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Spectrum leases in Ireland

Consultation on the framework for spectrum leases in Ireland

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Chapter 1

1 Introduction

- 1.1 In 2014, the Commission for Communications Regulation (ComReg) established a framework to facilitate transfers of spectrum rights of use in Ireland between undertakings in the Radio Spectrum Policy Programme bands (the “RSPP Bands”)¹. This “Spectrum Transfer Framework” consists of Regulations (the “Spectrum Transfer Regulations”)² and procedures and guidelines (the “Spectrum Transfer Procedures and Guidelines”)³.
- 1.2 In the Spectrum Transfer Framework, a **spectrum transfer** is defined as:
- the assignment by a licensee (the “Transferor”) of some or all of a right of use granted under a licence to another party (the “Transferee”) (Regulation 2 of the Spectrum Transfer Regulations)⁴; where
 - the Transferor must divest itself of all rights of use transferred (Regulation 3(3) of the Spectrum Transfer Regulations).
- 1.3 As set out in the Spectrum Transfer Procedures and Guidelines, the transfer of a spectrum right of use is for the full duration of that right of use as specified in the Transferor’s licence. This means that following such a transfer, the Transferor no longer possesses the right of use which has been transferred. In addition, where the *entire* right of use has been transferred, the Transferor is no longer obliged to meet the conditions attached to the transferred right of use while the Transferee becomes the undertaking which is so obliged to meet said conditions.
- 1.4 When establishing the Spectrum Transfer Framework in 2014, ComReg noted that it would return, in due course, to the matter of establishing a regulatory framework for spectrum leases.

¹ Article 6(8) of the [RSPP Decision](#) requires Member States to allow undertakings to transfer or lease rights of use for radio spectrum in the following harmonised bands: 790-862 MHz, 880-915MHz, 925-960MHz, 1710-1785MHz, 1805-1880MHz, 1900-1980MHz, 2010-2025MHz, 2110-2170MHz, 2.5-2.69GHz and 3.4-3.8GHz (the “RSPP Bands”).

² [Statutory Instrument 34 of 2014](#), Wireless Telegraphy (Transfer of Spectrum Rights of Use) Regulations 2014.

³ [ComReg Document 14/11](#), “Framework for spectrum transfers, Spectrum transfer Notification Form”, published 31 January 2014.

⁴ Regulation 3. (3) of the Spectrum Transfer Regulations requires the transferor and transferee to be undertakings, which is a defined term in European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No 335 of 2011.) as follows “undertaking” means a person engaged or intending to engage in the provision of electronic communications networks and services or associated facilities.

- 1.5 This consultation sets out ComReg’s proposals on the scope of such a framework for spectrum leases, the treatment of licence conditions, the procedures for assessing a spectrum lease, and the legislative changes that would be required to implement this proposed framework.
- 1.6 To clearly distinguish a “spectrum transfer” and a “spectrum lease”, ComReg proposes that a **spectrum lease** should be defined as⁵:
- the assignment by a licensee (the “Lessor”) of some or all of a spectrum right of use granted under licence to another undertaking (the “Lessee”) for a set period of time which shall expire prior to the expiry of the leased right of use as specified in the Lessor’s licence, after which the leased right of use shall revert to the Lessor; and where
 - the Lessor would continue to remain responsible for all licence obligations and conditions.
- 1.7 ComReg considers that the treatment of licence conditions is a key distinguishing feature between a spectrum transfer and a spectrum lease (see ComReg’s consideration of this matter in chapters 3 and 5 of this consultation).
- 1.8 In considering a procedure for assessing spectrum leases, ComReg observes that though transfers and leases are distinct from one another they also share similar characteristics in that they are both secondary market mechanisms to facilitate undertakings to obtain rights of use in the same spectrum bands and both mechanisms are broadly subject to the same statutory framework.
- 1.9 As discussed in chapter 4, ComReg proposes to apply the existing Spectrum Transfer Framework to spectrum leases. This means that before any spectrum lease agreement may be put into effect, it would be notified to ComReg and ComReg would then conduct an *ex ante* assessment as to whether the notified lease would be likely to result in a distortion to competition. ComReg would then determine whether the lease may be put into effect, with or without conditions, or whether it may not be put into effect.
- 1.10 Finally, Chapter 5 sets out ComReg’s proposals on the various legislative changes that are required to give effect to the proposals discussed herein.

