



Commission for  
**Communications Regulation**

# **1800 MHz Spectrum Release**

Consultation on the release of 1800 MHz  
spectrum rights of use

**Reference:** ComReg 13/88

**Date:** 13 September 2013

## **Additional Information**

Document No: 13/88  
Date: 13 September 2013

### **Disclaimer**

This consultation is not a binding legal document and also does not contain legal, commercial, financial, technical or other advice. The Commission for Communications Regulation is not bound by it, nor does it necessarily set out the Commission's final or definitive position on particular matters. To the extent that there might be any inconsistency between the contents of this document and the due exercise by the Commission of its functions and powers, and the carrying out by it of its duties and the achievement of relevant objectives under law, such contents are without prejudice to the legal position of the Commission for Communications Regulation. Inappropriate reliance ought not therefore to be placed on the contents of this document.

# Contents

<b>Section</b>	<b>Page</b>
1 Introduction .....	6
2 Background.....	7
2.1 Multi-Band Spectrum Award Process.....	7
2.2 Regulatory Impact Assessment.....	10
2.3 Other issues: potential GSM 1800 MHz interim rights of use.....	10
3 ComReg’s Proposals for the Award Spectrum, 1800 MHz Licence Conditions and Spectrum Fees .....	12
3.1 Introduction .....	12
3.2 Specifics of Award Spectrum.....	13
3.3 1800 MHz Licence Conditions.....	16
3.4 Spectrum Fees.....	20
3.5 Transition Issues.....	25
4 The Auction Rules.....	27
4.1 General .....	27
4.2 Award Format.....	28
5 Draft Decision(s) .....	34
6 Submitting Comments and Next Steps.....	40
6.1 Submitting Comments.....	40
6.2 Next Steps.....	41
Annex 1: Legal Framework and Statutory Objectives.....	42
Annex 2: Draft Information Memorandum.....	60

# Table of Figures

## Section

## Page

Figure 1: Results of MBSA - 1800 MHz band in both Time Slices .....	8
---	---

# Table of Tables

<b>Section</b>	<b>Page</b>
Table 1: Details on proposed frequency assignments.....	14
Table 2: Upfront Payments and SUFs in the MBSA.....	24
Table 3: Proposed SAF and SUF for the Award Spectrum .....	25
Table 4: Frequency Specific and Frequency Generic bid options.....	31

## Chapter 1

# 1 Introduction

- 1.1 The purpose of this document is to set out the proposals of the Commission for Communications Regulation (ComReg) on the granting of 1800 MHz spectrum rights of use which are currently unassigned, and to give interested parties the opportunity to express their views on those proposals.
- 1.2 ComReg is publishing, alongside this document, a report from its economic and award design consultants, DotEcon, as Document 13/89.
- 1.3 In preparing this document, ComReg has been guided by its statutory functions, objectives and duties relevant to the management of Ireland's radio frequency spectrum (which are outlined in Annex 1).
- 1.4 This document is structured as follows:
  - **Chapter 2:** sets out the background to the potential release;
  - **Chapter 3:** outlines the proposed spectrum rights of use for award and licensing options;
  - **Chapter 4:** details the proposed Award Process;
  - **Chapter 5:** sets out ComReg's Draft Decision<sup>1</sup>;
  - **Chapter 6:** sets out the next steps;
  - **Annex 1:** Legal Framework; and
  - **Annex 2:** draft Information Memorandum.

---

<sup>1</sup> If, having considered responses to this consultation, ComReg proceeds with the proposals as contained in this document, ComReg would intend to make the decisions set out in the draft Decision document contained in Chapter 5, which reflect these proposals and would implement them.

## Chapter 2

# 2 Background

## 2.1 Multi-Band Spectrum Award Process

- 2.1 ComReg completed a multi-band spectrum award (MBSA) in 2012 which released spectrum rights of use in the 800 MHz, 900 MHz and 1800 MHz bands on a liberalised basis.
- 2.2 ComReg's Final Decision relating to the MBSA process, Decision D04/12, was published as part of Document 12/25 following extensive consultation with interested parties over a four year period.<sup>2</sup> That decision was supplemented by an Information Memorandum, Document 12/52,<sup>3</sup> which set out the specifics relating to the mechanics of the MBSA.
- 2.3 Due to pre-existing 900MHz and 1800MHz rights of use, the MBSA process included lots in two time slices:
- Time Slice 1: which commenced on 1 February 2013 and expires on 12 July 2015; and
  - Time Slice 2: which commences on 13 July 2015 and expires on 12 July 2030.
- 2.4 The provisional auction results were published on 15 November 2012, in Document 12/123. The MBSA process then entered the Negotiation Phase which allowed movement of the location of lots within bands through agreement between the Winning Bidders. The Negotiation Phase produced no change from the provisional results and the final auction results were published on 5 December 2012, in Document 12/131.
- 2.5 On the same date (5 December 2012) all Bidders were notified, by way of a letter addressed to the first Authorised Agent of each Bidder, that the auction had ended.<sup>4</sup>

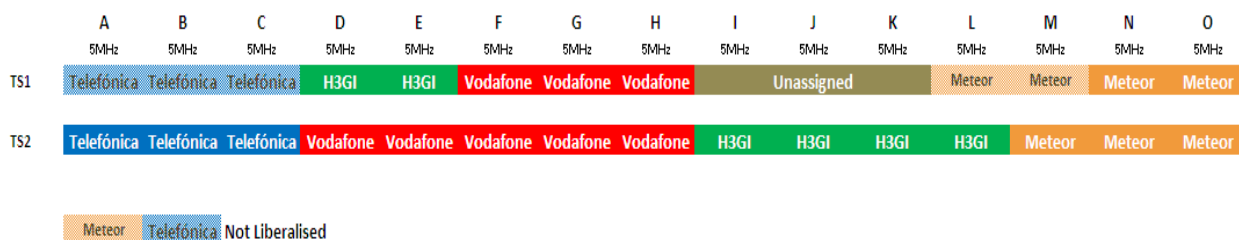
---

<sup>2</sup> See Documents 08/57, 09/14, 09/99, 10/71, 10/105, 11/60 and 12/25.

<sup>3</sup> Capitalised terms used in this Consultation document and not otherwise defined bear the meaning ascribed to them in Document 12/52.

<sup>4</sup> Letters to All Bidders, "End of the Assignment Stage and Auction", dated 5 December 2012, published as part of Documents 13/29a to f.

2.6 The auction resulted in the assignment of all lots available in Time Slice 2. In Time Slice 1, three lots were left unassigned in the 1800MHz band; being blocks I, J and K as shown in Figure 1.



**Figure 1: Results of MBSA - 1800 MHz band in both Time Slices<sup>5</sup>**

2.7 In Decision D04/12, published as part of Document 12/25, ComReg stated in relation to any lots that might remain unassigned in the MBSA that it would:

*“... retain its 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”*

2.8 The period of 1 year following the end of the process is approaching. Accordingly, ComReg now proposes to make available those lots unassigned in the MBSA process at the earliest possible opportunity by granting a limited number of rights of use of the spectrum concerned, and selecting those to whom such rights may be granted on the basis of objective, transparent, non-discriminatory selection criteria comprised within the auction-based selection procedure described in the body of this document, and particularised in the draft Information Memorandum contained in Annex 2.

2.9 Factors informing this proposal include that:

- it would accord with ComReg’s statutory objective of encouraging the efficient use and ensuring the effective management of spectrum by making available rights of use which could be used to provide services to consumers;

<sup>5</sup> The nomenclature in this figure is the nomenclature used for Lots in the MBSA Process.



- over the past year, the 1800 MHz band has become more prevalent for rolling out LTE services<sup>6</sup> and it is reasonable to believe that, notwithstanding the relatively short duration of the unassigned rights, Winning Bidders (and potentially new entrants) could find additional liberalised rights in the 1800 MHz band in the short term attractive<sup>7</sup>;
- making available liberalised rights of use in 1800 MHz band complies with Commission Decision 2009/766/EC on the harmonisation of the 900 MHz and 1800 MHz bands; and
- as noted by DotEcon in its report, the maximum duration of the unassigned rights is already relatively short and the underlying value of use will erode as the duration of these rights shorten, which, in ComReg's view, supports the earliest possible release of these unassigned rights of use.

2.10 The spectrum rights proposed for release consist of 2 × 15 MHz of 1800 MHz spectrum being blocks I, J and K as shown in Figure 1 above, with the duration of any assignment being for the remainder of Time Slice 1 only i.e. until 12 July 2015 (the 'Award Spectrum').

2.11 For the avoidance of doubt, it is proposed that all winners of the Award Spectrum will be granted Licences in respect of that spectrum issued pursuant to new regulations that ComReg proposes to make under the Wireless Telegraphy Act 1926 ("1800 MHz Licence").<sup>8</sup> Furthermore, it is anticipated that the new regulations and the 1800 MHz Licences issued thereunder will substantially reflect the Liberalised Use Licence Regulations and Liberalised Use Licences respectively, unless otherwise provided for herein.

---

<sup>6</sup> As outlined in the DotEcon report, according to the Global Mobile Suppliers Association ("GSA"), The 1800 MHz band has emerged as the main band for LTE deployments. 1800 MHz spectrum is now used in over 43% of commercially launched LTE 1800 networks in 45 countries with at least another 23 network deployments planned or in progress. The emergence of LTE-Advanced Carrier Aggregation technology may also increase the importance of 1800 MHz spectrum.

<sup>7</sup> For example, in respect of Liberalised Use Licensees, to provide additional capacity for "4G" services, which ComReg understands will begin to be provided to consumers towards the end of this year, including greater flexibility for transition when migrating customers to such new services/technologies.

<sup>8</sup> This is to enable participation by any new entrants wishing to acquire the Award Spectrum and to avoid significant amendment to and unduly complicating the existing Liberalised Use Regulations (S.I. 251 of 2012) which are due to remain in force far beyond the expiration of 1800 MHz Licences.

## 2.2 Regulatory Impact Assessment

- 2.12 Given the above factors, ComReg does not consider it necessary to conduct a regulatory impact assessment on this particular aspect of its proposed Award Process.
- 2.13 More generally also, given that the duration of the licences proposed is relatively short and that ComReg will therefore seek to complete the award process in a timely manner, ComReg has not in this case considered it necessary or desirable to carry out a formal, structured RIA, of the type it has carried out and published in previous consultations (including the MBSA process). This is in line with its Regulatory Impact Assessment (RIA) Guidelines and its published approach regarding the appropriateness of conducting or not conducting RIAs in particular cases.<sup>9</sup>
- 2.14 In particular, ComReg does not consider the carrying out of a RIA in this case to be required by the strict terms of Ministerial Policy Direction No.6 issued under section 13 of the 2002 Act, and notes that, in some cases, no regulatory obligations are proposed to be imposed<sup>10</sup>; that RIAs were recently conducted in the wider context of the MBSA process<sup>11</sup>; that there is a limited range of options to consider in this case; and that, as will appear from this document, relevant assessments and options have, in any event, been considered outside of the formal RIA framework.

## 2.3 Other issues: potential GSM 1800 MHz interim rights of use

- 2.15 ComReg notes that Telefónica has, as recently described in its submission to ComReg Document 13/43, urged ComReg to resolve the issues raised by the “gap” in its 1800 MHz rights of use – being from the expiration of its GSM 1800 MHz rights of use in December 2014 to the commencement of its liberalised 1800 MHz rights of use in July 2015.
- 2.16 ComReg appreciates that Telefónica may wish to have some visibility over this issue in the context of any participation by it in the proposed Award Process. However, ComReg observes that it is not able to set out

---

<sup>9</sup> See ComReg Documents 07/56a and 06/69.

<sup>10</sup> For example, where it is not proposed to include in the 1800 MHz Licences, licence conditions which are contained in Liberalised Use Licences.

<sup>11</sup> For example, in relation to the licence conditions in Liberalised Use Licences which are also now proposed to be included 1800 MHz Licences.

its position on this issue at this time due to a number of facts and outcomes over which it does not have visibility and/or control. In particular:

- it does not have visibility over whether Telefónica could objectively demonstrate that it would require GSM 1800 MHz interim rights in the relevant time period and, if so, the amount of such rights that it would require;
- in addition, assuming Telefónica successfully participates in the proposed Award Process, then the quantum of Award Spectrum won by it will have a bearing on its requirement for GSM 1800 MHz rights of use in the relevant time period<sup>12</sup>; and
- ComReg does not know the outcome of the proposed acquisition of Telefónica Ireland by Hutchison Whampoa.

2.17 Given this context, ComReg is currently of the view that it is not a position to reasonably assess this issue until after the conclusion of the proposed Award Process *and* the outcome of the merger control assessment of the proposed acquisition of Telefónica Ireland by Hutchison Whampoa. Notwithstanding this, ComReg expects to be in a position to make a decision on this matter significantly in advance of licence expiry.

---

<sup>12</sup> As any such rights won would bridge the temporal “gap” in its 1800 MHz holdings and could be used for the provision of GSM services.

## Chapter 3

# 3 ComReg's Proposals for the Award Spectrum, 1800 MHz Licence Conditions and Spectrum Fees

## 3.1 Introduction

- 3.1 This chapter sets out ComReg's proposals relating to the following key elements of the proposed Award Process:
- specifics relating to the Award Spectrum;
  - 1800 MHz Licence conditions; and
  - spectrum fees.
- 3.2 As already explained in Chapter 2, the Award Spectrum is spectrum which remained unassigned following the MBSA process.
- 3.3 While this proposed spectrum release process is a stand-alone process, separate from the MBSA process, ComReg considers that a number of the features of that process, which were consulted upon extensively and which were ultimately successful in facilitating the appropriate release of spectrum rights under that process, may be appropriate for inclusion in the proposed Award Process. In addition, ComReg notes that:
- amongst the parties likely to participate in the proposed Award Process (i.e. Liberalised Use Licensees) are already familiar with the mechanics of the MBSA process and the licence conditions attached to rights of use granted thereunder; and
  - there are existing licensees in the 1800MHz band with rights of use granted under the terms and conditions of the MBSA process, which will run concurrently with any rights of use granted as a result of the proposed Award Process.
- 3.4 Noting the above (but not limiting its consideration in any way in that regard, and, in particular, considering these to be objectively justified, proportionate and non-discriminatory generally), as will be seen from the following sections, ComReg has proposed the inclusion in 1800 MHz

Licences of most of the licence conditions that are included in Liberalised Use Licences. ComReg has also incorporated many of the features of the MBSA process into the proposed Award Process while at the same time aiming to simplify the process where appropriate which is reflective of the prevailing circumstances of this award. ComReg has also provided reasoning where it considers that some features of the MBSA process would not be appropriate.

## **3.2 Specifics of Award Spectrum**

### **3.2.1 Appropriate Lot Size for Award Spectrum**

- 3.5 As previously discussed, the Award Spectrum was made available during the MBSA process as three 5 MHz paired blocks (or “Lots”) which remained unassigned in Time Slice 1.
- 3.6 ComReg firstly observes that the Award Spectrum could be assigned in one of three ways:
- one lot of 2 × 15 MHz;
  - one 2 × 5 MHz Lot and one 2 × 10 MHz lot; or
  - three 2 × 5 MHz Lots.
- 3.7 ComReg notes and agrees with the following observations made by DotEcon in Section 3.1 of its report on this issue:
- that Lots of 2 × 5 MHz lots are considered to be the correct size ‘building blocks’ from which bidders can build spectrum packages;
  - that each of the existing mobile operators already holds multiple 2 × 5 MHz Lots both in the 1800 MHz band and, specifically, in Time Slice 1; and
  - that packaging the Award Spectrum in three 2 × 5 MHz blocks offers more options for award. In particular, the smaller blocks provide greater flexibility for any interested parties to tailor the size of a licence to their particular needs while, at the same time, making it possible to accommodate more users within the available spectrum, than under the other two packaging options.
- 3.8 ComReg further notes that:

- there was general support from interested parties in the MBSA process for a block size of 2 x 5 MHz<sup>13</sup>; and
- the 1800 MHz band is harmonised throughout Europe for the provision of electronic communications services. In that regard, EC Decision 2011/251/EU<sup>14</sup> specifies technologies which can be deployed in the band and that a minimum spectrum block size of 2 x 5 MHz is a suitable one for the provision of these services.

3.9 Given the above, ComReg considers it appropriate to use the same block size used in the MBSA process and proposes to make the Award Spectrum available as three paired Lots of 2 x 5 MHz.

3.10 Details on the frequency assignments associated with these proposed Lots are set out in Table 1 below.

Frequency Band	Lot Name <sup>15</sup>	Uplink / Downlink Frequency
1800 MHz	I	1750.0 - 1755.0 MHz / 1845.0 - 1850.0 MHz
1800 MHz	J	1755.0 - 1760.0 MHz / 1850.0 - 1855.0 MHz
1800 MHz	K	1760.0 - 1765.0 MHz / 1855.0 - 1860.0 MHz

**Table 1: Details on proposed frequency assignments**

### 3.2.2 Expiration of Existing Test and Trial Licence

3.11 Blocks I, J and K were vacated by Vodafone and Telefónica as part of the Transition Phase of the MBSA process. The Award Spectrum, as with the majority of unassigned spectrum in Ireland, was made available for use through ComReg’s Test and Trial licensing scheme. At present, there is one such Test and Trial licence active in the spectrum encompassed by the Award Spectrum (being 200 KHz in Lot I) which is used for transmission of very low power signals at two specific sites in Ireland. This licence will be active until 31 January 2014.

3.12 ComReg is of the view that, if licences in respect of the Award Spectrum were to come into effect prior to that date, the Test and Trial licence would not have a material effect on the use that could be made of block I. In any case,

<sup>13</sup> See Document 11/60A, Annex 5, paragraph A5.16.

<sup>14</sup> 2011/251/EU amends 2009/766/EC on the harmonisation of the 900 MHz and 1800 MHz frequency bands for terrestrial systems capable of providing pan-European electronic services in the Community.

<sup>15</sup> ComReg will retain the nomenclature used in the MBSA pertaining to these Lots to enable the unique identification of these lots, within the 1800 MHz band, following the grant of any spectrum rights of use following the proposed Award Process.

ComReg notes that the proposed commencement date of 1800 MHz Licences is 1 February 2014 (see below) which would be after the expiration of this Test and Trial Licence.

### **3.2.3 Duration of Award Spectrum and Corresponding 1800 MHz Licence**

- 3.13 As noted previously, the MBSA process resulted in the award of spectrum rights of use in two time slices:
- Time Slice 1: 1 February 2013 to 12 July 2015; and
  - Time Slice 2: 13 July 2015 to 12 July 2030.
- 3.14 ComReg notes that, in accordance with the provisions of the MBSA process, the earliest commencement date for any new rights of use of lots which remained unassigned following the MBSA process is 6 December 2013, being the expiration of one year following the date of notification of the completion of the MBSA to all Bidders<sup>16</sup>. Notwithstanding this, ComReg notes that, given the likely period required to complete this consultation process and to prepare for and carry out the proposed Award Process, it is unlikely that new rights of use for these unassigned lots could be granted until early 2014.
- 3.15 In that light, ComReg proposes that the commencement date of licences for the Award Spectrum would be 1 February 2014 because, amongst other things, this date:
- would appear to allow sufficient time to hold a competition and issue 1800 MHz licences subsequently,
  - would correspond with the calendar date of the commencement of Liberalised Use Licences and the payment of SUFs in relation to same; and
  - would also correspond with the expiry of the existing Test and Trial licence (as discussed above).
- 3.16 In the event that the availability of Award Spectrum to one or more Winning bidders is delayed, ComReg intends to provide refunds to the affected Winning Bidders in accordance with the procedures set out in Section 2.2.6 of the accompanying draft Information Memorandum.
- 3.17 As Blocks I, J and K are, in accordance with the results of the MBSA process, assigned to H3GI in Time Slice 2, any spectrum rights of use awarded as a

---

<sup>16</sup> Letters to All Bidders, "End of the Assignment Stage and Auction", dated 5 December 2012, published as part of ComReg Documents 13/29a-f.

result of the proposed Award Process (and corresponding 1800 MHz Licences) will expire on 12 July 2015.

### 3.2.4 Non-exclusive basis

3.18 ComReg proposes that all spectrum rights of use granted as a result of the proposed Award Process will be issued on a non-exclusive basis. ComReg notes that this is consistent with its approach to spectrum licensing generally and, in particular, with existing Liberalised Use Licences resulting from the MBSA process<sup>17</sup>.

## 3.3 1800 MHz Licence Conditions

3.19 As noted previously, while this proposed spectrum release is a stand-alone process separate from the MBSA process, a number of the features of that process, which were consulted upon extensively are considered by ComReg to be appropriate for inclusion in the proposed Award Process. In particular, ComReg notes that:

- the Award Spectrum was previously included for award in the MBSA; and
- there are existing licensees in the 1800 MHz band with rights of use granted under the terms and conditions of the MBSA process, which will run concurrently with any rights of use granted as a result of the proposed Award Process.

3.20 ComReg therefore proposes that, where appropriate, 1800 MHz Licences will be subject to similar conditions to those attached to existing Liberalised Use licences.<sup>18</sup>

3.21 In that regard, ComReg proposes that licence conditions pertaining to the following will apply to 1800 MHz Licences:

- Quality of Service (“QoS”) and associated compliance reporting conditions;
- compliance with rules to prevent spectrum hoarding that ComReg may specify in the future where such rules apply to Licences issued pursuant to the Award Process;
- assignment of rights and obligations of an 1800 MHz Licence; and

---

<sup>17</sup> In particular see section 5.8.1 of ComReg Document 12/25 and section 2.2.1 of ComReg Document 12/50.

<sup>18</sup> The licence conditions attaching to Liberalised Use Licences are set out in ComReg Document 12/25 and SI 251 of 2012.



- technical conditions (including conditions to be attached to terminal stations).
- 3.22 ComReg considers that these licence conditions should be applied consistently across 1800 MHz Licensees and Liberalised Use Licensees and go no further than is necessary to ensure that the Award Spectrum is used in a manner consistent with ComReg's statutory objectives and, in particular, the objective of encouraging efficient use and ensuring the effective management of radio frequencies. The above licence conditions are described in further detail in the draft Information Memorandum set out in Annex 2 of this document.
- 3.23 It is also proposed that the following licence conditions, which currently apply to Liberalised Use Licences, will either not apply to 1800 MHz Licences or will apply in a slightly amended form to that set out in Liberalised Use Licences:
- coverage and roll-out;
  - cessation of use of a Terrestrial System; and
  - provision of updated information for Part 2 and Part 3 of the Licence.
- 3.24 The reasoning for this position is set out below.

