



Commission for  
**Communications Regulation**

# Consultation on Hutchison 3G Ireland Limited's Request for an Amendment to its Liberalised Use Licence.

## **Consultation**

**Reference:** ComReg 13/43

**Date:** 09/05/2013

**An Coimisiún um Rialáil Cumarsáide**

**Commission for Communications Regulation**

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## **Legal Disclaimer**

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## **1 Introduction**

1. This consultation paper is published by the Commission for Communications Regulation (ComReg) to obtain views and representations from interested parties on Hutchison 3G Ireland's (H3GI) request for an amendment to its Liberalised Use Licence ("H3GI's Licence Amendment Request").
2. To assist and inform ComReg's decision-making on H3GI's Licence Amendment Request, ComReg invites written submissions from interested parties on same within the timeframes set out in Section 4 below.

**Donal Leavy**  
**Deputy Commissioner**

## **2 Background: ComReg's Multi-Band Spectrum Award Process and Liberalised Use Licences**

3. On 5 December 2012, and following the outcome of the Negotiation Phase of ComReg's Multi-Band Spectrum Award Process (MBSA), ComReg set out, in Document 12/131<sup>1</sup>, the final frequency assignments for the four Winning Bidders (being Hutchison 3G Ireland Limited (H3GI), Meteor Mobile Communications Limited (Meteor), Telefónica Ireland Limited (Telefónica) and Vodafone Ireland Limited (Vodafone)).
4. On 31 January 2013, ComReg issued a Liberalised Use Licence<sup>2</sup> to each of the Winning Bidders, all of which had a commencement date of 1 February 2013. Within each Licence, the commencement date of a Spectrum Block was set in line with the outcome of the MBSA process, noting that the availability of certain Spectrum Blocks was dependent upon the prior completion of the relevant Transition activities.
5. On 25 February 2013, ComReg issued an update on the MBSA process (Document 13/20) and published its finalised Transition Project Plan (Document 13/19) which set out the time periods for Meteor and Telefónica to complete their respective 900 MHz and 1800 MHz transition activities for Time Slice 1.<sup>3</sup>
6. Since then, Meteor and Telefónica have completed their respective transition activities in the 900 MHz band and 1800 MHz bands thereby completing the transition process for Time Slice 1 and releasing the remaining Spectrum Blocks for licensing. All Spectrum Blocks won in the MBSA process have now been made available in accordance with the outcome of the MBSA process.

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<sup>1</sup> ComReg Document 12/131 - Frequency Arrangements and Results of the Multi-Band Spectrum Award Process Information Notice - published 5 December 2012.

<sup>2</sup> Any word or expression used in this document has the same meaning as in ComReg Documents 12/25 and 12/52 unless the context otherwise requires.

<sup>3</sup> Time Slice 1 refers to the period 1 February 2013 to 12 July 2015

### 3 H3GI's Licence Amendment Request

7. Details of H3GI's Licence Amendment Request are contained in its letters of 28 November 2012, 18 January 2013, 26 March 2013 and 26 April 2013, non-confidential versions of which can be found in **Annex 1** to this consultation paper<sup>4</sup>.
8. Non-confidential versions of ComReg's correspondence relating to these letters, being its letters of 4 December 2012, 27 February 2013 and 9 April 2013, can also be found in **Annex 1** to this consultation paper.
9. Interested parties are hereby invited to provide their views and representations regarding the making of the amendment sought by H3GI on foot of H3GI's Licence Amendment Request.
10. Without prejudice to the generality of that invitation, interested parties might provide views and representations having regard, amongst other things, to:
  - ComReg's legal framework and statutory functions, objectives and duties under Irish and EU Law - a general guide to which, as it relates to the area of radio spectrum and the licensing of spectrum rights of use, was set out in ComReg Document 13/05<sup>5</sup> ; and
  - the Wireless Telegraphy (Liberalised Use and Preparatory Licences in the 800 MHz, 900 MHz and 1800 MHz Bands) Regulations 2012 (S.I. 251 of 2012)<sup>6</sup>.

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<sup>4</sup> ComReg is currently resolving issues regarding the confidentiality of this correspondence with H3GI in accordance with its Guidelines for the Treatment of Confidential Information (Document 05/24) and may publish revised versions of this correspondence in due course.

<sup>5</sup> Available at: [http://www.comreg.ie/\\_fileupload/publications/ComReg1305.pdf](http://www.comreg.ie/_fileupload/publications/ComReg1305.pdf)

<sup>6</sup> Available at: <http://www.irishstatutebook.ie/pdf/2012/en.si.2012.0251.pdf>

## 4 Next Steps

11. Responses to this consultation paper must be submitted within a four-week period from today's date, ending on **06 June 2013**.
12. In accordance with ComReg's usual practices, non-confidential versions of responses (and other substantive material) received will be published by ComReg.
13. ComReg will seek to publish these responses as soon as practicable following the close of the consultation period.
14. All 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.
15. It is sometimes necessary for respondents to provide confidential information in their submissions. Confidential information must be clearly identified as such and reasons provided as to why such information is considered to be confidential. ComReg will publish all of the responses it receives to this consultation, subject to its Guidelines on the Treatment of Confidential Information<sup>7</sup>.
16. All responses to this consultation paper should be clearly marked "Submission re: **ComReg 13/43**" and sent by post or e-mail to arrive on or before 5pm on **06 June 2013** to:

Ms. Sinead Devey  
Commission for Communications Regulation  
Irish Life Centre  
Abbey Street  
Freepost  
Dublin 1  
Ireland

Tel: +353-1-804-9600

E-mail: [sinead.devey@comreg.ie](mailto:sinead.devey@comreg.ie)

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<sup>7</sup> See Document 05/24 at: <http://www.comreg.ie/fileupload/publications/ComReg0524.pdf>

## **Annex 1: Relevant Correspondence Relating to H3GI's Licence Amendment Request.**

A 1.1 Correspondence relating to H3GI's Licence Amendment Request (from 28 November 2012 to 8 May 2013):

1. H3GI: letter to ComReg - "MULTI-BAND SPECTRUM AWARD" (dated 28 November 2012)<sup>8</sup>
2. ComReg: letter to H3GI - "MBSA process" (dated 4 December 2012)<sup>9</sup>
3. H3GI: letter to ComReg - "900 AND 1800 MHZ LIBERALISED USE LICENCE – APPLICATION FOR AMMENDMENT" (dated 18 January 2013)
4. ComReg: letter to H3GI - "900 and 1800 MHz Liberalised Use Licence – Application for Amendment " (dated 27 February 2013)
5. H3GI: letter to ComReg - "900 AND 1800 MHZ LIBERALISED USE LICENCE – APPLICATION FOR AMMENDMENT" (dated 26 March 2013)
6. ComReg: letter to H3GI - "900 and 1800 MHz Liberalised Use Licence – Application for Amendment " (dated 9 April 2013)
7. H3GI: letter to ComReg - "900 AND 1800 MHZ LIBERALISED USE LICENCE – APPLICATION FOR AMMENDMENT" (dated 26 April 2013)
8. ComReg: Email to H3GI, "Confidentiality of correspondence" (email dated 29 April 2013)
9. H3GI: reply to ComReg, "900 AND 1800 MHZ LIBERALISED USE LICENCE – APPLICATION FOR AMMENDMENT" (letter dated 2 May 2013).