⁵ This definition is in line with ComReg’s preliminary views on leasing as set out in the Transfer Framework “...leasing of rights of use of spectrum for a period of time whereby the right of use will revert to the lessor before the end of the term of the original licence...” (see paragraph 7 of Document 14/10)

1.1 Structure of this document

1.11 This document is structured as follows:

- **Chapter 2** sets out background information relevant to spectrum transfers and leases, including information on the legislative framework, the practices in Europe, and the existing Spectrum Transfer Framework;
- **Chapter 3** sets out the scope of the proposed Spectrum Lease Framework, noting that there is a need to distinguish between a spectrum lease and a spectrum transfer;
- **Chapter 4** sets out details of the proposed procedural framework for spectrum leasing, which is essentially to apply the existing procedures under the Spectrum Transfer Framework to spectrum leases;
- **Chapter 5** discusses practical considerations associated with implementing spectrum leases and transfers in particular in terms of how ComReg intends to grant and issue a Spectrum Lease Licence to a Lessee; and
- **Chapter 6** sets out the next steps and invites comments.

1.12 Annexes include:

- **Annex 1** Draft EECC Directive;
- **Annex 2** Spectrum trading information from Cullen International⁶;
- **Annex 3** Draft RIA on the procedures for the competition assessment of spectrum leases;
- **Annex 4** Redline draft Wireless Telegraphy (Transfer Spectrum Rights of Use) (Amendment) Regulations, 2017; and
- **Annex 6** Redline Spectrum Transfer and Lease Framework in Ireland.

⁶ Cullen International is an independent agency specialising in regulation intelligence consulting services and operates a subscription website at culleninternational.com

Chapter 2

2 Background information

2.1 This chapter sets out background information relevant to the transferring and leasing of spectrum rights of use, including information on:

- relevant legislation including draft EU legislation;
- spectrum transfers and leases in the EU including:
 - regulatory approaches implemented in other Member States;
 - spectrum transfers or leases which have occurred in the RSPB bands; and
 - the Radio Spectrum Policy Group (RSPG) recommendations to update EU legislation on the list of spectrum bands in which transfers and leases should be permitted;
- the Spectrum Transfer Framework in Ireland; and
- ComReg's recent statements to introduce a spectrum lease framework.

2.1 Relevant legislation

2.2 Statutory provisions and obligations relevant to spectrum transfers and leases in Ireland are set out in various legal instruments including the Framework Regulations⁷, the Authorisation Regulations⁸, the RSPB Decision⁹, and the Wireless Telegraphy Act of 1926 (as amended).¹⁰

Framework Regulations

2.3 The Framework Regulations transpose the Framework Directive¹¹ into Irish law. Regulation 19 of the Framework Regulations sets out the obligations on ComReg in relation to the transfer or lease of individual rights of use.

2.4 Regulation 19 provides that:

⁷ [S.I. No. 333/2011](#) - European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011.

⁸ [S.I. No. 335/2011](#) - European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011.

⁹ [Decision No. 243/2012/EU](#) of the European Parliament and of the Council of 14 March 2012 establishing a multiannual Radio Spectrum Policy Programme (the "RSPB Decision")

¹⁰ Act No 45 of 1926. See relevant information on <http://www.irishstatutebook.ie>

¹¹ The [Framework Directive 2002/21/EC](#) and the [Better Regulation Directive 2009/140/EC](#)

- ComReg shall ensure that undertakings may transfer or lease rights of use for radio frequencies to other undertakings, in accordance with conditions attached to such rights of use and any procedures specified by ComReg;
- ComReg may provide for undertakings to transfer or lease individual rights of use for radio frequencies in bands which are not identified by the European Commission under Article 9b(3) of the Framework Directive, in accordance with any procedures specified by ComReg;
- ComReg shall ensure that the conditions attached to individual rights of use for radio frequencies shall continue to apply after the transfer or lease, unless ComReg specifies otherwise;
- An undertaking intending to transfer a right of use for a radio frequency shall first notify ComReg of its intention to do so, in accordance with the procedures specified by ComReg, and ComReg shall ensure that such notifications are made public; and
- Where the use of a radio frequency has been harmonised through the Radio Spectrum Decision some other EU measures, any transfer or lease of a right of use for that radio frequency shall comply with such harmonised use.

Authorisation Regulations

2.5 The Authorisation Regulations transpose the Authorisation Directive¹² into Irish law and regulation 9 therein sets out provisions on rights of use for radio frequencies:

- When granting such rights of use, ComReg shall specify whether they may be transferred and, if so, under what conditions; and
- ComReg shall ensure that radio frequencies are efficiently and effectively used and that competition is not distorted by any transfer or accumulation of rights of use for radio frequencies. For this purpose, ComReg may take appropriate measures such as mandating the sale or the lease of rights of use for radio frequencies.

