the Licensee's existing GSM 1800 MHz rights;

³⁵ In addition, ComReg is aware that the commencement date of Lots in the 900 MHz band in Meteor's Liberalised Use Licence may be delayed to a date after 1 February 2013. In line with paragraph 3.152 of the Information Memorandum, ComReg's notification to Meteor requesting an amendment and partial surrender of its GSM spectrum rights would be aligned to the outcome of the MBSA process (including the expected commencement date of these Lots).

In the 1800 MHz band this would also apply to Meteor, Vodafone and Telefónica O2 insofar as these Existing GSM Licensees would each have to amend and/or surrender their GSM spectrum rights in that band.

- the Irish mobile market is likely to develop in the interim, e.g. increasing demand for advanced services, whereby one would expect demand for and reliance on existing GSM rights in the 1800 MHz band to diminish somewhat; and
- the Licensee might employ other mechanisms (e.g. the use of other spectrum bands, the provision of services via a national roaming agreement) to reduce its respective reliance upon its existing GSM rights in the 1800 MHz band in this period.

2.47 Given these factors, ComReg remains of the view that the most appropriate, objectively justified and proportionate approach in relation to this issue is to:

- commit to considering whether to grant interim GSM 1800 MHz rights of use (of approximately six and a half month duration) significantly prior to licence expiry; and
- commit to grant such GSM 1800 MHz interim rights only where it is justified, reasonable and proportionate to do so, having regard to the salient facts at that time and ComReg's statutory functions, objectives and duties.

2.48 Given the above, it is ComReg's view that it would only be appropriate to consider the issue of potential Interim GSM Rights of use in the 1800 MHz band closer to the end date of the licence (which is 31 December 2014) following a substantiated request from the affected Licensee.

2.49 For the avoidance of doubt and in the interests of regulatory certainty, ComReg will continue to review the situation and, if necessary, will issue a consultation on proposals aimed at addressing material issues arising from this temporal gap significantly prior to Telefónica O2's licence expiry.

Chapter 3

3 Draft Regulatory Impact Assessment (RIA)

- 3.1 This chapter sets out ComReg’s draft RIA on its proposal to extend the duration of Interim Licences. It has been prepared in accordance with ComReg’s RIA Guidelines (as set out in ComReg Document 07/56a³⁶) (“ComReg’s RIA Guidelines”) and having regard to the RIA Guidelines issued by the Department of An Taoiseach in June 2009 (“the Department’s RIA Guidelines”), and relevant Policy Directions issued to ComReg by the then Minister for Communications, Marine and Natural Resources under Section 13 of the 2002 Act on 21 February 2003 (the “Policy Directions”).
- 3.2 ComReg issued guidelines on its approach to conducting a RIA in August 2007. ComReg’s RIA Guidelines set out, amongst other things, the circumstances in which ComReg considered that a RIA might be appropriate. In summary, ComReg indicated it would generally conduct a RIA in any process that might result in the imposition of a regulatory obligation (or the amendment of an existing regulatory obligation to a significant degree), or which might otherwise significantly impact on any relevant market or on any stakeholders or consumers.
- 3.3 In the interests of continuing to ensure openness and transparency, and given that the expiration of Interim Licences has the potential to significantly impact on the electronic communications sector in Ireland, a draft RIA on the option to extend, or not, the duration of the Interim Licences has been conducted and prepared. Alongside comments on the rest of this document, ComReg invites interested parties to review this draft RIA and to submit any comments or information in relation to it that they believe ComReg should consider in finalising its decision on any extension of Existing Interim Rights.
- 3.4 As set out in ComReg’s RIA Guidelines, there are five steps to this draft RIA. These steps are:
- Step 1: Identify the policy issue and identify the objectives;
 - Step 2: Identify and describe the regulatory options;

³⁶ ComReg 07/56a – Guidelines on ComReg’s approach to Regulatory Impact Assessment – August 2007.

- Step 3: Determine the impacts on stakeholders;
- Step 4: Determine the impacts on competition; and
- Step 5: Assess the impacts and choose the best option.

3.1 Identifying the policy issues and objectives

- 3.5 Based upon the outcome of the Main Stage and the provisional spectrum assignments as determined in the Assignment Round of the MBSA (noting that the latter may change following the Negotiation Phase), ComReg notes that the expected commencement date of Lots in the 900 MHz band is likely to be affected by the implementation of Transition activities by the Existing GSM Licensees.³⁷
- 3.6 As noted in Chapter 2, the exact timeframes required for these Transition activities will become clearer over time as the Transition Project Plan is finalised and the Existing GSM Licensees implement their respective Transition Activities. In addition, ComReg is currently of the view that these Transition activities in the 900 MHz are likely to take a few months to complete. Given this, it appears likely that the 900 MHz Lots won by Vodafone and Telefónica O2 are likely to have a commencement date later than 1 February 2013.
- 3.7 Accordingly, it may be appropriate to provide for extensions to the duration of Interim Licences to enable these Transition Activities to be completed such that Vodafone and Telefónica can commence use of their 900 MHz Lots in an orderly fashion and, thereby, minimise the risk of significant disruption to consumer services and competition that could otherwise arise during this time.
- 3.8 ComReg is thus faced with the policy issue of how to address these licence expiry related concerns while, at the same time, giving effect to the MBSA outcome in a timely and efficient manner.
- 3.9 The options considered in this draft RIA are assessed against ComReg's statutory functions, duties and objectives,³⁸ and, in particular, ComReg's obligations in relation to:
- the promotion of competition³⁹, which include:

³⁷ ComReg does not consider the matter of potential Interim 1800 MHz rights in this draft RIA.

³⁸ Set out at Annex 2.

³⁹ ComReg has a broad discretionary power in relation to achieving this general obligation.

- ensuring that there is no distortion or restriction of competition in the electronic communications sector;⁴⁰
- promoting efficient investment and innovation in new and enhanced infrastructures;⁴¹ and
- encouraging efficient use and ensuring the effective management of radio frequencies;⁴²
- promoting the interests of users in the community;⁴³ and
- safeguarding competition to the benefit of consumers and promoting, where appropriate, infrastructure-based competition.⁴⁴

3.10 Accordingly, the principal policy issues and objectives that ComReg considers to be relevant to this draft RIA are:

- whether the duration of Interim Licences should be extended;
- ensuring the continued availability of GSM services; and
- the impact of ComReg's proposal on competition;

3.2 Identifying the regulatory options

3.11 ComReg considers that the two regulatory options now available to it are:

- **Option 1: Do not extend** the duration of Interim Licences – whereby the existing Interim Licences expire on 31 January 2013; or
- **Option 2: Extend** the duration of Interim Licences for the minimum period necessary to enable the Existing GSM Licensees to complete their respective Transition activities (i.e. Relocation) in the 900 MHz band.

⁴⁰ Section 12(2)(a)(ii) of the 2002 Act.

⁴¹ Regulation 16(2)(d) of the Framework Regulations.

⁴² Section 12(2)(a)(iv) of the 2002 Act.

⁴³ Section 12(1)(a)(iii) of the 2002 Act.

⁴⁴ Regulation 16(2)(c) of the Framework Regulations.

3.3 Determining the impacts on stakeholders

3.12 There are two broad stakeholder groups the impacts upon which are considered in the draft RIA, being:

- mobile network operators (including MVNOs⁴⁵):
 - H3GI as a new entrant to the 900 MHz band;
 - Existing GSM Licensees, who can be further distinguished between:
 - Meteor (which retains GSM rights of use); and
 - Interim Licensees;
- consumers.

3.13 In determining and assessing the stakeholder impacts ComReg has had regard to the following offsetting factors, which would in its view moderate some of the potential drawbacks of particular options:

- The timeframes for Relocation will be determined by ComReg in the Transition Project Plan and ComReg expects these to be the minimum duration necessary to carry out Transition activities in a timely and efficient manner;
- The availability of refunds in the event of delayed access to Lots (as set out in the MBSA processes in Document 12/52 as amended) noting that liquidated damages may also be levied against an undertaking delaying Relocation;
- The availability of Preparatory Licences, which entitles the holder of same to possess and install equipment in preparation for the commencement of its Liberalised Use Licence; and
- Winning Bidders had an opportunity to obtain Lots which would not be required for Relocation⁴⁶, although ComReg acknowledges that at least one Existing GSM Licensee would have been required to relocate in the 900 MHz band given the current spectrum assignments.

⁴⁵For the purpose of this draft RIA ComReg assumes that MVNOs are likely to have similar interests to their MNO host.

⁴⁶In particular on 12 November 2012, prior to the Assignment Round, winning bidders were notified in relation to *inter alia* the Advanced Commencement Method 2 for Lots A & B in the 900 MHz band in Time Slice 1. See also ComReg's answers to Question Number 56 of Document 12/73, 06 July 2012.

3.3.1 Impacts on stakeholders

- 3.14 From the perspective of H3GI, as a new entrant to the 900 MHz band, it would likely prefer the option which would result in the earliest commencement date for its 900 MHz Lot. As such, H3GI is likely to favour Option 1 as this would involve Interim Licences expiring on 31 January 2013, therefore theoretically enabling the commencement of its 900 MHz Lot on 1 February 2013. Notwithstanding that likely preference, ComReg notes that H3GI has a roaming agreement with Vodafone for the provision of voice and text (i.e GSM) services and it might therefore see some merit in Option 2 insofar as this option might avoid any disruptions to H3GI's services.
- 3.15 From the perspective of Meteor, which is provisionally assigned Blocks A and B, it appears that it is unlikely to favour Option 1 as under this option Meteor would, in effect, be required to carry out its Transition activities before 1 February 2013 in order to allow Telefónica O2 to Relocate into Blocks C and D (which Meteor currently occupies) and thereby commence use of its Lots on 1 February 2013. In addition Meteor has a roaming agreement with Telefónica O2 for the provision of voice and text (GSM) services and it might also therefore see some merit in Option 2 insofar as this option might avoid any disruptions to Meteor's services.
- 3.16 From the perspective of the Interim Licensees, these operators are unlikely to favour Option 1, as this would mean that they are no longer licensed to provide GSM services in the 900 MHz band under their Interim Licence and, amongst other things, this could:
- result in potential significant disruption to consumer services provided using these rights of use;
 - increase the cost of transition by potentially requiring the Interim Licensee to incur additional investment expenditure in an attempt to ameliorate the above consumer service issues. For instance, requiring the Interim Licensees to temporarily use higher frequency spectrum (e.g. the 1800 MHz band) to provide existing GSM services (noting this spectrum does not have the same coverage footprint as 900 MHz spectrum) and/or building additional base stations⁴⁷; and
 - require the Interim Licensees to complete their Relocation activities faster than they might prefer or be capable of achieving.

⁴⁷ ComReg notes that, as a practical matter, neither use of alternative frequencies nor construction of new base stations could be effective in mitigating disruption to consumer services in the time now available.

3.17 Interim Licensees would therefore presumably favour Option 2 as it ensures continuity of services to both retail and wholesale customers and avoids the potential for significant disruption to consumer services. As noted above, it is assumed that MVNO's would also want to avoid the disruptive effects being suffered by their consumers through disruption to their host network services.

3.3.2 Impacts on consumers

3.18 By way of background, consumers continue to place a high value on existing GSM services (voice and SMS text) and ComReg notes that mobile originating voice minutes accounted for 64.9% of all voice minutes in Q2 2012 (compared to 62.1% in Q2 2011). In addition the total number of SMS messages sent by mobile users in Ireland was less than 3.2 billion in Q2 2012, down 1.5% on the previous quarter but up 4.2% on Q2 2011.⁴⁸

3.19 In addition together the Interim Licensees account for circa 75 % market share of retail mobile customers in the State and have the highest level of coverage, which H3GI and Meteor rely upon via their respective roaming agreements.

3.20 In the present context there are likely to be a number of key preferences for consumers when assessing the preferable regulatory option. In particular, consumers are likely to prefer the option:

- which avoids significant disruption to existing services;
- that results in the availability of new services sooner rather than later; and
- that promotes competition so as to maximise the long term benefits in terms of choice, price and quality.

3.21 Consumers are unlikely to prefer Option 1 because of the likely significant negative impacts to voice and SMS services on all networks given (a) the direct effects of Option 1 on Vodafone and Telefónica O2's retail and wholesale customers (MVNOs) and (b) the indirect effects on Meteor and H3GI via their respective roaming agreements.