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<sup>8</sup> Letter previously published in Document 13/29.

<sup>9</sup> Letter previously published in Document 13/29.



10. ComReg: letter to H3GI, "900 MHz and 1800 MHz Liberalised Use Licence – Application for Amendment" (letter dated 08 May 2013)

1. H3GI: letter to ComReg - "MULTI-BAND SPECTRUM AWARD" (dated 28 November 2012)<sup>10</sup>

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<sup>10</sup> Letter previously published in Document 13/29

Hutchison 3G Ireland Limited  
Registered office

3<sup>rd</sup> Floor  
One Clarendon Row,  
Dublin 2, Ireland

Registered Number: 316982  
Place of Registration: Republic of Ireland



Dr Samuel Ritchie  
Commission for Communications Regulation  
Abbey Court  
Irish Life Centre  
Lower Abbey Street  
Dublin 1  
**CONFIDENTIAL**  
**BY COURIER AND EMAIL: [samuel.ritchie@comreg.ie](mailto:samuel.ritchie@comreg.ie)**

28 November 2012

Dear Dr Ritchie

### **MULTI-BAND SPECTRUM AWARD**

I refer to: (i) the results of the assignment round published on the EAS on Wednesday 14 November 2012; and (ii) your letter to David Hennessy, Chief Technical Officer, of Hutchison 3G Ireland Limited ("H3GI") dated 20 November 2012 (the "Letter").

In relation to the 1800 MHz band:

1. H3GI was awarded blocks D and E in Time Slice 1 and blocks I – L in Time Slice 2;
2. O2 was awarded blocks A – C in Time Slice 1 and Time Slice 2;
3. Vodafone was awarded blocks F - H in Time Slice 1 and blocks D – H in Time Slice 2;
4. Meteor was awarded blocks L – O in Time Slice 1 and blocks M – O in Time Slice 2; and
5. Blocks I – K in Time Slice 1 were unassigned.

Each of the winning bidders apart from H3GI has continuous spectrum across Time Slices 1 and 2.

At page 2 of the Letter, you state:

*"In the IM (see for example paragraph 4.211) ComReg stated that any unallocated Lots would be located contiguously in the presentation of assignment options in the Assignment Round. Winning Bidders will note that there are three unallocated Lots in a contiguous block (Lots I, J, K) in Time Slice 1 in the 1800 MHz band. Noting ComReg's position in Decision D04/12 that unsold lots will not be allocated for a reasonable period after the process, and, in any event, will not be allocated for a period of at least 1 year, ComReg considers that it would be appropriate, in terms of ensuring the effective management and encouraging the efficient use of radio frequencies and in the circumstances of avoiding the requirement for Transition Activities between Time Slice 1 and Time Slice 2, to permit assignment outcomes where the location of one or more of these unallocated Lots would vary from its current location in Lots I, J or K. Winning Bidders should therefore consider the above when considering and suggesting alternative assignment outcomes in the Negotiation phase[.]"*

Directors  
Robert Finnegan: Irish  
Canning Fok: British  
Frank Sixt: Canadian  
Robert Eckert: U.S.A  
Edmond Ho: British  
David Dyson: British  
Richard Woodward: British

A Hutchison Whampoa Company

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Dublin 2, Ireland

Registered Number: 316982  
Place of Registration: Republic of Ireland



H3GI hereby applies to ComReg for blocks J and K in Time Slice 1 (instead of blocks D and E) thus providing H3GI with continuous spectrum across Time Slices 1 and 2 in the 1800 MHz band.

H3GI believes that ComReg should grant this application for, *inter alia*, the following reasons:

1. The reasons set out in the above quote.
2. It would avoid wasteful allocation of resources. As a result of our network sharing agreement with Vodafone and the proposed assignment, H3GI will have to invest in 'combiners' that will be redundant in two years time.
3. It would not prejudicially affect any other interested party. There is a high degree of likelihood that no new market entrant would invest in the unassigned blocks for a period of approximately eighteen months.
4. It would be in accordance with *inter alia* the following statutory functions and objectives of ComReg:
  - a) The promotion of users' interests (section 12 (1)(a) of the Communications Regulation Act, 2002, as amended (the "Act"));
  - b) The efficient management and use of spectrum (section 12 (1)(b) of the Act); and
  - c) The promotion of efficient investment and innovation in new and enhanced infrastructures (regulation 16 (2)(d) of the European Communities (Electronic Communications Networks and Services)(Framework) Regulations, 2011 (the "Framework Regulations").

In the event that another winning bidder(s) makes a conflicting application or agreement, H3GI hereby requests ComReg to: (i) notify it of the nature of this application or agreement; and (ii) provide it with an opportunity to make representations to ComReg in advance of any decision by ComReg.

Yours sincerely

  
**DAVID HENNESSY**  
Chief Technical Officer

Directors  
Robert Finnegan: Irish  
Canning Fok: British  
Frank Sixt: Canadian  
Robert Eckert: U.S.A  
Edmond Ho: British  
David Dyson: British  
Richard Woodward: British

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2. ComReg: letter to H3GI - "MBSA process" (dated 4 December 2012)<sup>11</sup>

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<sup>11</sup> Letter previously published in Document 13/29



**By Hand**

4 December 2012

David Hennessy  
Chief Technical Officer  
Hutchison 3G Ireland Limited  
3<sup>rd</sup> Floor  
One Clarendon Row  
Dublin 2

### **MBSA process**

Dear Mr. Hennessy

I refer to the above matter and to your letter of 28 November 2012.

As you will be aware, the recently concluded Negotiation Phase provided Winning Bidders with the opportunity to agree an alternative configuration of assignments and to notify ComReg of a re-organisation of a band (see paragraph 3.140 of the Information Memorandum ('IM')). ComReg notes that H3GI's proposal is of a unilateral nature and does not therefore fall within the scope of agreements envisaged under the Negotiation Phase.

As you will also be aware, if Winning Bidders do not agree and notify ComReg of a re-organisation of a particular band, ComReg will rely on the results of the Assignment Round (paragraph 3.142 of the IM). As ComReg did not receive any notification of an agreement to re-organise any particular band further to the Negotiation Phase and, in accordance with the IM, ComReg will therefore provide spectrum rights for the frequency assignments as determined by the Assignment Round in the Notification and Grant stage of the MBSA process.

Notwithstanding the above, ComReg would bring to your attention the provisions of Regulation 7(3) of the Wireless Telegraphy (Liberalised Use and Preparatory Licences in the 800 MHz, 900 MHz and 1800 MHz bands) Regulations, 2012 which makes it clear that ComReg can, upon request, amend a Licence once granted where it considers it appropriate to do so. For the avoidance of doubt, ComReg would assess any such request in accordance with the Authorisation Regulations.