The RSPP Decision

2.6 Article 6(8) of the RSPP Decision requires Member States to allow undertakings to transfer or lease rights of use for radio frequencies in the following harmonised bands: 790-862 MHz, 880-915MHz, 925-960MHz,

¹² The [Authorisation Directive 2002/20/EC](#) and the [Better Regulation Directive 2009/140/EC](#)

1710-1785MHz, 1805-1880MHz, 1900-1980MHz, 2010-2025MHz, 2110-2170MHz, 2.5-2.69GHz and 3.4-3.8GHz (the “RSPP Bands”).

Wireless Telegraphy legislation

- 2.7 The Wireless Telegraphy Act 1926, as amended, requires any person who possesses or uses “apparatus for wireless telegraphy” to hold a valid licence, unless the particular apparatus has been designated as licence exempt.

2.1.1 Draft EU Legislation

The draft European Electronic Communications Code

2.8 In September 2016, the European Commission launched a review of the regulatory framework for electronic communications with the publication of a draft Directive to establish the European Electronic Communications Code (the “EECC”)¹³. The EECC, if adopted, would repeal the current EU regulatory framework, including the Authorisation and Framework Directives. The EECC is currently in draft form and is being debated and consulted upon, and so it has no legal status at present.

2.9 However, ComReg has considered the provisions of the EECC that are likely to relate to spectrum leasing and how those provisions ought to be considered at this stage in the design of the proposed leasing framework.

2.10 Draft Articles 51 and 52 (see Annex 1) of the current draft EECC broadly maintain the current provisions for the transfer or lease of rights of use for radio frequencies, as set out in the Authorisation Directive and Framework Directive. Draft Articles 51 and 52 currently states as follows:

- *“Without prejudice to the need to ensure the absence of a distortion of competition, in particular in accordance with Article 52 of this Directive, Member States shall:*
 - (a) submit trading and leasing to the least onerous procedure possible;*
 - (b) following notification from the lessor, not refuse the lease of rights of use for radio spectrum unless the lessor does not undertake to remain liable for meeting the original conditions attached to the rights of use; and*
 - (c) following a request by the parties, approve the transfer of rights of use for radio spectrum unless the new holder is unable to meet the original conditions for the right of use.”*
- *Points (a) to (c) are without prejudice to the Member States' competence to enforce compliance with the conditions attached to the rights of use at any*

¹³ The [Proposed Directive establishing the European Electronic Communications Code \(EECC\)](#)

time both with regard to the lessor and the lessee, in accordance with their national law.

- *Competent authorities shall facilitate the transfer or lease of rights of use for radio spectrum by giving timely consideration to any request to adapt the conditions attached to the right and by ensuring that the rights or the radio spectrum attached thereto may to the best extent be partitioned or disaggregated.”*

2.1.2 The EU Decision on the 470-790 MHz band

2.11 An EU Decision on the use of the 470 – 790 MHz frequency band has now been published in the Official Journal of the EU on 25 May 2017¹⁴ and will come into effect on 14 June 2017.

2.12 Article 2 of the Decision obliges Member States to allow the transfer or leasing of rights of use for radio frequencies for electronic communications services in the 694-790 MHz frequency band (the “700 MHz band”):

- *“Upon the granting of the rights of use in the 700 MHz frequency band for terrestrial systems capable of providing wireless broadband electronic communications services, Member States shall allow the transfer or leasing of such rights in accordance with open and transparent procedures pursuant to the applicable Union law.” [emphasis added]*

2.13 ComReg is required to update its Spectrum Transfer Framework to take account of the above Decision, specifically by adding the 700 MHz band to the list of bands which may be transferred between undertakings or, subject to this consultation, leased between undertakings.

2.2 Spectrum transfers and leases in Europe

2.14 This section sets out information on regulatory approaches for spectrum transfers or leases as implemented in the EU, the spectrum transfers or leases which have occurred, and recommendations to update EU legislation on the list of spectrum bands in respect of which transfers and leases should be permitted. This information is obtained from Cullen International¹⁵, ECC Report 169¹⁶ and the Radio Spectrum Policy Group (RSPG)¹⁷.

2.15 In summary, this information indicates the following:

¹⁴ <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1496044962133&uri=CELEX:32017D0899>

¹⁵ <http://www.cullen-international.com/> (a subscription website)

¹⁶ [ECC Report 169](#), Description of practices relative to trading of spectrum rights of use, May 2011

¹⁷ <http://rspg-spectrum.eu/>

- EU Member States generally follow similar approaches for spectrum transfers and leases in the RSPB Bands, although the precise implementation may differ between Member States. For example:
 - while spectrum leases in the RSPB Bands is provided for in most Member States, the UK does not permit spectrum leasing in the RSPB Bands¹⁸ though the UK does permit a “time-limited transfer” of spectrum rights of use.
 - while case-by-case approval of each spectrum transfer or lease in the RSPB Bands is the norm, in Sweden, short term spectrum leases (up to 6 months within a 12-month period) or limited to up to 10 transmitters are exempt from having to be approved.¹⁹
- The list of spectrum bands in which transfers or leases are allowed, as prescribed in EU law, should be updated to add new ECS harmonised bands, including the 700 MHz band.