3.22 By the same token, consumers are likely to prefer Option 2 because it would avoid these negative effects.

3.23 It is also recognised, however, that consumers would prefer Option 1 to the extent that it could avoid a delay to new services provided using 900 MHz Lots. Whilst new services could technically be provided by all Winning Bidders in the

⁴⁸ Document 12/101, 13 September 2012

900 MHz band under Option 1, in reality, however, it is likely that Meteor, Vodafone and Telefónica O2 – and hence H3GI - would not be in a position to provide such services until they reconfigured their networks to their new frequency assignments (i.e. implemented their respective Relocation activities). Furthermore, it should also be noted that new services could be provided from 1 February 2013 using Lots in the 800 MHz and 1800 MHz bands.

3.4 Impacts on competition

3.24 Under Option 1, the potential advantage is that the competition for new services in the 900 MHz band could commence from 1 February 2013. As noted above, however, it is unlikely that Meteor, Vodafone and Telefónica O2 – and hence H3GI - would not be in a position to provide such services until they reconfigured their networks to their new frequency assignments (i.e. implemented their respective Relocation activities).

3.25 The disadvantage for competition under Option 1 is that there would be significant distortions to existing competition if Vodafone and Telefonica (and potentially Meteor) were unable to service their respective existing retail and wholesale GSM customers until they implemented their respective Relocation Activities. In addition, Option 1 might not promote efficient infrastructure investment by potentially requiring Vodafone and Telefónica O2 to incur additional investment expenditure in an attempt to ameliorate the above consumer service issues.

3.26 Under Option 2, the potential advantage is that the significant distortions to existing competition would be avoided, by maintaining and safeguarding competition for the minimum period necessary to facilitate the Existing GSM Licensees' respective Relocation Activities in the 900 MHz band. Whilst it is recognised that Option 2 would likely delay commencement of Lots in the 900 MHz band (and thereby competition in advanced services using spectrum rights in this band), there are several reasons why such delays would be unlikely to affect competition in the long run including that:

- the potential delay would be only for the minimum period necessary to facilitate the Existing GSM Licensees' respective Relocation Activities (noting that the proposed durations are very short relative to the duration of liberalised rights of use);and
- advanced services could be provided from 1 February 2013 via liberalised rights of use in other spectrum bands released in the MBSA process (i.e 800 MHz and 1800 MHz);

3.5 Selecting the preferred option

3.27 Given the above, ComReg considers that, on balance, Option 2 is the most proportionate of the options considered in this draft RIA and accordingly is the preferred option for the reasons already given including that it:

- effectively eliminates the adverse effects on the retail and MVNO consumer services of Vodafone and Telefónica that would otherwise likely occur in the event that extensions to the duration of the Interim Licences of Vodafone and Telefónica O2 were not provided to facilitate the timely implementation of the respective Relocation activities of the Existing GSM Licensees;
- would avoid the adverse effects on the consumer services of Meteor and H3GI because of their respective reliance upon the networks of Vodafone and Telefónica O2;
- would avoid potentially inefficient investments made by Vodafone and Telefónica O2 seeking to mitigate disruption to their retail and wholesale customers;

3.28 Whilst it is recognised that Option 2 would likely delay commencement of Lots in the 900 MHz band (and thereby competition in advanced services using spectrum rights in this band), there are several reasons why such delays would be unlikely to affect competition in the long run including that:

- the potential delay would be only for the minimum period necessary to facilitate the Existing GSM Licensees' respective Relocation Activities (noting that the proposed durations are very short relative to the duration of liberalised rights of use);
- advanced new services could continue to be provided from 1 February 2013 via liberalised rights of use in other spectrum bands released in the MBSA process (i.e 800 MHz and 1800 MHz); and
- the off-setting factors previously identified in relation to the potential disadvantages of Option 2.

Chapter 4

4 ComReg's Proposal

4.1 Introduction

- 4.1 Given the high level approach identified in the previous chapter, this Chapter:
- considers the types of extensions which merit consideration;
 - sets out ComReg's specific proposals regarding the appropriate maximum duration of any extensions;
 - sets out ComReg's position on other licensing aspects and, in particular, licence conditions including licence fees; and
 - considers ComReg's proposals against relevant statutory obligations (such as objective justification, proportionality, and non-discrimination).

4.2 ComReg's specific proposal regarding the duration of extensions to Existing Interim Rights

- 4.2 As noted in the draft RIA, ComReg's proposal is to extend the duration of Existing Interim Rights by the minimum period necessary to facilitate the timely implementation of Transition Activities (and specifically, Relocation activities) by Telefónica and potentially Vodafone in the 900 MHz band.
- 4.3 It is important to remember that, under the results of the Assignment Round, Vodafone may not be required to carry out any Relocation activities in the 900 MHz band prior to the commencement of Time Slice 1 (noting that this might change as a result of the Negotiation Phase). Accordingly, and depending on the outcome of the Negotiation Phase, it may not be necessary to extend Vodafone's Interim Licence by virtue of its own Relocation activities. See chapter 2 for further details on this issue.
- 4.4 Even where Vodafone is not required to carry out any Relocation activities, it may nevertheless be necessary to extend the duration of Vodafone's Interim Licence in circumstances where the ability for Vodafone to make full use of all of its Liberalised 900 MHz rights is dependent on the implementation of Relocation activities of another Existing GSM Licensee. This could involve, for instance (assuming there is no change to the outcome of the of Assignment Round arising from the Negotiation Phase), Vodafone being precluded from commencing full use of its Liberalised 900 MHz rights in Blocks E and F until

Telefónica implements its Relocation Activities (i.e relocating from its existing GSM assignment in Blocks F and G).

4.5 Otherwise, following expiration of its Interim Licence on 31 January 2013, Vodafone would be without either GSM or liberalised rights of use in the 900 MHz band. The remainder of this chapter assumes that both Vodafone and Telefónica require at least some extension to the duration of their respective Interim Licences.

4.2.1 Background - relevant uncertainties

4.6 At this point in time, it is not possible for ComReg to identify what this minimum period is for each of the Interim Licensees because, amongst other things:

- the final frequency assignments of each of Vodafone and Telefónica's liberalised 900 MHz rights of use are not yet known (as the provisional frequency assignments determined in the Assignment Round may change due to the on-going Negotiation Phase of the MBSA process)⁴⁹;
- the detail of the Transition Project Plan has yet to be finalised. Among other things, ComReg would expect this Plan to set out the order in which the Relocation activities of the Existing GSM 900 MHz Licensees (being Vodafone, Telefónica and Meteor) would occur, and the milestones and timeframes for each Relocation activity;⁵⁰ and
- the actual timeframes required for Relocation activities could vary from those set out in the settled Transition Project Plan due to unforeseen circumstances arising in the implementation of the Transition process.

4.7 ComReg's proposal regarding the duration of any potential extensions to Existing Interim Rights is, therefore, necessarily affected by and should, in ComReg's view, appropriately take into account these uncertainties.

4.2.2 Specific Proposal

4.8 Given the context set out in Chapters 1 and 2 and summarised above, to enable sufficient time for proper consultation on and implementation of

⁴⁹ As discussed in Chapter 2, the outcome of the Negotiation Phase is expected to be known by 28 November 2012.

⁵⁰ This would be determined following the settling of the Transition Project Plan (whether on the basis of a proposal from the Existing GSM Licensees which is adopted by ComReg or, in the event that such a proposal is not put forward or is put forward but not adopted by ComReg, a proposal put forward by ComReg) in accordance with the procedures set out in the Information Memorandum.

proposals, ComReg is consulting on the following proposal, in advance of the required duration of any extension being known (or being capable of being known with more detailed calibration). That proposal involves providing for:

- a discretion on ComReg's part to grant a **primary extension** of sufficient duration to enable each of the Interim Licensees to complete their respective Relocation activities in accordance with the timeframes and milestones that will be set out in the Transition Project Plan ("Primary Extension"). Based on the estimates previously provided by Red-M/Vilicom in their joint technical reports⁵¹, a Primary Extension of up to 3 months would appear to be required;⁵² and
- a discretion on ComReg's part to grant up to **two additional extensions** of up to 2 months' duration each further to receipt of written applications from one or both Interim Licensee(s) and where demonstrated to be objectively justified, non-discriminatory and proportionate by such Interim Licensees to the satisfaction of ComReg ("Additional Extensions").

4.9 ComReg notes that respondents to this consultation will have clarity on the specific frequency assignments won under the MBSA process prior to submitting their responses.

4.10 Further details regarding each element of the specific proposal are provided below.

Primary Extension

4.11 The announcement of Main Stage and Assignment Round results to Winning Bidders took place on 14 November 2012. Accordingly, ComReg is consulting the proposal of on a Primary Extension of up to 3 months' duration in reliance on the following assumptions:

⁵¹ See in particular Documents 12/22, 10/105b and 10/71c.

⁵² In the Red-M/Vilicom joint technical reports a worst-case scenario of 5 months is discussed for completing the transition activities in the 900 MHz band. Using 28 November 2012 (the date that the final spectrum assignments are known) as initial start date for this 5 month period, this would mean that the end date would be end April 2013, i.e. 3 months after end January 2013. It should be noted that these planning assumptions are based upon a worst-case scenario and the time required for transition may be less than 5 months. However, as discussed in Chapter 2, the timeframes for the completion of Transitions activities (with the exception of unforeseen circumstances) will only become known when the Transition Project Plan is finalised.

- Red-M/Vilicom's worst-case estimate for all Relocation activities to be completed in 900 MHz band of approximately 5 months, and remains appropriate⁵³;
- the above 5 month period would consist of a planning phase of approximately four months, and an implementation phase of approximately 1 month;
- the outcome of the 2 week Negotiation Phase (whereby final frequency assignments in the 900 MHz band are known and Relocation activities can be evaluated by Existing GSM Licensees in the context of the specific frequency assignments won) will become known on 28 November 2012 and Existing GSM Licensees are therefore in a position to further advance their Transition planning and preparation activities from that date.

4.12 On the basis of the foregoing assumptions, ComReg has no reason to believe that the Existing GSM Licensees are not capable of completing their Relocation activities within a 5 month period from 28 November 2012 to the end of April 2013. As the Interim Licences expire on 31 January 2013, ComReg is of the view that the Primary Extension duration should therefore be for a period of up to 3 months from the end of January 2013 (i.e. up to the end of April 2013).

4.13 ComReg recognises that the duration proposed reflects estimates provided by Red-M/Vilicom (see Chapter 2) and, consequently, that the final timeframes established in the Transition Project Plan (based on the specific Relocation activities to be conducted and the order in which they are to be completed) may differ from this estimate. ComReg nevertheless considers the proposed duration to be appropriate at this time, given, amongst other things, that the estimate relied upon is a worst-case estimate for all Relocation activities to be completed in the 900 MHz band.

4.14 ComReg also recognises that more specificity regarding the actual Relocation timeframes for the Existing GSM Licensees will be known as ComReg progresses the development and finalisation of the Transition Project Plan and

⁵³ This estimate was set out in Documents 10/71c and 10/105b.

it is possible that the dates for the completion of transition activities in the 900 MHz band could be earlier or later than the end of April 2013.⁵⁴

4.15 Accordingly, and to the extent that information relating to the expected completion of Relocation activities by the Interim Licensees will be known prior to ComReg's decision on this matter, ComReg's proposal anticipates that the duration of any Primary Extension decided upon would appropriately take account of this information.

4.16 ComReg appreciates that some interested parties may not be comfortable with the uncertainty surrounding ComReg's proposal regarding duration at this stage. ComReg notes, however, that:

- this uncertainty is unavoidable due to the uncertainties identified above, and the need for ComReg to issue its proposals for consultation as early as possible; but
- as ComReg will be conducting appropriate consultation on the Transition Project Plan⁵⁵ (such as with other Winning Bidders), including the timeframes in same, interested parties will have the opportunity to make their views known on these matters and this should further inform the appropriate duration that should be adopted by ComReg for any Primary Extension.