Yours Sincerely

Dr. Samuel Ritchie

3. H3GI: letter to ComReg - "900 AND 1800 MHZ LIBERALISED USE LICENCE – APPLICATION FOR AMMENDMENT" (dated 18 January 2013)

Hutchison 3G Ireland Limited  
Registered office

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Registered Number: 316982  
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Dr Samuel Ritchie  
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**BY COURIER AND EMAIL:** [samuel.ritchie@comreg.ie](mailto:samuel.ritchie@comreg.ie)

18 January 2013

~~CONTAINS CONFIDENTIAL INFORMATION~~

Dear Dr Ritchie

### **900 AND 1800 MHZ LIBERALISED USE LICENCE – APPLICATION FOR AMENDMENT**

I refer to: (i) the results of the assignment round published on the EAS on Wednesday 14 November 2012; (ii) your letter to David Hennessy, Chief Technical Officer, of Hutchison 3G Ireland Limited (“H3GI”) dated 20 November 2012 (the “November Letter”); (iii) your letter to David Hennessy dated 4 December 2012 (the “December Letter”); (iv) the application by H3GI to ComReg for a 900 and 1800 MHz liberalised use licence of even date (“H3GI’s 900 and 1800 MHz Liberalised Use Licence Application”); and (v) regulation 7(3) of the Wireless Telegraphy (Liberalised Use and Preparatory Licences in the 800 MHz, 900 MHz and 1800 MHz Bands) Regulations 2012 (the “Regulations”).

In relation to the 1800 MHz band:

1. H3GI was awarded blocks D and E in Time Slice 1 and blocks I – L in Time Slice 2;
2. O2 was awarded blocks A – C in Time Slice 1 and Time Slice 2;
3. Vodafone was awarded blocks F - H in Time Slice 1 and blocks D – H in Time Slice 2;
4. Meteor was awarded blocks L – O in Time Slice 1 and blocks M – O in Time Slice 2; and
5. Blocks I – K in Time Slice 1 were unassigned.

Each of the winning bidders apart from H3GI has continuous spectrum across Time Slices 1 and 2.

At page 2 of the November Letter, ComReg states:

*“In the IM (see for example paragraph 4.211) ComReg stated that any unallocated Lots would be located contiguously in the presentation of assignment options in the Assignment Round. Winning Bidders will note that there are three unallocated Lots in a contiguous block (Lots I, J, K) in Time Slice 1 in the 1800 MHz band. Noting ComReg’s position in Decision D04/12 that unsold lots will not be allocated for a reasonable period after the process, and, in any event, will not be allocated for a period of at least 1 year, ComReg considers that it would be*

Directors  
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Canning Fok: British  
Frank Sixt: Canadian  
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Edmond Ho: British  
David Dyson: British  
Richard Woodward: British

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*appropriate, in terms of ensuring the effective management and encouraging the efficient use of radio frequencies and in the circumstances of avoiding the requirement for Transition Activities between Time Slice 1 and Time Slice 2, to permit assignment outcomes where the location of one o[r] more of these unallocated Lots would vary from its current location in Lots I, J or K. Winning Bidders should therefore consider the above when considering and suggesting alternative assignment outcomes in the Negotiation phase[.]”*

In the December Letter, ComReg states:

*“... ComReg would bring to your attention the provisions of Regulation 7(3) of the Wireless Telegraphy (Liberalised Use and Preparatory Licences in the 800 MHz, 900 MHz and 1800 MHz bands) Regulations, 2012 which makes it clear that ComReg can, upon request, amend a Licence once granted where it considers it appropriate to do so. For the avoidance of doubt, ComReg would assess any such request in accordance with the Authorisation Regulations.”*

Regulation 7 (3) of the Regulations provides:

*“Without prejudice to paragraph (2), at the request of the Licensee, the Commission may, if it considers it appropriate to do so, amend a Licence by adding to, deleting from, or altering the radio frequencies specified in the Licence, on which the Apparatus may be used. Any such amendment shall be effected in writing from the Commission specifying the amendment and given to the Licensee or sent to the Licensee at the address specified in the Licence or notified to the Commission pursuant to the Licence and these Regulations.”*

In accordance with regulation 7(3) of the Regulations, H3GI hereby requests ComReg to amend H3GI's 900 and 1800 MHz liberalised use licence once granted by substituting blocks I and J, or J and K for blocks D and E in the 1800 MHz band and Time Slice 1.

H3GI believes that ComReg should grant this application for, *inter alia*, the following reasons:

1. The reasons set out in the above quote. The rationale for the contiguity rule in respect of unallocated spectrum (the “Contiguity Rule”) no longer exists. The Contiguity Rule was intended to ensure the attractiveness of unallocated spectrum. However, given that blocks I – K will not be allocated for at least a year in accordance with ComReg Decision D04/12 and are awarded to H3GI in respect of Time Slice 2 ie any prospective licence would only be for a period of approximately twelve months, it is highly unlikely that an interested party would apply for these blocks. As ComReg states: *“it would be appropriate, in terms of ensuring the effective management and encouraging the efficient use of radio frequencies and in the circumstances of avoiding the requirement for Transition Activities between Time Slice 1 and Time Slice 2, to permit assignment outcomes where the location of one o[r] more of these unallocated Lots would vary from its current location in Lots I, J or K.”*
2. Awarding blocks I and J, or J and K to H3GI would avoid the requirement for transitional activities and the potential delay to availability of spectrum rights between Time Slice 1 and Time Slice 2. It would further avoid the wasteful allocation of resources. As a result of our network sharing agreement with Vodafone and the currently proposed award, H3GI will have to invest in ‘combiners’ that will be redundant in two years time. H3GI

estimates that the wasteful allocation of resources will amount to [REDACTED].

3. In the assignment round, Vodafone and Meteor bid more than O2 to ensure that they would not have to significantly re-locate in advance of Time Slice 1. Vodafone is currently and approximately licensed in blocks F – H. It bid for and secured blocks F – H in Time Slice 1. Meteor is currently licensed in blocks L – N. It bid for and secured blocks L – O in Time Slice 1. As a result of this and the contiguity rule in respect of winners winning the same amount of spectrum in both time slices<sup>1</sup>, O2 was awarded blocks A – C in both time slices. If the Contiguity Rule had not applied, ComReg would have had a discretion as to whether it awarded H3GI blocks D – E, I and J, or J and K. H3GI submits that ComReg should now exercise that discretion in its favour.
4. If awarded blocks I and J, or J and K, H3GI plans to provide advanced data services later this year, with all the attendant benefits for consumers and businesses that these services bring. [REDACTED]
5. It would be in accordance with ComReg's decision to retain discretion regarding how it might treat any unsold spectrum lots "*depending on the factual circumstances arising from the award process, save for the decision that unsold lots will not be allocated for a reasonable period after the process, and, in any event, will not be allocated for a period of at least 1 year*".<sup>2</sup>
6. It would also be in accordance with *inter alia* the following statutory functions and objectives of ComReg:
  - a) The promotion of users' interests (section 12 (1)(a) of the Communications Regulation Act, 2002, as amended (the "Act"));
  - b) The efficient management and use of spectrum (section 12 (1)(b) of the Act); and
  - c) The promotion of efficient investment and innovation in new and enhanced infrastructures (regulation 16 (2)(d) of the European Communities (Electronic Communications Networks and Services)(Framework) Regulations, 2011 (the "Framework Regulations"))).