Cullen International’s ‘Spectrum Cross-Country Analysis’ on spectrum trading

2.16 Information on spectrum trading²⁰ in the RSPB Bands, for the 19 European countries included in the ‘Spectrum Cross-Country Analysis’ section of Cullen International, highlights that:

- all 19 countries except Finland permit spectrum trading in the RSPB Bands. In Finland, spectrum trading is generally forbidden but it is permitted in the spectrum bands that were auctioned; and
- all countries except Slovakia²¹ require a case-by-case approval of each spectrum trade. The responsible authority is usually the authority that awarded the licence (the NRA or, in some countries, a ministry).

2.17 Detail on the specific regulatory approach in each of the 19 countries is available on the Cullen international website and is set out in Annex 2.

¹⁸ [Ofcom UK’s Trading Guidance Notes](#), OfW513(July 2015)

¹⁹ <http://www.pts.se/sv/Bransch/Radio/Radiotillstand/Overlatelse-och-uthyrning/>

²⁰ Cullen international describe spectrum trading (or secondary trading) as “*the right of the licensee to sell the spectrum to another undertaking.*”

²¹ For Slovakia, Cullen international indicates that no regulatory approval is required for spectrum trading but that “[an] *Announcement [is] required (4 weeks before trading) and information on completed trade (5 days after trade).*” In addition ComReg observes that the NRR (the Regulatory Authority in Slovakia) maintains a list of applicable transfers.

<http://www.teleoff.gov.sk/index.php?ID=5371>.

ECC Report 169

2.18 ECC Report 169 provides an overview of practices relative to the trading of spectrum rights of use within CEPT countries.

2.19 In describing spectrum trading and leasing, the questionnaire (annex 1 of ECC Report 169) explains that in the secondary market for spectrum usage rights two types of transactions may exist: trading (transfer of licence) and leasing.

- *“Trading of usage rights is the transfer of spectrum usage rights from one holder to another.”* and
- *“The leasing of usage rights is the possibility for a second party to exploit the usage rights of a first party for an agreed, usually limited time period. However, usage rights and obligations remain with the original rights holder. In such a case the first party may be able to exercise some control over the second party”*

2.20 In relation to spectrum trading, ECC Report 169 notes that:

- *“the transaction procedure is generally simple and has a limited number of steps which may include: notification of the intention to trade; publication of notified information; approval of transaction; and publication of final transaction;*
- *there may be specificities in different countries (some steps being omitted) but basically the steps of the procedures followed are similar (and are generally coherent with the minimum regulatory requirements of the EU framework for ECN&S); and*
- *very different transaction patterns (number of licences and number of transactions) are observed depending on the bands. This means that competition issues may be different in different bands and could be treated specifically.”*

2.21 In relation to the spectrum leasing, ECC Report 169 highlights that:

- *“there are no provisions in the EU Framework Directive concerning the details of the procedure for spectrum leasing, in contrast to the provisions for transfer of usage rights. However it can be assumed that the steps will be similar to the transfer but perhaps with relaxation of some requirements.”*

2.22 The RSPG, in its opinion on the implementation of the current RSPP and its revision to address the next period:²²

- notes that approaches to the trading and leasing of spectrum rights of use differ slightly from country to country, including differences in national legislation;
- recommends that the possibility of transferring and leasing spectrum rights of use in the RSPP bands should be maintained; and
- recommends adding new ECS harmonised bands to that list of bands that may be transferred or leased, in particular the 700 MHz, 1452-1492 MHz (1.4 GHz) and 2.3-2.4 GHz (2.3 GHz) bands.

2.23 In the RSPG Report on Efficient Awards and Efficient Use of Spectrum²³, the RSPG notes that in practice:

- the trading of spectrum rights of use in the harmonised bands in Europe has, to date, primarily occurred where regional/local authorisations are in force (for example, 3.5GHz regional licences in France) or where a merger between mobile operators has occurred; and
- the take-up of the ability to trade spectrum usage rights across Europe has been mixed, with many countries having experienced no or limited trades though France and Sweden have experienced several trades in the harmonised bands (see Annex 2).

2.3 The Spectrum Transfer Framework in Ireland

2.24 ComReg's Spectrum Transfer Framework provides for the transfer of spectrum rights of use in the RSPP Bands in Ireland. The framework was established in 2014 following consultation²⁴ and it sets out an *ex ante* procedure²⁵ for assessing any notified transfer in order to determine if it would be likely to distort competition.