4.17 However, ComReg expects that, in formulating any Transition Project Proposal, Interim Licensees and other participants in these discussions, will aim to ensure that Transition activities are carried out in a timely and efficient manner, such that any extensions to Interim Licences would be the minimum necessary to prevent potential significant consumer disruption. In this regard, ComReg would also point out that it was made clear in the Information Memorandum that ComReg will, in any case, take appropriate and effective measures to ensure that there is no undue delay in the availability of liberalised spectrum.⁵⁶

⁵⁴ In that regard, ComReg notes that the Existing GSM Licensees have 4 weeks from the announcement of the results of the Assignment Round (i.e. until 12 December 2012) to put forward a Transition Project Proposal. ComReg additionally notes that the terms of the IM do not preclude the Existing GSM Licensees from formulating any Transition Project Proposal in conjunction with H3GI. Indeed, ComReg has written to the Existing GSM Licensees strongly encouraging them to involve H3GI in the formulation of a Transition Project Proposal

⁵⁵ Whether on the basis of a Transition Project Proposal put forward by Existing GSM Licensees or, should one not be forthcoming, a proposal put forward by ComReg and suitably informed by independent, expert advice obtained by ComReg regarding transition activities.

⁵⁶ See paragraph 3.161 of the IM.

4.18 Accordingly, to the extent that the Transition Project Proposal does not appear to have achieved this, ComReg reserves the right to impose a Transition Project Plan which is fair to all Licensees.⁵⁷

Additional Extensions

4.19 The purpose of proposal to provide for two Additional Extensions is to give ComReg sufficient flexibility to address unforeseen circumstances arising in the course of Existing GSM Licensees meeting their respective Transition milestones and timeframes set out in the Transition Project Plan. However, any application for an Additional Extension by an Interim Licensee must demonstrate to ComReg's satisfaction that such an extension is objectively justified, non-discriminatory and proportionate.

4.20 In this regard, ComReg would remind Existing GSM Licensees that the Transition Project Proposal should satisfactorily address, amongst other things, the identification of all Transition activities to be undertaken by the Existing GSM Licensees and the order of each activity in each band (or coordinated across both bands) (emphasis added).⁵⁸

4.21 It is also noted that foreseen and unforeseen circumstances could arise in the context of one Existing GSM Licensee's Relocation activities but, given the potentially sequential nature of the implementation phase of Relocation activities to be conducted by Existing GSM Licensees in the 900 MHz band, this could impact directly on the ability of another Licensee to meet its Relocation milestones and timeframes.

4.22 Given the above, ComReg recognises that delays to the actual transition may arise due to the Licensee's own acts or omissions or unforeseen circumstances relevant to this aspect of the proposal, and may be as consequence of:

- a) extraordinary and unforeseeable events⁵⁹ or circumstances beyond the reasonable control of a Licensee which prevent a Licensee from

⁵⁷ As noted in paragraphs 3.160 to 3.162 of the IM.

⁵⁸ Paragraph 3.159 of Document 12/52. ComReg considers that this requirement, together with scrutiny of the Transition Project Proposal by interested parties (i.e. H3GI), ComReg and its independent, expert technical advisers (Red-M/Vilicom), should minimise the risk of an Interim Licensee building some latitude into the Transition Project Proposal so as to take unfair advantage of this aspect of the proposal.

⁵⁹ For the avoidance of doubt, a delay resulting from a failure to order necessary equipment within a very short period after the final frequency allocations are determined would not constitute an extraordinary and unforeseeable event.

complying with its obligations under the Transition Project Plan and which circumstances are not caused by acts or omissions of other Existing GSM Licensee's acts or omissions; or

- b) another Existing GSM Licensee's acts or omissions (including where due to extraordinary and unforeseen events affecting that other Existing GSM Licensee) - where the effects of such occurrences have a direct bearing on the ability of an Interim Licensee to meet its own milestones and timeframes⁶⁰.

4.23 ComReg notes that the onus would be on an Interim Licensee to demonstrate to the satisfaction of ComReg that any additional extension was objectively justified, non-discriminatory and proportionate. In addition, given the tight timeframes involved, a Licensee will be required to submit any application six weeks in advance of expiration of the Primary Extension or Additional Extension 1, as the case may be, or, where there is demonstrated to not be possible, as soon as practicable after becoming aware of the events or circumstances claimed to justify an Additional Extension.

4.24 Furthermore, ComReg also proposes to make public, and invite comments from interested parties on⁶¹, any application for an Additional Extension submitted by a Licensee so as to:

- ensure that the facts and circumstances claimed by a Licensee as justifying an additional extension are open to public scrutiny (subject to the protection of genuinely confidential information)⁶²; and
- in turn, provide sufficient transparency regarding the facts and circumstances which would underpin any decision by ComReg to grant an additional extension.

⁶⁰ Noting that the Transition Project Proposal should clearly identify where the Transition activities of one Existing GSM Licensee is dependent upon the Transition activities of another, such that any consequential delays by one party due to the delay of another party can be clearly attributable to the responsible party.

⁶¹ Again, given the tight timeframes involved, ComReg would draw attention to the potential for a shorter than usual period during which interested parties may submit comments on any application received. In that regard, whilst, under normal circumstances the period of time allowed for interested parties to respond to a consultation is four weeks, section 2.3.1 of ComReg's Consultation Procedures provides for variation in certain cases due to, amongst other things, the urgency of the matter at hand.

⁶² In that regard, a Licensee submitting an application for an additional extension will need to clearly identify the information claimed to be confidential and provide reasons for same.

4.25 Given these factors, there would be no certainty of any Additional Extension being granted to a Licensee upon the expiration of a Primary Extension (or, as the case may be, a first Additional Extension). ComReg is therefore of the view that this will:

- allow ComReg to restrict any Additional Extensions to the minimum period of time necessary; and
- incentivise the efficient and timely carrying out of Transition activities.

4.26 Finally, ComReg has no reason to believe that the proposed maximum aggregate duration of the Additional Extensions of up to 4 months (being the sum of the two Additional Extensions of up to 2 months' each), would not provide sufficient flexibility to address any unforeseen circumstances, noting Red-M/Vilicom's worst-case estimate of 5 months for all relocation activities to be completed in the 900 MHz band. For the avoidance of doubt ComReg does not currently envisage needing to use the full discretion proposed to be reserved in this regard.

4.3 Other Licensing aspects – Fees and Other Licence Conditions

4.27 ComReg has also considered whether other key aspects of the licences for Existing interim rights of use should be modified in light of its proposed extension. The key aspects considered are spectrum fees and other licence conditions.

Spectrum fees for any Primary and Additional Extensions

4.28 In Document 11/29 ComReg decided that:

- *“the interim licence fee for Vodafone and O2 are to be determined by reference to the spectrum fees [both the upfront payment and the annual spectrum usage fee] paid by Vodafone and O2 for their respective 15 year GSM licences ...;”*
- *“these fees are to be updated on a once-off basis to present day terms to take account of the change of the 15 year time difference between the licence commencement date of interim licence (16 May 2011) and the licence commencement date of Vodafone and O2's original GSM licence (16 May 1996);”*

- *“the overall CPI is the appropriate proxy indexation measure to use to update prices to today’s value and thereby account for the change in the prices of goods and services over the period. The overall CPI increased between May 1996 and March 2011 by 45.86%.”*; and
- *“Given the short duration associated with the interim licence, ComReg is of the view that it is more appropriate to apply a single annual spectrum fee that incorporates both the access fee and usage fee elements associated with the interim licence, rather than having a separate once-off access and ongoing annual spectrum usage fees.”*

4.29 The licence fees for an Interim Licence were accordingly set at €71,338 for a duplex channel of 200 kHz per annum.

4.30 ComReg notes that a period of over 1.5 years has elapsed since then, and the overall CPI has increased by 2.42% from March 2011 to October 2012.⁶³

4.31 Given ComReg’s position of spectrum fees for Interim Licences (set out in Document 11/29) and, furthermore, its position as set out in its Spectrum Strategy Statement⁶⁴ (see section 7.1.1)⁶⁵, ComReg believes that it is reasonable and appropriate to update the spectrum fees that would apply during any potential period of extension to Interim Licences (including both Primary and Additional Extensions) to account for subsequent changes in overall CPI. In particular, ComReg proposes to apply the CPI increase from March 2011 (being the date of computation in Document 11/29) to the spectrum fees set in Document 11/29.

4.32 Based on this methodology and using the latest CPI data available to ComReg, this would result in spectrum fees of €73,064 for a duplex channel of 200 kHz per annum. Given that it would be appropriate to rely upon the latest CPI data available to it at the time at which it makes its decision on this matter, ComReg proposes to do so at the time of making its decision.

⁶³ At the time of publishing this document, the most relevant CPI data available is for October 2012. Using November 1996 as the base year, this results in an overall CPI adjustment of 2.42% for the period March 2011 to October 2012.

⁶⁴ Document 11/89 “Strategy Statement for Managing the Radio Spectrum”, published 22 November 2011.

⁶⁵ Section 7.1.1 of Document 11/89 states that *“In ComReg’s view, to ensure that annual spectrum usage fees continue to incentivise efficient spectrum use during the licence term it will become increasingly important for such fees to be updated on an annual basis to account for the general rate of inflation. Such indexation will keep the value of these usage fees in real terms and, as such, maintain proper incentives for firms to continually assess whether they should continue to hold particular spectrum usage rights.”*

Other Licence conditions

- 4.33 Given the relatively short duration of the proposed extensions, ComReg is not proposing to vary the terms of the licence conditions as set out in the Interim Licensees' Existing Interim GSM Rights (other than the proposed amendment to the Licence fees discussed under the previous heading).⁶⁶
- 4.34 ComReg notes that there may be other consultations and decisions issued by ComReg during the timeframe of the proposed extensions which may require amendment to the licence conditions attached to the Existing Interim Rights. This could include, for example, ComReg's upcoming consultation in relation to electronic billing. Accordingly, nothing herein should be taken as a representation that the licence conditions attaching to the Existing Interim Rights, or any other licences, will not be the subject of a proposed amendment.
- 4.35 In addition, ComReg notes that in the Transition Phase, an Existing GSM Licensee may request ComReg to amend its licence in order to facilitate its Relocation to another part of the 900 MHz or 1800 MHz bands.

4.4 Requirements of objective justification and proportionality

- 4.36 The requirements of objective justification and proportionality appear in a number of statutory provisions relevant for present purposes including:
- section 12(3) of the 2002 Act which requires ComReg, in carrying out its functions, amongst other things, to seek to ensure that any measures taken by it are proportionate having regard to the objectives set out in Section 12 of the 2002 Act;
 - Regulation 15 of the Authorisation Regulations – which enables ComReg to amend the rights, conditions and procedures concerning rights of use for radio frequencies in objectively justified cases and when done in a proportionate manner; and
 - Regulation 19 of the Authorisation Regulations – which permits ComReg to impose fees for a licence which reflect the need to ensure the optimal use of the radio frequency spectrum. Any such fees must be objectively justified, transparent, non-discriminatory and proportionate in relation to

⁶⁶ The existing Interim GSM Rights for Telefónica O2 and Vodafone are published in Document 11/50a and Document 11/50b respectively.

their intended purpose and take into account the objectives set out in Section 12 of the 2002 Act and Regulation 16 of the Framework Regulations.

4.37 This section considers the extent to which ComReg's proposal regarding duration and its Licence fee proposals is objectively justified and proportionate.

ComReg's proposal regarding duration

4.38 ComReg is of the preliminary view that its proposal in relation to the duration of any extension to Existing Interim Rights is objectively justified and proportionate because, amongst other things:

- without an appropriate extension to Interim Licences, the Interim Licensees could be without GSM 900 Rights of use between 1 February 2013 and their completion of 900MHz Transition activities (the latter as determined following the finalisation of the Transition Project Plan). The proposal is therefore a measure designed, amongst other things, to safeguard existing competition in the mobile markets concerned and to minimise the risk of serious disruption to consumer services that could otherwise arise in that period;
- in light of the above objectives, the proposed duration of the Primary Extensions is proportionate because it would be for the minimum duration necessary for the Interim Licensees to complete their respective Relocation activities in the 900 MHz band. In this regard, ComReg notes that the proposed duration would be determined by reference to the minimum timeframes required for Transition identified in the Transition Project Plan⁶⁷ In the event that the Transition Project Plan is not settled at the time ComReg issues its response to consultation and decision on potential extensions to Interim Licences, the duration of a Primary Extension will be determined by reference to all materials before ComReg at that time; and
- furthermore and, by definition, any Additional Extensions would only be granted in the circumstances identified in Section 4.2.2 above and where a Licensee demonstrates to ComReg's satisfaction that it is objectively justified, non-discriminatory and proportionate to do so.

⁶⁷ Noting that the Transition Project Plan would be informed by material provided by the Existing GSM licensees, the independent expert views of Red-M/Vilicom and the views of relevant interested parties (e.g. H3GI as a Winning Bidder) (obtained via appropriate consultation by ComReg).