H3GI hereby requests a rebate from ComReg in respect of the 1800 MHz element of the first SUF for the period from 1 February 2013 to a final decision regarding H3GI's request to ComReg for amendment of its 900 and 1800 MHz liberalised use licence once granted. Such a rebate is consistent with, *inter alia*, the rebate of fees in respect of delayed commencement provided for in ComReg Document No. 12/52, "*Multi-band Spectrum Release –*

<sup>1</sup> At page 314 of ComReg Doc. No. 12/25, "*Multi-band Spectrum Release, Release of the 800 MHz, 900 MHz and 1800 MHz Radio Spectrum Bands – Response to Consultation and Decision*".

<sup>2</sup> At page 316 of ComReg Doc. No. 12/25, "*Multi-band Spectrum Release, Release of the 800 MHz, 900 MHz and 1800 MHz Radio Spectrum Bands – Response to Consultation and Decision*".

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*Information Memorandum*” (the “Information Memorandum”). H3GI's request for amendment arises from, *inter alia*, the rationale for the Contiguity Rule no longer applying.

Yours sincerely

A handwritten signature in blue ink that reads 'David Hennessy'.

**DAVID HENNESSY**  
Chief Technical Officer

Copy: Ms Tara Kavanagh, Licensing Manager, ComReg ([tara.kavanagh@comreg.ie](mailto:tara.kavanagh@comreg.ie))

Directors  
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4. ComReg: letter to H3GI - "900 and 1800 MHz Liberalised Use Licence – Application for Amendment " (dated 27 February 2013)



**By Email and Post**

27 February 2013

Mr David Hennessy  
Chief Technical Officer  
Hutchison 3G Ireland Limited  
3rd Floor  
One Clarendon Row  
Dublin 2

**900 MHz and 1800 MHz Liberalised Use Licence - Application for Amendment**

Dear Mr Hennessy,

I refer to your letter of 18 January, 2013, and to related correspondence concerning the request of Hutchison 3G Ireland Limited (H3GI) for an amendment to its Liberalised Use Licence by the substitution of blocks I and J, or J and K, for blocks D and E in the 1800 MHz band in Time Slice 1 (the "Licence Amendment Request").

ComReg has not formed a final view on that request, but requests a re-submission of your Licence Amendment Request in the circumstances described in this letter.

The MBSA process has concluded, and has yielded particular frequency assignments, as provided for in the Information Memorandum (Document 12/52, as amended), and agreed to by H3GI.

Accordingly, from that starting point, H3GI's Licence Amendment Request falls to be considered in the normal way, as a licence-amendment request by a licensee, pursuant to the provisions of the Wireless Telegraphy (Liberalised Use and Preparatory Licences in the 800 MHz, 900 MHz and 1800 MHz bands) Regulations, 2012 (the "2012 Regulations"), and in accordance with the Authorisation Regulations and with law generally.

This context is acknowledged by you in your letter of 18 January, where you refer to a request to amend the licence "...*once granted...*", and is also reflected in the reference, in my letter to Mark Hughes of 23 January, to ComReg addressing H3GI's Licence Amendment Request "...*following the issue of [its] Liberalised Use Licence.*"

Whilst you have, to a limited extent, sought to justify and rationalise the Licence Amendment Request in that particular context, ComReg would now ask you to do this squarely and in a focused way, in order that ComReg might properly consider it.

In that regard, I would be obliged if you could submit your request in that context, and if you could set out all facts, circumstances and representations of relevance to that context, as well as all submissions of law that H3GI feels would properly justify ComReg in acceding to H3GI's request.

In terms of the particular context, as you point out, Regulation 7(3) of the 2012 Regulations contemplates possible licence-amendment generally. Further, Regulation 15 of the Authorisation Regulations contemplates amendment by ComReg of rights of use for radio frequencies generally (but only, *inter alia*, in objectively-justified cases and in a proportionate manner).



Procedurally, Regulation 15 of the Authorisation Regulations contemplates that ComReg would give notice of any intention it might form to make the amendment, and that it would invite interested parties, including users and consumers, to make representations on any proposed amendment, to which it would then have to have regard in making its decision. That, of course, would entail ComReg engaging in some form of consultation process, and may involve the need for a regulatory impact assessment and other relevant analyses. Such consultation may also be necessary, given the potential significance and impact of the decision with regard to licence-amendment which H3GI is asking ComReg to make.

Finally, without having formed any particular view on these possible questions, ComReg would nevertheless also ask you to address in your re-submitted request, the possible questions of discrimination, competition-distortion, proportionality and State Aid that might be raised in principle in relation to granting the request.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S. Ritchie', written in a cursive style.

Dr. Samuel Ritchie

5. H3GI: letter to ComReg - "900 AND 1800 MHZ LIBERALISED USE LICENCE – APPLICATION FOR AMMENDMENT" (dated 26 March 2013)

Hutchison 3G Ireland Limited  
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Place of Registration: Republic of Ireland



Dr Samuel Ritchie  
Commission for Communications Regulation  
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Lower Abbey Street  
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**BY COURIER AND EMAIL:** [samuel.ritchie@comreg.ie](mailto:samuel.ritchie@comreg.ie)

26 March 2013

Dear Dr Ritchie

### 900 AND 1800 MHZ LIBERALISED USE LICENCE – APPLICATION FOR AMENDMENT

I refer to: (i) the 900 and 1800 MHz liberalised use licence granted by ComReg to Hutchison 3G Ireland Limited (“Three”) on 31 January 2013; and (ii) regulation 7(3) of the Wireless Telegraphy (Liberalised Use and Preparatory Licences in the 800 MHz, 900 MHz and 1800 MHz Bands) Regulations, 2012 (the “Regulations”). Regulation 7 (3) of the Regulations provides: *“Without prejudice to paragraph (2), at the request of the Licensee, the Commission may, if it considers it appropriate to do so, amend a Licence by adding to, deleting from, or altering the radio frequencies specified in the Licence, on which the Apparatus may be used. Any such amendment shall be effected in writing from the Commission specifying the amendment and given to the Licensee or sent to the Licensee at the address specified in the Licence or notified to the Commission pursuant to the Licence and these Regulations.”*

In accordance with regulation 7(3) of the Regulations, Three hereby requests ComReg to amend Three's 900 and 1800 MHz liberalised use licence by substituting blocks I and J, or J and K for blocks D and E in the 1800 MHz band and Time Slice 1. Three believes that ComReg should grant this application for, *inter alia*, the following reasons:

1. The efficient management and use of spectrum (section 12 (1)(b) of the Communications Regulation Act, 2002, as amended (the “Act”))

Blocks I – K in the 1800 MHz band are currently unassigned in Time Slice 1 and given that blocks I – K will not be allocated for at least a year (in accordance with ComReg Decision D04/12) and are awarded to Three in respect of Time Slice 2 ie any prospective licence would only be for a period of approximately twelve months, it is highly unlikely that an interested party would apply for these blocks. Awarding blocks I and J, or J and K to Three would avoid both the requirement for transition activities between Time Slice 1 and Time Slice 2 (including the administrative burden of determining and monitoring a transition plan), and the potential delay to availability of spectrum rights.