²² [Document RSPG16-006 FINAL](#), RSPG opinion on the implementation of the current RSPP and its revision to address the next period, published February 2016

²³ [Document RSPG16-004 FINAL](#), RSPG Report on Efficient Awards and Efficient Use of Spectrum, published February 2016

²⁴ See [ComReg Document 12/76](#) published 11 July 2012, and [ComReg Document 14/10](#) published 31 January 2014.

²⁵ ComReg Document 14/10, and in particular Annex 2 therein, sets out ComReg's views in support of an ex-ante procedure to review notified transfers. Among other things, an ex-ante procedure provides a level of certainty to the market, and a level of protection to the interests of consumers, as regards preventing anti-competitive effects arising from a notified transfer before they might materialise, thus assisting ComReg pre-empt any structural competition changes which may be negative.

2.25 The provisions and procedures of the Spectrum Transfer Framework are set out in the:

- Spectrum Transfer Regulations (S.I. 34 of 2014); and
- Spectrum Transfer Procedures and Guidelines (ComReg Document 14/11).

2.26 The Spectrum Transfer Regulations specify that:

- a transfer is the assignment by a licensee (the “Transferor”) of some or all of a right of use granted under a licence to another party (the “Transferee”);
- a transfer of a right of use is only allowed in the RSPP bands (as listed in the Schedule); and
- the Transferor must divest itself of all rights of use transferred (Regulation 3(3));

2.27 The Spectrum Transfer Regulations specify that ComReg shall make a determination in respect of any notified spectrum transfer at the end of either of two phases:

- Regulation 6 provides for a **phase 1 determination**²⁶ without a “full investigation”. ComReg shall inform the notifying parties of its phase 1 determination within 35 days of the date on which the assessment commenced; and
- Regulation 7 provides for a **phase 2 determination**²⁷ following a full investigation within an indicative timeframe of 105 days.

2.28 The Spectrum Transfer Procedures and Guidelines sets out information on:

- how undertakings must notify ComReg of their intention to transfer individual rights of use for radio frequencies; and
- guidance on how ComReg shall determine whether a transfer of an individual right of use for a radio frequency would be likely to result in a distortion to competition.

2.4 ComReg statements on introducing a framework for

²⁶ Under Regulation 6(1), ComReg would inform the parties of one of the following determinations, (a) that the transfer may be put into effect, (b) that the transfer may be put into effect subject to conditions specified by ComReg, or (c) that ComReg intends to carry out a full investigation under Regulation 7.

²⁷ Under Regulation 7(2), ComReg shall make one of the following determinations, namely that the transfer (a) may be put into effect, (b) may be put into effect subject to conditions specified by ComReg, or (c) may not be put into effect..

spectrum leases

2.29 When it establishes its Spectrum Transfer Framework in 2014, ComReg stated that it would return to the matter of spectrum leases in due course.

2.30 To date, no spectrum transfers have been notified to ComReg. However, ComReg has sought preliminary views on a range of high level matters on how to introduce spectrum leasing in its consultation on the Radio Spectrum Management Strategy Statement for 2016 to 2018.²⁸

2.31 A number of respondents to that consultation submitted views on this issue and ComReg, in its response to that consultation, stated that it:²⁹

- *“agrees that spectrum trading can increase the efficient use of spectrum noting, at the same time, that transfers or leases do not happen often in practice.”*; and
- *“sees merit in an over-arching principle that any leasing framework would be established consistent with the principles and checks and balances of the existing Spectrum Transfer Framework.”*

2.32 ComReg also stated its intention to finalise a spectrum leasing framework in advance of 31 July 2017³⁰ because, amongst other things, this would facilitate the leasing of spectrum rights in the 3.6 GHz band as provided for in Regulation 6 of the 3.6 GHz Band Regulations.³¹

²⁸ Footnote 117 of [ComReg Document 15/131](#).

²⁹ Section 3.3.5 of [ComReg Document 16/49](#), Response to Consultation on ComReg’s radio spectrum management strategy

³⁰ See ComReg’s Radio Spectrum Management Strategy Statement 2016-2018 (bullet v of paragraph 61.3 in section 6.2.2 of Document [16/50](#)), and ComReg’s draft ECS Strategy Statement: 2017 – 209 (bullet 1 of paragraph 5.50 of Document [16/115](#))

³¹ [S.I. No. 532/2016](#) - Wireless Telegraphy (3.6 GHz Band Licences) Regulations 2016.