ComReg's spectrum fees proposal for any Primary and Additional Extensions

4.39 ComReg is of the preliminary view that its proposal in relation to the spectrum fees for any Primary and Additional Extensions is objectively justified and proportionate because, amongst other things:

- the fees charged should ensure that Interim Licensees continue to make optimal use of that spectrum as there will be no change in use of the spectrum (Interim Licences would be confined to GSM-use only) and so spectrum fees should continue to reflect the value of the use of that spectrum;
- as ComReg does not propose to vary the remaining substantive licence conditions, there would not be any other reason to vary the spectrum fees - with the exception of updating of same to reflect changes to the CPI - which would itself be consistent with ComReg's decision on spectrum fees for the grant of Interim Licences as set out in Document 11/29; and
- ComReg's spectrum fee proposal is also consistent with ComReg's position on annual spectrum usage fees as set out in section 7.1.1 of its Spectrum Strategy Statement (Document 11/89) which states that "*It will be increasing important for such fees to be updated on an annual basis to account for the general rate of inflation*"

4.5 Requirement of non-discrimination

4.40 In addition to the requirements of non-discrimination referred to in relevant provisions of the Authorisation Regulations, ComReg must apply objective, transparent, non-discriminatory and proportionate regulatory principles in pursuit of its objectives under Regulation 16(1) of the Framework Regulations and Section 12 of the 2002 Act. It must do this by, amongst other things, ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks and services.

4.41 ComReg is also required to ensure that fees imposed for a licence are objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose and take into account the objectives of ComReg as set out in Section 12 of the 2002 Act and Regulation 16 of the Framework Regulations.

4.42 The obligation of non-discrimination requires that comparable situations should not be treated in a different manner unless the difference in treatment is objectively justified. This section considers ComReg's specific proposal regarding duration and its Licence fee proposals against this requirement.

ComReg's proposal regarding duration

4.43 ComReg's proposal in relation to the duration of any extension to Existing Interim Rights would be non-discriminatory because, amongst other things:

- in granting an extension to Interim Licensees, ComReg notes that it would not be granting an advantage to one person that is not granted to another person who is in a comparable legal and factual situation. Under the terms of the IM, Meteor will continue to have its full GSM 900 MHz rights with which to provide existing GSM services until the start date of its Liberalised 900 MHz rights and, secondly, H3GI does not currently provide GSM services in the 900 MHz band;
- furthermore, while H3GI may be in competition with Vodafone and Telefónica O2 for customers, it is not in a comparable legal and factual situation. ComReg is proposing to extend Interim Licences in the 900 MHz band for 2G services only pending the finalisation of Transition activities by the Interim Licensees. The only person who is in a comparable legal and factual situation to the current Interim Licensees in the light of that potential decision is the other current provider of 2G services which is in a position to continue providing such services, which is Meteor. Therefore, the requirement of non-discrimination requires that no advantage be granted to Vodafone and Telefónica O2 as compared to the treatment of Meteor. In that regard, ComReg notes that the proposal is open to Vodafone and Telefónica O2, and would have been extended to Meteor also, had its 900 MHz licence also been about to expire with similar imminence; and
- all Bidders were equally and expressly put on notice of the potential for delayed access to some or all Lots in the 800 MHz, 900 MHz and/or 1800 MHz bands in the IM (see, in particular footnote 20 of same) and had the opportunity to bid in the Assignment Round to mitigate the effect of any possible Interim Licence extension on their own Licence commencement.

4.44 ComReg is therefore satisfied that its proposal would not breach the requirement of non-discrimination.

ComReg's spectrum fees proposal for any Primary and Additional Extensions

4.45 ComReg is of the preliminary view that its proposal in relation to the spectrum fees for any Primary and Additional Extensions of Interim Rights would be non-discriminatory because the licence fees will apply equally to both Vodafone and Telefónica O2. Furthermore, ComReg notes that it does not propose to vary the remaining substantive licence conditions (e.g. from GSM-only use to a liberalised rights), there would not be any reason to vary the spectrum fees - with the exception of updating of same to reflect changes to the CPI - which would itself be consistent with ComReg's decision on spectrum fees for the grant of Interim Licences as set out in Document 11/29.

4.6 Consultation Question – ComReg's proposals

Q.1	Do you agree with the proposals set out in this chapter? Please provide reasons, evidence and other relevant material in support of your view.
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Chapter 5

5 Draft Decision

5.1 This chapter sets out ComReg's proposed decisions based on the positions arrived at in the preceding chapters. A draft proposed decision instrument is set out below.

DECISION

1. DEFINITIONS AND INTERPRETATION

In this Decision, save where the context otherwise admits or requires, the following terms, words and expressions shall bear the meanings set out below.

Save where the context otherwise admits or requires, a word importing the singular shall be read as also importing the plural, and a word importing the plural shall be read as also importing the singular.

“Additional Extension 1” means an extension, not exceeding 2 months, of the duration of an Interim Licence in accordance with such provisions of the Interim Licence Regulations, as amended, providing for same, commencing immediately following the date of the expiration of any Primary Extension that may be granted by ComReg in accordance with those Regulations;

“Additional Extension 2” means an extension, not exceeding 2 months, of the duration of an Interim Licence in accordance with such provisions of the Interim Licence Regulations, as amended, providing for same, commencing immediately following the date of the expiration of a Additional Extension 1, that may be granted by ComReg in accordance with those Regulations;

“Authorisation Regulations” means the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations, 2011 (S.I. No. 335 of 2011);

“Communications Regulation Act 2002” means the Communications Regulation Act 2002, (No. 20 of 2002), as amended;

“ComReg” means the Commission for Communications Regulation, established under section 6 of the Communications Regulation Act 2002;

“Consumer Price Index” means the Consumer Price Index published by the Central Statistics Office;

“Existing GSM 900 MHz Licence” means a licence relating to GSM-only rights of spectrum use in the 900 MHz band;

“Existing GSM 900 MHz Licensee” means a holder of an Existing GSM 900 MHz licence;

“Framework Regulations” means the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011);

“GSM” means an electronic communications network that complies with the GSM standards as published by ETSI, in particular but not limited to EN 301 502 and EN 301 511;

“GSM Amendment Regulations” means the European Communities (Public Pan-European Cellular Digital Land-Based Mobile Communications) Regulations 2010 (S.I. No. 295 of 2010);

“GSM Mobile Telephony Service” means a mobile telephony service corresponding to GSM standards;

“Information Memorandum” means the Information Memorandum published by ComReg on 25 May 2012 under ComReg Document Number 12/52, as amended, together with its associated documents;

“Interim Licence” means a licence described in Regulation 3 of the Interim Licence Regulations;

“Interim Licence Regulations” means the Wireless Telegraphy (Interim GSM Mobile Telephony Licence) Regulations, 2011 (S.I. No. 189 of 2011);

“Interim Licensee” means a holder of an Interim Licence;

“Interim Licence Amendment Regulations” means the Wireless Telegraphy (Interim GSM Mobile Telephony Licence) (Amendment) Regulations set out in draft form in **Annex XX** to ComReg Document 13/XX;

“Interim Licence Term” means the period from 16 May, 2011 to 31 January, 2013, provided for in the Interim Licence Regulations and in the Interim Licences granted thereunder to Interim Licensees;

“Multi-Band Spectrum Award” means the process by which rights of use in respect of some or all of the 800, 900 and 1800 MHz bands are being released jointly and which provides for those rights of use to run from 2013 to 2030;

“Minister” means the Minister for Communications, Energy and Natural Resources;

“Primary Extension” means an extension, not exceeding 3 months, of the duration of an Interim Licence in accordance with such provisions of the Interim Licence Regulations, as amended, providing for same, that may be granted by ComReg in accordance with those Regulations;

“**Transition Activities**” means the activities required of an Existing GSM 900 MHz Licensees to relocate to different locations within the 900 MHz band;

“**Transition Period**” means the period from 1 February 2013 to the completion of Transition Activities by Telefónica and the completion of Transition Activities, that may potentially be required, by Vodafone;

“**RIA**” means the Regulatory Impact Assessment set out in Chapter **XX** of ComReg Document **13/XX**;

“**Telefónica**” means Telefónica O2 Ireland Limited;

“**Vodafone**” means Vodafone Ireland Limited; and

“**Wireless Telegraphy Act 1926**” means the Wireless Telegraphy Act 1926, as amended.

2. DECISION-MAKING CONSIDERATIONS

2.1 ComReg has made this Decision having regard to:

- (i) the contents of, and the materials referred to in, as well as the materials provided by respondents in response to, and in connection with, the following ComReg documents, which shall, where appropriate, be construed with this Decision:
- a. 10/71,
 - b. 11/11,
 - c. 11/29,
 - d. 12/25,
 - e. 12/52 (as amended),
 - f. 12/73,
 - g. 12/127,
 - h. **[13/XX – Response to Consultation document]**

including, but without limitation, those relating, *inter alia*, to:

- the imminent expiry of Interim Licences held by each of Vodafone and Telefónica, on 31 January 2013;
- the fact that Vodafone and Telefónica may not be in a position to complete their Transition Activities before their Interim Licences expire on 31 January 2013;
- the need to avoid potential significant consumer disruption during the Transition Period;

- the need to avoid potential significant disruption to existing GSM services from 1 February 2013 until completion of Relocation Activities by Vodafone and Telefónica;
 - the consequent need to provide for the extension of, and to extend as appropriate, the Interim Licence Term;
 - the desirability of ensuring that extensions to the Interim Licence Term are only for the minimum duration necessary to facilitate the timely and efficient completion of Transition Activities in the 900 MHz band;
 - the desirability of providing as much regulatory certainty and predictability as possible in the circumstances;
- (ii) the consultants' reports commissioned, and the advice obtained, by ComReg in relation to (i) above;
- (iii) the powers, functions, objectives and duties of ComReg, including, without limitation those under and by virtue of:
- a. the Communications Regulation Act 2002, and, in particular, sections 10, 12 and 13 thereof;
 - b. the Framework Regulations, and, in particular, Regulations 12, 16 and 17 thereof;
 - c. the Authorisation Regulations, and, in particular, Regulations 9, 10, 11, 12, 15 and 19 thereof;
 - d. Sections 5 and 6 of the Wireless Telegraphy Act, 1926;
 - e. the applicable Policy Directions made by the Minister under Section 13 of the Communications Regulation Act 2002;

and noting that it has given all interested parties the opportunity to express their views and make their submissions, and having evaluated the matters to be decided, in accordance with its obligations pursuant to, *inter alia*:

- (i) Regulation 12 of the Framework Regulations; and

- (ii) ComReg's RIA Guidelines (ComReg Document 07/56a) and the RIA Guidelines issued by the Department of An Taoiseach in June, 2009.

3. DECISION

- 3.1 ComReg hereby decides that, upon obtaining the consent of the Minister to the making by it of the Interim Licence Amendment Regulations, it will make the Interim Licence Amendment Regulations under section 6(1) of the Wireless Telegraphy Act 1926, prescribing relevant matters in regard to Interim Licences by way of amendment of the Interim Licence Regulations.
- 3.2 ComReg hereby decides that, upon application properly being made to it by an Interim Licensee within the terms of the Interim Licence Regulations as so amended, it will grant to them, or either of them, as the case may be, a Primary Extension.
- 3.3 ComReg hereby decides that it may, upon application properly being made to it within the terms of the Interim Licence Regulations as so amended by an Interim Licensee which has been granted a Primary Extension, grant to such Licensee Additional Extension 1, and, thereafter, Additional Extension 2, in circumstances where the exercise of its discretion to do so provided for in the Interim Licence Regulations, as amended, makes one, or both, of such extensions appropriate.
- 3.4 For the avoidance of doubt, ComReg makes no commitment or representation in this Decision regarding the extension of the duration of Interim Licences beyond such extension of duration as is provided for in the Interim Licence Regulations, as amended, whether at all, or for any particular period, or on any particular terms.
- 3.5 ComReg hereby decides that it will update the annual Licence Fees set out in the Interim Licence Regulations to present day terms by reference to the Consumer Price Index from March 2011 (the date to which the Licence Fees set out in the Interim Licence Regulations were indexed) to **[the date of the latest CPI figures available when the Decision is made]**.