Directors  
Robert Finnegan: Irish  
Canning Fok: British  
Frank Sixt: Canadian  
Robert Eckert: U.S.A  
Edmond Ho: British  
David Dyson: British  
Richard Woodward: British

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Registered office

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Dublin 2, Ireland

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2. The promotion of competition and users' interests (section 12 (1)(a) of the Act)

As a result of our current assignment, [REDACTED]

3. The promotion of efficient investment and innovation in new and enhanced infrastructures (regulation 16 (2)(d) of the European Communities (Electronic Communications Networks and Services)(Framework) Regulations, 2011 (the "Framework Regulations"))).

Awarding blocks I and J, or J and K to Three would avoid the inefficient investment in redundant infrastructures referred to above.

Three is minded that its application may give rise to possible questions of discrimination, competition-distortion, proportionality and State Aid. However, Three does not believe that issues of discrimination, competition-distortion, proportionality or State Aid arise. The reason for this is that it is open to any other winning bidder to similarly apply to ComReg. It would then be for ComReg to determine in accordance with objective criteria which application would accord best with its statutory functions. In relation to proportionality, Three believes that amendment of its liberalised use licence as requested is proportionate to remedy the detriments identified above.

Yours sincerely

  
**DAVID HENNESSY**  
Chief Technical Officer

Copy: Ms Tara Kavanagh, Licensing Manager, ComReg ([tara.kavanagh@comreg.ie](mailto:tara.kavanagh@comreg.ie))

Directors  
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Edmond Ho: British  
David Dyson: British  
Richard Woodward: British

6. ComReg: letter to H3GI, "900 and 1800 MHz Liberalised Use Licence – Application for Amendment " (dated 9 April 2013)



**By Email and Post – ~~Confidential~~**

9 April 2013

Mr. David Hennessy  
Chief Technical Officer  
Hutchinson 3G Ireland Limited  
3<sup>rd</sup> Floor  
One Clarendon Row  
Dublin 2

**900 MHz and 1800 MHz Liberalised Use Licence – Application for Amendment**

Dear Mr Hennessy,

I refer to your letter of 26 March 2013, in which H3GI requests that ComReg amend its 900 and 1800 MHz Liberalised Use Licence by substituting blocks I and J, or J and K, for blocks D and E, in the 1800 MHz band, in Time Slice 1 (the “Licence Amendment Request”).

The Licence Amendment Request follows a similar request submitted by H3GI by letter dated 18 January 2013, to which ComReg responded on 27 February 2013, noting and requesting the following:

*“Whilst you have, to a limited extent, sought to justify and rationalise the Licence Amendment Request in that particular context, ComReg would now ask you to do this squarely and in a focused way, in order that ComReg might properly consider it.*

*In that regard, I would be obliged if you could re-submit your request in that context, and if you could set out all facts, circumstances and representations of relevance to that context, as well as all submissions of law that H3GI feels would properly justify ComReg in acceding to H3GI’s request.”*

Despite the above request, the Licence Amendment Request contained in your letter of 26 March is set out in substantially the same limited terms as in the letter of 18 January 2013. For example, H3GI has not provided any rationale [REDACTED]

Furthermore, ComReg’s letter of 27 February 2013 asked H3GI to address, in its Licence Amendment Request, “the possible questions of discrimination, competition-distortion, proportionality and State Aid that might be raised in principle in relation to granting the request.” However, in its Licence Amendment Request, H3GI merely states that such issues do not arise because “it is open to any other winning bidder to similarly apply to ComReg”. This statement only addresses H3GI’s right to make such a request and does not address the possible questions mentioned above that might be raised in principle in the context of granting the request.



Given the potential significance and impact of a decision to amend H3GI's licence, ComReg requires more detailed information and reasoning to assist it in properly considering the Licence Amendment Request. It is for H3GI to determine the nature of the material that it should provide in support of its Licence Amendment Request. However, ComReg would expect any such request to:

- include all facts, circumstances, points of law and representations of relevance that H3GI considers would properly justify ComReg acceding to the request;
- address the fact that other Winning Bidders bid for and paid an additional price for their MBSA frequency assignments (see ComReg Document 12/131) and that it was within H3GI's power to have avoided the situation in which it now finds itself. ComReg notes that (i) in the Assignment Round, H3GI opted to [REDACTED]  
[REDACTED]  
[REDACTED] and
- address any possible issues of discrimination, competition-distortion, proportionality and State Aid that might be raised in principle in relation to granting the request.

Having regard to the above, it would be inappropriate for ComReg to consider the commencement of a public consultation in relation to the Licence Amendment Request until such time as H3GI has provided ComReg with sufficient relevant information, as outlined above, to form a basis for such a consultation.

Yours sincerely,

Dr. Samuel Ritchie

7. H3GI: letter to ComReg - "900 AND 1800 MHZ LIBERALISED USE LICENCE – APPLICATION FOR AMMENDMENT" (dated 26 April 2013)

Hutchison 3G Ireland Limited  
Registered office

3<sup>rd</sup> Floor  
One Clarendon Row,  
Dublin 2, Ireland

Registered Number: 316982  
Place of Registration: Republic of Ireland



Three.ie

Dr Samuel Ritchie  
Commission for Communications Regulation  
Abbey Court  
Irish Life Centre  
Lower Abbey Street  
Dublin 1  
**BY COURIER AND EMAIL:** [samuel.ritchie@comreg.ie](mailto:samuel.ritchie@comreg.ie)

26 April 2013

[REDACTED]

Dear Dr Ritchie

### 900 AND 1800 MHZ LIBERALISED USE LICENCE – APPLICATION FOR AMENDMENT

I refer to your letter dated 9 April 2013. Hutchison 3G Ireland Limited ("Three") is happy to answer the specific matters raised by ComReg.

1. **The rationale** [REDACTED]

[REDACTED] As part of the Netshare project, Three and Vodafone are combining their networks and sharing site infrastructure. [REDACTED]

[REDACTED]. In order to do this, the signals from each operator must be combined. The cost of these combiners is [REDACTED]. [REDACTED] produces a figure of [REDACTED]. The cost of these combiners is high due to the fact that they are made specifically to combine signals that are adjacent to each other, which is the case for TS1 and TS2. The problem is that these combiners are manufactured for specific frequencies. Therefore, they will need to be replaced with new frequency specific combiners in TS2, due to the fact that we will have different frequencies in TS2. At this point, there is a cost of swapping out the combiners which will cost on average [REDACTED] per site. [REDACTED] produces a figure of [REDACTED], which gives a combined cost of [REDACTED]. In the event that Three is permitted to move frequencies, Three will be able to have the combiners manufactured to allow for the expansion from 10 to 20MHz and they will not need to be replaced.]

2. **The fact that other Winning Bidders bid for and paid an additional price for their MBSA frequency assignments (see ComReg Document 12/131) and that it was within H3GI's power to have avoided the situation in which it now finds itself. ComReg notes that (i) in the Assignment Round, H3GI opted to** [REDACTED]

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Three submits that this fact is not relevant. The rationale for the contiguity rule for unsold lots no longer exists and there are benefits (In terms of ComReg's statutory objectives) to be gained from granting application(s) for amendment of winning bidders' assignments. Without prejudice to this position and for the following reasons, Three submits that it did not have an effective opportunity to avoid the situation in which it now finds itself.