Chapter 3

3 Scope of proposed spectrum lease framework

- 3.1 Based on its overview of international practices in chapter 2, ComReg observes that though EU member states generally follow similar approaches for spectrum transfers and leases in the RSPB Bands, spectrum transfers and leases may be described and interpreted somewhat differently in different countries³² and the implementation processes also differ somewhat between countries.
- 3.2 In this chapter, ComReg summarises the scope of the Spectrum Transfer Framework, established in 2014, before setting out the proposed scope of its new spectrum lease framework. Amongst other things, this chapter sets out ComReg's proposed definition of a "spectrum lease" which is intended to clearly distinguish a spectrum lease from a spectrum transfer.

3.1 Scope of the Spectrum Transfer Framework

Duration of a spectrum transfer

- 3.3 Under the Spectrum Transfer Framework, the Transferor must fully divest itself of the spectrum right of use which is being transferred – i.e. the spectrum right of use is permanently transferred to the Transferee (for the duration of that right of use) and does not revert to the Transferor.

Categories of spectrum transfer

- 3.4 Two categories of transfers are possible under the Spectrum Transfer Framework:
- A **full transfer** where all spectrum rights of use in the Transferor's licence are transferred to the Transferee (this might also be described as the transfer of the entire licence); and
 - A **partial transfer** where some but not all of the spectrum rights of use in the Transferor's licence are transferred to the Transferee.

³² For example, in the UK, leases in the RSPB Bands is not allowed. However, the UK allows for a time-limited transfer of such rights.

Licence condition in a spectrum transfer

3.5 The Spectrum Transfer Framework provides for the following as regards licence conditions:

- in a full transfer, the licence conditions travel with the transferred right of use – i.e. the conditions in the Transferor’s licence pass to the Transferee’s licence such that the Transferor is no longer obliged to meet those conditions but the Transferee is obliged to meet those conditions³³; and
- in a partial transfer, the licence conditions are maintained in the Transferor’s licence *and* are replicated in the Transferee’s licence, such that the Transferor and the Transferee are both obliged to meet those conditions.

3.6 The Spectrum Transfer Framework³⁴ also allows either or both of the notifying parties (i.e. the Transferor and/or the Transferee) to apply³⁵ for an amendment to any original licence condition. Regulation 5(7) and 5(8) of the Spectrum Transfer Regulations provide that ComReg shall review any such request to amend a licence condition and that ComReg may suspend the time period within which its assessment of a notified transfer must be completed until it has completed such a review.

3.2 Proposed spectrum lease framework

Duration of a spectrum lease

3.7 ComReg proposes a spectrum lease framework which would enable any undertaking (“the Lessor”) to assign a spectrum right of use to another undertaking (“the Lessee”) for a fixed period of time which shall not exceed the period of time for which the spectrum right of use was originally granted (as detailed in the Lessor’s licence) following which the leased spectrum right of use would revert to the Lessor.

³³ Footnote 4 of the Notification Form in the Spectrum Transfer Guidelines and Procedures explains that in the case of a full transfer, the original licence holder would no longer have rights to the transferred spectrum so it would not be obliged to comply with the licence conditions following the transfer.

³⁴ Section 6 of the Notification Form in the Spectrum Transfer Guidelines and Procedures.

³⁵ In such instances the notifying parties should detail the proposed amendment, the reasons why such an amendment would be considered necessary or desirable, and the reasons as to why such an amendment would accord with ComReg’s statutory functions, objectives and duties.

- 3.8 Therefore, in a spectrum transfer the transferred right of use *does not* revert to the Transferor but in a spectrum lease the transferred right of use *does* revert to the Transferor.

Categories of spectrum leases

- 3.9 ComReg considers that, similar to spectrum transfers, spectrum leases can be for some or all of the spectrum usage rights in a Lessor's licence to a Lessee (e.g. a lease could be for, say, (i) an amount of spectrum, (ii) a particular geographic area, (iii) or combinations of the foregoing etc.

Licence obligations in a spectrum lease

- 3.10 Under Regulation 19 of the Framework Regulations, the conditions in the Lessor's licence must remain in effect after associated spectrum right of use has been leased, unless ComReg (having considered any application made by either or both of the notifying parties) should specify otherwise.
- 3.11 One key difference between a full spectrum transfer and a proposed spectrum lease is that, in a spectrum lease, the Lessor would remain responsible for meeting the conditions attached to the leased right of use; the requirement to meet those conditions would not pass to the Lessee. A detailed discussion on ComReg's proposal treatment of licence conditions under a spectrum lease is in Chapter 6.

Question 1. Do you agree with ComReg's proposed spectrum lease framework?
Please provide reasons in support of your views.