4. STATUTORY POWERS NOT AFFECTED

- 4.1. Nothing in this Decision shall operate to limit ComReg in the exercise and performance of statutory powers, functions, objectives or duties conferred on it under any primary or secondary legislation from time to time.

5. EFFECTIVE DATE

- 5.1 This Decision is effective from the date of publication and shall remain in force until further notice by ComReg.

ALEX CHISHOLM
CHAIRPERSON
THE COMMISSION FOR COMMUNICATIONS REGULATION
THE XX DAY OF XX MONTH XX YEAR

DRAFT

Chapter 6

6 Next Steps

- 6.1 The consultation period will run for period of **three weeks** commencing 23 November 2012 and closing **Friday 14 December 2012**. While under normal circumstances, the period of time allowed for interested parties to respond to a consultation is four weeks, section 2.3.1 of ComReg's Consultation Procedures⁶⁸ provides for variation in certain cases due to, amongst other things, the urgency of the matter at hand.
- 6.2 As outlined in Chapter 2 above, it now appears unlikely that the relevant Transition activities in the 900 MHz band (specifically Relocation activities) can be completed before 1 February 2013 when the current interim rights of use held by Vodafone and Telefónica will expire. On this basis, an extension to the duration of one or both Interim Licensee's Interim 900 MHz Rights is likely to be required to facilitate the timely and efficient completion of these Transition activities, while avoiding the potential for significant competition and consumer concerns to arise.
- 6.3 Accordingly, given the importance of the matter, the straightforward nature of the issue to be addressed and the relative proximity of 1 February 2013, ComReg considers this shorter consultation period to be necessary and appropriate on this occasion.
- 6.4 Responses must be submitted in written form. If responses are submitted electronically, they must also be unprotected so as to facilitate online publication. In submitting any response, please also set out your reasoning and all supporting information for any views expressed.
- 6.5 Finally, it is sometimes necessary for respondents to provide confidential information in their submissions. Confidential information must be clearly identified as such. ComReg will publish all of the responses it receives to this consultation, subject to its guidelines on the treatment of confidential information⁶⁹.
- 6.6 All responses to this consultation should be clearly marked:- "Submission re ComReg 12/127" and sent by post or e-mail to arrive on or before 5pm on Friday 14 December 2012 to:

⁶⁸ See Document 11/34 at http://www.comreg.ie/fileupload/publications/ComReg_1134.pdf

⁶⁹ See Document 05/24 at <http://www.comreg.ie/fileupload/publications/ComReg0524.pdf>

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Annex 1: Glossary

A1.1 Definitions

- A 1.1 The definitions in this glossary shall apply to this Consultation and draft decision Document as a whole save that they shall not apply to the draft decision set out in chapter 5 and draft amending SI in Annex 3.
- A 1.2 Where a term in this glossary is defined by reference to a definition in a section or paragraph and an explanation of that term is provided in this glossary, the latter explanation is for convenience only and reference should be made to the appropriate part of the document for the definitive meaning of that term in its appropriate context.
- A 1.3 Any reference to any provision of any legislation shall include any modification re-enactment or extension thereof.
- A 1.4 The headings contained in this Consultation and draft decision Document are inserted for convenience of reference only and shall not in any way form part of or affect or be taken into account in the construction or interpretation of any provision of this Consultation and draft decision Document or the Annexes or Schedules hereto.
- A 1.5 Capitalised terms used in this Consultation and draft decision Document and not otherwise defined shall, unless the context otherwise requires or admits, bear the meaning ascribed to them in the Information Memorandum.
- A 1.6 The singular shall include the plural and the plural shall include the singular.
- A 1.7 Terms defined in this Consultation and draft decision Document shall, unless the context otherwise requires or admits, have the meaning set out below and cognate terms shall be construed accordingly:

3G Licence	A Licence issued under the Wireless Telegraphy (Third Generation and GSM Licence) Regulations, 2002 and 2003 (S.I. 345 of 2002 and S.I. No. 340 of 2003) for 3G services in the 2100 MHz band.
800MHz band	The frequency range 791 – 821 MHz paired with 832 – 862 MHz

900MHz band	The frequency range 880 – 915 MHz paired with 925 – 960 MHz
1800MHz band	The frequency range 1710 – 1785 MHz paired with 1805 – 1880 MHz
2100 MHz Band	1920 – 1980 MHz paired with 2110 – 2170 MHz, and 1900 – 1920 MHz
Additional Extension	An Additional Extension means an extension of the duration of an Interim Licence in accordance with such provisions of the Interim Licence Regulations, as amended, providing for same;
Assignment Round	The single round of bidding in the Assignment Stage, scheduled simultaneously but run independently for each band, during which Winning Bidders (and Existing GSM Licensees if applicable) were entitled to submit one or more Bids to be assigned Specific Lots within the bands in which they have won Lots (or retain Lots for which they hold Existing GSM Licences).
Assignment Stage	The stage of the Auction where Winning Bidders (and Existing GSM Licensees if applicable) are allocated Specific Lots in accordance with the number of Lots they have been allocated.
Auction	The mechanism within the MBSA Process used to determine Winning Bidders and Winning Prices in the event a Main Stage or Assignment Stage is required.
Auction Rules	Rules and procedures relating to the Auction, as presented in this Information Memorandum and its Annexes.
Bands	The 800 MHz band, the 900 MHz band and the 1800 MHz band.
CPI	Consumer Price Index published by the Central Statistics Office.
Document 10/71	“800 MHz, 900 MHz & 1800 MHz spectrum release.” Published 17 September 2010.

Document 10/71c	“Retuning and Relocating GSM900 Spectrum Assignments in Ireland.” A report for ComReg by Red-M and Vilicom. Published 17 September 2010.
Document 10/105b	“Retuning and Relocating GSM1800 Spectrum Assignments in Ireland.” A report for ComReg by Red-M and Vilicom. Published 15 December 2010.
Document 11/11	“Interim Licences for the 900 MHz band Consultation.” Published 17 February 2011.
Document 11/29	“Interim Licences for the 900 MHz Band” Response to Consultation and Decision. Published 13 April 2011.
Document 11/57	“Joint Technical Report, Mobile Operator Responses to 10/71, 10/105 and 11/11”. Prepared for ComReg by Red-M and Vilicom. Published 24 August 2011.
Document 11/60	“Multi-Band Spectrum Release - Release of the 800 MHz, 900 MHz and 1800 MHz radio spectrum bands.” Response to Consultation and Draft Decision. Published 24 August 2011.
Document 11/60a	Multi-Band Spectrum Release. Annexes to Document 11/60. Published 24 August 2011.
Document 12/22	Joint Technical Report, Mobile Operator Responses to 11/60 and 11/75”. Prepared for ComReg by Red-M and Vilicom. Published 16 March 2012.
Document 12/25	Multi-Band Spectrum Release - Release of the 800 MHz, 900 MHz and 1800 MHz radio spectrum bands.” Response to Consultation and Decision, Published 16 March 2012
Draft Amendment	Means the draft Amendments to the Interim Licence Regulations as set out in Annex 3 of this document.
Early Liberalisation	The option available to an Existing GSM Licensee with GSM rights of use which are intended to continue after the

Option	commencement date for Time Slice 1 to relinquish all, or part, of its existing GSM 900 MHz and/or 1800 MHz spectrum rights of use, contingent on it winning an equivalent quantum of liberalised 900 MHz and/or 1800 MHz spectrum rights of use in Time Slice 1 in the MBSA process.
Existing GSM Licence	A Licence relating to GSM-only rights of spectrum use in the 900MHz and/or 1800MHz bands in Time Slice 1.
Existing GSM Licensee	A holder of a Licence relating to GSM-only rights of spectrum use in the 900MHz and/or 1800MHz bands in Time Slice 1.
Existing Licence	A Licence currently held under a Wireless Telegraphy Regulation.
General Authorisation	An authorisation for an undertaking to provide an electronic communications network or service under and in accordance with Regulation 4 of the Authorisation Regulations.
GSM900 MHz Licence	A Licence issued under the Wireless Telegraphy (GSM Mobile Telephony Licence) (Amendment) Regulations 2003 (S.I. 339 of 2003) for GSM use in the 900 MHz band.
GSM1800 MHz Licence	A Licence issued under the Wireless Telegraphy (GSM Mobile Telephony Licence) (Amendment) Regulations 2003 (S.I. 339 of 2003) for GSM use in the 1800 MHz band.
GSM Licence	A GSM900 MHz Licence or a GSM1800 MHz Licence or an Interim GSM900 MHz Licence as the case may be an Existing GSM Licensee shall be construed accordingly.
Information Memorandum / IM	Document 12/52 as amended.
Indexation	The adjustment of prices for inflation. The index of inflation that will be used will be the Consumer Price Index (CPI) as published by the Central Statistics Office (CSO).
Interim GSM	The Wireless Telegraphy (Interim GSM Mobile Telephony

Regulations	Licence) Regulations, 2011 (S.I. 189 of 2011) for GSM use in the 900 MHz band
Interim Licence	A Licence issued under the interim GSM Regulations and Interim Licensees shall be construed accordingly.
Interim Licensing Proposal (ILP)	The Interim Licensing Proposal discussed and set out in ComReg's interim licensing process, namely Documents 11/29, 11/11 and 10/71.
Liberalised Use Licence (or a Liberalised Licence)	A Licence issued under Schedule 1 of the Regulations (as may be amended prior to enactment) in the form set out in Annex 2 which entitles the holder to use certain Specific Lots of spectrum in the Bands, subject to the terms and conditions set out therein.
Licence	A Liberalised Use Licence, a Preparatory Licence, an Existing GSM Licence or an Interim Licence as the case may be and "Existing Licensee" and "Licensee" shall be construed accordingly.
Lot / Block	A 2 x 5 MHz block of spectrum in a specified band (the 800MHz, 900MHz or 1800MHz band).
Main Stage	The stage of the Auction which determined the number of Lots won by each Winning Bidder in each band but without such Lots being associated with specific frequency assignments.
Multi-Band Spectrum Award (MBSA) Process	The process to award spectrum in the 800 MHz, 900 MHz and 1800 MHz bands in accordance with the substantive decisions set out in Document 12/25 and the processes and procedures set out in the Information Memorandum (Document 12/52) as amended.
Negotiation Phase	The two week period allowed after the Assignment Stage where successful Bidders can attempt to agree alternative assignment for spectrum rights of use won in the MBSA Process.
Notification and Grant Stage	The stage of the MBSA process as defined in Document 12/52

Preparatory Licence	A Licence issued under Schedule 2 of the Regulations (as may be amended prior to enactment) in the form set out in Annex 2 which entitles the holder to possess and install equipment designed or configured for operation in certain Lots of spectrum in the Bands, but which does not permit any wireless telegraphy transmissions, subject to the terms and conditions set out therein.
Primary Extension	A Primary Extension means an extension of the duration of an Interim Licence in accordance with such provisions of the Interim Licence Regulations, as amended, providing for same that may be granted by ComReg in accordance with those Regulations;
Qualification Stage	The stage of the MBSA process as defined in Document 12/52
Relocation	Relocation refers to the situation where an Existing GSM Licensee obtains an equal amount or a greater amount of spectrum rights in the 900/1800 MHz band and has to relocate its network to this new spectrum location
Retuning	An Existing GSM Licensee reducing its existing spectrum assignments to a smaller assignment as a result of the MBSA Process.
Specific Frequencies	The frequency ranges associated with Specific Lots.
Specific Lot	A 2 × 5 MHz block of spectrum in one Time Slice in one of the Bands. Each Specific Lot has two specific frequency ranges associated with it, one of which is used for uplink and one of which is used for downlink.
Spectrum Usage Fees (SUFs)	The annual Spectrum Fees associated with a Licence which a Winning Bidder / Licensee is required to pay over the duration of the Licence.
Time Slice	A time period for which licences are being allocated within the MBSA Process. There are two distinct Time Slices for which Lots in all bands (800 MHz, 900 MHz, 1800 MHz) are being allocated, and each Licence shall be in respect of one Time Slice:

	<ul style="list-style-type: none"> • 1 February 2013 – 12 July 2015; and • 13 July 2015 – 12 July 2030.
Time Slice 1	A time period from 1 February 2013 to 12 July 2015 (as may be amended by ComReg).
Time Slice 2	A time period from 13 July 2015 – 12 July 2030 (as may be amended by ComReg).
Transition	Relocating or retuning of existing spectrum assignments
Transition Phase	The phase required to facilitate the network adjustments required by the Existing GSM Licensees (and potentially Winning Bidders in Time Slice 1) to retune or relocate parts of their networks to the new spectrum assignments determined by the MBSA process (the “Transition Phase”).
Transition Project Plan	The plan which sets out the Transition activities, milestones and timeframes for completing the Transition Phase associated with the MBSA process.
Transition Project Proposal	A proposal submitted by Existing GSM Licensees and Winning Bidder for consideration by ComReg as input into the Transition Project Plan.
Transition Rules	Rules regarding transition, as set out in section 3.8 of the IM
Winning Bidder	A Bidder which won at least one Lot in the MBSA Process.