The relevant spectrum is split into 15 blocks:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O

In TS1 only combinations where Vodafone ("VF"), O2, Meteor, Three and the unsold lots are contiguous are considered valid. Hence, 5 groups of blocks must fit together to form the whole 15 blocks of 1800 spectrum:



Likewise in TS2, where there were no unsold lots, 4 groups of blocks must fit together:



There are only 8 possible solutions for Three in TS1 and 6 in TS2. This leads to only 8 combinations where Three win the same spectrum in TS1 as in TS2. In other words, for each possible solution in TS1, there is only 1 possible solution in TS2:

TS1	TS2
AB	A-D
DE	D-G
FG	D-G
GH	G-J
HI	G-J
JK	I-L
KL	I-L
NO	L-O

Making the assumption that in bidding differently in the assignment round [REDACTED]

TS1	TS2	[REDACTED]
DE	D-G	[REDACTED]
JK	I-L	[REDACTED]
KL	I-L	[REDACTED]

It is only the first case where all operators have the same lots in TS1 and TS2. As a result, the other operators were likely to bid considerable amounts for these combinations and make it prohibitively expensive for Three to win them in the auction. Given that Vodafone had 3 and 5 blocks in TS1 and TS2 compared to Three's 2 and 4 blocks, Three would have to bid a total amount greater than Vodafone to achieve this result and Three's cost would have been [REDACTED] greater per lot than Vodafone's. Finally, there was only one round in the assignment phase of the auction and limited information in respect of competitor's bids. In these circumstances, it would have been irrational for Three to incur such a liability. Three could not have reasonably predicted these circumstances when the auction rules were being drafted and as a result, applied for an amendment to the rules.

3. **All facts, circumstances, points of law and representations of relevance that H3GI considers would properly justify ComReg acceding to the request**

In the absence of any further specific requests for information from ComReg, Three believes that it has provided ComReg with all facts, circumstances, points of law and representations of relevance that Three considers would properly justify ComReg acceding to the request. As stated in our licence amendment request dated 26 March 2013, Three believes that ComReg should grant its application for, *inter alia*, the following reasons:

- a) The efficient management and use of spectrum (section 12 (1)(b) of the Communications Regulation Act, 2002, as amended (the "Act"))

Blocks I – K in the 1800 MHz band are currently unassigned in Time Slice 1 and given that blocks I – K will not be allocated for at least a year (in accordance with ComReg Decision D04/12) and are awarded to Three in respect of Time Slice 2 ie any prospective licence would only be for a period of approximately twelve months, it is highly unlikely that an interested party would apply for these blocks. Awarding blocks I and J, or J and K to Three would avoid both the requirement for transition activities between Time Slice 1 and Time Slice 2 (including the administrative burden of determining and monitoring a transition plan), and the potential delay to availability of spectrum rights.



- b) The promotion of competition and users' interests (section 12 (1)(a) of the Act)

As a result of our current assignment,



- c) The promotion of efficient investment and innovation in new and enhanced infrastructures (regulation 16 (2) (d) of the European Communities (Electronic Communications Networks and Services)(Framework) Regulations, 2011 (the "Framework Regulations"))).

Awarding blocks I and J, or J and K to Three would avoid the inefficient investment in redundant infrastructures referred to above.

**4. Possible issues of discrimination, competition-distortion, proportionality and State Aid that might be raised in principle in relation to granting the request**

In our licence amendment request dated 26 March 2013, Three stated: *"Three is minded that its application may give rise to possible questions of discrimination, competition-distortion, proportionality and State Aid. However, Three does not believe that issues of discrimination, competition-distortion, proportionality or State Aid arise. The reason for this is that it is open to any other winning bidder to similarly apply to ComReg. It would then be for ComReg to determine in accordance with objective criteria which application would accord best with its statutory functions. In relation to proportionality, Three believes that amendment of its liberalised use licence as requested is proportionate to remedy the detriments identified above".* In your letter, ComReg states: *"This statement only addresses H3GI's right to make such a request and does not address the possible questions mentioned above that might be raised in principle in the context of granting the request".* Three does agree with this statement. The rationale for the contiguity rule for unsold lots no longer exists. As a result, the winning bidders have an opportunity to apply for amendment of their assignments and ComReg can determinate those applications based on objective criteria. In the context of this equal opportunity, the amendment of Three's licence by ComReg would not confer any advantage on Three (that could not be similarly conferred on any of the winning bidders if they successfully applied to ComReg). As a result, issues of discrimination, competition-distortion and State Aid do not arise.

Hutchison 3G Ireland Limited  
Registered office

3<sup>rd</sup> Floor  
One Clarendon Row,  
Dublin 2, Ireland

Registered Number: 316982  
Place of Registration: Republic of Ireland



We look forward to the prompt consideration of our request.

Yours sincerely

**DAVID HENNESSY**  
Chief Technical Officer

Copy: Ms Tara Kavanagh, Licensing Manager, ComReg ([tara.kavanagh@comreg.ie](mailto:tara.kavanagh@comreg.ie))

Directors  
Robert Finnegan: Irish  
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Robert Eckert: U.S.A  
Edmond Ho: British  
David Dyson: British  
Richard Woodward: British

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8. ComReg: Email to H3GI, "Confidentiality of correspondence"  
(email dated 29 April 2013)

## Fiachra ODoherty

---

**From:** Fiachra ODoherty  
**Sent:** 29 April 2013 17:00  
**To:** 'Mark Hughes'  
**Cc:** Samuel Ritchie  
**Subject:** Confidentiality of correspondence

Dear Mark

I refer to H3GI's letters to ComReg dated 18 January, 26 March and 26 April in connection with H3GI's application for an amendment to its 900 and 1800 MHz liberalised use licence.

H3GI has identified various sections in these letters which it considers to be confidential in nature. I would be grateful if H3GI would provide reasons for its view in respect of each section of text considered by it to be confidential.

In addition, I note on page 2 of H3GI's letter of 26 April the inclusion of "[**Confidential:**]", indicating a section considered confidential by H3GI, but which has no related closed parenthesis. It is therefore not clear the extent of the subsequent text considered by H3GI to be confidential and ComReg would appreciate some clarity in this regard.

Further information on ComReg's treatment of confidential information is published in ComReg Document 05/24.