Chapter 4

4 The proposed procedures for the spectrum lease framework

4.1 Having discussed the scope of the spectrum lease framework in Chapter 3, this chapter sets out ComReg's proposed procedures by which it would assess spectrum leases.

4.1 Relevant obligations when designing procedures for spectrum transfers or leases

4.2 Annex 1 of ComReg Document 16/50 summarises ComReg's statutory objectives in managing to radio spectrum.

4.3 Amongst other things, those objectives include ensuring the efficient management and use of radio spectrum in Ireland and, in pursuit of this objective, that ComReg must apply objective, transparent, non-discriminatory and proportionate regulatory principles.

The obligation not to distort competition

4.4 Regulation 9 of the Authorisation Regulations requires ComReg to ensure that competition is not distorted as a consequence of any transfer or accumulation of spectrum rights of use and, in further of this objective, ComReg may take appropriate measures such as mandating the sale or lease of spectrum rights of use.

4.5 While Regulation 9 does not explicitly state that ComReg must ensure that competition is not distorted as a consequence of any lease of a spectrum right of use, the substance of Regulation 9 does indicate that, as with spectrum transfers, spectrum leases ought to be assessed in terms of whether they are likely to distort competition. This view is supported by:

- the proposed text in the draft EU legislation for an EECC directive, where draft Article 51(3) explicitly mentions that the "*transfer or lease of rights of use for radio spectrum*" is ... "*[w]ithout prejudice to the need to ensure the absence of a distortion of competition*"; and
- the practices of EU member states as discussed in chapter 3 above, where similar approaches are generally adopted for assessing both spectrum transfers and spectrum leases in the RSPB Bands.

4.2 The procedures in the Spectrum Transfer Framework

4.6 The Spectrum Transfer Framework established a procedure for the *ex ante* review by ComReg of notified transfers of spectrum rights of use.

4.7 The rationale supporting this *ex ante* review procedure is set out in ComReg Document 14/10 (in particular the Final Regulatory Impact Assessment (RIA) at Annex 2) and is summarised below:

- *It [an ex ante review] would provide greater certainty to the market that competition would be protected;*
- *It would provide greater comfort to the parties to the trading arrangements where ComReg approved the arrangement up front;*
- *It would better enable ComReg to prevent anticompetitive effects in the market (resulting from trades) and would therefore better protect the interest of consumers;*
- *It would pre-empt any structural competition concerns before they materialise; and*
- *It would be consistent with merger controls in Ireland where mergers are also assessed on an ex-ante basis. Adopting an ex-ante framework would also be in line with Oxera's recommendation as outlined in its Spectrum Trading Issues Report, a framework for competition assessments, ComReg 12/76b."*

4.8 Under current *ex ante* review process, as implemented under the Spectrum Transfer Framework, includes the following:

- Any proposed transfer of spectrum right of use in an RSPP band must be notified to ComReg, by either or both of the notifying parties (the Transferor and/or the Transferee) and there is an administration fee of €5,000;
- ComReg will publish details on its website of any proposed transfer of a spectrum right of use in an RSPP band, as has been notified to ComReg and including details of same, and ComReg will afford all interested parties the opportunity to make submissions in respect of the proposed transfer;
- Phase 1 review - if ComReg forms the opinion that the result of the transfer will not be to distort competition then ComReg will, within 35 working days after the Commencement Date inform the notifying parties and any other undertakings or third parties who have made submissions, that it has so determined and ComReg will publish notice of its determination on its website.

- Phase 2 review – where, having considered the information provided and all submissions received, ComReg is unable on the basis of the information before it to form a view that the result of a transfer will not be to distort competition, the Commission will make a determination to carry out a “full investigation”, i.e. to proceed to phase 2. Any full investigation has ³⁶ an indicative timeframe of 105 days and would include:
 - the provision of further submissions by the notifying parties and other third parties;
 - the furnishing of an ‘Assessment’ by ComReg to the notifying parties, where ComReg will clearly set out its concerns regarding the proposed transfer;
 - the submission a response to the ‘Assessment’ by the notifying parties; and
 - the entering into discussion with the notifying parties and the notifying parties making proposals with regard to the manner in which the transfer may be put into effect, or the adoption of measures to ameliorate any effects of the notified transfer on competition.