### **3.3.1 Coverage and Roll-out**

- 3.25 It is a condition of Liberalised Use Licences that the licensee must achieve and maintain a minimum coverage level of 70% of the population of Ireland in a timeframe dependent on whether or not the licensee is an Existing Mobile Network Operator at the time of the MBSA ("Existing MNO") or a new entrant to the Irish mobile market. As all Winning Bidders in the MBSA were Existing MNOs, the timeframe within which all licensees must meet the above coverage obligation is three years from the commencement date of their respective Liberalised Use Licence, i.e. 1 February 2016.
- 3.26 ComReg's principal justifications for attaching a coverage obligation to Liberalised Use Licences were:
- to ensure the efficient use of spectrum by ensuring that the spectrum is used to deploy services to a wider geographic range than may otherwise be the case<sup>19</sup>; and
  - to safeguard against 'cherry picking' and to ensure that consumers are provided with a reasonable level of coverage which is maintained.<sup>20</sup>

---

<sup>19</sup> See, for example, paragraph 5.63 of Document 11/60.

3.27 ComReg is satisfied that the coverage obligation attached to Liberalised Use Licences is well designed to achieve these objectives. However, given the very short duration of the Award Spectrum, ComReg does not believe that attaching a similar coverage obligation to 1800 MHz Licences would assist in the achievement of these objectives because:

- 1800 MHz Licences will expire on 12 July 2015 prior to the deadline for Liberalised Use Licensees to meet the minimum coverage obligation of 70% of the population of Ireland, i.e. 1 February 2016. Thus, if an identical coverage obligation was applied to 1800 MHz Licences as that which applies under existing Liberalised Use Licences, it would be unworkable;
- ComReg has not identified any benefit to attaching any form of lesser coverage obligation to 1800 MHz Licences. On the contrary, given the very short duration of same, ComReg is of the preliminary view that it would not be justified or proportionate to attach any type of material coverage obligation; and
- there is a not insignificant risk that imposing a material coverage obligation could deter potential bidders from participating in the proposed Award Process.

3.28 Accordingly, it would not, in ComReg's preliminary view, be objectively justified or proportionate to attach any type of coverage obligation to 1800 MHz Licences.

3.29 Moreover, given the relatively short duration of 1800 MHz Licences, Liberalised Use Licensees that do not win any Award Spectrum would not, in ComReg's preliminary view, be prejudiced by the absence of a coverage obligation.

### **3.3.2 Cessation of use of a Terrestrial system**

3.30 It is a condition of a Liberalised Use Licence that, where a Licensee intends to cease the use of a terrestrial system that is used to provide services under the Liberalised Use Licence (e.g. GSM), the licensee is obliged to:

- notify ComReg of this intention at least 6 months in advance of the proposed termination date; and
- use reasonable endeavours at all times to ensure that any adverse effects on users of a cessation of use of a terrestrial system are minimised.

---

<sup>20</sup> See, for example, paragraph 5.96 of Document 12/25.

3.31 ComReg notes that the introduction of this particular licence condition was motivated primarily by consumer protection concerns. However:

- given the fact that 1800 MHz Licences will be of only very short duration;
- given the fact that, unlike much of the 900 MHz and 1800 MHz spectrum rights auctioned in the MBSA, the Award Spectrum is currently fallow and there are therefore no legacy services to be protected; and
- in light of the consumer protection provisions already contained in the General Authorisation (to which a Licensee will be subject)<sup>21</sup>,

ComReg does not propose to attach a similar obligation to 1800 MHz Licences.

3.32 As noted above in relation to the coverage and roll-out obligation, given the relatively short duration of 1800 MHz Licences, Liberalised Use Licensees that do not win any spectrum in the proposed Award Process would not, in ComReg's preliminary view, be prejudiced by the absence of this particular obligation.

### **3.3.3 Provision of updated information for Part 2 and Part 3 of the 1800 MHz Licence**

3.33 Part 2 and Part 3 of the Liberalised Use Licence details the apparatus to which the licence relates and the location of this apparatus. It is a condition of this licence that the licensee, in each calendar year in which the licence is in force and in any event on or before the anniversary of the licence commencement date of each such year, submit updated information to ComReg in respect of Parts 2 and 3 of its Liberalised Use Licence.

3.34 Following the grant of Liberalised Use Licences, however, ComReg wrote to each licensee requesting that they provide the above information on a monthly basis (rather than on an annual basis) for the first year of their licence. All licensees have complied with this request.

3.35 For the purposes of consistency across licence types, ComReg proposes to attach a similar condition to 1800 MHz Licences but amended to reflect the fact that the relevant information is to be provided on a monthly basis for the first year of the licence.

3.36 This information would first be provided to ComReg in advance of the commencement date of the 1800 MHz Licence, and subsequently on a monthly basis for the first year of their licence. Given the short duration of the

---

<sup>21</sup> See, in particular, Conditions 18.2 to 18.5 of Document 03/81R4.

licence, it is not anticipated that this information would be required following the first 12 months of the 1800 MHz Licence.

- 3.37 ComReg requires this information for the purposes of managing the radio frequency spectrum and, given the scope and nature of the information sought, does not consider that it would impose a disproportionate burden on the prospective 1800 MHz Licensee(s).

## **3.4 Spectrum Fees**

### **3.4.1 MBSA Position**

- 3.38 A key consideration in deciding on the criteria and processes by which, and the conditions subject to which, to grant limited rights of use of spectrum to interested parties and in auction implementation thereafter, is determining whether a minimum price is required and, if so, at what level it should be set. A minimum price represents the lowest overall price subject to which ComReg will grant rights of use in relation to the spectrum concerned. In the MBSA process, ComReg's decision in relation to the minimum price and its structure included that:

- there would be a minimum price for liberalised rights of use to 800, 900 and 1800 MHz spectrum;
- a benchmark methodology would be used to inform ComReg's proposals in relation to the setting of a minimum price for such rights of use; and
- the minimum price would then be apportioned on a 50/50 basis between a minimum upfront Spectrum Access Fee (SAF) and ongoing annual Spectrum Usage Fees (SUF). That minimum SAF was referred to as the reserve price for the MBSA process. Further, ComReg proposed that the SUFs should be indexed to inflation based on the Consumer Price Index (CPI).

- 3.39 In respect of the level at which a minimum price should be set, ComReg previously identified in the MBSA process a number of the factors which should inform that decision, including that:

- the minimum price should not give rise to, or increase incentives for, collusive behaviour;
- the minimum price should not be set so high as to choke off demand;
- the minimum price should not be set so low as to incentivise participation by frivolous bidders;

- the minimum price should not reflect any social option value; and
- the administrative costs of running the award process should be recovered from the minimum price set.

### **3.4.2 Whether to include a Minimum Price in the Award Process**

- 3.40 ComReg has considered whether a minimum price (“Minimum Price”) is appropriate for the proposed Award Process and proposes to apply one.
- 3.41 Amongst the reasons for this is that the Award Spectrum comprises spectrum rights which were included in the recent MBSA process.
- 3.42 Further, the inclusion of the Minimum Price should, amongst other things, deter frivolous bidders, disincentivise and guard against uncompetitive and inefficient auction outcomes and encourage the optimal use of spectrum in the event that there is no excess demand in the proposed Award Process. Moreover, ComReg considers it appropriate that the Award Spectrum is not granted in a process that offers more favourable terms than equivalent rights of use granted under the recent MBSA process.

### **3.4.3 The Level of the Minimum Price in the Proposed Award Process**

- 3.43 In terms of the methodology used to calculate the level of the Minimum Price, ComReg notes DotEcon’s observations regarding the licensing of the Award Spectrum on terms that are consistent with those for Liberalised Use Licences and regarding the minimum Price being consistent with the approach used in the MBSA.
- 3.44 Minimum prices for liberalised 1800 MHz rights of use were previously calculated for the purposes of the MBSA process. These minimum prices were set by reference to a lower bound estimate of the market value of spectrum based on international benchmarks.
- 3.45 Given that the Award Spectrum comprises spectrum blocks which were included in the recent MBSA process and that there are therefore obvious links between the two processes, one option for ComReg to consider is the setting of a Minimum Price by reference to the prices achieved in the MBSA. As noted in DotEcon’s report, it is not possible to calculate a specific price for 1800 MHz spectrum won in Time Slice 1 in the MBSA given the nature of the package bidding. Furthermore it is questionable whether it would be appropriate to use the actual prices achieved as the aim of the minimum price

is to set a minimum level and not the actual price, as this is to be set via the spectrum competition itself.<sup>22</sup>

3.46 Noting the above, ComReg considers it appropriate to apply the minimum price methodology used in the MBSA process (adjusting for licence duration and inflation). This should ensure that rights of use of the Award Spectrum are not granted under more favourable conditions than equivalent rights of use granted under the recent MBSA. As in the MBSA, it is not possible to accurately or precisely test the level of overall demand for the Award Spectrum in advance of the proposed Award Process in order to determine whether there is a risk of choking off demand in the process by using a particular methodology for setting the Minimum Price which generates a Minimum Price at a particular level of magnitude. However, ComReg notes:

- that the methodology used in the MBSA provided a lower bound estimate of the market value of spectrum;
- that DotEcon considers that adjustments to these lower bound estimates are unnecessary given the minor developments in auctions internationally in the intervening period since the MBSA process<sup>23</sup>;
- all package prices containing 1800 MHz spectrum exceeded the reserve price for that package;
- applying the MBSA minimum price methodology in the proposed Award Process rather than setting actual prices achieved in the MBSA therefore allows lower winning bids than those achieved under the MBSA process;
- that, while the Award Spectrum went unsold in the MBSA, DotEcon concludes that it would be unsafe to assert that reserve prices for these lots choked off demand; and
- that it is possible that the value of having more liberalised 1800 MHz spectrum at hand for launching and maintaining 4G services using this band may have increased over the year (as DotEcon observes in its report).

3.47 ComReg also notes that:

- given that the Award Spectrum comprises spectrum rights which were included in the recent MBSA process and that there are therefore some links between the two processes, ComReg is minded to avoid the risk of

---

<sup>22</sup> As noted in DotEcon's report, it is not possible to calculate a specific price for 1800 MHz spectrum won in Time Slice 1 in the MBSA given the nature of the package bidding.

<sup>23</sup> See Section 5. of the Dotecon report.

discriminating between winning bidders across the two processes, in particular in relation to the mechanism for determining spectrum fees (which includes the methodology for the setting minimum prices). For example, this risk is particularly acute in the context of where the specific frequency locations of the Award Spectrum may mean that certain Liberalised Use Licensees now place greater value on these rights than others (for instance due to contiguity with existing rights in Time Slice 1) <sup>24</sup>;

- adjusting the minimum price for unassigned spectrum so soon after the completion of the MBSA process could undermine regulatory predictability and distort bidding behaviour in future award processes; and
- a lower Minimum Price would be less likely to ensure the optimal use of the Award Spectrum in the event that these rights were granted at such lesser Minimum Price.

3.48 In light of the above and having considered DotEcon's views on the setting of the Minimum Price, ComReg proposes to use the same Minimum Price methodology as used in the MBSA process, adjusting for licence duration and inflation. The proposed Minimum Prices are set out in the following section.

3.49 As in the MBSA process, ComReg also considers it appropriate in the proposed Award Process that the Minimum Price should comprise the sum of a minimum SAF (the 'Reserve Price') plus the sum of annual SUFs. This fee structure is aimed at incentivising Licensees to make optimal use of the spectrum from the earliest point in time and throughout the term of the Licence.

#### **3.4.4 Payment of Fees for an 1800 MHz Licence**

3.50 As noted above, ComReg proposes that the Minimum Price will be structured in two parts – an upfront Reserve Price (or minimum Spectrum Access Fee (SAF)) accompanied by Spectrum Usage Fees (SUF). In light of the short duration of 1800 MHz Licences, this section considers how best the Minimum Price might be broken up into the constituent elements.

3.51 As discussed in the previous section and consistent with the MBSA, ComReg proposes that the minimum SAF and SUF will be apportioned on a 50/50 basis.

---

<sup>24</sup> As discussed in the following chapter, a frequency specific approach is proposed and the locations of these rights of use may have a strong bearing on the value Existing Licensees place on specific Lots.

- 3.52 ComReg proposes that the SAF payable by a winning bidder for an 1800 MHz Licence will be determined by the winning bids in the proposed Award Process.
- 3.53 Under the MBSA, the SUF was an index-linked fee that is payable on an annualised basis over the duration of the licence. The SUFs under the MBSA for a given period are payable in advance such that the first SUF was due prior to the initial grant of a Liberalised Use Licence.
- 3.54 After the first annualised SUF payment, it is proposed that the second and final payment would be payable prior to the commencement of the second SUF period. ComReg notes that this second and final period, which expires on 15 July 2015, will be less than one year. As such, the SUF payable in respect of this period will be the annual SUF adjusted on a pro rata daily basis for the relevant period.
- 3.55 Table 2 below sets out the reserve prices and SUFs that were applied in the MBSA process. These were calculated by reference to a minimum price of €20 million for sub-1GHz spectrum and €10 million for 1800 MHz spectrum.

Spectrum	TS1 upfront payment	TS2 Upfront Payment	Annual SUF
800 MHz	€2.55m	€8.26m	€1.08m
900 MHz	€2.55m	€8.26m	€1.08m
1800 MHz	€1.27m	€4.13m	€0.54m

**Table 2: Upfront Payments and SUFs in the MBSA**

- 3.56 ComReg has applied a real discount rate of 8% consistent with the methodology used in the MBSA process<sup>25</sup> to adjust the Net Present Value (NPV) for an 1800 MHz Licence with duration of 1.5 years (February 2014 to July 2015). This yields a Reserve Price of €0.791 million per lot expressed in 2012 prices. The associated SUF is consistent with the SUF for 1800 MHz spectrum in the MBSA and amounts to **€0.54 million plus CPI**.
- 3.57 To account for the different start date of Liberalised Use Licences and proposed 1800 MHz Licences, the NPV also needs to be adjusted for inflation. According to the Central Statistics Office (CSO), prices rose by 0.7% between June 2012 and June 2013. Therefore, after an adjustment for inflation, the Reserve Price per Lot would be **€0.797 million** in June 2013 prices. Table 3 outlines the proposed Reserve Price and the annual SUF at

<sup>25</sup> ComReg Document 12/25.



June 2013 prices. The SUF for the remaining duration of a Licence (which will be shorter than one year) will be the annual SUF adjusted on a pro rata daily basis. The final Reserve Price and SUF due will set out in the final Information Memorandum taking into account the latest CSO data available at that time. The SUFs due will be calculated in advance of the commencement of the licence and each subsequent anniversary.

Spectrum Rights	Reserve Price	SUF (12 months)
1 Lot of 1800 MHz	€0.797m + CPI adjustment <sup>26</sup>	€0.54m + CPI adjustment <sup>27</sup>

**Table 3: Proposed SAF and SUF for the Award Spectrum**

### 3.5 Transition Issues

- 3.58 In the MBSA Information Memorandum, ComReg indicated that, depending on the nature and extent of Transition activities required between Time Slice 1 and Time Slice 2, ComReg reserved the right to apply the Transition rules set out in the MBSA Information Memorandum to the Existing GSM Licensees and Winning Bidders of Lots in Time Slice 1 in the 800 MHz, 900 MHz and 1800 MHz bands.
- 3.59 As some reorganisation of the 1800 MHz band is likely to be required between Time Slice 1 and Time Slice 2, ComReg is of the view that all Licensees holding rights of use in the 1800 MHz Band which continue after 12 July 2015, being the commencement date of Time Slice 2, will need to co-operate in order to ensure a smooth transition between Time Slices.
- 3.60 On the other hand, if a Winning Bidder in the present Award Process does not have rights of use in the 1800 MHz band in Time Slice 2, its sole obligation will be to cease using the 1800 MHz band by 12 July 2015.
- 3.61 Accordingly, ComReg reserves the right to adopt a Transition Project Plan, as set out at paragraph 3.165 of the MBSA Information Memorandum, and to make such plan binding on all Winning Bidders in respect of any spectrum awarded pursuant to the proposed Award Process, in the same manner that it

<sup>26</sup> The proposed Reserve Price is €0.797m in June 2013 prices and will be readjusted to September 2013 prices once CPI data becomes available.

<sup>27</sup> In line with the MBSA process, the CPI adjustment to the first SUF will use 1 February 2013 (i.e. the commencement date of the Liberalised Use Licences) as the starting date for the calculation of the CPI. The second SUF payable will be further adjusted for CPI and adjusted on a pro rata daily basis to reflect the fact that it will apply to a period of less than one year.

is binding upon winning bidders in respect of Liberalised Use Licences issued pursuant to the MBSA process.

- 3.62 In addition, to ensure that Winning Bidders fully vacate the Lots won pursuant to the proposed Award Process by 12 July 2015 (so as to enable H3GI to make use of Lots I, J and K from the commencement of Time Slice 2), ComReg proposes to make it a condition of participation in the proposed Award Process that, where an 1800 MHz Licensee fails to vacate the Award Spectrum by 12 July 2015, it will agree to pay liquidated damages to ComReg. Further details on this aspect of the proposed Award Process are set out in section 5 of the draft Information Memorandum.

## Chapter 4

# 4 The Auction Rules

4.1 This chapter sets out some general and specific details regarding the proposed Award Process including, amongst other things, information concerning:

- award participants;
- spectrum caps;
- combinatorial bidding;
- frequency specific versus frequency generic Lots;
- open stage versus sealed-bid process; and
- first price versus second price rules.

## 4.1 General

### 4.1.1 Award Participants

4.2 Whilst ComReg notes and would not necessarily disagree with DotEcon's observation that the most likely parties to participate in the proposed Award Process are existing Liberalised Use Licensees, all interested parties are, in accordance with the Authorisation Regulations, entitled to participate in the proposed Award Process.

4.3 All applicants, regardless of whether they were previously identified as a Qualified Bidder under the MBSA process, will be required to complete the relevant Application Form, a draft of which is set out in Annex 2 of the draft Information Memorandum. The requirements of qualification for the proposed Award Process will be finalised in the final Information Memorandum.

### 4.1.2 Competition Spectrum Caps

4.4 The MBSA process included competition spectrum caps limiting the quantity of spectrum rights which could be won by any one Bidder.

4.5 ComReg noted during that process that the primary purpose of auction-based spectrum caps was to avoid extreme outcomes which could harm competition and consumer welfare, whilst at the same time ensuring that the spectrum

caps do not, of themselves, determine the final distribution of spectrum rights, which should rather be determined by competition amongst bidders.

- 4.6 ComReg further notes that the spectrum caps applied in the MBSA process were devised in light of the facts and circumstances which persisted at the time of the MBSA process. They were not intended to apply beyond the date of completion of that process or to necessarily reflect ComReg's views on the acceptable<sup>28</sup> distribution of mobile spectrum amongst MNOs over time.
- 4.7 ComReg's view, in this instance, is that an unrestricted Auction would be unlikely to lead an extreme outcome which could harm competition and consumer welfare because, amongst other things:
- certain MNOs hold un-liberalised 1800 MHz rights of use during this time period<sup>29</sup>;
  - the likely requirement for certain MNOs to support legacy GSM customers again during this time period<sup>30</sup>; and
  - in particular, the relatively short duration of 1800 MHz Licences.
- 4.8 Given these factors, ComReg is of the preliminary view that that competition spectrum caps do not appear to be required for the proposed Award Process<sup>31</sup>.

## 4.2 Award Format

- 4.9 This section sets out ComReg's preliminary view as to the appropriate format of the proposed Award Process.
- 4.10 The proposed mechanics of the proposed Award Process are detailed in the draft Information Memorandum, contained in Annex 2 to this document and are not discussed here.

---

<sup>28</sup> The reference to 'acceptable' here is made in light of the various *ex ante* statutory powers available to ComReg which can be used to ensure that there is no restriction or distortion of competition caused by spectrum holdings.

<sup>29</sup> For instance, whilst ComReg notes that Meteor could, if it won rights to all of the Award Spectrum, possess 7 1800 MHz Lots in Time Slice 1, ComReg observes that 2 of these Lots would be on a GSM-only basis. Similarly, whilst Telefónica Ireland could, if it won all the Award Spectrum, possess 6 Lots in Time Slice 1, ComReg observes that 3 of these Lots would be on a GSM-only basis.

<sup>30</sup> Whilst ComReg notes that Vodafone could, if it won all the Award Spectrum, possess 6 liberalised Lots in Time Slice 1, ComReg also observes that some of its 1800 MHz rights could be needed to support legacy GSM customers.

<sup>31</sup> This view is expressly based on the spectrum holdings of the Liberalised Use Licensees at the present time.

### 4.2.1 Competitive Selection Process

4.11 In all of the circumstances identified and reflected in this document, and also in line with its Strategy Statement for managing the radio frequency spectrum<sup>32</sup>, ComReg is of the view that a competitive award process generally along the lines of the approach taken in the MBSA process, and described in the body of this document and in the draft Information Memorandum in Annex 2, would be the most appropriate for the purpose of granting the spectrum rights of use concerned, and would best meet its statutory functions, objectives and duties.

### 4.2.2 Complexity of the proposed Award Process

4.12 ComReg is also of the view that it is desirable and should be possible to minimise complexity in the proposed Award Process given that:

- the earliest possible release of this spectrum maximises the benefit of such rights to the prospective Licensee and, by extension, to consumers. A relatively simple award format should expedite the setting of rules for the proposed Award Process, the preparation required for participants and the running of the proposed Award Process itself;
- increased complexity can raise the cost of participation relative to the value of the Award Spectrum, noting that there is a limited quantum of spectrum available for a limited licence duration relative to the MBSA process; and
- the limited quantum of spectrum and shorter licence duration should facilitate a less complex award process.

4.13 The following sections therefore reflect the general desire to minimise complexity in the proposed Award Process.

### 4.2.3 Combinatorial Bidding

4.14 The MBSA process allowed bidders to express valuations for a combination of Lots. This approach was taken as it addressed both aggregation risks and fragmentation risks for bidders:

- aggregation risks - being where a bidder requires multiple blocks of spectrum but is awarded 'stranded' lots (unwanted subsets of demand, i.e. one 2 x 5 MHz block where a bidder sought two blocks in this case); and

---

<sup>32</sup> Strategy Statement - Strategy for Managing the Radio Spectrum: 2011 – 2013, Document 11/89.