Best Regards,

**Fiachra O'Doherty**  
**Spectrum Engineer**

**Commission for Communications Regulation**

Abbey Court Irish Life Centre Lower Abbey Street Dublin 1 Ireland  
Telephone +353 1 804 9667  
Fax +353 1 804 9655  
Email [fiachra.odoherty@comreg.ie](mailto:fiachra.odoherty@comreg.ie)  
Website [www.comreg.ie](http://www.comreg.ie)

Visit our new consumer website at <http://www.askcomreg.ie>

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9. H3GI: reply to ComReg, "900 AND 1800 MHZ LIBERALISED USE LICENCE – APPLICATION FOR AMMENDMENT" (letter dated 2 May 2013)

Hutchison 3G Ireland Limited  
Registered office

3<sup>rd</sup> Floor  
One Clarendon Row,  
Dublin 2, Ireland

Registered Number: 316982  
Place of Registration: Republic of Ireland



Mr Fiachra O'Doherty, Spectrum Engineer  
Commission for Communications Regulation  
Abbey Court  
Irish Life Centre  
Lower Abbey Street  
Dublin 1

**BY COURIER AND EMAIL:** [fiachra.odoherty@comreg.ie](mailto:fiachra.odoherty@comreg.ie)

2 May 2013

Dear Mr O'Doherty

### 900 AND 1800 MHZ LIBERALISED USE LICENCE – APPLICATION FOR AMENDMENT

I refer to your email dated 29 April 2013. Hutchison 3G Ireland Limited ("Three") responds as follows:

1. **Letter from Mr David Hennessy, CTO, Three to Dr Samuel Ritchie, Manager Spectrum Operations, Commission for Communications Regulation ("ComReg") dated 18 January 2013 (the "Application for Amendment")**
  - a) In relation to the text marked confidential in point 2 on page 2/3 of the Application for Amendment, Three considers this information to be confidential because it relates to its cost base and disclosure of this information would harm Three's competitive position.
  - b) In relation to the text marked confidential in point 4 on page 3 of the Application for Amendment, Three considers this information to be confidential because it relates to [REDACTED] and disclosure of this information would harm Three's competitive position.
2. **Letter from Mr David Hennessy, CTO, Three to Dr Samuel Ritchie, Manager Spectrum Operations, ComReg dated 26 March 2013 (the "Revised Application for Amendment")**

In relation to the text marked confidential in point 2 on page 2 of the Revised Application for Amendment, Three considers this information to be confidential because it relates to [REDACTED] and its cost base, and disclosure of this information would harm Three's competitive position. Whilst this information contains information that is not marked confidential in previous correspondence, Three considers that disclosure of this information will result in the disclosure of the remaining information by virtue of the way in which the text is worded which would harm Three's competitive position for the reasons set out above.

Directors  
Robert Finnegan: Irish  
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3. **Letter from Mr David Hennessy, CTO, Three to Dr Samuel Ritchie, Manager Spectrum Operations, ComReg dated 26 April 2013 (the "Clarification Letter")**

- a) In relation to the text marked confidential in the first and second headings on page 1 of the Clarification Letter, Three considers this information to be confidential because it relates to its cost base and bidding history in the 800, 900 and 1800 MHz auction, and disclosure of this information would harm Three's competitive position. Three notes that this information was marked as confidential in the letter from Samuel Ritchie to David Hennessy dated 9 April 2013.
- b) In relation to the text marked confidential under the first heading on page 1 of the Clarification Letter, Three considers this information to be confidential because it relates to its future approach to network infrastructure, current operational conditions, cost base and disclosure of this information would harm Three's competitive position. Without prejudice to this position, Three considers that this text can be redacted as follows:

*"As part of the Netshare project, Three and Vodafone are combining their networks and sharing site infrastructure. [REDACTED]*

*[REDACTED] In order to do this, the signals from each operator must be combined. The cost of these combiners is*

*[REDACTED] produces a figure of [REDACTED]. The cost of these combiners is high due to the fact that they are made specifically to combine signals that are adjacent to each other, which is the case for TS1 and TS2. The problem is that these combiners are manufactured for specific frequencies. Therefore, they will need to be replaced with new frequency specific combiners in TS2, due to the fact that we will have different frequencies in TS2. At this point, there is a cost of swapping out the combiners which will cost on average [REDACTED] per site. [REDACTED] produces a figure of [REDACTED] which gives a combined cost of [REDACTED]. In the event that Three is permitted to move frequencies, Three will be able to have the combiners manufactured to allow for the expansion from 10 to 20MHz and they will not need to be replaced."*

- c) In relation to the text marked confidential under the second heading on pages 2 and 3 of the Clarification Letter (I attach a copy of this letter including the second parenthesis), Three considers this information to be confidential because it relates to its understanding of the 800, 900 and 1800 MHz auction rules and disclosure of this information would harm the competitive position of Three and the Three Group in future auctions. Without prejudice to this position, Three considers that this text can be redacted as follows:

*"The relevant spectrum is split into 15 blocks:*

Hutchison 3G Ireland Limited  
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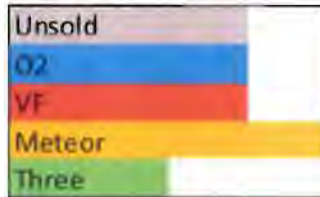
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1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O

*In TS1 only combinations where Vodafone ("VF"), O2, Meteor, Three and the unsold lots are contiguous are considered valid. Hence, 5 groups of blocks must fit together to form the whole 15 blocks of 1800 spectrum:*



*Likewise in TS2, where there were no unsold lots, 4 groups of blocks must fit together:*



*There are only 8 possible solutions for Three in TS1 and 6 in TS2. This leads to only 8 combinations where Three win the same spectrum in TS1 as in TS2. In other words, for each possible solution in TS1, there is only 1 possible solution in TS2:*

TS1	TS2
AB	A-D
DE	D-G
FG	D-G
GH	G-J
HI	G-J
JK	I-L
KL	I-L
NO	L-O

*Making the assumption that in bidding differently in the assignment round*

*the key combinations become:*

Directors  
Robert Finnegan: Irish  
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Robert Eckert: U.S.A  
Edmond Ho: British  
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[REDACTED]

TS1	TS2	[REDACTED]
DE	D-G	[REDACTED]
JK	I-L	[REDACTED]
KL	I-L	[REDACTED]

*It is only the first case where all operators have the same lots in TS1 and TS2. As a result, the other operators were likely to bid considerable amounts for these combinations and make it prohibitively expensive for Three to win them in the auction. Given that Vodafone had 3 and 5 blocks in TS1 and TS2 compared to Three's 2 and 4 blocks, Three would have to bid a total amount greater than Vodafone to achieve this result and Three's cost would have been [REDACTED] greater per lot than Vodafone's. Finally, there was only one round in the assignment phase of the auction and limited information in respect of competitor's bids. In these circumstances, it would have been irrational for Three to incur such a liability. Three could not have reasonably predicted these circumstances when the auction rules were being drafted and as a result, applied for an amendment to the rules."*

- d) In relation to the text marked confidential under the third heading on page 4 of the Clarification Letter, Three considers this information to be confidential because it relates to [REDACTED] and its cost base, and disclosure of this information would harm Three's competitive position. Whilst this information contains information that is not marked confidential in previous correspondence, Three considers that disclosure of this information will result in the disclosure of the remaining information by virtue of the way in which the text is worded which would harm Three's competitive position for the reasons set out above.

Yours sincerely

  
**MARK HUGHES**  
Head of Regulatory

**Copy:** Dr Samuel Ritchie, Manager Spectrum Operations, ComReg  
([samuel.ritchie@comreg.ie](mailto:samuel.ritchie@comreg.ie))

**Encl.**

Directors  
Robert Finnegan: Irish  
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Irish Life Centre  
Lower Abbey Street  
Dublin 1  
**BY COURIER AND EMAIL:** [samuel.ritchie@comreg.ie](mailto:samuel.ritchie@comreg.ie)

26 April 2013

[REDACTED]

Dear Dr Ritchie

**900 AND 1800 MHZ LIBERALISED USE LICENCE – APPLICATION FOR AMENDMENT**

I refer to your letter dated 9 April 2013. Hutchison 3G Ireland Limited (“Three”) is happy to answer the specific matters raised by ComReg.