A1.2 European and Governmental Bodies, Regulatory and Standardisation Organisations

ComReg	Commission for Communications Regulation
DCENR	Department of Communications, Energy and Natural Resources

EC	European Commission
EU	European Union

A1.3 Primary and Secondary Legislation

SI	Statutory Instrument
2002 Act	The Communications Regulation Act 2002 (No. 20 of 2002), as amended ⁷⁰
Act of 1926	The Wireless Telegraphy Act 1926 (No. 45 of 1926) as amended
Authorisation Regulations	European Communities (Electronic Communication Networks and Services) (Authorisation) Regulations 2011 (S.I. No 335 of 2011)
EC Decision 2009/766/EC	European Commission Decision on the harmonisation of the 900 MHz and 1800 MHz frequency bands for terrestrial systems capable of providing pan-European electronic communications services in the Community
EC Decision 2010/267/EU	European Commission Decision on harmonised technical conditions of use in the 790-862 MHz frequency band for terrestrial systems capable of providing electronic communications services in the European Union
EC Decision 2011/251/EU	European Commission Decision, amending Decision 2009/766/EC, on the harmonisation of the 900 MHz and 1800 MHz frequency bands for terrestrial systems capable of providing pan-European electronic communications services in the

⁷⁰ Includes the Communications Regulation (Amendment) Act 2007 and the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010.

	Community
Framework Directive	Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, as amended
Framework Regulations	European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No 333 of 2011)
The Minister	Minister for Communications, Energy and Natural Resources
Specific Regulations	Specific Regulations has the same meaning as set out in Regulation 2 of Framework Regulations 2011 (S.I. No. 333 of 2011)

A1.4 Glossary of Technical Terms

3G	Third Generation Mobile System (e.g. UMTS)
2G	Second generation mobile services (e.g. GSM)
2.5G	2G systems incorporating packet switched services
Combinatorial Clock Auction (CCA)	An auction format that progresses in two distinct phases. The first phase consists of a number of open rounds, which provide for price discovery (the ‘primary Bid rounds’). This is followed by a single round of bidding (the ‘Supplementary Bids round’) during which bidders can express their demand for all packages of Lots that they value, subject to certain constraints.
CPI	Consumer Price Index
CSO	Central Statistics Office

ECN	Electronic Communications Network as defined under the Framework Regulations
ECS	Electronic Communications Service as defined under the Framework Regulations
Meteor	Meteor Mobile Communications or Meteor
Guard-band	An unused spectrum bandwidth separating channels to prevent interference
GHz	Gigahertz (1,000,000,000 Hertz)
GSM	Global System for Mobile Communications
Hertz or Hz	Unit of Frequency
H3GI	Hutchison 3G Ireland
kHz	Kilo Hertz (1,000 Hertz)
LTE	Long Term Evolution of 3G
MHz	Megahertz (1,000,000 Hertz)
MNO	Mobile Network Operator
MVNO	Mobile Virtual Network Operator (a licensed mobile operator with no spectrum assignment and with or without network infrastructure)
QoS	Quality of Service
RIA	Regulatory Impact Assessment
SUF	Spectrum Usage Fee

Telefónica	Telefónica O2 Communications (Ireland) Ltd
UMTS	Universal Mobile Telecommunications System.
Vodafone	Vodafone Ireland Limited

Annex 2: Legal Framework and Statutory Objectives

- A 2.1 The Communications Regulation Acts 2002-2010⁷¹ (the “2002 Act”), the Common Regulatory Framework (including the Framework and Authorisation Directives⁷² as transposed into Irish law by the corresponding Framework and Authorisation Regulations⁷³), and the Wireless Telegraphy Acts⁷⁴ set out, amongst other things, powers, functions, duties and objectives of ComReg that are relevant to this response to consultation and draft decision.
- A 2.2 Apart from licensing and making regulations in relation to licences, ComReg’s functions include the management of Ireland’s radio frequency spectrum in accordance with ministerial Policy Directions under Section 13 of the 2002 Act, having regard to its objectives under Section 12 of the 2002 Act, Regulation 16 of the Framework Regulations and the provisions of Article 8a of the Framework Directive. ComReg is to carry out its functions effectively, and in a manner serving to ensure that the allocation and assignment of radio frequencies is based on objective, transparent, non-discriminatory and proportionate criteria.
- A 2.3 This annex is intended as a general guide as to ComReg’s role in this area, and not as a definitive or exhaustive legal exposition of that role. Further, this annex restricts itself to consideration of those powers, functions, duties and

⁷¹ The Communications Regulation Act 2002, the Communications Regulation (Amendment) Act 2007 and the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010.

⁷² Directive No. 2002/21/EC of the European Parliament and of the Council of 7 March 2002 (as amended by Regulation (EC) No. 717/2007 of 27 June 2007, Regulation (EC) No. 544/2009 of 18 June 2009 and Directive 2009/140/EC of the European Parliament and Council of 25 November 2009) (the “Framework Directive”) and Directive No. 2002/20/EC of the European Parliament and of the Council of 7 March 2002 (as amended by Directive 2009/140/EC) (the “Authorisation Directive”)

⁷³ The European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011) and the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011 (S.I. No. 335 of 2011) respectively which revoke and replace S.I.307 of 2003 and S.I. 306 of 2003 respectively.

⁷⁴ The Wireless Telegraphy Acts, 1926 and 1956, the Broadcasting Authority Acts, 1960 to 1971, in so far as they amend those Acts, the Wireless Telegraphy Act 1972, Sections 2, 9, 10,11,12,14,15,16,17 and 19 of the Broadcasting and Wireless Telegraphy Act 1988 and Sections 181 (1) to (7) and (9) and Section 182 of the Broadcasting Act 2009.

objectives of ComReg that appear most relevant to the matters at hand and by way of example excludes those in relation to premium rate services or market analysis.

A 2.4 All references in this annex to enactments are to the enactment as amended at the date hereof, unless the context otherwise requires.

A2.1 Primary Objectives and Regulatory Principles Under the 2002 Act and Common Regulatory Framework

A 2.5 ComReg's primary objectives in carrying out its statutory functions in the context of electronic communications are to:

- promote competition;⁷⁵
- contribute to the development of the internal market;⁷⁶
- promote the interests of users within the Community;⁷⁷
- ensure the efficient management and use of the radio frequency spectrum in Ireland in accordance with a direction under Section 13 of the 2002 Act;⁷⁸ and
- unless otherwise provided for in Regulation 17 of the Framework Regulations, take the utmost account of the desirability of technological neutrality in complying with the requirements of the Specific Regulations⁷⁹ in particular, those designed to ensure effective competition.⁸⁰

⁷⁵Section 12 (1)(a)(i) of the 2002 Act.

⁷⁶Section 12 (1)(a)(ii) of the 2002 Act.

⁷⁷Section 12(1)(a)(iii) of the 2002 Act.

⁷⁸Section 12(1)(b) of the 2002 Act. Whilst this objective would appear to be a separate and distinct objective in the 2002 Act, it is noted that, for the purposes of ComReg's activities in relation to ECS and ECN, Article 8 of the Framework Directive identifies "*encouraging efficient use and ensuring the effective management of radio frequencies (and numbering resources)*" as a sub-objective of the broader objective of the promotion of competition. In light of this, the assessment of different regulatory options against this objective is set out in the context of the RIA contained in document 11/60.

⁷⁹The 'Specific Regulations' comprise collectively the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011), the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011 (S.I. No. 335 of 2011), the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011 (S.I. No. 334 of 2011), the European

A2.1.1 Promotion of Competition

A 2.6 Section 12(2)(a) of the 2002 Act requires ComReg to take all reasonable measures which are aimed at the promotion of competition, including:

- ensuring that users, including disabled users, derive maximum benefit in terms of choice, price and quality;
- ensuring that there is no distortion or restriction of competition in the electronic communications sector; and
- encouraging efficient use and ensuring the effective management of radio frequencies and numbering resources.

A 2.7 In so far as the promotion of competition is concerned, Regulation 16(1)(b) of the Framework Regulations also requires ComReg to:

- ensure that elderly users and users with special social needs derive maximum benefit in terms of choice, price and quality, and
- ensure that, in the transmission of content, there is no distortion or restriction of competition in the electronic communications sector.

A 2.8 Regulation 9(11) of the Authorisation Regulations also provides that ComReg must ensure that radio frequencies are efficiently and effectively used having regard to Section 12(2)(a) of the 2002 Act and Regulations 16(1) and 17(1) of the Framework Regulations. Regulation 9(11) further provides that ComReg must ensure that competition is not distorted by any transfer or accumulation of rights of use for radio frequencies, and, for this purpose, ComReg may take appropriate measures such as mandating the sale or the lease of rights of use for radio frequencies.

A2.1.2 Contributing to the Development of the Internal Market

A 2.9 Section 12(2)(b) of the 2002 Act requires ComReg to take all reasonable measures which are aimed at contributing to the development of the internal market, including:

Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011 (S.I. 337 of 2011) and the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (S.I. No. 336 of 2011).

⁸⁰ Regulation 16(1)(a) of the Framework Regulations.

- removing remaining obstacles to the provision of electronic communications networks, electronic communications services and associated facilities at Community level;
- encouraging the establishment and development of trans-European networks and the interoperability of transnational services and end-to-end connectivity; and
- co-operating with electronic communications national regulatory authorities in other Member States of the Community and with the Commission of the Community in a transparent manner to ensure the development of consistent regulatory practice and the consistent application of Community law in this field.

A 2.10 In so far as contributing to the development of the internal market is concerned, Regulation 16(1)(c) of the Framework Regulations also requires ComReg to co-operate with the Body of European Regulators for Electronic Communications (BEREC) in a transparent manner to ensure the development of consistent regulatory practice and the consistent application of EU law in the field of electronic communications.

A2.1.3 Promotion of Interests of Users

A 2.11 Section 12(2)(c) of the 2002 Act requires ComReg, when exercising its functions in relation to the provision of electronic communications networks and services, to take all reasonable measures which are aimed at the promotion of the interests of users within the Community, including:

- ensuring that all users have access to a universal service;
- ensuring a high level of protection for consumers in their dealings with suppliers, in particular by ensuring the availability of simple and inexpensive dispute resolution procedures carried out by a body that is independent of the parties involved;
- contributing to ensuring a high level of protection of personal data and privacy;
- promoting the provision of clear information, in particular requiring transparency of tariffs and conditions for using publicly available electronic communications services;
- encouraging access to the internet at reasonable cost to users;
- addressing the needs of specific social groups, in particular disabled users; and

- ensuring that the integrity and security of public communications networks are maintained.

A 2.12 In so far as promotion of the interests of users within the EU is concerned, Regulation 16(1)(d) of the Framework Regulations also requires ComReg to:

- address the needs of specific social groups, in particular, elderly users and users with special social needs, and
- promote the ability of end-users to access and distribute information or use applications and services of their choice.

A2.1.4 Regulatory Principles

A 2.13 In pursuit of its objectives under Regulation 16(1) of the Framework Regulations and Section 12 of the 2002 Act, ComReg must⁸¹ apply objective, transparent, non-discriminatory and proportionate regulatory principles by, amongst other things:

- promoting regulatory predictability by ensuring a consistent regulatory approach over appropriate review periods;
- ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks and services;
- safeguarding competition to the benefit of consumers and promoting, where appropriate, infrastructure-based competition;
- promoting efficient investment and innovation in new and enhanced infrastructures, including by ensuring that any access obligation takes appropriate account of the risk incurred by the investing undertakings and by permitting various cooperative arrangements between investors and parties seeking access to diversify the risk of investment, while ensuring that competition in the market and the principle of non-discrimination are preserved;
- taking due account of the variety of conditions relating to competition and consumers that exist in the various geographic areas within the State; and
- imposing ex-ante regulatory obligations only where there is no effective and sustainable competition and relaxing or lifting such obligations as soon as that condition is fulfilled.