- fragmentation risks - being where a bidder wins two 2 × 5 MHz blocks that are not contiguous, which might significantly reduce the bidder's value of the spectrum.
- 4.15 A combinatorial format also allows for mutually exclusive bids which provide maximum flexibility for the bidder while eliminating the risk of winning multiple lots surplus to requirements.
- 4.16 While the level of such risks are generally reduced in the proposed Award Process, where only 3 Lots are available for release, mitigating these risks for bidders may increase the likelihood of participation in the process, increase bidders' willingness to reflect their full valuation on packaged lots and maximise the chances of an efficient award outcome (see for example Section 4.1 of the DotEcon Report).
- 4.17 While providing for combinatorial bidding would increase the complexity of the proposed Award Process, the fact that there are only 3 Lots available for release means that the adoption of a combinatorial format would not, in ComReg's view, result in an overly complex process.
- 4.18 Having considered DotEcon's views on this issue, it is ComReg's preliminary view that combinatorial bidding should be permitted in the proposed Award Process.

#### **4.2.4 Frequency Specific or Frequency Generic Lots**

- 4.19 The MBSA process consisted of the release of a large number of spectrum lots; there were 15 lots available in the 1800 MHz band alone. The lots were made available on a frequency generic basis in the Main Stage, followed by an Assignment Stage to determine the specific location of spectrum won in the auction.
- 4.20 An advantage in using a frequency generic approach when there are a large number of frequency lots for release is that it can greatly reduce the number of bid combinations available to bidders initially, thereby simplifying the bidding process. In the case of the proposed Award Process, however, this advantage is minimal due to the fact that there are only three Lots available for release. The potential bid combinations for the proposed Award Process based on a frequency specific and frequency generic approach are illustrated in Table 4 below.

Frequency Specific	Frequency Generic
Block I	one 1800 MHz Block
Block J	two 1800 MHz Blocks
Block K	three 1800 MHz Blocks
Blocks I & J	
Blocks J & K	
Blocks I & K	
Blocks I, J & K	

**Table 4: Frequency Specific and Frequency Generic bid options**

- 4.21 The adoption of a frequency specific approach for the proposed Award Process would, in ComReg’s view, be suitable given that there are Licensees with existing spectrum rights of use in the 1800 MHz band and, as a result, the locations of these rights of use may have a strong bearing on the value Existing Licensees place on specific Lots. The adoption of a frequency specific approach, by allowing the placement of bids on specific lots, removes the risk of a bidder acquiring Lots of no value to them as a result of any assignment stage.
- 4.22 A frequency specific approach also further simplifies and shortens the award process by eliminating the requirement for an assignment stage.
- 4.23 Given these considerations, ComReg notes and agrees with DotEcon’s observations in Section 3.2 of its Report where it notes that:
 

*“the benefits from using a frequency-generic approach appear to be limited in this award due to the small number of lots available. On the other hand, offering the spectrum as frequency-specific lots may substantially simplify both the bidding process (removing the need for an assignment stage) and any valuation and bid strategy work required by bidders relative to the case where frequency-generic lots were used, contributing to lower participation costs.”*
- 4.24 Accordingly, ComReg is of the view that a frequency specific approach would be more appropriate than a frequency generic approach for the proposed Award Process.

**4.2.5 Open Stage or sealed-bid process**

- 4.25 The MBSA process used an open stage auction format in the form of a combinatorial clock auction (CCA). This approach provided for multiple auction rounds with increasing prices at the start of each round for Lot

categories with excess demand. This generated important information discovery for bidders with regard to competition for Lots.

- 4.26 The information gathered from each round of the CCA allowed bidders to update their estimates, valuations and bidding strategy based on the bidding outcomes.
- 4.27 This approach was particularly important to the participants in the MBSA process due to the issues surrounding business continuity raised by the existing GSM licensees in the 900 MHz and 1800 MHz bands. However, ComReg notes that issues surrounding business continuity are not relevant to the proposed Award Process.
- 4.28 As the proposed Award Process is for spectrum rights of use in a limited quantum of spectrum for a relatively short period, this substantially reduces the possible bidding strategies available to bidders and should make it relatively easy for bidders to develop relative valuations for this process, reducing the value of any information that could be gathered with an open round approach.
- 4.29 As previously stated, while ComReg does not preclude any qualified party from participation in the proposed Award Process, it is aware that the likely participants are those with existing rights of use in the 1800 MHz band. Those likely participants have already taken part in an open stage award process which included spectrum in the 1800 MHz band, which potentially already addresses any common value uncertainty in this band. They have also already observed, first hand, the value of Lots in the 1800 MHz band.
- 4.30 The alternative to an open stage process is a sealed-bid process. This approach consists of one round, in which a bidder puts forward its full valuation for the Lots of interest. In contrast, an open stage approach, where the duration of the process is dependent on demand, may proceed to multiple rounds and so provides no certainty as to duration for bidders. This makes the open stage approach relatively more complex and may require the investment of greater resources by participants for the purposes of devising an appropriate auction strategy.
- 4.31 In addition, ComReg notes that no information can be gathered by a bidder regarding the activities of other bidders in a single sealed-bid process. This factor significantly reduces the possibility for bidders to bid strategically to raise costs for rival bidders at low risk to themselves.
- 4.32 On balance, and having considered the views expressed by DotEcon, ComReg's preliminary view is that a single sealed-bid approach is appropriate for the proposed Award Process.



## 4.2.6 First Price vs. Second Price

- 4.33 There are two main pricing mechanisms that are applied in spectrum award processes, being:
- First price: Where the winning bidder is required to pay the bid price to acquire the lot or package lot to which the bid relates; or
  - Second price: Where the winning bidder is required to pay the minimum amount that would be required to outbid its rivals to acquire the Lot or package of Lots to which the bid relates.
- 4.34 The MBSA process adopted a second price rule largely because the second price rule:
- disincentivises gaming behaviour and encourages straightforward bidding;
  - largely removes any need for a bidder to consider bidding strategies of other bidders, allowing a bidder to focus on expressing its own preferences on packages, which, in turn, introduces a large measure of predictability for bidders; and
  - is an appropriate approach given ComReg's objective of encouraging efficient spectrum use by assigning spectrum rights to those who value it most.
- 4.35 A first price rule presents difficulties for bidders in the context of single sealed-bid processes given that the lack of information regarding competition for lots makes it particularly difficult for bidders to establish a bid amount which would maximise its surplus.
- 4.36 However, the adoption of a second price rule, especially in the context of a single sealed-bid approach, allows a bidder to submit its full valuation, or opportunity cost, for the Lot or package of Lots of interest to it while still maximising its surplus. This increases the likelihood of an efficient allocation of lots.
- 4.37 Having considered the views expressed by DotEcon in relation to the appropriate pricing mechanism for the proposed Award Process, ComReg is of the view that the use of a second price rule would be the most appropriate approach.

## Chapter 5

# 5 Draft Decision(s)

5.1 This chapter sets out ComReg's draft decisions based on the proposals presented by ComReg in the preceding chapters and their supporting annexes.

### 1. DEFINITIONS AND INTERPRETATION

In this Decision, save where the context otherwise admits or requires:

**"1800 MHz band"** means the frequency range 1710 – 1785 MHz paired with 1805 – 1880 MHz;

**"Award Spectrum"** means the frequency range 1750 to 1765 MHz paired with 1845 to 1860 MHz;

**"Apparatus"** means apparatus for wireless telegraphy, as defined in section 2 of the Wireless Telegraphy Act 1926, for terrestrial systems capable of providing Electronic Communications Services in the 1800 MHz band;

**"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;

**"Electronic Communications Service"** has the meaning assigned to it in the Framework Regulations;

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

**"Information Memorandum"** means the information memorandum which ComReg intends to publish in due course, and **"draft Information Memorandum"** means the draft information memorandum which was published by ComReg on 13 September 2013 under ComReg Document Number 13/88;

**“1800 MHz Licence”** means a licence to keep and have possession of Apparatus in a specified place in the State granted under section 5 of the Wireless Telegraphy Act 1926 in accordance with and subject to the matters prescribed in the 1800 MHz Licence Regulations in relation to such a licence;

**“1800 MHz Licence Regulations”** means regulations prescribing relevant matters in relation to 1800 MHz Licences in line with ComReg Document 13/YY [ComReg’s forthcoming response to consultation document on the proposed Award Process], made by ComReg under section 6 of the Wireless Telegraphy Act 1926 with the consent of the Minister for Communications, Energy and Natural Resources, pursuant to section 37 of the Communications Regulation Act 2002;

**“Lot”** means a 2 × 5 MHz block of the Award Spectrum;

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

**“Qualified Bidder”** means an applicant who, following consideration of its application by ComReg, has been informed, in accordance with the requirements of the Information Memorandum that its application is compliant and that it is entitled to participate in the competitive selection procedure described herein.

**“Winning Bidder”** means a Qualified Bidder that wins at least one Lot in the competitive selection procedure described herein; and

**“Wireless Telegraphy Act 1926”** means the Wireless Telegraphy Act, 1926 (No. 45 of 1926), as amended.

## 2. DECISION-MAKING CONSIDERATIONS

2.1 In arriving at its decisions in this document, ComReg has had regard to:

(i) the contents of, and the circumstances, materials and reasoning referred to in, as well as the materials provided by respondents in connection with, the below-listed ComReg documents:

- a. 12/25;
- b. 12/52;
- c. 13/88;
- d. 13/YY [ComReg’s forthcoming response to consultation document on the proposed Award Process];

(ii) the consultant's reports commissioned, and the advice obtained, by ComReg in relation to the subject-matter of the documents and materials listed 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 applicable Policy Directions made by the Minister under Section 13 of the Communications Regulation Act 2002;
- c. the Framework Regulations, and, in particular, Regulations 13, 16 and 17 thereof;
- d. the Authorisation Regulations, and, in particular, Regulations 9, 10, 11, 12, 15, 16, 17, 18(1)(c) and 19 thereof;
- e. Decision 2009/766/EC of 16 October, 2009, on the harmonisation of the 900 MHz and 1,800 MHz frequency bands for terrestrial systems capable of providing pan-European electronic communications services in the Community, as amended; and
- g. Sections 5 and 6 of the Wireless Telegraphy Act, 1926,

and, noting that it has:

- a. given all interested parties the opportunity to express their views and make their submissions in accordance with Regulation 11 of the Authorisation Regulations and Regulation 12 of the Framework Regulations; and
- b. evaluated the matters to be decided, in accordance with its obligations generally,

as set out in the various chapters of ComReg Document 13/YY [ComReg's forthcoming response to consultation document on the Proposed Award Process] and their supporting annexes, ComReg has decided as follows:

### **3. DECISIONS**

3.1 subject to obtaining the consent of the Minister to the making by it of the 1800 MHz Licence Regulations, to make those regulations under section 6 of the Wireless Telegraphy Act 1926, prescribing relevant matters in relation to 1800 MHz Licences, including prescribing the form of the licences concerned, their

duration and the conditions and restrictions subject to which they are granted, as described in ComReg Document 13/YY [ComReg's forthcoming response to consultation document on the proposed award];

3.2 under section 5 of the Wireless Telegraphy Act 1926, and pursuant to the 1800 MHz Licence Regulations as made following the obtaining of ministerial consent, to grant a limited number of individual rights of use for radio frequencies, by way of 1800 MHz Licences, in respect of the Award Spectrum;

3.3 to select those parties who will be eligible to be granted an 1800 MHz Licence (that is to say, Winning Bidders) by means of a competitive selection procedure which is more particularly described in Document 13/YY [ComReg's forthcoming response to consultation document on the proposed award] and which will be further particularised in the Information Memorandum;

3.4 to incorporate in the competitive selection procedure, as further particularised in the draft Information Memorandum, and as may be refined in the Information Memorandum, including, inter alia, the following elements:

3.4.1 A number of stages including an application stage, a qualification stage, an assessment stage and a notification and grant stage.

3.4.2 Rights of use of the Award Spectrum being granted from 1 February 2014 (or such other date as may be specified by ComReg) to 12 July 2015 (or such other date as may be specified by ComReg) and all such rights of use of spectrum granted expiring absolutely on 12 July 2015.

3.4.3 Bidders will be required to submit a sealed bid as part of their application form.

3.4.4 If there is excess demand for one or more packages, or multiple bids by a single bidder, the winner and price determination rules will be run:

- the Bidding rules, and winner and price determination will be subject to detailed rules of the type set out in the draft Information Memorandum, refined versions of which will be set out in the Information Memorandum. Winning bids will be determined by selecting at most one bid from amongst the entirety of bids made by each Qualified Bidder in order to maximise the total value of winning bids subject to not allocating more Lots than are available; and
- a price calculation methodology as set out in the draft Information Memorandum and to be particularised in the Information

Memorandum, will then be applied to calculate the payable by Winning Bidders on the basis of the opportunity cost of awarding Lots to each Winning Bidder and group of Winning Bidders.

- 3.4.8 No spectrum caps will apply in the competitive selection procedure.
  - 3.4.9 Minimum prices to be determined in accordance with the methodology set out in the draft Information Memorandum, where the final minimum price will be set out in the Information Memorandum, taking account of any additional relevant data at that time.
  - 3.4.10 Reimbursement by ComReg of upfront fees and spectrum usage fees (as described in the Information Memorandum) to any Winning Bidder in the event that an 1800 MHz Licence commences later than 1 February 2014, in accordance with the methodology set out in the draft Information Memorandum, and which will be detailed in the Information Memorandum.
- 3.5 upon application properly being made to it by Winning Bidders within the terms of the 1800 MHz Licence Regulations as made following the obtaining of Ministerial consent, and on payment of the fees prescribed thereby, to grant 1800 MHz Licences to Winning Bidders, under section 5 of the Wireless Telegraphy Act 1926, for the period, and subject to the conditions and restrictions (including conditions as to revocation), prescribed in the 1800 MHz Licence Regulations, including, as appropriate, the conditions and restrictions described in ComReg Document 13/YY [ComReg's forthcoming response to consultation document on the proposed award] and set out in more detail in the draft Information Memorandum and as may be refined in the Information Memorandum.
- 3.6 to retain its discretion regarding how it might treat any unsold Lots depending on the factual circumstances arising from the award process.

#### **4. STATUTORY POWERS NOT AFFECTED**

4.1. Nothing in this document shall operate to limit ComReg in the exercise of discretions or powers, or the performance of functions or duties, or the attainment of objectives under any laws applicable to ComReg from time to time.

**KEVIN O' BRIEN**  
**COMMISSIONER**  
**THE COMMISSION FOR COMMUNICATIONS REGULATION**  
**THE            DAY OF MONTH 2013**

## Chapter 6

# 6 Submitting Comments and Next Steps

## 6.1 Submitting Comments

- 6.1 All input and comments are welcome; however, it would make the task of analysing responses easier if comments were referenced to the relevant section of each chapter and annex in this document.
- 6.2 Please also set out your reasoning and all supporting information for any views expressed.
- 6.3 The period for comment will run until 5 pm on Friday 11 October 2013, during which time ComReg welcomes written comments on any of the issues raised in this paper.
- 6.4 In order to promote further openness and transparency ComReg will publish all respondents' submissions to this consultation as well as all substantive correspondence on matters relating to this document, subject to the provisions of ComReg's guidelines on the treatment of confidential information <sup>33</sup>.
- 6.5 We would request that electronic submissions be submitted in an unprotected format so that they can be included in the ComReg submissions document for electronic publication.
- 6.6 ComReg appreciates that respondents may wish to provide confidential information if their comments are to be meaningful. As it is ComReg's policy to make all responses available on its website and for inspection generally, respondents to consultations are again requested clearly to identify confidential material, and to place confidential material in a separate annex to their response, also providing supporting reasoning as to why such material is confidential in that annex.

---

<sup>33</sup> Document 05/24 - Response to Consultation - Guidelines on the treatment of confidential information - March 2005.



## 6.2 Next Steps

- 6.7 All submissions which are received will be published, redacted as necessary in order to take account of any confidential or commercially sensitive information and in accordance with the provisions of ComReg's guidelines on the treatment of confidential information.
- 6.8 When it has concluded its review of all of the submissions received and other relevant material, ComReg's intention would be to publish a response to consultation together with a final Decision and, as soon as practical thereafter, a finalised Information Memorandum which would initiate the proposed Award Process.
- 6.9 ComReg will have due regard to all comments received before putting together and publishing its final Information Memorandum.
- 6.10 ComReg notes that any material changes made in ComReg's final Decision may require subsequent changes to be made to the draft Information Memorandum and ComReg reserves the right to do so, if required.
- 6.11 ComReg remains conscious of the desirability of completing the proposed Award Process in a timely fashion, and it remains ComReg's intention to complete by year-end the process for the selection of parties to whom rights of use for the radio frequencies concerned are to be granted. However, ComReg notes that this is a relatively challenging timescale for all concerned and, further, that it cannot commit to this timetable, nor give precise dates for intervening publications, in advance of receiving and analysing submissions now invited under this consultation.

## Annex 1: Legal Framework and Statutory Objectives

A 1.1 The Communications Regulation Acts 2002-2011<sup>34</sup> (the “2002 Act”), the Common Regulatory Framework (including the Framework and Authorisation Directives<sup>35</sup> as transposed into Irish law by the corresponding Framework and Authorisation Regulations<sup>36</sup>), and the Wireless Telegraphy Acts<sup>37</sup> set out, amongst other things, powers, functions, duties and objectives of ComReg that are relevant to this response to consultation and draft decision.

A 1.2 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 1.3 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 objectives of ComReg that appear most relevant

---

<sup>34</sup> The Communications Regulation Act 2002, the Communications Regulation (Amendment) Act 2007, the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010 and the Communications Regulation (Postal Services) Act 2011.

<sup>35</sup> 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”)

<sup>36</sup> 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.

<sup>37</sup> 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.

to the matters at hand and generally excludes those not considered relevant (for example, in relation to premium rate services or market analysis). For the avoidance of doubt, however, the inclusion of particular material in this Annex does not necessarily mean that ComReg considers same to be of specific relevance to the matters at hand.

A 1.4 All references in this annex to enactments are to the enactment as amended at the date hereof, unless the context otherwise requires.

## **A1.1 Primary Objectives and Regulatory Principles under the 2002 Act and Common Regulatory Framework**

A 1.5 ComReg's primary objectives in carrying out its statutory functions in the context of electronic communications are to:

- promote competition<sup>38</sup>;
- contribute to the development of the internal market<sup>39</sup>;
- promote the interests of users within the Community<sup>40</sup>;
- 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<sup>41</sup>; 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

---

<sup>38</sup> Section 12 (1)(a)(i) of the 2002 Act.

<sup>39</sup> Section 12 (1)(a)(ii) of the 2002 Act.

<sup>40</sup> Section 12(1)(a)(iii) of the 2002 Act.

<sup>41</sup> Section 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.

Specific Regulations<sup>42</sup> in particular those designed to ensure effective competition<sup>43</sup>.

### **A1.1.1 Promotion of Competition**

A 1.6 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 1.7 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 1.8 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.

---

<sup>42</sup> The 'Specific Regulations' comprise collectively the Framework Regulations, the Authorisation Regulations, the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011 (S.I. No. 334 of 2011), the European 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).

<sup>43</sup> Regulation 16(1)(a) of the Framework Regulations.

### **A1.1.2 Contributing to the Development of the Internal Market**

A 1.9 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:

- 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 1.10 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.

### **A1.1.3 Promotion of Interests of Users**

A 1.11 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 1.12 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.

#### **A1.1.4 Regulatory Principles**

A 1.13 In pursuit of its objectives under Regulation 16(1) of the Framework Regulations and Section 12 of the 2002 Act, ComReg must 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.

### **A1.1.5 BEREC**

A 1.14 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.

### **A1.1.6 Other Obligations Under the 2002 Act**

A 1.15 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;<sup>44</sup>
- have regard to international developments with regard to electronic communications networks and electronic communications services,

---

<sup>44</sup> Section 12(3) of the 2002 Act.

associated facilities, postal services, the radio frequency spectrum and numbering<sup>45</sup>; 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.<sup>46</sup>

### **A1.1.7 Policy Directions<sup>47</sup>**

A 1.16 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 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 1.17 The Policy Directions which are most relevant in this regard include the following:

#### **Policy Direction No.3 on Broadband Electronic Communication Networks**

A 1.18 ComReg shall in the exercise of its functions, take into account the national objective regarding broadband rollout, viz, the Government

---

<sup>45</sup> Section 12(5) of the 2002 Act.

<sup>46</sup> Section 12(6) of the 2002 Act .

<sup>47</sup> ComReg also notes, and takes due account of, the Spectrum Policy Statement issued by the DCENR in September 2010.



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 1.19 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 1.20 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 1.21 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 1.22 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 1.23 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 1.24 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 1.25 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.

## **A1.2 Other Relevant Obligations under the Framework and Authorisation Regulations**

### **A1.2.1 Framework Regulations**

A 1.26 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 1.27 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 1.28 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 1.29 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 1.30 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 1.31 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 1.32 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 1.33 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 1.34 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 1.35 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 1.36 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.

## **A1.2.2 Authorisation Regulations**

### **Decision to limit rights of use for radio frequencies**

- A 1.37 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 1.38 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 1.39 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 1.40 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 1.41 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 1.42 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 1.43 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 1.44 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 1.45 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 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 1.46 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 1.47 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 1.48 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 1.49 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 1.50 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).

## **A1.3 Other Relevant Provisions**

### **Wireless Telegraphy Acts**

A 1.51 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 1.52 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 1.53 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 1.54 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 1.55 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.

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

A 1.56 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.

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

A 1.57 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 1.58 On 15 February 2012, the European Parliament adopted the five-year Radio Spectrum Policy Programme (RSPP).