1. **The rationale** [REDACTED]

[REDACTED]

2. **The fact that other Winning Bidders bid for and paid an additional price for their MBSA frequency assignments (see ComReg Document 12/131) and that it was within H3GI’s power to have avoided the situation in which it now finds itself. ComReg notes that (i) in the Assignment Round, H3GI opted to** [REDACTED]

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Richard Woodward: British

[REDACTED]

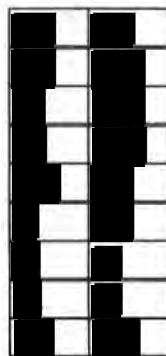
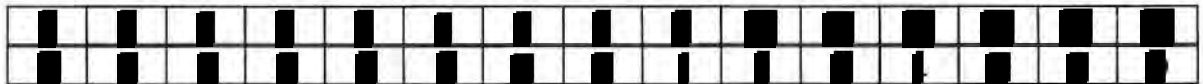
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Three submits that this fact is not relevant. The rationale for the contiguity rule for unsold lots no longer exists and there are benefits (In terms of ComReg's statutory objectives) to be gained from granting application(s) for amendment of winning bidders' assignments. Without prejudice to this position and for the following reasons, Three submits that it did not have an effective opportunity to avoid the situation in which it now finds itself.



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Edmond Ho: British  
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Richard Woodward: British



[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

Finally, there was only one round in the assignment phase of the auction and limited information in respect of competitor's bids. In these circumstances, it would have been irrational for Three to incur such a liability. Three could not have reasonably predicted these circumstances when the auction rules were being drafted and as a result, applied for an amendment to the rules.

3. **All facts, circumstances, points of law and representations of relevance that H3GI considers would properly justify ComReg acceding to the request**

In the absence of any further specific requests for information from ComReg, Three believes that it has provided ComReg with all facts, circumstances, points of law and representations of relevance that Three considers would properly justify ComReg acceding to the request. As stated in our licence amendment request dated 26 March 2013, Three believes that ComReg should grant its application for, *inter alia*, the following reasons:

- a) The efficient management and use of spectrum (section 12 (1)(b) of the Communications Regulation Act, 2002, as amended (the "Act"))

Blocks I – K in the 1800 MHz band are currently unassigned in Time Slice 1 and given that blocks I – K will not be allocated for at least a year (in accordance with ComReg Decision D04/12) and are awarded to Three in respect of Time Slice 2 ie any prospective licence would only be for a period of approximately twelve months, it is highly unlikely that an interested party would apply for these blocks. Awarding blocks I and J, or J and K to Three would avoid both the requirement for transition activities between Time Slice 1 and Time Slice 2 (including the administrative burden of determining and monitoring a transition plan), and the potential delay to availability of spectrum rights.

- b) The promotion of competition and users' interests (section 12 (1)(a) of the Act)

As a result of our current assignment, [REDACTED]

- c) The promotion of efficient investment and innovation in new and enhanced infrastructures (regulation 16 (2) (d) of the European Communities (Electronic Communications Networks and Services)(Framework) Regulations, 2011 (the "Framework Regulations"))).

Awarding blocks I and J, or J and K to Three would avoid the inefficient investment in redundant infrastructures referred to above.

**4. Possible issues of discrimination, competition-distortion, proportionality and State Aid that might be raised in principle in relation to granting the request**

In our licence amendment request dated 26 March 2013, Three stated: *"Three is minded that its application may give rise to possible questions of discrimination, competition-distortion, proportionality and State Aid. However, Three does not believe that issues of discrimination, competition-distortion, proportionality or State Aid arise. The reason for this is that it is open to any other winning bidder to similarly apply to ComReg. It would then be for ComReg to determine in accordance with objective criteria which application would accord best with its statutory functions. In relation to proportionality, Three believes that amendment of its liberalised use licence as requested is proportionate to remedy the detriments identified above".* In your letter, ComReg states: *"This statement only addresses H3G's right to make such a request and does not address the possible questions mentioned above that might be raised in principle in the context of granting the request".* Three does agree with this statement. The rationale for the contiguity rule for unsold lots no longer exists. As a result, the winning bidders have an opportunity to apply for amendment of their assignments and ComReg can determinate those applications based on objective criteria. In the context of this equal opportunity, the amendment of Three's licence by ComReg would not confer any advantage on Three (that could not be similarly conferred on any of the winning bidders if they successfully applied to ComReg). As a result, issues of discrimination, competition-distortion and State Aid do not arise.

Hutchison 3G Ireland Limited  
Registered office

3<sup>rd</sup> Floor  
One Clarendon Row,  
Dublin 2, Ireland

Registered Number: 316982  
Place of Registration: Republic of Ireland



We look forward to the prompt consideration of our request.

Yours sincerely

**DAVID HENNESSY**  
Chief Technical Officer

**Copy:** Ms Tara Kavanagh, Licensing Manager, ComReg ([tara.kavanagh@comreg.ie](mailto:tara.kavanagh@comreg.ie))

Directors  
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Canning Fok: British  
Frank Six: Canadian  
Robert Eckert: U.S.A  
Edmond Ho: British  
David Dyson: British  
Richard Woodward: British

A Hutchison Whampoa Company

10. ComReg: letter to H3GI, "900 MHz and 1800 MHz Liberalised Use Licence – Application for Amendment" (letter dated 08 May 2013)



**By Email and Post**

08 May 2013

Mr. David Hennessy  
Chief Technical Officer  
Hutchinson 3G Ireland Limited  
3<sup>rd</sup> Floor  
One Clarendon Row  
Dublin 2

**900 MHz and 1800 MHz Liberalised Use Licence – Application for Amendment**

Dear Mr Hennessy,

I refer your letter of 26 April concerning the request of Hutchison 3G Ireland Limited (H3GI) for an amendment to its Liberalised Use Licence (the “Amendment Request”).

ComReg continues to have reservations about the extent to which H3GI has substantively addressed the matters raised in ComReg’s letters of 27 February and 9 April 2013. However, in the interests of progressing and further informing its consideration of this matter, ComReg is nevertheless minded in the particular circumstances of this case now to publicly seek the views of interested parties on the matter.

In order to facilitate the provision of informed responses by such parties, the process will involve, amongst other things, the publication of non-confidential versions of correspondence relating to the Amendment Request.

In that regard, and further to Fiachra O’Doherty’s e-mail to Mark Hughes of 29 April, I acknowledge Mark Hughes’ letter of response dated 2 May. I should say, without prejudice to that response or ComReg’s own substantive response to it, that if H3GI were able to restrict its claims to ones that are necessary to protect information that can reasonably and properly be considered to be confidential, such an approach would, in our view, help to ensure that the maximum reasoning and evidence of possible material relevance to the Amendment Request was available to interested parties. This should in principle be to the benefit of all parties.

We will write to you separately on this issue in due course.

Yours sincerely,

Dr. Samuel Ritchie