⁸¹ Pursuant to Regulation 16(2) of the Framework Regulations.

A2.1.5 BEREC

A 2.14 Under Regulation 16(1)(3) of the Framework Regulations, ComReg must:

- having regard to its objectives under Section 12 of the 2002 Act and its functions under the Specific Regulations, actively support the goals of BEREC of promoting greater regulatory co-ordination and coherence; and
- take the utmost account of opinions and common positions adopted by BEREC when adopting decisions for the national market.

A2.1.6 Other Obligations under the 2002 Act

A 2.15 In carrying out its functions, ComReg is required, amongst other things, to:

- seek to ensure that any measures taken by it are proportionate having regard to the objectives set out in Section 12 of the 2002 Act;⁸²
- have regard to international developments with regard to electronic communications networks and electronic communications services, associated facilities, postal services, the radio frequency spectrum and numbering;⁸³ and
- take the utmost account of the desirability that the exercise of its functions aimed at achieving its radio frequency management objectives does not result in discrimination in favour of or against particular types of technology for the provision of ECS.⁸⁴

A2.1.7 Policy Directions⁸⁵

A 2.16 Section 12(4) of the 2002 Act provides that, in carrying out its functions, ComReg must have appropriate regard to policy statements, published by or on behalf of the Government or a Minister of the Government and notified to the Commission, in relation to the economic and social development of the State. Section 13(1) of the 2002 Act requires ComReg to comply with any

⁸²Section 12(3) of the 2002 Act.

⁸³Section 12(5) of the 2002 Act.

⁸⁴Section 12(6) of the 2002 Act.

⁸⁵ComReg also notes, and takes due account of, the Spectrum Policy Statement issued by the DCENR in September 2010.

policy direction given to ComReg by the Minister for Communications, Energy and Natural Resources (“the Minister”) as he or she considers appropriate, in the interests of the proper and effective regulation of the electronic communications market, the management of the radio frequency spectrum in the State and the formulation of policy applicable to such proper and effective regulation and management, to be followed by ComReg in the exercise of its functions. Section 10(1)(b) of the 2002 Act also requires ComReg, in managing the radio frequency spectrum, to do so in accordance with a direction of the Minister under Section 13 of the 2002 Act, while Section 12(1)(b) requires ComReg to ensure the efficient management and use of the radio frequency spectrum in accordance with a direction under Section 13.

A 2.17 The Policy Directions which are most relevant in this regard include the following:

Policy Direction No.3 on Broadband Electronic Communication Networks

A 2.18 ComReg shall in the exercise of its functions, take into account the national objective regarding broadband rollout, viz, the Government wishes to ensure the widespread availability of open-access, affordable, always-on broadband infrastructure and services for businesses and citizens on a balanced regional basis within three years, on the basis of utilisation of a range of existing and emerging technologies and broadband speeds appropriate to specific categories of service and customers.

A 2.19 ComReg is conscious that the three year objective described in this policy direction has now expired making this direction less relevant currently.

Policy Direction No.4 on Industry Sustainability

A 2.20 ComReg shall ensure that in making regulatory decisions in relation to the electronic communications market, it takes account of the state of the industry and in particular the industry’s position in the business cycle and the impact of such decisions on the sustainability of the business of undertakings affected.

Policy Direction No.5 on Regulation only where Necessary

A 2.21 Where ComReg has discretion as to whether to impose regulatory obligations, it shall, before deciding to impose such regulatory obligations on undertakings, examine whether the objectives of such regulatory obligations would be better achieved by forbearance from imposition of such obligations and reliance instead on market forces.

Policy Direction No.6 on Regulatory Impact Assessment

A 2.22 ComReg, before deciding to impose regulatory obligations on undertakings in the market for electronic communications or for the purposes of the management and use of the radio frequency spectrum or for the purposes of the regulation of the postal sector, shall conduct a Regulatory Impact Assessment in accordance with European and International best practice and otherwise in accordance with measures that may be adopted under the Government's Better Regulation programme.

Policy Direction No.7 on Consistency with other Member States

A 2.23 ComReg shall ensure that, where market circumstances are equivalent, the regulatory obligations imposed on undertakings in the electronic communications market in Ireland should be equivalent to those imposed on undertakings in equivalent positions in other Member States of the European Community.

Policy Direction No.11 on the Management of the Radio Frequency Spectrum

A 2.24 ComReg shall ensure that, in its management of the radio frequency spectrum, it takes account of the interests of all users of the radio frequency spectrum.

General Policy Direction No.1 on Competition (2004)

A 2.25 ComReg shall focus on the promotion of competition as a key objective. Where necessary, ComReg shall implement remedies which counteract or remove barriers to market entry and shall support entry by new players to the market and entry into new sectors by existing players. ComReg shall have a particular focus on:

- market share of new entrants;
- ensuring that the applicable margin attributable to a product at the wholesale level is sufficient to promote and sustain competition;
- price level to the end user;
- competition in the fixed and mobile markets;
- the potential of alternative technology delivery platforms to support competition.

A2.2 Other Relevant Obligations under the Framework and Authorisation Regulations

A2.2.1 Framework Regulations

A 2.26 Regulation 17 of the Framework Regulations governs the management of radio frequencies for electronic communications services. Regulation 17(1) requires that ComReg, subject to any directions issued by the Minister pursuant to Section 13 of the 2002 Act and having regard to its objectives under Section 12 of the 2002 Act and Regulation 16 of the Framework Regulations and the provisions of Article 8a of the Framework Directive, ensure:

- the effective management of radio frequencies for electronic communications services;
- that spectrum allocation used for electronic communications services and issuing of general authorisations or individual rights of use for such radio frequencies are based on objective, transparent, non-discriminatory and proportionate criteria; and
- ensure that harmonisation of the use of radio frequency spectrum across the EU is promoted, consistent with the need to ensure its effective and efficient use and in pursuit of benefits for the consumer such as economies of scale and interoperability of services, having regard to all decisions and measures adopted by the European Commission in accordance with Decision No. 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the EU.

A 2.27 Regulation 17(2) provides that, unless otherwise provided in Regulation 17(3), ComReg must ensure that all types of technology used for electronic communications services may be used in the radio frequency bands that are

declared available for electronic communications services in the Radio Frequency Plan published under section 35 of the 2002 Act in accordance with EU law.

A 2.28 Regulation 17(3) provides that, notwithstanding Regulation 17(2), ComReg may, through licence conditions or otherwise, provide for proportionate and non-discriminatory restrictions to the types of radio network or wireless access technology used for electronic communications services where this is necessary to—

- avoid harmful interference,
- protect public health against electromagnetic fields,
- ensure technical quality of service,
- ensure maximisation of radio frequency sharing,
- safeguard the efficient use of spectrum, or
- ensure the fulfilment of a general interest objective as defined by or on behalf of the Government or a Minister of the Government in accordance with Regulation 17(6).

A 2.29 Regulation 17(4) requires that, unless otherwise provided in Regulation 17(5), ComReg must ensure that all types of electronic communications services may be provided in the radio frequency bands, declared available for electronic communications services in the Radio Frequency Plan published under section 35 of the Act of 2002 in accordance with EU law.

A 2.30 Regulation 17(5) provides that, notwithstanding Regulation 17(4), ComReg may provide for proportionate and non-discriminatory restrictions to the types of electronic communications services to be provided, including where necessary, to fulfil a requirement under the International Telecommunication Union Radio Regulations.

A 2.31 Regulation 17(6) requires that measures that require an electronic communications service to be provided in a specific band available for electronic communications services must be justified in order to ensure the fulfilment of a general interest objective as defined by or on behalf of the Government or a Minister of the Government in conformity with EU law such as, but not limited to—

- safety of life,
- the promotion of social, regional or territorial cohesion,
- the avoidance of inefficient use of radio frequencies, or

- the promotion of cultural and linguistic diversity and media pluralism, for example, by the provision of radio and television broadcasting services.

A 2.32 Regulation 17(7) provides that ComReg may only prohibit the provision of any other electronic communications service in a specific radio spectrum frequency band where such a prohibition is justified by the need to protect safety of life services. ComReg may, on an exceptional basis, extend such a measure in order to fulfil other general interest objectives as defined by or on behalf of the Government or a Minister of the Government.

A 2.33 Regulation 17(8) provides that ComReg must, in accordance with Regulation 18, regularly review the necessity of the restrictions referred to in Regulations 17(3) and 17(5) and must make the results of such reviews publicly available.

A 2.34 Regulation 17(9) provides that Regulations 17(2) to (7) only apply to spectrum allocated to be used for electronic communications services, general authorisations issued and individual rights of use for radio frequencies granted after the 1 July 2011. Spectrum allocations, general authorisations and individual rights of use which already existed on the 1 July 2011 Framework Regulations are subject to Regulation 18.

A 2.35 Regulation 17(10) provides that ComReg may, having regard to its objectives under Section 12 of the 2002 Act and Regulation 16 and its functions under the Specific Regulations, lay down rules in order to prevent spectrum hoarding, in particular by setting out strict deadlines for the effective exploitation of the rights of use by the holder of rights and by withdrawing the rights of use in cases of non-compliance with the deadlines. Any rules laid down under this Regulation must be applied in a proportionate, non-discriminatory and transparent manner.

A 2.36 Regulation 17(11) requires ComReg to, in the fulfilment of its obligations under that Regulation, respect relevant international agreements, including the ITU Radio Regulations and any public policy considerations brought to its attention by the Minister.

A2.2.2 Authorisation Regulations

Decision to limit rights of use for radio frequencies

A 2.37 Regulation 9(2) of the Authorisation Regulations provides that ComReg may grant individual rights of use for radio frequencies by way of a licence where it considers that one or more of the following criteria are applicable:

- it is necessary to avoid harmful interference,

- it is necessary to ensure technical quality of service,
- it is necessary to safeguard the efficient use of spectrum, or
- it is necessary to fulfil other objectives of general interest as defined by or on behalf of the Government or a Minister of the Government in conformity with EU law.

A 2.38 Regulation 9(10) of the Authorisation Regulations provides that ComReg must not limit the number of rights of use for radio frequencies to be granted except where this is necessary to ensure the efficient use of radio frequencies in accordance with Regulation 11.

A 2.39 Regulation 9(7) also provides that:

- where individual rights of use for radio frequencies are granted for a period of 10 years or more and such rights may not be transferred or leased between undertakings in accordance with Regulation 19 of the Framework Regulations, ComReg must ensure that criteria set out in Regulation 9(2) apply for the duration of the rights of use, in particular upon a justified request from the holder of the right.
- where ComReg determines that the criteria referred to in Regulation 9(2) are no longer applicable to a right of use for radio frequencies, ComReg must, after a reasonable period and having notified the holder of the individual rights of use, change the individual rights of use into a general authorisation or must ensure that the individual rights of use are made transferable or leasable between undertakings in accordance with Regulation 19 of the Framework Regulations.

Publication of procedures

A 2.40 Regulation 9(4)(a) of the Authorisation Regulations requires that ComReg, having regard to the provisions of Regulation 17 of the Framework Regulations, establish open, objective, transparent, non-discriminatory and proportionate procedures for the granting of rights of use for radio frequencies and cause any such procedures to be made publicly available.

Duration of rights of use for radio frequencies

A 2.41 Regulation 9(6) of the Authorisation Regulations provides that rights of use for radio frequencies must be in force for such period as ComReg considers appropriate having regard to the network or service concerned in view of the

objective pursued taking due account of the need to allow for an appropriate period for investment amortisation.

Conditions attached to rights of use for radio frequencies

A 2.42 Regulation 9(5) of the Authorisation Regulations provides that, when granting rights of use for radio frequencies, ComReg must, having regard to the provisions of Regulations 17 and 19 of the Framework Regulations, specify whether such rights may be transferred by the holder of the rights and under what conditions such a transfer may take place.