## **Annex 2: Draft Information Memorandum**

# Contents

<b>Section</b>	<b>Page</b>
Chapter 1	6
1 Introduction .....	6
1.1 Legal Framework and Agreement .....	6
1.2 Structure of Draft Information Memorandum .....	7
Chapter 2	9
2 The Award Spectrum and 1800 MHz Licences .....	9
2.1 The Award Spectrum .....	9
2.2 1800 MHz Licences – Terms and Conditions .....	10
2.2.1 Scope of the 1800 MHz Licence .....	11
2.2.2 1800 MHz Licence Duration .....	11
2.2.3 Licence Conditions Applicable to all 1800 MHz Licences .....	12
2.2.4 1800 MHz Licence Technical Conditions .....	15
2.2.5 Fees for a 1800 MHz Licence .....	17
2.2.6 Refund or adjustment of Licence Fees .....	19
2.2.7 Enforcement Actions – Compliance with Licence Conditions, Licence Suspension, Licence Withdrawal .....	21
2.2.8 Amendment of an 1800 MHz Licence .....	21
2.2.9 Other Considerations .....	21
Chapter 3	23
3 The Award Process and Auction Rules .....	23
3.1 Lots Available .....	23
3.2 Process Overview and Timeline .....	23
3.3 Application Stage .....	26
3.3.1 Questions .....	27
3.3.2 Application Form and Supporting Documents .....	28
3.3.3 Deposits .....	30
3.3.4 Confidential Information and Bidder behaviour .....	30
3.3.5 Application procedure .....	41

3.3.6	Completing the Lot Application Form .....	42
3.4	Qualification Stage .....	43
3.4.1	Process for approval of Applications .....	43
3.4.2	Assessment of Applications .....	44
3.5	Assessment Stage .....	46
3.5.1	Winner and Winning Price Determination .....	46
3.5.2	Price Determination .....	46
3.6	Notification and Grant Stage .....	47
3.7	Transition Rules .....	49
3.8	Other Matters .....	50
3.8.1	Communication with ComReg .....	50
3.8.2	Exceptional Circumstances .....	50
3.9	End of Award Process .....	50
<b>Chapter 4 52</b>		
4	<b>Legal Terms and Conditions .....</b>	<b>52</b>
4.1	Important Notice .....	52
4.2	Additional Conditions .....	55
4.2.1	Open Applications .....	55
4.2.2	Canvassing .....	56
4.2.3	Auction and Transition Rules / Collusion / Improper Influence .....	56
4.2.4	Publicity .....	57
4.2.5	Errors .....	57
4.2.6	No Warranty and Termination .....	58
4.2.7	Own Costs .....	58
4.2.8	Waiver .....	59
4.2.9	Amendments .....	59
4.2.10	Conclusion of Process .....	59
4.3	Liquidated Damages .....	59

# Annex

Section	Page
Annex 1: Glossary.....	61
Annex 2: Draft Application Form .....	70

# Table of Figures

<b>Section</b>	<b>Page</b>
Figure 1: Current spectrum assignments in the 1800 MHz band in Time Slice 1 (until 12 July 2015) .....	10
Figure 2: MBSA Process spectrum assignments in the 1800 MHz band in Time Slice 2 (from 13 July 2015 until 12 July 2030) .	10



# Table of Tables

<b>Section</b>	<b>Page</b>
Table 1: The Spectrum included in this process.....	9
Table 2: Lots in the 1800 MHz band .....	9
Table 3: Commencement and expiry dates of Lots and corresponding 1800 MHz Licence/s .....	12
Table 4 Lots available to any Interested Party participating in the Award Process .....	23
Table 5: Timetable for the Award Process .....	25
Table 6: Administrative information .....	72
Table 7: Lot Application Form .....	78

## Chapter 1

# 1 Introduction

- 1.1 In Document 13/88<sup>1</sup>, ComReg published its proposals for the release of three lots of liberalised spectrum rights of use in the 1800 MHz band, being those lots which were unassigned in ComReg's Multi-Band Spectrum Award (MBSA) Process, together with a draft Information Memorandum setting out the processes and procedures which would implement same.
- 1.2 In Document 13/YY<sup>2</sup>, ComReg set out its response to consultation and final Decision on this spectrum release proposal.
- 1.3 In light of its consideration of all submissions received in response to Document 13/88 and other relevant information before it, and its Decision as set out in Document 13/YY and, having regard to its obligations under the Authorisation Regulations, ComReg now publishes this Information Memorandum, which details more particularly the processes and procedures ComReg will employ to implement its Decision DXX/13 as set out in Document 13/YY.

## 1.1 Legal Framework and Agreement

- 1.4 In preparing this Information Memorandum, ComReg has been guided by its statutory functions, objectives and duties relevant to the management of Ireland's radio frequency spectrum (which are outlined in Annex X of Document 13/YY).
- 1.5 Further, in addition to providing for the licensing of successful Applicants preparing for the launch of services on foot of the rights of use secured in the proposed Award Process, Statutory Instrument No. XX of 201X prescribes relevant matters<sup>3</sup> in relation to the 1800 MHz Licences that ComReg proposes to grant under section 5 of the Wireless Telegraphy Act 1926, as amended, on foot of the Award Process (the "Regulations").
- 1.6 In addition, Interested Parties should note the requirement to be authorised to provide an electronic communications network or

---

<sup>1</sup> ComReg Document 13/88 – Consultation on the release of 1800 MHz spectrum rights of use - published 13 September 2013

<sup>2</sup> ComReg Document 13/[XX] – [TITLE] - published [DAY MONTH 2013.]

<sup>3</sup> See section 6 of the Wireless Telegraphy Act, 1926, as amended by section 182 of the Broadcasting Act 2009.

service in Ireland<sup>4</sup>. Interested Parties can consult ComReg's website for further details<sup>5</sup>.

1.7 Chapters 2, 3 and 4 of this Information Memorandum contain the terms of the agreement which Interested Parties will agree to in participating in the Award Process and attention is specifically drawn to these Chapters given the important and potentially binding provisions contained therein.<sup>6</sup>

## 1.2 Structure of Draft Information Memorandum

1.8 The remainder of this draft Information Memorandum is structured as follows:

- **Chapter 2** details the Award Spectrum, including the lot structure for same, and the terms and conditions of 1800 MHz Licences relating to the Award Spectrum that may be awarded through the Award Process;
- **Chapter 3** details the Auction Rules and provides timelines for the Award Process;
- **Chapter 4** provides additional details on the legal terms and conditions that are applicable to this Award Process;
- **Annexes:**
  1. Glossary;
  2. Application Form; and
  3. Determination of Winning Bids and Base Prices.

---

<sup>4</sup> Under Regulation 4(1) of the Authorisation Regulations, any undertaking intending to provide an electronic communications network or service shall, before doing so, notify ComReg of its intention to provide such a network or service, following which that undertaking will be deemed to be authorised under Regulation 4(4). Under Regulation 4(6) of the Authorisation Regulations, any undertaking which fails to comply with Regulation 4(1) or Regulation 4(5) (notification of any changes to the information supplied) commits an offence.

<sup>5</sup> See [www.comreg.ie/licensing\\_and\\_services/general\\_authorisation.551.html](http://www.comreg.ie/licensing_and_services/general_authorisation.551.html) for further details.

<sup>6</sup> Interested Parties should note that ComReg reserves the right to make amendments to the Auction Rules after the finalisation of this Information Memorandum to correct any errors therein, or to further clarify matters, whether identified by ComReg, its consultants or Interested Parties, where such amendments are necessary or appropriate to ensure that the Auction Rules operate in the manner intended by ComReg, as set out in the Information Memorandum. ComReg will promptly bring any such amendments to the attention of Interested Parties. Interested Parties are reminded that they are obliged to bring any errors to ComReg's attention promptly. See also, Chapter 4 in this regard.

- 1.9 In anticipation of receiving correspondence on matters relating to this document, ComReg hereby gives notice that it will publish all material correspondence received in this regard. Such information will be subject to the provisions of ComReg's guidelines on the treatment of confidential information <sup>7</sup>.

---

<sup>7</sup> Guidelines on the treatment of confidential information, ComReg Document 05/24

## Chapter 2

# 2 The Award Spectrum and 1800 MHz Licences

## 2.1 The Award Spectrum

- 2.1 The liberalised rights of use being made available for release in this Award Process relate to the 30 MHz of paired 1800 MHz spectrum in the 1750-1765 MHz and the 1845-1860 MHz frequency ranges set out in the following table (the 'Award Spectrum').

Frequency Band	Frequency Pairing (FDD)		Number of 2 × 5 MHz Spectrum Blocks
	Uplink band (MHz)	Downlink band (MHz)	
1800 MHz	1750 - 1765	1845 – 1860	3

**Table 1: The Spectrum included in this process**

- 2.2 The Award Spectrum is being made available in 2 × 5 MHz blocks (or "Lots") and therefore comprises three (3) Lots of paired spectrum.
- 2.3 ComReg is retaining the nomenclature used in the MBSA Process pertaining to these Lots to enable the unique identification of each lot within the 1800 MHz band. Accordingly, the 3 Lots comprising the Award Spectrum are denoted as blocks I, J and K.
- 2.4 The specific frequency assignments for each Lot are set out in Table 2 below.

Frequency Band	Name of Lot	Uplink / Downlink Frequency
1800 MHz	I	1750.0 - 1755.0 MHz 1845.0 - 1850.0 MHz
1800 MHz	J	1755.0 - 1760.0 MHz 1850.0 - 1855.0 MHz
1800 MHz	K	1760.0 - 1765.0 MHz 1855.0 - 1860.0 MHz

**Table 2: Lots in the 1800 MHz band**

- 2.5 The Lots are unassigned in Time Slice 1, save for a Test and Trial licence for low power emissions in 200 kHz of block I which expires on 31 January 2014.
- 2.6 In accordance with the MBSA Process, Hutchison 3G Ireland Limited (H3GI) possesses the rights of use to all 3 Lots in Time Slice 2. Accordingly, any rights of use to Lots I, J and K granted in the Award Process will expire no later than 12 July 2015.
- 2.7 Figure 1 and Figure 2 below identify the current holders of rights to each lot in the 1800 MHz band in Time Slice 1 and 2, respectively.

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
Telefonica	Telefonica	Telefonica	H3GI	H3GI	Vodafone	Vodafone	Vodafone	Unassigned	Unassigned	Unassigned	Meteor	Meteor	Meteor	Meteor

**Figure 1: Current spectrum assignments in the 1800 MHz band in Time Slice 1 (until 12 July 2015)<sup>8</sup>**

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
Telefonica	Telefonica	Telefonica	Vodafone	Vodafone	Vodafone	Vodafone	Vodafone	H3GI	H3GI	H3GI	H3GI	Meteor	Meteor	Meteor

**Figure 2: MBSA Process spectrum assignments in the 1800 MHz band in Time Slice 2 (from 13 July 2015 until 12 July 2030)**

## 2.2 1800 MHz Licences – Terms and Conditions<sup>9</sup>

- 2.8 In this Award Process, ComReg intends to award 1800 MHz Licences which will permit the use of apparatus for wireless telegraphy (“Apparatus”) in three specific frequency assignments in the 1800 MHz band for the deployment of terrestrial systems capable of providing Electronic Communications Services (“ECS”).
- 2.9 The following describes the principal terms and conditions associated with an 1800 MHz Licence. These terms and conditions are set out in the Regulations.

<sup>8</sup> Note: Telefonica’s GSM 1800 MHz licence in lots (A, B and C) is due to expire in December 2014.

<sup>9</sup> Where general principles are stated in this Information Memorandum they may not necessarily be immediately qualified by any provisos, exceptions or reservations that apply. Accordingly, this document should be construed as a whole.

2.10 Among other things, these Licences will expire on 12 July 2015 (or such other date as may be specified by ComReg).

### **2.2.1 Scope of the 1800 MHz Licence**

2.11 An 1800 MHz Licence will allow the Licensee to keep and have possession of, install, maintain, work and use Apparatus for terrestrial systems capable of providing electronic communications services in the 1800 MHz band.

2.12 An 1800 MHz Licence is "non-exclusive" for the national terrestrial territory of the Republic of Ireland and all Apparatus licensed under an 1800 MHz Licence are required to comply with the relevant European Commission (EC) decisions for the spectrum band(s) licensed including, in particular, EC Decision 2009/766/EC<sup>10</sup> as amended<sup>11</sup>.

2.13 As set out in the Regulations:

- a "non-exclusive" licence, means that ComReg is not precluded from authorising other persons to keep, possess, install, maintain or use other Apparatus "on a non-interference and non-protected basis" in the spectrum encompassed by the Lots;<sup>12</sup> and
- "on a non-interference and non-protected basis" means a basis on which no harmful interference may be caused to any Radiocommunication Service, and on which no claim may be made for the protection of Apparatus operating on this basis against harmful interference originating from Radiocommunication Services.

### **2.2.2 1800 MHz Licence Duration**

The expected commencement and expiry dates of the Lots, and the corresponding 1800 MHz Licence/s, are set out in Table 3 below.

---

<sup>10</sup> 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. (2009/766/EC)

<sup>11</sup> In April 2011 EC Decision 2011/251/EU amended EC Decision 2009/766/EC.

<sup>12</sup> It is standard practice in Ireland that rights of use in spectrum bands licensed to particular licensees are also made available for use by other Apparatus on a non-interference and non-protected basis. ComReg does not presently foresee any material change in its policy on non-exclusivity over and above that already applied in other spectrum licensing regimes in Ireland.

Commencement Date	Expiry Date
1 February 2014 (or such other date as may be specified by ComReg)	12 July 2015 (or such earlier date as may be specified by ComReg)

**Table 3: Commencement and expiry dates of Lots and corresponding 1800 MHz Licence/s**

2.14 There is no implied or express right of renewal, extension or any other form of prolongation of an 1800 MHz Licence beyond the expiry date of 12 July 2015 as specified herein.

### **2.2.3 Licence Conditions Applicable to all 1800 MHz Licences**

2.15 This section describes the conditions which are applicable to all 1800 MHz Licences which may be granted on foot of the Award Process.

#### **Quality of Service (“QoS”) and associated compliance reporting conditions**

2.16 It is a condition of an 1800 MHz Licence that the Licensee meet minimum Quality of Service (“QoS”) obligations<sup>13</sup>. These QoS obligations relate to:

- the Minimum “Availability of the Network” Standard; and
- the Minimum “Voice Call” Standard.

2.17 The specifics of these QoS obligations are set out in the Regulations<sup>14</sup>.

2.18 It is also a condition of an 1800 MHz Licence that the Licensee shall, after the first twelve months, measure and submit an annual report to ComReg on its compliance with the above QoS obligations (“QoS Compliance Report”).

2.19 This compliance reporting condition includes that:

---

<sup>13</sup>The QoS obligations attached to an 1800 MHz Licence will apply to all relevant services provided using the Spectrum Blocks licensed in Part 1 of a Licensee’s Licence. For the avoidance of doubt, this will include all relevant services of the Licensee and those services provided by any third parties via contractual or other arrangements with the Licensee that use those Spectrum Blocks.

<sup>14</sup>[DETAIL TO BE ADDED]



- in the QoS Compliance Report the Licensee shall notify ComReg whether the Licensee has either (a) met the relevant QoS obligations as set out in its Licence, or (b) failed to meet the said obligations and reasons for same;
- the measurements required for the QoS Compliance Report shall be agreed with ComReg in advance and the compliance report shall have sufficient detail and granularity to allow the Commission to verify the Licensee's measurements;
- upon request by ComReg, the Licensee shall carry out Drive Test Measurements and submit these results to ComReg. These Drive Test Measurements are to be carried out at the Licensee's own expense and to a standard as agreed with ComReg; and
- the Licensee shall submit its QoS Compliance Report within the 31 calendar days following the anniversary of the Licence Commencement Date of the 1800 MHz Licence.

2.20 Given the duration of an 1800 MHz Licence and, for the avoidance of doubt, a Licensee will only be required to submit one QoS Compliance Report.

### **Compliance with rules to prevent spectrum hoarding**

2.21 It is a condition of the 1800 MHz Licence that the Licensee comply with any rules to prevent spectrum hoarding as laid down by ComReg under Regulation 17(10) of the Framework Regulations. While no such rules have been currently laid down by ComReg, ComReg reserves the right to specify such rules in the future and such rules may apply to Licences issued pursuant to the Award Process.

### **Assignment of rights and obligations of an 1800 MHz Licence**

2.22 Assignment of rights and obligations of an 1800 MHz Licence (including trading of rights of use for radio frequencies attaching to an 1800 MHz Licence) will be permitted.

2.23 In relation to any such assignment of rights and obligations, among other things, it is a condition of the 1800 MHz Licence that the Licensee shall:

- notify ComReg of its intention to transfer some or all of its rights of use of radio frequencies attached to its 1800 MHz Licence;

- only transfer rights of use for radio frequencies attached to its 1800 MHz Licence in accordance with the procedures on the transfer of rights of use for radio frequencies specified by ComReg;<sup>15</sup>
- not transfer rights of use for radio frequencies attached to its 1800 MHz Licence without the prior consent of ComReg, which shall not be unreasonably withheld, where ComReg has yet to specify its procedures for the transfer of rights of use for radio frequencies; and
- ensure that any Assignee<sup>16</sup> enters into a valid and binding agreement to comply with all conditions and obligations under the Regulations and the Licences issued pursuant to the Regulations and to provide to the Assignor<sup>17</sup> or ComReg, as appropriate, such details as ComReg is entitled to require from a Licensee from time to time.

2.24 While ComReg has specified draft procedures on the transfer of rights of use for radio frequencies<sup>18</sup>, these have yet to be finalised. It should also be noted that any transfer of rights of use would not only have to comply with electronic communication law but also applicable competition law.

### **Provision of updated information for Part 2 and Part 3 of the Licence**

- 2.25 Part 2 and Part 3 of the 1800 MHz Licence details the Apparatus to which the Licence relates and the location of this Apparatus.
- 2.26 It is a condition of the 1800 MHz Licence that the Licensee shall, at the end of each full calendar month in the first year for which the Licence is in force, submit updated information to ComReg in respect of Parts 2 and 3 of its 1800 MHz Licence.
- 2.27 It is ComReg's intention to publish details of 1800 MHz Licences, including information contained in Part 2 and Part 3, on its web-site,

---

<sup>15</sup> For the avoidance of doubt, any such procedures shall be in accordance with the relevant provisions of the Authorisation and Framework Regulations.

<sup>16</sup> Assignee means a party to whom some or all of the rights and obligations under a Licence have been transferred.

<sup>17</sup> Assignor means the party from whom some or all of the rights and obligations under a Licence have been transferred.

<sup>18</sup> See ComReg Document 12/76.

subject to the protection of confidential information in line with ComReg Document 05/24<sup>19</sup>.

### **Payment of fees**

2.28 It is a condition of an 1800 MHz Licence that the Licensee shall make payment of fees as detailed in the Regulations.

### **2.2.4 1800 MHz Licence Technical Conditions**

2.29 This section describes technical conditions which are:

- applicable to an 1800 MHz Licence; and
- associated with the R&TTE<sup>20</sup> and EMC<sup>21</sup> Directives.

### **Spectrum in the 1800 MHz band**

2.30 The technical conditions for the 1800 MHz band, amongst other things, require a Licensee:

- to deploy and operate terrestrial systems that are in compliance with the technical parameters set out in Decision 2009/766/EC (as amended);
- if deploying a GSM system in the 1800 MHz band, to meet the guard band obligation as set down in Decision 2009/766/EC (as amended), in the absence of bilateral or multilateral agreements between neighbouring 1800 MHz licensees; and
- to comply with all MoUs agreed from time to time between ComReg and Ofcom, or its successor, in relation to the 1800 MHz band, including those set out in:
  - Document 11/50e,<sup>22</sup> and
  - Document 11/50f.<sup>23</sup>

---

<sup>19</sup> See Appendix A of ComReg Document 05/24: Response to Consultation - Guidelines on the treatment of confidential information - March 2005.

<sup>20</sup> This refers to Article 3(2) of Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on Radio Equipment and Telecommunications Terminal Equipment and the Mutual Recognition of their Conformity.

<sup>21</sup> Directive 2004/108/EC.

<sup>22</sup> MoU between Ireland and the UK on Coordination in the 1710-1785/1805-1880 MHz Frequency Bands (see [http://www.comreg.ie/\\_fileupload/publications/ComReg1150e.pdf](http://www.comreg.ie/_fileupload/publications/ComReg1150e.pdf))

<sup>23</sup> MoU on Frequency Coordination between Ireland and the UK on the Frequency Bands 880-915/925-960 MHz and 1710-1785/1805-1880 MHz (see [http://www.comreg.ie/\\_fileupload/publications/ComReg1150f.pdf](http://www.comreg.ie/_fileupload/publications/ComReg1150f.pdf))

## **Compliance with the R&TTE Directive**

- 2.31 All radio and telecommunications terminal equipment must comply with the essential requirements and other relevant provisions of the R&TTE Directive before being placed on the market or put into service in Ireland.
- 2.32 Under the R&TTE Regulations<sup>24</sup>, which transpose the R&TTE Directive into law in Ireland, and the 2002 Act, it is a function of ComReg to ensure compliance, as appropriate, by persons with the relevant provisions of that legislation in relation to the placing of communications equipment on the market and the placing on the market and putting into service of radio equipment. Among other things, ComReg defines the regulated interface requirements for radio services in Ireland and these interfaces are currently set out in ComReg Document 06/47R.<sup>25</sup> That document has radio interface specifications for the 1800 MHz band and it is ComReg's intention to update ComReg Document 06/47R in due course to account for any 1800 MHz Licences issued as a result of this Award Process.
- 2.33 It is a condition of an 1800 MHz Licence that the Licensee ensures that all radio equipment worked and used under the 1800 MHz Licence operates in accordance with the relevant interface requirements as set out in ComReg Document 06/47R (as amended from time to time).

## **Compliance with the EMC Directive as transposed into Irish law**

- 2.34 It is a condition of an 1800 MHz Licence that the Licensee ensures that the Apparatus or any part thereof, complies with the requirements set out in Annex I to the EMC Directive (Directive 2004/108/EC). In this regard, a Licensee has a duty to ensure that the electromagnetic disturbance generated by its licensed Apparatus does not exceed the level above which radio and telecommunications equipment or other equipment cannot operate as intended and that equipment sold, or installations constructed, by them are appropriately immune to electromagnetic interference.

---

<sup>24</sup> The European Communities (Radio Equipment and Telecommunications Terminal Equipment) Regulations, 2001 (S.I. No. 240 of 2001)

<sup>25</sup> Interface Requirements for Radio Services in Ireland (see [http://www.comreg.ie/fileupload/publications/ComReg\\_0647R.pdf](http://www.comreg.ie/fileupload/publications/ComReg_0647R.pdf))

## 2.2.5 Fees for a 1800 MHz Licence

- 2.35 The fee for an 1800 MHz Licence consists of an Upfront Fee which is payable as part of the Award Process and Spectrum Usage Fees (“SUFs”) which are paid prior to the grant of an 1800 MHz Licence and then over its duration<sup>26</sup>.
- 2.36 For the avoidance of doubt, it should be noted that the grant of any Licence arising out of this Award Process is not an activity that is currently subject to Value Added Tax (“VAT”) and so all Licence fees to be paid by Licensees in connection with the Award Process will not include VAT, unless the VAT rules change in the interim.

### Upfront Fee

- 2.37 The Upfront Fee payable by a Winning Bidder for an 1800 MHz Licence at the end of the Auction is a spectrum access fee associated with the Winning Bid made by that Winning Bidder, payable for winning one or more of the available Lots.
- 2.38 The Upfront Fee will be at least the Reserve Price for each Lot and no greater than the Bid amount specified by the Winning Bidder for its Winning Bid, as determined by the methodology detailed in Chapter 3 of this document.
- 2.39 The Reserve Price per Lot is €0.871 million.<sup>27</sup>

### Spectrum Usage Fee

- 2.40 The SUF is an index-linked fee that is paid at defined intervals over the duration of the 1800 MHz Licence.
- 2.41 The first SUF is due prior to the grant of an 1800 MHz Licence and the second and final SUF is due prior to the anniversary of the commencement date of the 1800 MHz Licence.
- 2.42 SUFs are index-linked to the overall Consumer Price Index<sup>28</sup> (“CPI”) as published by the Central Statistics Office<sup>29</sup> of Ireland or its

---

<sup>26</sup> As discussed further in subsection 2.2.6 of this document, the net Deposit to be refunded at the end of the Auction will be the Deposit submitted plus any interest earned less the Upfront Fee.

<sup>27</sup> This is to be updated in the final IM for any CPI adjustments

<sup>28</sup> If the CPI data ceases to be published or if the method of its calculation changes fundamentally, ComReg reserves the right to select another appropriate index and to amend the method of calculating indexing accordingly.

<sup>29</sup> See [www.cso.ie](http://www.cso.ie)

successor. As the CPI may vary over time, the SUF per Lot may increase or decrease over the duration of the 1800 MHz Licence based upon the increases or decreases in the CPI for the relevant time period.

- 2.43 For an 1800 MHz Licence, the SUFs are the sum of the SUFs associated with each Lot included in the 1800 MHz Licence. For each Lot included in an 1800 MHz Licence, the SUF for a one (1) year Licence period is €0.54 Million per Lot plus the “CPI Adjustment”.
- 2.44 The CPI Adjustment to a SUF is to be calculated using 1 February 2013 as the common base date for the CPI (i.e. CPI = 100). When calculating the “CPI Adjustment” to the SUF associated with a Licence, ComReg will use the most up-to-date CPI data available to it at that time. For example, where the anniversary of the commencement date of an 1800 MHz Licence is 1 February, ComReg envisages that the most up-to-date CPI data available to it is likely to be CPI data from November of the previous year<sup>30</sup>.
- 2.45 Where the applicable SUF relates to a period of less than one year (as will be the case for the second and final SUF period for an 1800 MHz Licence), the SUF shall be calculated using the above methodology and adjusted on a pro rata daily basis.

### **Payment Arrangements for Licence Fees**

- 2.46 The Licence Fees for an 1800 MHz Licence are to be paid into ComReg’s Bank Account, the details of which are specified in the Application Form as set out in Annex 2 of this document.
- 2.47 The Upfront Fee for an 1800 MHz Licence will, at the Notification and Grant Stage and subject to unusual circumstances, be deducted from the Deposit paid by the Winning Bidder and any surplus deposit will be refunded.
- 2.48 Where the due date for payment of Licence Fees falls on a day which is not a Working Day, payment shall be made on or before the last Working Day before the date on which payment would otherwise have fallen due.

---

<sup>30</sup> This would take into consideration the time required for the publication of CPI data by the CSO and the administrative requirements such as invoicing the SUF to the Winning Bidder or Licensee thirty (30) calendar days in advance of anniversary of the commencement date of the Liberalised Use Licence.

- 2.49 As set out in section 3.6 of this document, where a Winning Bidder does not comply with the conditions relating to the payment of the Upfront Fee or the conditions attached to the payment of the first SUF due on the grant of its Licence, it will forfeit its Deposit, without prejudice to ComReg's entitlement to recover the full amount due in respect of all Lots won by that Winning Bidder as a simple contract debt.
- 2.50 Where a Licensee has been issued an 1800 MHz Licence, failure by a Licensee to make a payment of the second SUF on or before the date it falls due constitutes non-compliance by the Licensee with its 1800 MHz Licence conditions and ComReg may take steps to recover the sum due, including taking compliance actions in accordance with the Authorisation Regulations.
- 2.51 In addition, where payment of any fee is not made when due, then the Licensee shall pay to ComReg interest on the fees or part thereof that is outstanding at the appropriate EURIBOR rate, between the date when such fee, or part thereof, fell due and the date of payment of such fee or part thereof.
- 2.52 An amount payable by a person in respect of an outstanding Licence fee may be recovered by ComReg from the person as a simple contract debt in any court of competent jurisdiction.

## **2.2.6 Refund or adjustment of Licence Fees**

- 2.53 In limited circumstances ComReg may refund or adjust Licence Fees payable by Winning Bidders due to the delayed commencement of Lots.
- 2.54 The refund or adjustment of fees payable to a Winning Bidder for each Lot so delayed shall be calculated as follows:
- a pro-rata portion of the Upfront Fees already paid by the Winning Bidder on a daily basis for each whole day following the commencement date that ComReg does not make the Lot available; and
  - a pro-rata portion of SUFs already paid by the Winning Bidder on a daily basis for each whole day following the commencement date that ComReg does not make the Lot available.
- 2.55 Refunds to the Winning Bidder will be paid by ComReg within 5 Working Days of its notification of delayed commencement or, if

desired by the Winning Bidder, these refunds can be offset against the second and final SUF payable.

2.56 For the avoidance of doubt:

- no refund of Upfront Fees and/or SUFs shall be payable by ComReg to any Winning Bidder for any delay to the availability of any Lot caused, or contributed to, by acts or omissions of that Winning Bidder, its servants or agents, or any failure on behalf of its suppliers;
- in submitting an Application, Applicants agree that if they become Winning Bidders, a failure to obtain consents, approvals, Apparatus or funding necessary to deploy a network or complete transitional activities shall be deemed to be an omission on behalf of that Winning Bidder; and
- to the extent permitted by law, ComReg's liability for damage or loss of any nature arising from delayed access to Lots is expressly limited to the refunds identified above and, in submitting an Application, Applicants agree to same.

#### **Other refunds of Licence Fees**

2.57 Where a Licensee requests an amendment to its 1800 MHz Licence which is accepted by ComReg and which results in:

- a reduction of the quantum of spectrum assigned to an 1800 MHz Licence, the Licensee shall not be entitled to any refund of its Upfront Licence fee, but shall be entitled to any excess SUFs paid in relation to this quantum of spectrum (which has been subject to the reduction) after the date this amendment takes effect and the Licensee no longer has a right of use over that spectrum pursuant to an 1800 MHz Licence. Additionally, the Licensee will not be liable for any future SUFs on these surrendered Lots beyond the new expiry date of these Lots in its amended 1800 MHz Licence; or
- a reduction of the duration of one or more Lots in a 1800 MHz Licence, the Licensee shall not be entitled to any refund of its Upfront Licence fee, but shall be entitled to any excess SUFs paid in relation to the unused part of the Licence term where SUFs have already paid.

2.58 Where an amendment, surrender or withdrawal of an 1800 MHz Licence results from an enforcement action taken by ComReg, no 1800 MHz Licence fees paid will be refunded to the Licensee.



## **2.2.7 Enforcement Actions – Compliance with Licence Conditions, Licence Suspension, Licence Withdrawal**

- 2.59 Enforcement of conditions of 1800 MHz Licences shall be carried out by ComReg in accordance with its statutory functions, objectives and duties including, in particular, those set out in the Authorisation Regulations.
- 2.60 An 1800 MHz Licence may be suspended or withdrawn in accordance with the Authorisation Regulations.
- 2.61 In the event that enforcement action by ComReg results in the suspension, withdrawal (or foreshortening) of an 1800 MHz Licence or part thereof, no Licence fees paid in connection with that Licence will be refundable.
- 2.62 ComReg may appoint such members of its staff as it considers appropriate to be authorised officers for the purposes of the exercise by ComReg of its powers, functions and duties. For the purposes of the exercise by ComReg of its functions, an authorised officer appointed by ComReg may exercise the powers conferred by section 39(3) of the 2002 Act on authorised officers appointed under that Act.

## **2.2.8 Amendment of an 1800 MHz Licence**

- 2.63 ComReg may amend the rights, obligations and procedures relating to an 1800 MHz Licence from time to time in accordance with the Authorisation Regulations.

## **2.2.9 Other Considerations**

### **Spectrum reviews and amendments to Licence conditions**

- 2.64 It is ComReg's policy to conduct, at regular intervals, reviews of spectrum management and use and, as a consequence of these reviews, amendments to licences may be proposed and implemented. Accordingly, ComReg may amend the rights, obligations and procedures relating to an 1800 MHz Licence from time-to-time and in accordance with the Authorisation Regulations. In considering any such action, ComReg would act reasonably, transparently and fully in accordance with its statutory objectives, functions and duties.

## **Spectrum pooling and sharing**

- 2.65 ComReg's consideration of the issues associated with spectrum pooling and sharing were set out in its Radio Spectrum Strategy Statement (see section 3.5 of Document 11/88 and section 4.4 of Document 11/89 at [www.comreg.ie](http://www.comreg.ie)). As set out in those documents, and having regard to its statutory functions, objectives and duties, it is not possible for ComReg to guarantee that individual spectrum sharing and pooling agreements will be permitted as the details of any such agreements would have to be assessed in the context of relevant electronic communications and competition law. It is only possible to make such an assessment on a case-by-case basis having regard to the specifics of a proposed arrangement and the circumstances in which the proposed arrangement would occur.

## Chapter 3

# 3 The Award Process and Auction Rules

## 3.1 Lots Available

3.1 Three individual lots in the 1800 MHz band are being made available in this Award Process. Table 4 below provides an overview of these three Lots.

Lot Designator	Frequency band	Licence duration <sup>31</sup>	Lot size	Reserve Price per Lot	Annual SUF per Lot (before Indexation)
Lot I	1750.0 - 1755.0 MHz paired with 1845.0 - 1850.0 MHz	01/02/14 to 12/07/15	2 x 5 MHz	€0.871 million. <sup>32</sup>	€0.54m + CPI adjustment
Lot J	1755.0 - 1760.0 MHz paired with 1850.0 - 1855.0 MHz				
Lot K	1760.0 - 1765.0 MHz paired with 1855.0 - 1860.0 MHz				

**Table 4 Lots available to any Interested Party participating in the Award Process**

## 3.2 Process Overview and Timeline

3.2 This subsection describes the overall structure of the Award Process. It comprises the following stages:

- an **Application Stage**, during which Applicants can submit Applications, which must include their Bids for the Lots available and corresponding Deposits, to ComReg;

<sup>31</sup> Note that, as discussed in subsection 2.2.2, the commencement and expiry dates of Lots may be adjusted by ComReg.

<sup>32</sup> This is to be updated in the final IM for any CPI adjustments

- a **Qualification Stage**, in which ComReg will examine Applications received and determine whether Applicants are qualified to participate in the Award Process;
- an **Assessment Stage**, in which ComReg will determine the Lot/s allocated to each Applicant and the price to be paid by each Winner Bidder on the basis of Bids received on Application; and
- a **Notification & Grant Stage**, in which ComReg will notify the Winning Bidders of their entitlement to obtain an 1800 MHz Licence in accordance with the outcome of the Award Process and, subject to the payment of fees and other provisions, subsequently grant Licences to Winning Bidders.

3.3 The timeline for the Award Process is set out in Table 5 below.

3.4 ComReg reserves the right to vary these timelines as may be necessary, in order to take into account any changed or unforeseen circumstances. ComReg, in doing so, would give appropriate notification (e.g. by issuing a public notice on its website or giving notice only to a selection of Interested Parties, depending on the stage of the Award Process (e.g. Applicants, Qualified Bidders)).

Stage of process	Milestone	Timeline
Application Stage	Publication of final Information Memorandum on ComReg's website	Day Month 2013
	Deadline for submission of questions regarding the Award Process	Day Month 2013 [plus 2 weeks]
	Final date for responses to questions on the Award Process to be published on ComReg's website	Day Month 2013 [plus 2 weeks]
	Deadline for submission of Application Forms	Day Month 2013 [plus 1 / 2 weeks]
	Deadline for submission of Deposits	Day Month 2013 [same date as

<b>Stage of process</b>	<b>Milestone</b>	<b>Timeline</b>
		above]
	Restrictions on Auction-related communications come into effect	On submission of Application to ComReg
Qualification Stage	Each Applicant to be informed by ComReg about whether it has become a Qualified Bidder or not	Day Month 2013 [plus 2 week]
	Return of Deposits to Applicants that have not become Qualified Bidders	Day Month 2013 [close to above]
Assessment Stage (if required)	Determination of the Lots assigned to each Winning Bidder and the price to be paid	Day Month 2013 [plus 1 week]
Notification and Grant Stage	Notification to each Winning Bidder of their entitlement to apply for an 1800 MHz Licence	Day Month 2013 [plus 1 day]
	Public announcement of outcome of Award Process	
	Refund of Interest earned and any surplus funds held by ComReg	Day Month 2013 [plus 1 week]
End of Award Process		

**Table 5: Timetable for the Award Process**

- 3.5 References in this Chapter and throughout this Information Memorandum to ComReg using its discretion shall mean that ComReg shall exercise its discretion in accordance with its statutory functions, objectives and duties.
- 3.6 Any form of direct or indirect cooperation among Applicants or their stakeholders to influence the outcome of the Award Process (collusive behaviour) is prohibited.
- 3.7 Likewise, the public announcement or other disclosure to third parties of participation in the Award Process, or of Bids or bidding

strategies – prior to or following the Application Stage – are prohibited.

- 3.8 In the event that an Applicant breaches the Auction Rules, that Applicant may be excluded from the Award Process, depending on the severity of the breach.
- 3.9 If an Applicant is excluded from the Award Process, it will remain liable for its Bids and any fees payable in the event that the Applicant would have become a Winning Bidder. However, the same Applicant will not be allocated any spectrum rights won in the Award Process.
- 3.10 ComReg may, at its discretion, decide to void the Bids of an Applicant who has been excluded. Voiding of Bids of a Bidder may require a recalculation of Winning Bids and Winning Prices.

### 3.3 Application Stage

- 3.11 The Award Process begins on the day on which ComReg publishes the Information Memorandum, namely **DAY MONTH 2013**<sup>33</sup>.
- 3.12 As set out in Table 5 above, the deadline<sup>34</sup> for all Interested Parties to submit their Applications to participate in the Award Process, (the “Application Date”) together with the required Deposit is **DAY Month 2013**.<sup>35</sup> This deadline is approximately 5-6 weeks following the date of publication of the Information Memorandum.
- 3.13 For the purpose of this document and the Award Process, the term “**Auction Rules**” shall refer to the rules and procedures relating to the Auction, as presented in Chapters 3 and 4 of this Information Memorandum, and to any other material to which the rules in Chapters 3 and 4 directly refer.
- 3.14 As part of their Applications and in order to be eligible to Bid for spectrum in this Award Process, all Interested Parties must submit:
  - a completed Application Form;<sup>36</sup>
  - a cleared Deposit; and

---

<sup>33</sup> Table 5 sets out the timeline associated with this Award Process.

<sup>34</sup> ComReg is under no obligation to consider Applications that have not been submitted in full by this Application Date.

<sup>35</sup> If the Application Date in this Information Memorandum and that published on ComReg’s website differ, the Application Date published on ComReg’s website takes precedence.

<sup>36</sup> See Annex 2.

- any other documentation required to be annexed to the Application Form.

3.15 An Interested Party that submits an Application to ComReg is herein referred to as an Applicant.

### **3.3.1 Questions**

3.16 ComReg will allow questions to be submitted to it by Interested Parties to facilitate clarity and understanding of the Award Process and Auction Rules (see also section 4.2.5 on errors). All questions received in due time will be replied to on an ongoing basis and, as far as possible, within 8 Working Days.

3.17 The deadline for the submission of questions is **16:00** hours (local time) on **Day Month 2013**. ComReg anticipates publishing all questions and associated answers no later than **Day Month 2013**.

3.18 In that regard, and for this Award Process, questions must be submitted in written, hardcopy format only and cannot be submitted in any electronic format. From the publication of the Information Memorandum until the end of the Award Process, no e-mail communications with any Applicant, in relation to or connected with the Award Process, will be entered into or considered.

3.19 Questions should be delivered by hand or courier to ComReg's offices and addressed as follows:

**Persons Name**

**1800 MHz Spectrum Award**

**Commission for Communications Regulation**

**Abbey Court, Irish Life Centre**

**Lower Abbey Street**

**Dublin 1**

**Ireland**

3.20 Questions should be submitted in a sealed envelope. Delivery of any submission and, for example, anonymity of the submission is in the control of the particular Interested Party. Interested Parties should ensure that the envelope does not contain any marks which could identify the originator. Interested Parties are required to identify themselves on the question sheet within the sealed envelope.

- 3.21 Receipt of questions will be acknowledged by ComReg in writing.
- 3.22 ComReg will publish all questions together with their associated responses on an anonymous basis on its website.
- 3.23 ComReg reserves its right to, where appropriate, amend previous responses up until **Day Month 2013**, such that answers provided before this date are for general guidance only and should not be considered final or relied upon until **Day Month 2013**.

### **3.3.2 Application Form and Supporting Documents**

- 3.24 The Application Form must be completed by prospective Applicants, and must include the completed Lot Application Form.
- 3.25 Each prospective Applicant is allowed to submit one single Application. Once a prospective Applicant has submitted an Application, the Applicant will not be permitted to revise or withdraw any of the Bids specified in its Lot Application Form, add any further Bids to the list submitted, or revise any other documents included in its Application unless the prospective Applicant is required to do so by ComReg in its discretion to do same.
- 3.26 Part 1 of the Application Form, entitled "Administrative Information", requests the Applicant to provide, among other things, details of person(s) to be used as the direct point of contact for an Applicant for purposes of the Award Process. In completing this part of the Application Form, the Applicant must also submit appropriate evidence that the persons signing the Application Form are duly authorised by the Applicant to do so ("Authorised Agents"). Appropriate evidence would include:
  - where the Applicant is incorporated in the European Union, evidence that the Authorised Agents are registered pursuant to the appropriate national implementing measures transposing Article 9 of the First Company Law Directive<sup>37</sup> (Regulation 6 of S.I. 163 1973 in Ireland);
  - a board resolution from an Applicant which is a company registered in Ireland;
  - an irrevocable power of attorney; or
  - equivalent evidence in respect of an Applicant from outside Ireland, supported by a legal opinion from a law firm in their

---

<sup>37</sup> Directive 68/151/EEC.



jurisdiction, carrying in excess of €10,000,000 in professional indemnity insurance, addressed to ComReg, certifying that the Authorised Agents are entitled to bind the Applicants contractually.

3.27 Part 2 of the Application Form, entitled "Applicant Declaration", requires the Applicant to agree to be bound by the Auction Rules as set out in this document including:

- the provisions regarding agreements with third parties;
- the Auction Rules relating to confidentiality; and
- non-collusion for the duration of the Award Process<sup>38</sup>.

3.28 The Applicant Declaration must also be signed by the Applicant.

3.29 Part 3 of the Application Form, entitled "Lot Application Form", lists all seven packages and the Reserve Price per package. Details on how to complete the Lot Application Form are set out in section 3.3.6.

3.30 Applicants must also submit an Ownership Structure Document as part of their respective Applications. This document must provide details of the Applicant's ownership structure, including certification that this ownership structure is compliant with the ownership rules set out in subsection 3.3.4 and is correct to the best knowledge of the Applicant, and list the Applicant's Insiders.

3.31 In addition, in submitting its Application Form, an Applicant agrees to be bound by terms and conditions associated with the Award Process as set out in this Information Memorandum, which amongst other things, include:

- its agreement that, if it becomes a Winning Bidder, then its failure to obtain consents, approvals, apparatus or funding necessary to deploy a network shall be deemed to be a breach of the Auction Rules by that Winning Bidder; and
- its agreement to vacate fully the Lots assigned to it pursuant to the Award Process by the expiration of its 1800 MHz Licence, where it has no rights of use to one or more of these Lots in Time Slice 2.

---

<sup>38</sup> In addition to those rules under Irish and EU competition law.

### 3.3.3 Deposits

- 3.32 An Applicant must submit a Deposit with its Application. The required amount of the Deposit shall correspond to the largest Bid amount (sum of the Reserve Price and amount bid in excess of the Reserve Price) specified for any package by the Applicant in its Lot Application Form.
- 3.33 The Applicant's Deposit must be transferred to the bank account nominated by ComReg as specified in Annex 5, and is to be received as cleared funds in ComReg's account<sup>39</sup>, before **23:59** (11.59 PM) on the final day that Applications are permitted, namely **Day Month 2013**.
- 3.34 Deposits will be held by ComReg in euro. Any amount of a Deposit to be repaid to an Applicant will be repaid in euro unless, arising from an action taken by the State, funds held in the relevant ComReg account are compulsorily redenominated or converted into a currency other than euro, in which case ComReg shall return the appropriate amount in the currency into which the account was redenominated or converted at the rate applicable on the date of any such redenomination or conversion. The Applicant bears any risk of any exchange rate fluctuations or compulsory currency redenomination or conversion.
- 3.35 ComReg will place all monies received from each Applicant into an NTMA<sup>40</sup> "Exchequer Account". Interest will be paid by ComReg on funds held by it during the Award Process and Applicants will receive all interest accrued in this account.

### 3.3.4 Confidential Information and Bidder behaviour

- 3.36 Bidders are reminded that they are subject to rules, both under the Auction Rules and under competition law, prohibiting the coordination of bidding decisions with other Bidders or the sharing of information with other Bidders that could affect those Bidders' bidding decisions.
- 3.37 This subsection sets out the rules (in addition to those rules under Irish and EU competition law) that govern the behaviour of

---

<sup>39</sup> Bidders are cautioned to ensure that the cleared funds received by ComReg are required to be the amount of the Deposit specified in euro. Bidders should ensure that the amount of funds received by ComReg is not diminished by bank charges, exchange rate fluctuations or similar matters.

<sup>40</sup> National Treasury Management Agency.

Applicants from the time of submission of their Applications until the grant of Licences. The Auction Rules require that any Applicant shall refrain from any action that could upset the running of the Award Process. The Auction Rules also set out a number of specific rules in relation to Confidential Information and collusion, other restrictive practices capable of distorting the outcome of the Award Process, and the behaviour of employees and legal entities that are related or connected to the Bidder.

- 3.38 As part of its Application to be awarded spectrum rights of use in the 1800 MHz band in which radio frequencies are being made available in the Award Process, each Applicant is required to confirm that it has and will continue to comply with the Auction Rules and that it has taken all reasonable measures to ensure that its Connected Persons, employees and Insiders<sup>41</sup> have and will continue to at all times comply with these rules. Notwithstanding subsection 3.3.4 if at any point it becomes apparent that an Applicant or Bidder, its Connected Persons or its Insiders have failed to comply with these rules, the Applicant or Bidder, as appropriate, will be deemed responsible for that breach and may, depending on the nature and seriousness of the breach, be excluded from the Award Process and/or forfeit part or all of the Deposit it paid at the Application Stage. In certain circumstances, ComReg may also suspend or withdraw a Winning Bidder's Licence(s) if, after award of the Licence(s), it emerges that the Bidder, its Connected Persons or its Insiders breached these rules.