A 2.43 Regulation 10(1) of the Authorisation Regulations provides that, notwithstanding Section 5 of the 1926 Act, but subject to any regulations under Section 6 of the 1926 Act, ComReg may only attach those conditions listed in Part B of the Schedule to the Authorisation Regulations. Part B lists the following conditions which may be attached to licences:

- Obligation to provide a service or to use a type of technology for which the rights of use for the frequency has been granted including, where appropriate, coverage and quality requirements.
- Effective and efficient use of frequencies in conformity with the Framework Directive and Framework Regulations.
- Technical and operational conditions necessary for the avoidance of harmful interference and for the limitation of exposure of the general public to electromagnetic fields, where such conditions are different from those included in the general authorisation.
- Maximum duration in conformity with Regulation 9, subject to any changes in the national frequency plan.
- Transfer of rights at the initiative of the rights holder and conditions of such transfer in conformity with the Framework Directive.
- Usage fees in accordance with Regulation 19.
- Any commitments which the undertaking obtaining the usage right has made in the course of a competitive or comparative selection procedure.
- Obligations under relevant international agreements relating to the use of frequencies.
- Obligations specific to an experimental use of radio frequencies.

A 2.44 Regulation 10(2) also requires that any attachment of conditions under Regulation 10(1) to rights of use for radio frequencies must be non-discriminatory, proportionate and transparent and in accordance with Regulation 17 of the Framework Regulations.

Procedures for limiting the number of rights of use to be granted for radio frequencies

A 2.45 Regulation 11(1) of the Authorisation Regulations provides that, where ComReg considers that the number of rights of use to be granted for radio frequencies should be limited or that the duration of existing rights of use for radio frequencies should be extended other than in accordance with the terms specified in the rights of use, it must, without prejudice to Sections 13 and 37 of the 2002 Act:

- give due weight to the need to maximise benefits for users and to facilitate the development of competition, and
- give all interested parties, including users and consumers, the opportunity to express their views in accordance with Regulation 12 of the Framework Regulations.

A 2.46 Regulation 11(2) of the Authorisation Regulations requires that, when granting the limited number of rights of use for radio frequencies it has decided upon, ComReg does so “...on the basis of selection criteria which are objective, transparent, non-discriminatory and proportionate and which give due weight to the achievement of the objectives set out in Section 12 of the 2002 Act and Regulations 16 and 17 of the Framework Regulations.”

A 2.47 Regulation 11(4) requires ComReg to publish any decision to limit the granting of rights of use for radio frequencies or to extend the duration of existing rights of use and to include the reasons for that decision.

A 2.48 Regulation 11(4) provides that where it decides to use competitive or comparative selection procedures, ComReg must, inter alia, ensure that such procedures are fair, reasonable, open and transparent to all interested parties.

Fees for spectrum rights of use/licences

A 2.49 Regulation 19 of the Authorisation Regulations permits ComReg to impose fees for a licence which reflect the need to ensure the optimal use of the radio frequency spectrum.

A 2.50 ComReg is required to ensure that any such fees are objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose and take into account the objectives of ComReg as set out in Section 12 of the 2002 Act and Regulation 16 of the Framework Regulations.

Amendment of rights and obligations

A 2.51 Regulation 15 of the Authorisation Regulations permits ComReg to amend rights and conditions concerning licences, provided that any such amendments may only be made in objectively justified cases and in a proportionate manner, following the process set down in Regulation 15(4).

A2.3 Other Relevant Provisions

Wireless Telegraphy Acts

A 2.52 Under Section 5 of the Wireless Telegraphy Acts, ComReg may, subject to those Acts, and on payment of the prescribed fees (if any), grant to persons licences to keep and have possession of apparatus for wireless telegraphy in any specified place in the State.

A 2.53 Such licences are to be in such form, continue in force for such period and be subject to such conditions and restrictions (including conditions as to suspension and revocation) as might be prescribed in regard to them by regulations made by ComReg under Section 6.

A 2.54 Section 5(3) also provides that, where it appears appropriate to ComReg, it may, in the interests of the efficient and orderly use of wireless telegraphy, limit the number of licences for any particular class or classes of apparatus for wireless telegraphy granted under Section 5.

A 2.55 Section 6 provides that ComReg may make regulations prescribing in relation to all licences granted by it under section 5, or any particular class or classes of such licences, all or any of the matters following that is to say:

- the form of such licences,
- the period during which such licences continue in force,

- the manner in which, the terms on which, and the period or periods for which such licences may be renewed,
- the circumstances in which or the terms under which such licences are granted,
- the circumstances and manner in which such licences may be suspended or revoked by ComReg,
- the terms and conditions to be observed by the holders of such licences and subject to which such licences are deemed to be granted,
- the fees to be paid on the application, grant or renewal of such licences or classes of such licences, subject to such exceptions as ComReg may prescribe, and the time and manner at and in which such fees are to be paid, and
- matters which such licences do not entitle or authorise the holder to do.

A 2.56 Section 6(2) provides that ComReg may make regulations authorising and providing for the granting of licences under section 5 subject to special terms, conditions, and restrictions to persons who satisfy it that they require the licences solely for the purpose of conducting experiments in wireless telegraphy.

GSM Directive (as amended)

A 2.57 In light of the rights of use of spectrum under consideration in this document, ComReg notes that the GSM Directive 87/372/EEC as transposed by S.I. 416 of 1994 and the Amending GSM Directive 2009/114/EC as transposed by S.I. 195 of 2010 are also of relevance.

A 2.58 In particular regulation 3(2) of S.I. 195 of 2010 provides that: *“The Commission for Communications Regulation shall examine whether the existing assignment of spectrum in the 900 MHz band to competing mobile operators is likely to distort competition in the mobile markets in the State and, where justified and proportionate, it shall address such distortions in accordance with Regulation 15 of the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2003 (S.I. No. 306 of 2003)⁸⁶.”*

⁸⁶ Now in accordance with Regulation 15 of the 2011 Authorisation Regulations.

Commission Decision 2009/766/EC on Harmonisation of the 900 MHz and 1800 MHz bands

A 2.59 ComReg must comply with the provisions of the above Commission Decision which is aimed at harmonising the technical conditions for the availability and efficient use of the 900 MHz band, in accordance with Directive 87/372/EEC, and of the 1800 MHz band for terrestrial systems capable of providing electronic communications services. This decision was recently amended by Commission Decision 2011/251/EU.

Commission Decision 2010/267/EU on Harmonisation of 800 MHz band

A 2.60 ComReg must comply with the provisions of the above Commission Decision which is aimed at harmonising the technical conditions for the availability and efficient use of the 800 MHz band for terrestrial systems capable of providing electronic communications services.

Article 4 of Directive 2002/77/EC (Competition Directive)

A 2.61 Article 4 of the Competition Directive provides that: *“Without prejudice to specific criteria and procedures adopted by Member States to grant rights of use of radio frequencies to providers of radio or television broadcast content services with a view to pursuing general interest objectives in conformity with Community law:*

- *Member States shall not grant exclusive or special rights of use of radio frequencies for the provision of electronic communications services.*
- *The assignment of radio frequencies for electronic communication services shall be based on objective, transparent, non-discriminatory and proportionate criteria.”*

Radio Spectrum Policy Programme

A 2.62 On 14 March 2012, the European Parliament and the Council adopted Decision 243/2012/EU establishing the first Radio Spectrum Policy Programme.

Annex 3: Draft Amendments to the Interim Licence Regulations

A 3.1 The following sets out the specific amendments that ComReg proposes to make to the Wireless Telegraphy (Interim GSM Mobile Telephony Licence) Regulations, 2011 (Statutory Instrument 189 of 2011).

STATUTORY INSTRUMENT

S.I. No. XX of 2013

**Wireless Telegraphy (Interim GSM Mobile Telephony Licence)
(Amendment) Regulations, 2013**

DRAFT

S.I. No. XX of 2013**Wireless Telegraphy (Interim GSM Mobile Telephony Licence)
(Amendment) Regulations, 2013**

The Commission for Communications Regulation, in exercise of the powers conferred on it by section 6 (as substituted by section 182 of the Broadcasting Act 2009, (No. 18 of 2009)) of the Wireless Telegraphy Act, 1926, (No. 45 of 1926) and Regulations 11 and 15 of the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011, and with the consent of the Minister for Communications, Energy and Natural Resources, pursuant to section 37 of the Communications Regulation Act, 2002, (No. 20 of 2002), hereby makes the following Regulations:

Citation

1. These Regulations may be cited as the Wireless Telegraphy (Interim GSM Mobile Telephony Licence) (Amendment) Regulations, 2013.
2. The Wireless Telegraphy (Interim GSM Mobile Telephony Licence) Regulations, 2011 and these Regulations may be cited together as the Wireless Telegraphy (Interim GSM Mobile Telephony Licence) Regulations, 2011 and 2013 and shall be construed together as one.

Interpretation

3. In these Regulations, unless the context otherwise requires:

“Act of 1926” means the Wireless Telegraphy Act, 1926 (No. 45 of 1926);

“Additional Extension” means an extension of the duration of a Licence, being either Additional Extension 1 or Additional Extension 2;

“Additional Extension 1” means an extension of the duration of a Licence of up to 2 months’ duration, commencing from 1 May 2013 (or from whatever is the day and date immediately following the date of the expiration of a Primary Extension granted by the Commission), granted by the Commission in accordance with the decisions and procedures set out in Commission Document **13/XX** and Decision **XX/13**;

“Additional Extension 2” means an extension of the duration of a Licence of up to 2 months’ duration, commencing from 1 July 2013 (or from whatever is the day and date immediately following the date of the expiration of Additional Extension 1 granted by the Commission), granted by the Commission in accordance with the decisions and procedures set out in Commission Document **13/XX** and Decision **XX/13**;

“Apparatus” means apparatus for wireless telegraphy as defined in section 2 of the Act of 1926 for the purpose of providing a Mobile Telephony Service and, in relation to a Licence, means the particular apparatus for wireless telegraphy to which the Licence relates;

“Commission” means the Commission for Communications Regulation;

“Commission Decision **13/XX**” means the decision of the Commission, published on **DD/MM/YY** under Commission Document Number **13/XX**;

“Commission Document **XX/13**” means the [**SPECIFY NAME OF DOCUMENT**] of the Commission, published on **DD/MM/YY** under Commission Document Number **13/XX**;

“GSM” means an electronic communications network that complies with the GSM standards as published by ETSI, in particular but not limited to EN 301 502 and EN 301 511;

“Licence” means a licence under section 5 of the Act of 1926, to keep, have possession of, install, maintain, work and use Apparatus in a specified place in the State;

“Licensee” means the holder of a Licence issued under the Principal Regulations;

“Mobile Telephony Service” or “GSM Mobile Telephony Service” means a mobile telephony service corresponding to the GSM specifications;

“Primary Extension” means an extension of the duration of a Licence of up to 3 months’ duration, commencing from 1 February 2013, granted by the Commission in accordance with the decisions and procedures set out in Commission Document **13/XX** and Decision **XX/13**;

“Principal Regulations” means the Wireless Telegraphy (Interim GSM Mobile Telephony Licence) Regulations, 2011.

Amendment of Regulation 5 of Principal Regulations

4. The Principal Regulations are amended by substituting the following for Regulation 5(4):

“(4) Notwithstanding paragraphs (1), (2) and (3) of this Regulation, a Licence granted or renewed under these Regulations shall in any event, terminate on 31 January 2013, or:

- a) 30 April 2013 (or such earlier termination date as may have been decided upon by the Commission in granting the Primary Extension concerned) where a

- Primary Extension has been granted by the Commission to a Licensee and where no Additional Extensions have been granted;
- b) a date two months after the expiry date that would be applicable pursuant to paragraph a) (or such earlier termination date as may have been decided upon by the Commission in granting Additional Extension 1 concerned) where a Primary Extension and Additional Extension 1 have been each granted by the Commission to a Licensee, and where Additional Extension 2 has not been granted); or
 - c) a date two months after the expiry date that would be applicable pursuant to paragraph b) where a Primary Extension, Additional Extension 1 and Additional Extension 2 have each been granted by the Commission a Licensee (or such earlier termination date as may have been decided upon by the Commission in granting Additional Extension 2 concerned)”

Amendment of Regulation 9 of Principal Regulations

5. The Principal Regulations are amended by substituting the following for Regulation 9(1):

“9. (1) Subject to paragraph (2) of this Regulation, the following fees are hereby prescribed in relation to Licences to which these Regulations apply.

The Licensee shall pay in respect of each 200 kHz duplex radio frequency channel in the 900 MHz frequency band as specified in the Licence, a fee of **[This figure will be the fee payable under the Principal Regulations (prior to amendment hereby, indexed by reference to the Consumer Price Index from March 2011 (the date to which the Licence Fees set out in the Interim Licence Regulations were indexed) to [the date of the latest CPI figures available when the Decision is made].**for a one-year period; and”