## Confidential Information and Insiders

### Definitions

- 3.39 **Confidential Information** means any information which, if known to another Bidder, may influence the amount that the Bidder is willing to Bid for Lots or the strategy it adopts in Bidding for such Lots in the Auction. Confidential Information shall include (but not necessarily be limited to) information as to a Bidder's business case, its pre-Auction related activities, its Bid strategy, information as to the identity of a Bidder's Authorised Agents, or the Prices it is willing to Bid for spectrum. Confidential Information relating to individual Bidders shall also include the Bidder's actual participation in the Award Process.

---

<sup>41</sup> See paragraph 3.46 for a definition of an Insider.

- 3.40 A **Bidding Group** is defined as a Bidder and its Connected Persons.
- 3.41 A person (the “Connected Person”) is a **Connected Person** in relation to a Bidder where the Connected Person and/or any of its Controlling Persons and/or any of its Controlled Persons:
- a) either by itself or in concert with another person or other persons Controls the Bidder;
  - b) either by itself or in concert with another person or other persons has a direct or indirect Interest of 10% or more in the Bidder;
  - c) is a partner<sup>42</sup> of the Bidder;
  - d) either by itself or in concert with another person or other persons has an agreement, wholly or partly, to finance or otherwise assist the Bidder in connection with the Award Process;
  - e) is Controlled by the Bidder alone or in concert with another Connected Person or Persons; or
  - f) has as a director or senior executive any individual who is a director or senior executive of the Bidder or any of its Controlled Persons.
- 3.42 A person (the “**Controlling Person**”) will be deemed to control another person (the “Controlled Person”) in the circumstances described in the following paragraphs (and “Control” will be construed accordingly):
- a) where the Controlling Person and/or its Controlled Persons and/or its Associates, either by itself or in concert with other persons has:
    - an Interest in 30% or more of the share capital of the Controlled Person;
    - the right to cast 30% or more of the votes of shareholders on any matter at shareholders meetings;
  - b) where the Controlled Person routinely or generally acts in accordance with the instructions of the Controlling Person;

---

<sup>42</sup> Within the meaning of the Partnership Act 1890 or equivalent legislation in the jurisdiction where the entity is formed.

- c) where, in the plain meaning of the words, the Controlling Person and/or its Controlled Persons controls the Controlled Person;
- d) where the Controlling Person is capable of exercising decisive influence on the activity of the Controlled Person by means of:
  - securities, contracts or any other means, or any combination of securities, contracts or other means; and/or
  - ownership of, or the right to use all or part of, the assets of the “Controlled person”, and/or
  - rights or contracts which enable decisive influence to be exercised with regard to the composition, voting or decisions of the organs of the “Controlled Person”; and/or
  - without limitation by the foregoing, any other way
- e) In addition to the above, in determining whether influence of the kind referred to above is capable of being exercised by a “Controlling Person” over a “Controlled Person”, regard shall be had to all the circumstances of the matter and not solely to the legal effect of any instrument

3.43 In the definitions of “Connected Person” and “Controlled Person” a person is “in concert” with another person in circumstances where:

- a) one person Controls the other person; or
- b) one person is Associated with the other person; or
- c) there is an agreement or arrangement (whether or not legally binding) between those persons as to co-ordinated or concerted behaviour or activity by those persons (or either of them);
- d) where, within the plain meaning of the expression “concerted”, the persons’ behaviour or activity is concerted.

3.44 An “**Interest**” shall include:

- a) an ownership interest, legal or beneficial, actual or contingent;
- b) an interest as the holder of a mortgage, charge, lien, hypothecation or other encumbrance;

- c) any derivative interest such as a participation or sub-participation where the holder of the Interest and/or any of its Controlled Persons directly or indirectly bears some or all of the rewards and / or some or all of the risks of the relevant entity, shares or other securities;
- d) an option to acquire any of the foregoing;
- e) a right to convert a right or asset (such as a debt security) into any of the foregoing.

3.45 An “**Associate**” of any entity means:

- a) a director or company secretary or like officer of the entity and/or of its Controlled Persons;
- b) a senior executive of the entity and/or of its Controlled Persons;
- c) a spouse, civil partner or cohabiting partner of the foregoing;
- d) any minor child of the foregoing and any child of the foregoing residing with the foregoing;
- e) any partner of the foregoing;
- f) any entity Controlled by any one or more of the foregoing and any partner of such entity.

3.46 An **Insider** shall mean an entity that has:

- received Confidential Information about that Bidder but is not a Connected Person;
- undertaken, wholly or partly, to finance or assist a member of a Bidding Group in connection with the Award Process; or
- has provided advice to the Bidder in formulating its Bid strategy and/or business case in connection with the Award Process.

An Insider can be a legal entity or a natural Person. For example, an Insider could be a potential participant in a joint bid or a bank or other funder, in either case, with knowledge of a Bidder’s business case, valuations or Bid ceilings, or it could be an auditor, consultant, lawyer, economic adviser, or other professional assisting in the preparation of a Bid. Each Bidder shall submit a list of its Insiders to ComReg, at the time of its Application, and it shall inform ComReg thereafter of every change to its list of Insiders.

## Restrictions

- 3.47 The rules regarding Confidential Information set out in this section shall apply from the date that an Applicant submits its Application or the Application Date, whichever is the earlier, to the end of the Award Process. Confidentiality regarding the outcome of the Award Process must be maintained until ComReg makes a public announcement at the end of the Award Process as detailed in subsection 3.9.
- 3.48 Except in accordance with the Exemption from Insider Rules as discussed below, Bidding Groups and Insiders must not convey Confidential Information to any other person, including another Bidding Group or its Insiders, either by making public such information, or by communicating such information directly to another Bidding Group or its Insiders or indirectly through an intermediate source.
- 3.49 It is possible that at the Application Date a Bidder is unaware that it has a common Insider with another Bidder. If ComReg finds that two or more Bidders have a common Insider, it shall:
- notify the Bidders concerned, indicating a deadline for them to apply for exemption from the rules on common Insiders;
  - require the relationship of one or more of the Bidders with the common Insider to terminate insofar as the Award Process is concerned; or
  - exclude the affected Bidders from further participation in the Award Process.
- 3.50 If the Bidders concerned are not granted an exemption by ComReg and/or they do not alter the common Insider situation to ComReg's satisfaction, then ComReg shall exclude the Bidders from further participation in the Award Process. If the relationship is brought to light later in the Award Process, ComReg may also declare the result of the Award Process as not binding, either in whole or in part, on ComReg.
- 3.51 If two or more Bidders have a common Insider, and it is not possible to bring the situation to an end within the deadline set by ComReg, and ComReg does not grant an exemption, one or more of the Bidders may withdraw from participation in the Award

Process, before the deadline for doing so set by ComReg, so that it is not necessary for ComReg to exclude all affected Bidders.

### **Exemption from Insider rules**

- 3.52 ComReg may, in exceptional circumstances and at its sole discretion, grant exemption from the rules relating to common Insiders described above. ComReg may attach terms to any such exemption.
- 3.53 In considering whether to grant an exemption, ComReg will consider the arrangements put in place by a common Insider, to prevent the dissemination of Confidential Information relating to one Bidder from the individuals acting for that Bidder within the common Insider to the individuals acting for another Bidder.
- 3.54 In considering whether or not to grant an exemption, ComReg will require certain information from the Bidder, including (but not necessarily limited to) the following:
- details of all individuals acting for each Bidder within the common Insider;
  - an organisation chart showing the positions of each of these individuals within the common Insider;
  - a copy of any appropriate policies and procedures manuals used by the common Insider in relation to the segregation of customer data;
  - a written undertaking from the common Insider, in a form acceptable to ComReg, to segregate all Confidential Information relating to the Bidders that it is acting for and not to use any common personnel in relation to the different Bidders.
- 3.55 If a Bidder seeks an exemption, it will consent to ComReg contacting the managing director, managing partner, or person occupying an equivalent position in the common Insider, to seek the appropriate written undertaking, which shall be expressed to be for the benefit of ComReg.

### **Collusion and other disruption to the Award Process**

- 3.56 All Bidders and Bidding Groups shall refrain from doing any of the following:



- disclosing any Confidential Information beyond the Bidder and its Connected Persons and Insiders;
- disclosing any Confidential Information in breach of undertakings made by a Bidder pursuant to any exemption to the rules on Connected Persons and Insiders granted by ComReg;
- obtaining Confidential Information in relation to any other Bidder;
- communicating with other Bidders and their Connected Persons with the intention or effect of coordinating bidding within the Auction;
- entering into agreements with other Bidders or their Connected Persons in relation to the Award Process;
- undertaking any action that is intended to, or is likely to, distort the outcome of the Award Process; and
- for the duration of the Award Process, exchanging information, coordinating or entering into agreements with other Bidders and their Connected Persons regarding the Bidder's strategy for use of the Licence.

The above requirements shall be binding upon all Applicants until ComReg has publicly announced the final outcome of the Award Process.

- 3.57 Subject to ComReg's discretion to conclude otherwise, any merger or acquisition that may occur during the Award Process shall not be considered an act that could adversely affect the Award Process.
- 3.58 Notwithstanding the provisions of the paragraphs above, any member of a Bidding Group, or Insider may disclose Confidential Information to its employees, agents or other representatives, and vice versa, where this is necessary for the purposes of:
- determining the Bidder's participation and preparing for its participation in the Award Process, including its Bid strategy;
  - assisting the Bidder during its participation in the Award Process; and

- dealing with commercial and regulatory matters following, and directly concerned with, the outcome of the Award Process, including, for example, liaison with ComReg prior to the grant of 1800 MHz Licences.

However, such disclosure shall not include disclosure to any members of another Bidding Group except with ComReg's prior written consent.

### **Restrictive agreements**

3.59 A Bidding Group, or its Insiders may neither prior to the submission of an Application, nor after the submission of an Application and until ComReg publicly announces the outcome of the Award Process, enter into any agreement or establish any understanding with a provider of equipment or software, which directly or indirectly:

- restricts the provider's ability to supply equipment or software to another Bidder or another Bidder's Connected Persons regarding the planning, establishment or operation of a network in Ireland involving the frequencies which are subject to this Award Process; or
- restricts the prices or other terms and conditions that the provider can offer another Bidder or its Connected Persons regarding the planning, establishment or operation of a network in Ireland involving the frequencies which are subject to this Award Process.

3.60 A Bidder, its Connected Persons or Insiders may not either prior to or during the Award Process enter into any agreement or establish any understanding with a third party if the agreement or understanding directs this third party not to participate in the Award Process, or restricts the ability of this third party to participate in the Award Process.

### **Directors and employees**

3.61 Circumstances may arise where Bidding Groups and their respective Insiders have common directors and/or employees. If this occurs, the Bidders concerned need to ensure that the respective persons:

- are not, directly or indirectly, involved in the preparation and/or submission of the Application for both Bidders or their Connected Persons, such that they are involved in the Award Process for one Bidding Group only;
  - are not in possession of, do not obtain, or have knowledge of any Confidential Information concerning both Bidders or their respective Connected Persons or Insiders; and
  - are involved in Bidding for one Bidder only or not at all.
- 3.62 Prior to the submission of its Application, a potential Bidder shall take all reasonable measures with a view to identifying its Connected Persons, Associated Bidders and Insiders.
- 3.63 A Bidder shall ensure that its Connected Persons take all reasonable measures to identify and inform the Bidder if they have any board members or employees who are Insiders in relation to another Bidder, such that the Bidder can take appropriate precautions to ensure that the rules on Confidential Information and collusion are not breached.

### **Sanctions**

- 3.64 As part of their Applications, Applicants agree to be bound by a series of possible administrative sanctions for infringement of the Auction Rules.
- 3.65 Interested Parties should note that certain breaches of the Auction Rules and other behaviours that Applicants and/or Bidders could engage in may entitle other Applicants and/or Bidders to seek redress under civil law and, moreover, may also constitute offences relating to, amongst other things, competition law, fraud and conspiracy. In respect of certain such behaviours, liability can be imposed on the individuals engaging in the behaviour as well as on the organisation. In the event that such behaviour comes to the attention of Bidders during the Auction they are obliged under the Auction Rules to notify ComReg immediately to enable appropriate action to be taken.
- 3.66 In the event that an Applicant or Bidder breaches any of these rules, it can face, subject to ComReg's discretion, a number of alternative sanctions depending on the severity of the breach. Specifically, the list of possible sanctions includes, but is not limited to:

- exclusion from the Award Process; and/or
  - forfeiture of part or all of the Deposit which was paid on Application.
- 3.67 If a Bidder is excluded from the Award Process, then ComReg, at its discretion, may void Bids made by the Bidder in question. For the avoidance of doubt, on exclusion of a Bidder, ComReg may continue with the Auction unchanged, save for the exclusion of that Bidder. ComReg reserves the right to make such alterations to the Auction as it considers appropriate at its discretion.
- 3.68 A breach by an individual Bidder, its Connected Persons or Insiders of any of the rules mentioned in this subsection, may lead to the forfeiture of part or all of the Deposits paid by that Bidder during the Award Process. The amount of a Deposit to be forfeited for breach of these rules will be determined by ComReg by reference to the nature and severity of the breach and its impact.
- 3.69 Actions which may lead to a Bidder's exclusion from the Award Process and/or the forfeiture of a Bidder's Deposit include the following:
- submitting materially<sup>43</sup> false or misleading information to ComReg;
  - failing to update ComReg, in a timely manner, in relation to any change to material information submitted within its Application or during the Award Process;
  - a Bidder or any member of its Bidding Group colluding or attempting to collude with any other person to distort the outcome of the Award Process, or is acting in a way which is likely to distort the outcome of the Award Process;
  - a Bidder or any member of its Bidding Group, or any Insider, disclosing Confidential Information to others during the period of restrictions on communications, other than in accordance with Exemption from Insider Rules as discussed above;

---

<sup>43</sup> Where reference is made in this Information Memorandum to matters being material, ComReg, acting reasonably, shall be entitled to decide whether or not a matter is material. Accordingly, where an Applicant has any doubt as to the materiality of a matter, it should be reported to ComReg.

- a Bidder or any member of its Bidding Group obtaining or attempting to obtain Confidential Information in relation to any other Bidder;
- any member, director or employee of a member of a Bidder's Bidding Group, who is also a director or employee of a member of another Bidding Group, taking part in the preparation of both Bidding Groups for participation in the Award Process or is receiving Confidential Information relating to both Bidding Groups or participating in the Award Process in relation to more than one Bidding Group;
- a Bidder, its Connected Persons or Insiders canvasses directly or indirectly any member of ComReg or any person associated in any way with the Award Process; and
- any other breach of the Auction Rules contained in Chapter 3 or the agreement with ComReg described in Chapter 4.

In certain circumstances, ComReg may also suspend or withdraw a Winning Bidder's Licence(s) if, after grant of the Licence(s), it emerges that the Bidder, its Connected Persons or its Insiders breached the Auction Rules set out in Chapter 3 or the agreement with ComReg described in Chapter 4.

- 3.70 In cases where breaches are caused not by the Bidder, but by its Connected Persons and Insiders, then ComReg has discretion to waive or limit the application of sanctions set out in this subsection if it can be shown that the breach occurred without the Bidder's knowledge, that the Bidder has taken all reasonable steps to avoid the breach and that the breach has not caused material detriment to the Award Process.
- 3.71 Nothing in this Information Memorandum shall preclude ComReg from seeking alternative remedies for breach of the Auction Rules set out herein, including, but not limited to, a claim for damages, or the bringing of proceedings under the Competition Act 2002, as amended, or the Communications Regulation Acts 2002-2011 or the Specific Regulations.

### **3.3.5 Application procedure**

- 3.72 In order to take part in the Award Process, Applicants must submit four completed and identical Application Forms on paper including four identical copies of an Ownership Structure Document on paper

and an electronic copy of same in an editable format on CD-ROM. The container(s) in which the Application Form and Ownership Structure Documents and CD-ROM are submitted must not in any way disclose the identity of the Applicant. ComReg will only accept applications during the period of **Day Month 2013 to Day Month 2013** between **10.00 and 16.00 hours (Irish time)**. Applicants are required to make an appointment with ComReg to submit an application. To make an appointment to submit an Application, Applicants are required to contact **Nominated Person** on Working Days between **Day Month 2013** and **Day Month 2013**, and between 10.00 to 13:00 and 14:00 to 16.00 hours (Irish time) at:

**Phone: 00 353 (0)1 804 9XXX**

- 3.73 All applications will be date stamped. Applicants will be given a receipt acknowledging the submission of its application. Applications will not be opened until the closing date for receipt of Applications has passed. Applications will be opened in the presence of an independent auditor.
- 3.74 No Applications will be opened by ComReg until after 16.00 hours (Irish time) on the closing date for receipt of applications.
- 3.75 The deadline for receipt of Deposits, as set out in subsection 3.3.3 will be 23:59 on the Application Date.
- 3.76 As noted at subsection 3.3.1 above, ComReg will allow questions to be submitted regarding the Award Process up until 16:00 hours (local time) on **Day Month 2013**. Following that date, and onwards through to the conclusion of the Notification and Grant Stage, no questions will be accepted from Applicants or Interested Parties, save for those that would qualify as permitted communications of the type set out in subsection 3.8.1 of this document (Communications with ComReg) and save for those communications and responses which are specifically requested by ComReg or its agents in accordance with the Information Memorandum.

### **3.3.6 Completing the Lot Application Form**

- 3.77 Each Bid consists of:
  - a package (the Lots that the Bid applies to); and
  - a Bid amount (the price the applicant is offering to pay for the Lots in the package).

- 3.78 If a Bid is selected as a Winning Bid, then the applicant will be allocated the package specified in the Bid, and required to pay a price no greater than the Bid amount specified in the Bid.
- 3.79 Applicants may bid for the following packages:
- Lot I;
  - Lot J;
  - Lot K;
  - Lots I and J;
  - Lots I and K;
  - Lots J and K; or
  - Lots I, J and K.
- 3.80 The Lot Application Form lists all possible packages that an Applicant may bid for, the Lots included in that package along with the Reserve Price that applies to that package (calculated as the sum of reserve prices of all Lots included in the package). In order to bid for a package, the Bidder must specify a Bid amount for the corresponding package that it is willing to pay. The Bid amount must be at least the Reserve Price for the package and in whole Euros.
- 3.81 Any of the valid package Bids submitted by an Applicant may be selected as a Winning Bid, in which case the Bidder will be allocated the package specified in the Bid for a price no greater than the Bid amount specified in the Bid. However, at most one Bid from each Applicant can be selected as a Winning Bid – therefore the Applicant is only liable to pay up to the Bid amount specified in at most one of its Bids.

## **3.4 Qualification Stage**

### **3.4.1 Process for approval of Applications**

- 3.82 Once the Application Date has passed, ComReg will evaluate all Applications received within the specified time window and evaluate which Applications are valid<sup>44</sup>. Applicants that submitted valid Applications at the Application Stage that are approved by ComReg are referred to as Bidders.

---

<sup>44</sup> Details of what constitutes a valid Application is set out in subsection 3.3.

- 3.83 Upon completion of its assessment of Applications, ComReg will inform each Applicant whether or not it has been approved by ComReg to become a Bidder;
- 3.84 ComReg will not inform Bidders about the identity of other Bidders or unsuccessful Applicants who fail to become Bidders.

### **3.4.2 Assessment of Applications**

- 3.85 If an Applicant fails to ensure that ComReg receives the Deposit in full associated with the Lots applied for in its Lot Application Form by the deadline specified by ComReg, ComReg may, at its discretion, decide that the corresponding Application is not valid and that the Applicant will not become a Bidder and will thus not be eligible to participate in the Award Process. Alternatively, it may provide a short additional period of time for the Deposit to be topped up appropriately.
- 3.86 In the event that the Applicant does not become a Bidder by virtue of failing to submit its Deposit in full, any incomplete Deposit that has been paid to ComReg will be returned soon after the end of the Qualification Stage in accordance with the timeline for the return of Deposits to unsuccessful Applicants as provided in Table 5 above or as may have been extended by any grace period permitted by ComReg for the Deposit to be topped up.
- 3.87 If any aspect of an Application (other than the partial payment of a Deposit) is found to be incomplete, only partially complete, unclear or otherwise invalid, ComReg has the discretion to decide what measures to take, reflecting the nature of the ambiguity, omission or invalidity. These measures include seeking clarification or verification of information already provided, requesting further information from the Applicant or deeming that Application invalid.
- 3.88 In particular, if at any point during the Award Process a Bidder is found by ComReg to have submitted information on its ownership structure which is materially incomplete or incorrect, ComReg has the discretion to take whatever measures that it deems appropriate, including requiring that one or more Bidders verify information already provided, and to provide additional information and supporting evidence. If ComReg is unable to determine to its reasonable satisfaction that two or more Bidders are not connected or associated (in accordance with the terms of subsection 3.4) on the basis of information provided to it, it reserves the right to treat those Bidders as being connected or associated.



- 3.89 In the event that an Application is in any material way incomplete, inaccurate, invalid or untrue, ComReg may not allow the Applicant to become a Bidder. If, having determined that Applicant may become a Bidder, ComReg becomes subsequently aware that the Bidder's original Application was incomplete, inaccurate, invalid or untrue, ComReg may, at its discretion, allow the Bidder the opportunity to clarify or correct the information already provided. If the Bidder cannot provide correction or clarification to ComReg's satisfaction within a time limit specified by ComReg, that Bidder may be excluded from the Award Process with return of all, part or none of the Bidder's Deposit in accordance with the deadline as set out in Table 5 above. In the event of any material inaccuracy or untruth in an Application being identified, ComReg reserves the right to exclude the Bidder from the Award Process without providing an opportunity for the Bidder to clarify or correct the information already provided.
- 3.90 In the case where an Applicant is declared unsuccessful in its Application on account of such deficiencies in its Application, its Deposit will be returned in accordance with the timetable for return of Deposits to unsuccessful Applicants provided in Table 5 above as may have been extended by any grace period permitted by ComReg in seeking to address such deficiencies. Applicants are reminded that even if they are unsuccessful in becoming Qualified Bidders, they remain bound by the Auction Rules on release of Confidential Information until the grant of Licences by ComReg.
- 3.91 In the case where a Bidder's Application is considered incomplete, inaccurate, invalid or untrue retrospectively, its Deposit may or may not be returned, in whole or in part, depending on the nature and seriousness of the deficiency of its Application. In the case where at least a partial Deposit is to be returned, these funds will be returned within one week of the Bidder being informed that it is not eligible to take further part in the Award Process.
- 3.92 Applicants are subject to an on-going obligation to inform ComReg of material changes in all circumstances affecting any of the information provided in their Applications. If an Applicant becomes aware of a material error, omission or inaccuracy in its Application, the Applicant will inform ComReg as soon as reasonably possible. This obligation on an Applicant continues throughout the entire Award Process until such time that Licences have been granted.

## **3.5 Assessment Stage**

3.93 The Assessment Stage determines the Lots allocated to each Bidder, on the basis of the Bids received in the Application Stage.

### **3.5.1 Winner and Winning Price Determination**

3.94 A Feasible Allocation of Lots amongst Bidders consists of a selection of Bids such that:

- at most one Bid is selected from each Bidder; and
- all the Lots included in the Bids selected can be awarded given the available spectrum.

3.95 The total value of an allocation is the sum of bid amounts of the selected Bids.

3.96 The selection of Winning Bids will maximise the total value across all Feasible Allocations. Thus, the Winning Bids will include at most one Bid from each Bidder. Bidders who are allocated any Lots are referred to as Winning Bidders.

3.97 If there are no valid Bids from any Bidders, then no spectrum rights will be awarded.

3.98 If there is only one Feasible Allocation that generates the highest total value, this will be the winning outcome that determines the Winning Bids and Winning Bidders.

3.99 In the event of any tie amongst multiple allocations of equal highest total value, then the winning outcome will be selected at random from the tied allocations.

### **3.5.2 Price Determination**

3.100 A price will be determined for each Bidder who has been allocated Lots. Prices are determined based on the concept of opportunity cost, and reflect the value that could have been generated by allocating the Lots won by Winning Bidders to other Bidders.

3.101 The opportunity cost of assigning each subset of Winning Bidders (including the subset consisting of the whole set of Winning Bidders and subsets formed by single Winning Bidders) their Lots is determined by the value that could have been obtained by allocating these lots amongst the remaining Bidders. This can be calculated as the difference between:

- the highest total value that could be achieved across all Feasible Allocations that do not include any of the Bids submitted by the Winning Bidders in the subset; and
- the sum of Bid amounts from any Winning Bids in the original winning outcome that were submitted by Winning Bidders not in the subset.

3.102 Prices are determined jointly for all Winning Bidders and are set to ensure that:

- each subset of Winning Bidders jointly pays an aggregate price that is no less than the joint opportunity cost of allocating that subset of Winning Bidders the Lots they have won; and
- subject to the previous condition being met, the total sum of prices is the smallest possible.

3.103 If more than one set of possible prices meet the previous conditions, then the prices will be the set of possible prices that minimises the sum of squared differences between the individual opportunity cost of assigning each Winning Bidder the Lots it has won and its price, rounded up to the nearest Euro.

3.104 For the avoidance of doubt:

- the price for any Winning Bidder cannot exceed the Bid amount that the Winning Bidder has specified in its winning Bid; and
- where there is only one Winning Bidder, the price for that Winning Bidder will be the sum of the Reserve Price for each Lot won by that Winning Bidder.

## **3.6 Notification and Grant Stage**

3.105 Once ComReg has determined the Winning Bidders and prices, ComReg will notify each Bidder in writing whether or not it has been successful in acquiring Lots in the Award Process.

3.106 In the case of Bidders who do not win any Lots in the Award Process, ComReg will return the relevant amount of its Deposit to it (less any Deposit forfeiture imposed in accordance with the Auction Rules) within approximately two weeks of this notification.

3.107 In the case of Winning Bids, ComReg will notify the Winning Bidders of their entitlement to obtain an 1800 MHz Licence, subject

to compliance with certain obligations as set out below, including their obligation to pay the Upfront Fee.

- 3.108 The **Upfront Fee** to be paid by each Winning Bidder prior to the grant of a Licence will become immediately due and payable once ComReg has notified Winning Bidders of their entitlement to obtain a Licence.
- 3.109 Due to the nature of the award process, the Deposit held by ComReg on behalf of each Winning Bidder should be greater than or equal to the Upfront Fee due from that Winning Bidder. Accordingly, ComReg shall be entitled to deduct that Upfront Fee from the said Deposit and if the amount of a Winning Bidder's Upfront Fee is less than the amount of its Deposit, the balance of the said Deposit will be returned to that Winning Bidder by ComReg within 5 days thereafter (less any Deposit forfeiture imposed in accordance with the Auction Rules). If, whether due to forfeiture of all or part of a Winning Bidder's Deposit, or otherwise, the Deposit retained by ComReg on behalf of that Winning Bidder is less than the Upfront Fee due from that Winning Bidder, the balance of the Upfront Fee shall be paid to ComReg prior to the grant of any Licence.
- 3.110 In respect of an 1800 MHz Licence, the notification will state that, upon grant of such a Licence, the Winning Bidder is obliged to comply with the terms and conditions associated with the 1800 MHz Licence and will among other things:
- specify the Lots to be included in the Licence in accordance with the Lots allocated to the Bidder in the Award Process;
  - specify the commencement date of each Lot to be included in its Licence;
  - specify the expiry date of each Lot to be included in its 1800 MHz Licence and the expiry date of its Licence;
  - note that the Winning Bidder is required to pay the Spectrum Usage Fee associated with the Licence in advance of the issue of same; and
  - specify the information required by ComReg to populate Part 2 and Part 3 of the Licence and state that the Winning Bidder is obliged to provide such information to ComReg in advance of the commencement date of its 1800 MHz Licence.

- 3.111 Where the Winning Bidder has submitted the Upfront Fee in respect of each Lot to be included in its Licence prior to the commencement date of that Lot and complies with the conditions set out above, ComReg will issue an 1800 MHz Licence to the Winning Bidder.
- 3.112 ComReg may at its discretion extend the time limit in order for Bidders to fulfil these obligations. If a Winning Bidder does not comply with the conditions relating to the payment of the Upfront Fee or the other conditions relating to the grant of its 1800 MHz Licence, it will forfeit its Deposit and entitlements to a Licence, without prejudice to ComReg's entitlement to recover the full amount due in respect of all Lots won as a simple contract debt.
- 3.113 Once an 1800 MHz Licence has been issued to a Winning Bidder, ComReg will publish the text of the Licence and subsequent amendments to same on its website.

### **3.7 Transition Rules**

- 3.114 In the MBSA Information Memorandum, ComReg indicated that depending on the nature and extent of Transition activities required between Time Slice 1 and Time Slice 2, ComReg reserved the right to apply the Transition rules set out in the MBSA Information Memorandum to the Existing GSM Licensees and Winning Bidders of Lots in Time Slice 1 in the 800 MHz, 900 MHz and 1800 MHz bands.
- 3.115 As some reorganisation of the 1800 MHz band is likely to be required between Time Slice 1 and Time Slice 2, ComReg is of the view that all Licensees holding rights of use in the 1800 MHz band which continue after 12 July 2015, being the commencement date of Time Slice 2, will need to co-operate in order to ensure a smooth transition between Time Slices.
- 3.116 On the other hand, if a Winning Bidder in the present Award Process does not have rights of use in the 1800 MHz band in Time Slice 2, its sole obligation will be to cease using its 1800 MHz rights by 12 July 2015.
- 3.117 Accordingly, ComReg reserves the right to adopt a Transition Project Plan, as set out at paragraph 3.165 of the MBSA Information Memorandum, and to make such plan binding on all Winning Bidders in respect of any spectrum awarded pursuant to this Award Process, in the same manner that it is binding upon

winning bidders in respect of Liberalised Use Licences issued pursuant to the MBSA Award Process.

## **3.8 Other Matters**

### **3.8.1 Communication with ComReg**

3.118 From the publication of the Information Memorandum all communications is to be via written correspondence. No email correspondence will be considered or entered into until the end of the Award Process.

### **3.8.2 Exceptional Circumstances**

3.119 If exceptional circumstances arise during any stage of the Auction, ComReg has the discretion to:

- void all package Bids received in the Auction, and either suspend the Auction or restart the Auction; and/or
- take any other steps or measures in running the Award Process which are appropriate and proportionate to the exceptional circumstances which have arisen and which further the objectives of the Award Process and ComReg's objectives.

3.120 ComReg will determine whether a situation of exceptional circumstances has arisen. Exceptional circumstances could include, for example, material concern about collusion amongst Bidders.

3.121 In the event that a Bidder is excluded from the Auction and some, or all, of its Bids are deemed invalid, ComReg would typically expect not to use any of its exceptional powers to modify any Auction outcome or intermediate state of the Auction as it affects other Bidders, as described earlier. However, ComReg does not fetter its discretion in this regard.

## **3.9 End of Award Process**

3.122 Once ComReg has determined the Winning Bids for all Packages the results of the Award Process will be notified to Bidders and, in tandem, made public.

3.123 The following information will be released:

- the identity of the Winning Bidders;

- the Lots awarded to each Winning Bidder;
- the Price to be paid by each Winning Bidder.

## Chapter 4

# 4 Legal Terms and Conditions

## 4.1 Important Notice

- 4.1 This Information Memorandum is being made available by ComReg solely for the purposes of assisting prospective Bidders in deciding whether they wish to proceed to participate in the Award Process in accordance with the terms of this Information Memorandum and to assist prospective Bidders and their agents in preparing for and understanding the Award Process. This Information Memorandum may not be used for any other purpose and, when using it for the stated purposes above, prospective Bidders are strictly subject to the terms and conditions set out in this Information Memorandum.
- 4.2 In this Information Memorandum an “**Interested Party**” shall have the meaning ascribed to this expression in the Glossary to this Information Memorandum.
- 4.3 To the extent permitted by law, no representation or warranty or undertaking (express or implied) is or will be made by ComReg or its personnel or agents and no liability or responsibility is or will be accepted by ComReg or its personnel or agents as to:
- i. the adequacy, accuracy or completeness of the information, opinions or statements (or the basis on which they are premised) contained in this Information Memorandum or in any of the documents referred to herein;
  - ii. any omissions, errors or misstatements contained in this Information Memorandum or in any documents referred to herein; and
  - iii. the contents of any written or oral information made available by ComReg or its personnel or agents to Interested Parties or any third party relating to the Award Process.
- 4.4 To the extent permitted by law, any liability for any loss or damage of any nature arising from this Information Memorandum and its use by Interested Parties is expressly disclaimed by ComReg.
- 4.5 Without prejudice to the foregoing and to the extent permitted by law, ComReg’s aggregate liability for all losses or damages of any nature arising from delayed access to Lots is expressly limited to



the refunds or adjustments of Licence Fees as set out in subsection 2.2.6 of the MBSA Information Memorandum.

- 4.6 To the extent permitted by law, Interested Parties shall not be entitled to rely on the contents of this Information Memorandum to argue that they have rights or expectations, pursuant to legitimate expectation, estoppel or other related legal arguments, that:
- i. ComReg will not exercise any of its rights reserved in subsection 4.2.6 of this chapter;
  - ii. they will be awarded any spectrum at the end of the Award Process;
  - iii. bidding in any particular manner will, of itself, guarantee success in the Award Process;
  - iv. ComReg will during the term of any Licence granted pursuant to the Award Process modify the terms of such licence, or the regulations affecting such licence, in any manner and, without prejudice to the generality of the foregoing, that ComReg will provide for spectrum trading or leasing or that ComReg will permit the use of any particular new technologies in the spectrum licensed in the Award Process; or
  - v. ComReg will reassign rights of use of spectrum licensed pursuant to the Award Process in any particular way at the termination of any licences granted pursuant to the Award Process.
- 4.7 While ComReg, its personnel and agents intend to implement the Award Process, ComReg, its personnel and agents give no indication or commitment and make no statements as to the possible outcomes of this Award Process.
- 4.8 In accessing this Information Memorandum, Interested Parties acknowledge that they will be solely responsible for their own assessment of any matter connected with the Award Process to which the Information Memorandum relates. Interested Parties are responsible for forming their own views, deciding if they will partake in the Award Process, completing the relevant Application forms and calculating any Bids.
- 4.9 All dates in this Information Memorandum are, unless specifically stated to the contrary, target or indicative dates only and may be subject to change at the sole discretion of ComReg acting subject to its statutory functions, objectives and duties.

- 4.10 Whilst the information in this Information Memorandum has been provided in good faith, it does not purport to be comprehensive nor to have been independently verified. Interested Parties should form their own views. ComReg reserves the right to amend this Information Memorandum and any information or documents contained or referred to herein in accordance with paragraph 4.29 of this Chapter 4.
- 4.11 Nothing in this Information Memorandum is, or should be relied upon as, a promise or representation as to ComReg's ultimate decision in relation to the award of a licence or licences. ComReg reserves the right to suspend or not to proceed with the Award Process or any part thereof and may terminate the Award Process or any part thereof at any time and, in such event, ComReg shall not be liable, howsoever, to any Interested Party save for ComReg's obligations to return deposits in certain circumstances. ComReg also reserves the right, in accordance with law, to change any procedure in relation to the Award Process. ComReg reserves the right to reject any and all Applications received as part of the Award Process or not to select any Applicant for the grant of a Licence. Interested Parties are recommended to seek their own financial, legal and technical advice at their own cost in relation to the Award Process. The publication of this Information Memorandum or any information made available in connection with the Award Process does not constitute nor is to be taken as constituting the giving of financial, legal, technical or investment advice by ComReg, its personnel or agents.
- 4.12 Any conflict of interest or potential conflict of interest – including but not limited to any conflict arising under the rules set out in sections 3.3.4 and 3.3.5 of this Information Memorandum - must be disclosed to ComReg by any Interested Party or by any prospective or actual Bidder as soon as such conflict of interest or potential conflict of interest becomes apparent. The appropriate course of action to be taken in such event shall be decided upon by ComReg, in its discretion acting subject to its statutory functions, objectives and duties.
- 4.13 This Information Memorandum should be read and construed in accordance with the previous documentation issued by ComReg as part of this process including:
- a) Consultation and draft Decision 13/88;
  - b) Response to Consultation and Decision 13/YY;

along with the associated consultants' reports and other relevant ComReg documents, all of which are available at: XX (the "Consultation Process Documents"). In the event of any conflict between the views expressed in any of the Consultation Process Documents the view expressed in the later document shall take precedence. Where any draft document, for instance a draft statutory instrument, draft decision or draft Information Memorandum has been supplanted by a finalised document, the draft document should be discounted entirely. In the event of any conflict or inconsistency between the Consultation Process Documents and this Information Memorandum, this Information Memorandum shall take precedence.

- 4.14 The legal and contractual obligations described in this Chapter of the Information Memorandum are imposed on Interested Parties who are furnished with or who download this Information Memorandum and ComReg reserves the right to enforce such obligations. Copyright (and any other intellectual property rights) in this Information Memorandum vest and remain in ComReg and its licensors and recipients of this document including Interested Parties shall not use or copy this Information Memorandum other than in pursuit of the purposes described in paragraph 4.1 above, without the permission of ComReg. Applicants who submit applications to enter the Award Process shall be obliged to express their acceptance to the provisions of this Chapter as part of the application process (see subsection 3.3 and Annex 2).
- 4.15 This Information Memorandum and all matters arising out of or in connection with or in any way related to this Information Memorandum shall be governed and construed in accordance with the laws of Ireland and shall be subject to, and Interested Parties hereby expressly submit to, the exclusive jurisdiction of the Irish courts.

## **4.2 Additional Conditions**

### **4.2.1 Open Applications**

- 4.16 All Applications (including Applications which do not ultimately become qualifying Applications) by Applicants comprise offers which must remain open and valid for three (3) months from the date of submission. Applications are contractually binding offers

and the submission of an Application shall mean the Applicant unconditionally offers to agree to:

- i. the provisions of this Chapter;
  - ii. the Applicant declaration which forms part of the Application (see Annex 2); and
  - iii. the Auction Rules described in section 4.2.3 below.
- 4.17 Offers shall be deemed to be accepted (meaning that an agreement covering (i),(ii) and (iii) above has been formed between the Applicant and ComReg) once they are submitted to ComReg in accordance with the Information Memorandum and an acknowledgment of receipt has been issued by ComReg even if they subsequently do not become qualifying Applications.
- 4.18 All Applications will be assessed in accordance with subsection 3.4 of this Information Memorandum.
- 4.19 For the avoidance of doubt, the contract described in this subsection 4.2.1 is in addition to and not in substitution for the contract described in paragraph 4.14 above, which binds all parties in receipt of this Information Memorandum to the provisions of this Chapter. In the event that an Applicant withdraws its Application on or before the deadline of **DD MONTH 2013**, such Applicant will remain bound by the contract described in paragraph 4.14.

#### **4.2.2 Canvassing**

- 4.20 Interested Parties must not canvass directly or indirectly any staff or the Commissioners of ComReg or any person associated in any way with the Award Process. Failure to comply with this requirement may result in an Application being deemed invalid or disqualification from the Award Process. This does not restrict an Applicant from making any representations through the communications channels specified in this Information Memorandum.

#### **4.2.3 Auction and Transition Rules / Collusion / Improper Influence**

- 4.21 The Award Process and Auction Rules described in this Information Memorandum and its Annexes shall form part of the agreement between ComReg and Applicants described in section 4.2.1 above. By submitting an Application, the Applicant agrees to be bound by

and to comply with the Auction Rules. The Auction Rules are designed to prevent collusion or other forms of anticompetitive conduct and, for the avoidance of doubt, any direct or indirect attempt by Interested Parties to influence, in any way, the Award Process. Any breach of the Auction Rules may result in the disqualification of that/those Interested Parties or, where the party engaging in such behaviour is an agent that agent's principal. Non-exhaustive examples of such improper influence are collusion, price fixing, bid rigging, market division or breach of Award Process confidentiality.

#### **4.2.4 Publicity**

- 4.22 No publicity whatever regarding this Information Memorandum and/or Award Process is permitted unless and until ComReg has consented in writing, at its discretion, to the relevant communication. For the avoidance of doubt, this publicity prohibition shall prevent Interested Parties and/or their agents from making any public statements or statements likely to be made public whatsoever concerning the Award Process and/or this Information Memorandum.
- 4.23 ComReg may issue such communications and generate such publicity in relation to the Award Process as it considers appropriate and without notice to Interested Parties. ComReg, subject to its guidelines on the treatment of confidential information, in particular, has the right to publicise or otherwise disclose any information regarding the Award Process, the identity of Applicants (including the identity of their members, sub-contractors and agents), successful Bidders or the granting of related licence or licences at any time.

#### **4.2.5 Errors**

- 4.24 If Interested Parties discover any error or omission or lack of clarity in this Information Memorandum, such Interested Parties must immediately notify ComReg in writing of such error, omission or lack of clarity which will be resolved by ComReg in such manner as it considers appropriate.

#### **4.2.6 No Warranty and Termination**

- 4.25 The publication of this Information Memorandum does not warrant or imply that any Interested Party will be awarded a Licence or Licences.
- 4.26 ComReg will act at all times to a standard expected of a public body and in line with its statutory functions, objectives and duties. ComReg reserves the right, for any reason whatever at its discretion:
- to reject Applications which do not comply with the Auction Rules;
  - not to proceed with any part of the Award Process described in this Information Memorandum;
  - not to provide an Interested Party with any additional information;
  - not to implement any arrangement contemplated by this Information Memorandum;
  - to withdraw from any discussions or consultation which ComReg might engage or have engaged in;
  - to suspend the Award Process at any time;
  - not to award any Licence or Licences;
  - to procure the award of a Licence or Licences by alternative means; and/or
  - to terminate the Award Process at any time.

#### **4.2.7 Own Costs**

- 4.27 Each Interested Party shall be fully responsible for the entirety of all expenses and/or costs it incurs in the preparation or submission of an Application or in participating in the Award Process. Save as otherwise expressly stated in this Information Memorandum, ComReg is not responsible for and will not pay for any expense or cost incurred or loss suffered by an Interested Party in the preparation or submission of its Application, the participation in the Award Process or otherwise. Further, ComReg is not responsible for any travel or accommodation costs incurred by Interested Parties unless previously agreed in writing by ComReg.

#### **4.2.8 Waiver**

- 4.28 The failure or neglect by ComReg to enforce any provision of the Information Memorandum is not (and will not be deemed to be) a waiver of that provision and does not prejudice ComReg's right to take subsequent action in respect of such provision.

#### **4.2.9 Amendments**

- 4.29 ComReg reserves, at its discretion, the right, at any time until the conclusion or termination of the Award Process, to amend or modify this Information Memorandum or Award Process in any respect by way of clarification, addition, deletion or otherwise. ComReg will inform Interested Parties of any such amendments or modifications, if appropriate.

#### **4.2.10 Conclusion of Process**

- 4.30 The conclusion of the Award Process as set out in subsection 3.9, shall be without prejudice to the accrued rights, and obligations of ComReg and Interested Parties pursuant to this Chapter 4. The provisions of this Information Memorandum shall continue to bind ComReg and/or Interested Parties, to the extent that each of these provisions has become applicable to an Interested Party during the Award Process, after the conclusion of the Award Process.
- 4.31 Additional continuing obligations are imposed on Applicants pursuant to the contract formed by section 4.2.1 of this Chapter.

### **4.3 Liquidated Damages**

- 4.32 In the MBSA Information Memorandum, ComReg indicated that depending on the nature and extent of Transition activities required between Time Slice 1 and Time Slice 2, ComReg reserved the right to apply the Transition rules set out in the MBSA Information Memorandum to the Existing GSM Licensees and Winning Bidders of Lots in Time Slice 1 in the 800 MHz, 900 MHz and 1800 MHz bands.
- 4.33 As some reorganisation of the 1800 MHz band is likely to be required between Time Slice 1 and Time Slice 2, ComReg is of the view that all Licensees holding rights of use in the 1800 MHz band which continue after 12 July 2015, being the commencement date of Time Slice 2, will need to co-operate in order to ensure a smooth transition between Time Slices.

- 4.34 On the other hand, if a Winning Bidder in the present Award Process does not have rights of use in the 1800 MHz band in Time Slice 2, its sole obligation will be to cease using the 1800 MHz band by 12 July 2015.
- 4.35 Accordingly, ComReg reserves the right to adopt a Transition Project Plan, as set out at paragraph 3.165 of the MBSA Information Memorandum, and to make such plan binding on all Winning Bidders in respect of any spectrum awarded pursuant to this Award Process, in the same manner that it is binding upon winning bidders in respect of Liberalised Use Licences issued pursuant to the MBSA Award Process.
- 4.36 An essential part of ensuring that Winning Bidders fully vacate the Lots won pursuant to this Award Process is the identification of, and agreement to pay, liquidated damages to ComReg where a Winning Bidder fails to vacate the spectrum which it wins pursuant to this Award Process on or before the expiry of the Licence which it wins.
- 4.37 The total amount of liquidated damages payable by Winning Bidders will be based on the refunds or adjustments of licence fees that ComReg pre-estimates that it may have to make to HG3I in the event that ComReg may be unable to make the Lots available for use by HG3I on commencement date of Time Slice 2. Section 2.2.6 of this document contains details of the nature of refunds or adjustments payable by ComReg and which, save to the extent that liquidated damages shall be calculated by reference to the relevant MBSA fees paid by H3GI (being the holder of the rights of use for the Lots in Time Slice 2), shall be used by ComReg in pre-estimating the payable liquidated damages pursuant to a Winning Bidders failure to fully vacate the Lots won pursuant to this Award Process on or before the expiry of the Licence which it wins. These liquidated damages are payable immediately on request and are non-refundable.



# Annex 1: Glossary

## A1.1 Definitions

- A 1.1 The definitions in this glossary shall apply to this draft Information Memorandum as a whole
- 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 Any reference to an Interested Party shall include that Interested Party's successors and assigns.
- A 1.5 The headings contained in this draft Information Memorandum 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 draft Information Memorandum or the Annexes or Schedules hereto.
- A 1.6 Terms defined in this draft Information Memorandum shall, unless the context otherwise requires or admits, have the meaning set out below:

1800MHz band	The frequency range 1710 – 1785 MHz paired with 1805 – 1880 MHz.
1800 MHz Licence	A Licence issued under Schedule 1 of the Regulations which entitles the holder to use certain Lots of spectrum in the 1800 MHz band, subject to the terms and conditions set out therein.
Applicant	An entity that submits an Application to ComReg to be allocated at least one of the Lots being made available in the Award Process.
Application	The Application to participate in the Award Process made by an

	<p>Applicant.</p> <p>A valid Application is a binding commitment to pay up to the highest value Bid submitted for any Package of Lots specified on the Applicant's Lot Application Form.</p>
Application Date	The date by which Interested Parties must submit an Application to participate in the Award Process together with the required monetary Deposit.
Application Form	<p>The Application Form, as set out in Annex 2 of this Document, to be delivered as part of an Application consisting of:</p> <ul style="list-style-type: none"> <li>• Part 1: Administrative Information</li> <li>• Part 2: Applicant Declaration</li> <li>• Part 3: Lot Application Form</li> <li>• any supporting documentation required to be delivered including Ownership Structure.</li> </ul>
Application Stage	The stage of the Award Process described in subsection 3.3 of this Information Memorandum, which runs from the day on which the Information Memorandum is published up to and including the Application Date.
Assessment Stage	The stage of the Award Process used to determine Winning Bidders and Winning Prices.
Assignee	Assignee means a party to whom some or all of the rights and obligations under a Licence have been transferred.
Assignor	Assignor means the party from whom some or all of the rights and obligations under a Licence have been transferred.
Associate	As defined in subsection 3.3.4 of the Information Memorandum.
Associated Bidders	As defined in subsection 3.3.4 of the Information Memorandum.
Auction	The mechanism within the Award Process used to determine Winning Bidders and Winning Prices in the event that there is insufficient supply to meet the demand expressed by Applicants

	for Lots.
Auction Rules	Rules and procedures relating to the Auction, as presented in this Information Memorandum and its Annexes.
Authorised Agent	A person who the Applicant has notified ComReg is entitled to bind an Applicant contractually in relation to the Award Process.
Award Process	The overall process through which it is intended that rights of use of the Award Spectrum will be granted in the event that at least one Applicant submits a valid Application, which by definition must include a valid Bid.
Award Spectrum	The 1800 MHz spectrum in respect of which rights of use are being made available in the Award Process as set out in paragraph 2.1.
Winning Price	The price to be paid by a Winning Bidder for the Package of Lots allocated to it in the Assessment Stage of the Award Process (determined using a second price rule).
Bid	A binding offer to buy a Package of Lots for a specific monetary amount (the Bid Amount).
Bid Amount	The monetary amount associated with an offer made by a Bidder for a specified Package of Lots. The Bid amount must be at least the Reserve Price for the Package, and must be in whole euros.
Bidder	An Interested Party that has both submitted an Application and associated Initial Deposit to ComReg to be allocated a Package of Lots in the Award Process (thereby becoming an Applicant) and had its Application approved by ComReg, qualifying it to be allocated such Lots in the Assessment Stage.
Bidding Group	A Bidder and its Connected Persons as defined in subsection 3.3.4 of the Information Memorandum.
Confidential Information	Details of what may constitute Confidential Information for the purposes of this Award Process are provided in subsection 3.3.4

	of the Information Memorandum.
Connected Person	Shall have the meaning ascribed to it in subsection 3.3.4 of the Information Memorandum.
Controlled Person	As defined in subsection 3.3.4 of the Information Memorandum.
Controlling Person	As defined in subsection 3.3.4 of the Information Memorandum.
CPI	Consumer Price Index published by the Central Statistics Office.
Deposit	A monetary amount submitted by an Applicant as part of its Application to be allocated Lots in the Award Process. For an Application to be valid, the amount of an Applicant's Deposit must be equal to the highest Bid amount specified by the Applicant in its Lot Application Form.
Drive Test Measurement	Measurements collected using a motor vehicle
Excess Demand	Demand for Lots that exceeds supply for any specific Lot available in the Award Process.
Feasible Allocation	Shall have the meaning ascribed to it in paragraph 3.94 of the Information Memorandum.
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.
Information Memorandum	The Information Memorandum including all of the Annexes and Schedules thereto.
Indexation	The adjustment of prices for inflation. The index of inflation that will be used will be the Consumer Price Index as published by the Central Statistics Office.
Insider	Shall have the meaning ascribed to it in section 3.3.4

Interested Party	<p>Includes, to the extent that the context requires or admits, any of the following:</p> <ul style="list-style-type: none"> <li>• a respondent to Consultation Document 13/88;</li> <li>• a prospective Bidder;</li> <li>• an Applicant;</li> <li>• a Qualified Bidder; or</li> <li>• an agent of any of the foregoing.</li> </ul>
Licence	An 1800 MHz Licence and “Licensee” shall be construed accordingly.
Lot (or Spectrum Block)	A 2 x 5 MHz block of the Award Spectrum. Each Lot has two specific frequency ranges associated with it, one of which is used for uplink and one of which is used for downlink.
Minimum Price	This price is the combination of the Reserve Price and SUF for each specific Lot.
Notification and Grant Stage	The stage of the Award Process during which Deposits (minus any applicable Upfront Fees or penalties) are returned to Bidders and 1800 MHz Licences are granted to Winning Bidders.
Package of Lots	<p>A selection of one or more Lots available as follows:</p> <ul style="list-style-type: none"> <li>• Lot I</li> <li>• Lot J</li> <li>• Lot K</li> <li>• Lots I &amp; J</li> <li>• Lots J &amp; K</li> <li>• Lots I &amp; K</li> <li>• Lots I, J &amp; K</li> </ul>
Qualified Bidder	An Applicant who, following consideration of its Application by ComReg, has been informed, in accordance with subsection 3.4, that its Application is compliant and that it is entitled to participate in the Award Process.
Qualification Stage	A stage of the Award Process during which ComReg assesses Applications to be allocated Lots in the Award Process submitted before the deadline for Applications, evaluates which Applications

	are valid and determines which Applicants qualify to become Qualified Bidders in the Award Process.
Radiocommunication Service	A service as defined in the Radio Regulations of the International Telecommunication Union involving the transmission, emission or reception of radio waves for specific telecommunication purposes.
Regulations	Statutory Instrument No. XX of 201X
Reserve Price	The minimum Bid for a Lot for such a Lot to be allocated.
Specific Frequencies	The frequency ranges associated with specific Lots.
Spectrum Usage Fees (SUFs)	Annual fees which a successful Bidder must pay in respect of spectrum rights of use assigned in the Award Process.
Time Slice 1	A time period from 1 February 2012 to 12 July 2015 (as may be amended by ComReg).
Time Slice 2	A time period from 13 July 2015 to 13 July 2030 (as may be amended by ComReg).
Unsuccessful Bidder	An Interested Party that submits an Application to ComReg to be allocated Lots in the Award Process, is declared a Qualified Bidder but is not allocated any Lots in the Award Process.
Upfront Price/Upfront Fee	The Winning Price to be paid by a Winning Bidder for the spectrum to be assigned to it as a result of the Award Process.
Winning Bid	A Bid in respect of which a Winning Bidder is allocated at least one Lot in the Winning Combination.
Winning Bidder	A Bidder that wins at least one Lot in the Award Process.
Working Day	A day on which the clearing banks are open for business in Ireland.

## 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 <sup>45</sup>
Authorisation Regulations	European Communities (Electronic Communication Networks and Services) (Authorisation) Regulations 2011 ( <a href="#">S.I. No 335 of 2011</a> )
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 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 Community

<sup>45</sup> Includes the Communications Regulation (Amendment) Act 2007 and the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010.

Framework Regulations	European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 ( <a href="#">S.I. No 333 of 2011</a> )
The Minister	Minister for Communications, Energy and Natural Resources
Specific Regulations	Specific Regulations has the same meaning as set out in Regulation 2 of the Framework Regulations

## A1.4 Glossary of Technical Terms

3G	Third Generation Mobile System (e.g. UMTS)
CPI	Consumer Price Index
ECS	Electronic Communications Service as defined under the Framework Regulations
EMC	Electro Magnetic Compatibility
FDD	Frequency Division Duplex
Guard-band	An unused spectrum bandwidth separating channels to prevent interference
GSM	Global System for Mobile Communications
Hertz	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
MoU	Memorandum / Memoranda of Understanding
QoS	Quality of Service
R&TTE	Radio Equipment And Telecommunications Terminal Equipment
SUF	Spectrum Usage Fee
Telefónica	Telefónica O2 Communications (Ireland) Ltd
UMTS	Universal Mobile Telecommunications System.
Vodafone	Vodafone Ireland Limited

# Annex 2: Draft Application Form<sup>46</sup>

Applicants must complete Parts 1, 2 and 3 of this application form. Any additional documentation required to be supplied by the applicant as part of its application is to be appended to this application form.

## Part 1: Administrative Information

For an application to be complete, the administrative information listed in Table 6 below must be provided. Note that the Applicant name provided will be that to whom licences will be awarded where relevant. Contact details for Authorised Agents are those that will be used by ComReg for circulating Bidder materials for the Award Process and for contacting the Bidder during the Award Process if necessary.

Information required	Information provided
Name of Applicant*	Name:
Complete postal address of registered office , or if it does not have a registered office, the principal place where it carries on business, and, if different, address to which all communications will be sent regarding the Award Process	Address 1:
	Address 2 (if different):
Telephone/ fax number for Applicant	Telephone:
	Fax:

<sup>46</sup> A writeable PDF format of this form will be made available on the ComReg website.

Information required	Information provided
Bank details of Applicant (for the purpose of returning part or all of the Applicant's Deposit where applicable)	Name of Bank and address of relevant branch:  Account Number:  Sort Code:  BIC Code:  IBAN No:
Name of Applicant's Authorised Agent 1** (Block capitals)	Name:
Position of Applicant's Authorised Agent 1	Position:
Telephone numbers, fax number and e-mail address of Applicants Authorised Agent 1	Telephone (fixed):  Telephone (mobile):  Fax:  Email:
Specimen signature of Applicant's Authorised Agent 1 Witnessed By	Signature 1:  Name:  Position:  Signature:
Name of Applicant's Authorised Agent 2*** (Block capitals)	Name:

Information required	Information provided
Position of Applicant's Authorised Agent 2	Position:
Telephone numbers, fax number and e-mail address of Applicants Authorised Agent 2	Telephone (fixed):  Telephone (mobile):  Fax:  Email:
Specimen signature of Applicant's Authorised Agent 2 Witnessed By	Signature:  Name:  Position:  Signature:

**Table 6: Administrative information**

\* Note: In the case of Applicants that are bodies corporate, attach a certified copy of Certificate of Registration along with Articles of Association and Memorandum of Association or equivalent together with a certified translation thereof into English or Irish, where the original is not in English or Irish. Company Secretary or authorised signatory is required to certify the copy.

\*\* Note: Authorised Agents must be authorised to bind the Bidder and to take all decisions or communicate all decisions connected with the Award Process on the Bidder's behalf including, but not limited to, the authority to submit Bids in respect of any of Lots available in the Award Process and to commit to payment of the necessary amount if the Bidder is granted spectrum.\*\*\* Note: Applicants can authorise one more person, who could act as the Alternate Authorised Agent in case of unavailability of the primary Authorised Person. In case of any duplication of submissions made on behalf of the Bidder by different Authorised Agents, the submission made by the first Authorised Agent would be considered as final and binding.

Appropriate evidence of the authorisation of Authorised Agents, as per paragraph 3.26 of the Information Memorandum, must be attached hereto.

## Part 2: Applicant Declaration

The concepts of “Associated Persons”, “Applicant”, “Bidding Group”, “Connected Person”, “Confidential Information”, “Insider”, “Legal Entity” and “Mobile Operator” for the purposes of this declaration shall be construed as defined in the information Memorandum.

We, the undersigned, being Authorised Agents of [\_\_\_\_\_]  
(the “**Applicant**”) hereby undertake, warrant and declare, and to the extent that anything contemplated hereunder remains to be done, covenant, both on our own behalf and on behalf of the Applicant, having made all reasonable inquiries that:

1. The Applicant is entitled to submit the Application and participate in the Award Process, and the Applicant has obtained all necessary declarations of consent, permissions and approvals.
2. The Applicant has ensured and will ensure that all information and all declarations contained in the Application and appendices attached thereto are correct and accurate.
3. The Applicant has and will ensure that the Applicant, discloses Confidential Information only to the extent it is necessary and then only to other parties within the Applicant's own Bidding Group or to persons who, prior to such disclosure, are Insiders in relation to the same Applicant and that the Applicant shall take all reasonable measures with a view to ensuring that the person who receives such Confidential Information treats it as confidential at all times.
4. The Applicant has ensured and will ensure that the Applicant, the Applicant's employees, board of directors (where applicant is a body corporate) and persons connected with the Applicant or Insiders refrain from disclosing Confidential Information to parties other than as specified in paragraph 3 above until the Licences have been issued and from exchanging Confidential information with other parties regarding the Applicant's strategy for obtaining and use of the Licence or Licences.
5. The Applicant will ensure that the Applicant and any Connected Persons and any Insiders - shall refrain from entering into agreements or negotiations with a view to entering into agreements with other interested parties or their Connected Persons in relation to matters concerning the Award Process, including without prejudice to the generality of the foregoing agreements relating to

spectrum, network or infrastructure sharing, from the time at which this Application is submitted to the date of the issue of the 1800 MHz Licences..

6. The Applicant has ensured and will ensure that the Applicant - and, to the best knowledge of the Applicant, any Connected Persons and any Insiders - neither prior to the submission of the Application, nor after the submission thereof and until the Licences have been issued, shall enter into agreements or establish any understanding with a provider of equipment or software which:
  - regulates such provider's possibility of supplying equipment or software to another Applicant or their Connected Persons concerning the planning, establishment or operation of a network using the frequencies dealt with in this Award Process, or
  - regulates the prices or other terms and conditions that a provider of equipment or software may offer another Applicant or their Connected Persons in connection with the planning, establishment or operation of a network using the frequencies dealt with in this Award Process.

To the extent that agreements already entered into or understandings already established, as mentioned in this paragraph 6, have not been terminated, the Applicant has ensured that such agreements are in compliance with competition law and the existence thereof has been disclosed in an appendix to this Declaration.

7. The Applicant has ensured and will ensure that the Applicant - and, to the best knowledge of the Applicant, any Connected Persons and any Insider - does not enter into agreements or establish any understanding with a third party, either prior to or during the Award Process, for the access to or the use of the Applicant's network or networks using the frequencies dealt with in this Award Process during the term of the 1800 MHz Licences, if the agreement or the understanding directs such third party not to participate or limits such third party's ability to participate in the Award Process.
8. The Applicant has ensured that agreements already entered into or understandings already established, as mentioned in the above paragraph, have been terminated, including to the best knowledge of the Applicant, any Connected Persons and any Insider have

ensured such agreements or understandings have been terminated.

9. The Applicant has ensured and will ensure that the Applicant – and, to the best knowledge of the Applicant, any Connected Persons and any Insiders – both prior to and after the submission of an Application and until the Licences have been issued, refrains from any action that could have an adverse effect on the Award Process.
10. The Applicant shall comply with the Auction Rules as contained in the Information Memorandum including, without limitation, the provisions of Chapter 4 at all times and shall procure that its personnel, Insiders and Connected Persons, to the extent appropriate, shall also comply with the Auction Rules from the date of publication of the Information Memorandum until the commencement of the Licences awarded.
11. The Applicant has ensured and will ensure that prior to the filing of its Application, the Applicant takes all reasonable measures with a view to identifying its Connected Persons and Associated Persons.
12. The Applicant will ensure that, in accordance with subsection 3.3 of the Information Memorandum, after submitting its Application all relevant changes to its ownership structures are notified to ComReg.
13. Save as disclosed in an appendix attached to this Declaration, the Applicant is (i) not, or, in case the Applicant is a partnership, a joint venture or equivalent, the relevant partners or participants are not, nor is expected to be subject to an insolvency process including, without prejudice to the generality of the foregoing, liquidation, examinership, receivership, bankruptcy, winding-up proceedings or equivalent proceedings in other jurisdictions and (ii) capable of paying its debts as they fall due.
14. Save as disclosed in an appendix attached to this Declaration, the Applicant is not, or, in case the Applicant is a partnership, a joint venture or equivalent, the relevant partners or participants are not, nor is expected to be involved in any disputes which may in any material and adverse way affect the Applicant's possibility of complying with the terms of the Licence, if the Applicant is awarded such Licence.

15. The Applicant agrees that any disclosure made under paragraphs 6, 13 and/or paragraph 14 above must contain sufficiently clear and detailed information to allow ComReg assess the Applicant's capacity to participate in the Award Process, to comply with the Auction Rules and to comply with the terms of the Licence. The Applicant agrees that ComReg's decision further to any assessment in this respect shall be final and that ComReg reserves the right to, where necessary and proportionate, seek further information or clarification from an Applicant, to specify the level of detail required and the timescales within which it must be provided. The Applicant agrees that any failure to cooperate fully with this disclosure requirement may result in an Applicant's application being deemed invalid or in subsequent disqualification of the Applicant from the Award Process.

Applicant Name: \_\_\_\_\_

For and on behalf of the Applicant:

\_\_\_\_\_

(Signature of those persons who are empowered to bind the Applicant or otherwise authorised to bind the Applicant)

Name in block capitals: \_\_\_\_\_

Date (DD/MM/YYYY):

--	--	--	--	--	--	--	--

If the Applicant is a partnership, a joint venture or equivalent, the Declaration must also be signed by the relevant partners or participants:

As partner/participant:

\_\_\_\_\_

(Signature)

Name in block capitals: \_\_\_\_\_

Date (DD/MM/YYYY):

--	--	--	--	--	--	--	--



### Part 3: Lot/Package Application Form

The submission of this Lot Application Form as part of a complete Application represents a binding offer by an Applicant to make the payments of the Upfront Fee and SUFs determined to be payable in respect of any one of its Bids specified herein determined to be a Winning Bid by the Auction Rules.

The Lot Application Form, including all Packages of Lots and associated Reserve Prices is set out in Table 7 below.

Deposits are to be paid into ComReg's bank account using the following details:

Bank of Ireland: 2 College Green, Dublin 2, Ireland  
Account Number: 96614639  
Sort Code: 90-00-17  
BIC Code: BOFIIIE2D  
IBAN No: IE96 BOFI 9000 1796 6146 39

If making a bank transfer/EFT, please ensure that:

- Reference is "1800 MHz Spectrum Award"
- Your Bank quotes your Account Number (if an existing ComReg account holder) in making the transfer to ComReg.

Information Required	Information Provided
Applicant Name:	
Total amount of Deposit (largest value in column E):	

A	B	C	D	E
Package	Lots Included in Package	Package Reserve Price	Amount Bid in excess of the Reserve Price	Total (Column C + D)
1	I	€ 847 000		
2	J	€ 847 000		
3	K	€ 847 000		
4	I & J	€ 1 694 000		
5	I & K	€ 1 694 000		
6	J & K	€ 1 694 000		
7	I, J & K	€ 2 541 000		

**Table 7: Lot Application Form**

To avoid doubt, Applicants are requested to strike out any package for which they are not Bidding on.

Applicant Name:

\_\_\_\_\_

\_\_\_\_\_

(Signature of those persons who are empowered to bind the Applicant or otherwise authorised to bind the Applicant)

Name in block capitals:

\_\_\_\_\_

Date (DD/MM/YYYY):

--	--	--	--	--	--	--	--

## Application Checklist

Tick the boxes to ensure that all the required information is included in your application. A complete application must consist of the following:

Part 1: Administrative Information - All sections of Table 6 completed and signed.

- Appropriate evidence for signatory of Application as specified in paragraph 3.26
  - Ownership Structure Document as specified in paragraph 3.30

Part 2: Applicant Declaration signed

Part 3: Lot Application Form completed and signed


## Application Procedure

The application procedure is set out in subsection 3.3.6 of the Information Memorandum and states that

In order to take part in the Award Process, Applicants must submit four completed and identical Application Forms on paper including four identical copies of an Ownership Structure Document on paper and an electronic copy of same in an editable format on CD-ROM. The container(s) in which the Application Form and Ownership Structure Documents and CD-ROM are submitted must not in any way disclose the identity of the Applicant. ComReg will only accept applications during the week of **DD MONTH 2013 to DD MONTH 2013** between 10.00 and 16.00 hours (Irish time).

Applicants are required to make an appointment with ComReg to submit an application. To make an appointment to submit an Application, Applicants are required to contact **Nominated Person** on Working Days between **XX MONTH 2013 and DD MONTH 2013**, and between 10.00 to 13:00 and 14:00 to 16.00 hours (Irish time) at:

**Phone: 00 353 (0)1 804 XXXX**

All applications will be date and time stamped. Applicants will be given a receipt acknowledging the submission of its application. Applications will be opened in the presence of an independent auditor.

No Applications will be opened by ComReg until after 16.00 hours (Irish time) on the closing date for receipt of applications.

The deadline for receipt of Deposits, as set out in subsection 3.3.2 of the Information Memorandum will be 23:59 on the Application Date of **DD MONTH 2013**.