4.3 The proposed procedures for the spectrum lease framework

4.9 In considering a procedure for reviewing proposed leases of spectrum rights of use, ComReg would first observe that while spectrum leases are distinct from spectrum transfers (see chapter 4 above), they also have similar characteristics in that both:

- are subject to broadly the same legislative basis as summarised in section 5.1 above;
- facilitate undertakings to obtain spectrum rights of use (which would suggest that similar competition distortion effects could result from either arrangement); and
- would be permitted to occur in the same spectrum bands, namely, the bands that are suitable for the provision of mobile wireless broadband - see ComReg’s proposals in chapter 3. These spectrum bands are important and widely used in Ireland - they currently support 5,969,928

³⁶ Under Regulation 7(2) of the Spectrum Transfer Regulations, ComReg shall make one of the following determinations, namely that the transfer (a) may be put into effect, (b) may be put into effect subject to conditions specified by ComReg, or (c) may not be put into effect..

mobile subscribers ³⁷ and an estimated 21,903 fixed broadband subscribers in the 3.6 GHz band (valid as of January 2017);and

4.10 ComReg has conducted a draft Regulatory Impact Assessment (RIA) in order to its consideration of the appropriate procedures for spectrum leasing – see Annex 4. The draft RIA considers two high level options³⁸ and concludes that the preferred option is an *ex ante* framework which would apply the same procedures as currently used in the Spectrum Transfer Framework.

4.11 With this option, ComReg observes that the procedures for the *ex ante* review of proposed spectrum leases:

- should be entirely consistent with the current procedures for reviewing proposed spectrum transfers and that this should prevent the potential for “regulatory shopping” (i.e. where prospective notifying parties might seek to choose between the procedure for reviewing spectrum transfers and the procedure for reviewing spectrum leases);
- should provide greater certainty to the market that competition would be protected. This is particularly important given that spectrum leasing would be permitted in the key bands used for mobile wireless broadband;
- should better enable ComReg to ensure that spectrum leases do not distort competition, to the ultimate benefit of consumers.³⁹; and
- should pre-empt any structural competition concerns before they materialise, which again is particularly important given that spectrum leasing would be permitted in the key bands used for mobile wireless broadband

4.12 ComReg considers that the procedures in the current Spectrum Transfer Framework:

- are not overly onerous on the notifying parties;

³⁷ Valid for December 2016. This includes mobile broadband and Machine to Machine (‘M2M’) subscriptions. See ComReg [Document 17/15](#), Irish Communications Market, Quarterly Key Data Report, Q4 2016, published 16 March 2017.

³⁸ Option 1 – An *ex-post* competition assessment under Section 4 and/or 5 of the Competition Act 2002; and

Option 2 - An *ex-ante* competition assessment using the procedures specified in the Spectrum Transfer Framework.

³⁹ This is a particularly important consideration in light of the number of subscribers that are currently supported with these bands, namely 5,969,928 mobile subscribers and an estimated 21,903 fixed broadband subscribers in the 3.6 GHz band (valid as of January 2017)

- provide the notifying parties and third parties with opportunity to submit their views and for ComReg to consider those submissions and, if required, to seek additional information;
- is sufficiently flexible in that it provides for a 35 day phase 1 investigation and, only if necessary, a longer phase 2 “full investigation”, thus ensuring that all such investigations will be carried out in a timely manner.

4.13 ComReg finally notes that its proposal to apply the same procedures for reviewing spectrum transfers and spectrum leases in the RSPP bands is in line with general practice in other European jurisdictions.

Chapter 5

5 Practical considerations with spectrum leases and transfers

5.1 This chapter discusses a number of practical considerations associated with implementing the proposed spectrum lease framework. These include ComReg's preliminary views on:

- any potential accumulation of spectrum rights of use resulting from spectrum leasing;
- ensuring that the conditions attaching to a spectrum right of use will continue to apply after that right has been leased; and
- the legislation that must be enacted in order to implement a spectrum lease framework.

5.1 Accumulation of spectrum usage rights

5.2 Under a spectrum lease, both the Lessor and the Lessee would hold rights:

- The Lessee would obtain the right *to use* the leased spectrum for a specified period of time which shall not exceed the period of time for which the spectrum right of use was originally granted (as detailed in the Lessor's licence) following which the leased spectrum right of use would revert to the Lessor; and
- The Lessor would continue to retain the original licence containing the spectrum right of use which has been leased for the duration specified in the licence granted to it originally.⁴⁰

5.3 Noting the above, and Regulation 9 of the Authorisation Regulations under which ComReg must ensure that radio frequencies are efficiently and effectively used and that competition is not distorted by any transfer or accumulation of rights of use for radio frequencies, ComReg observes that it may have to consider the rights of the Lessor and the Lessee when assessing any possible accumulation of rights. For example, this may be a relevant consideration when considering spectrum competition caps in awards for spectrum rights of use, and it could result in both the Lessor's and Lessee's rights being counted in determining competition spectrum caps.

⁴⁰ For example, if a lease is terminated earlier than expected, the beneficial usage rights revert to the Lessor.

5.2 Ensuring that licence conditions continue to apply after a spectrum lease

- 5.4 As discussed in chapter 4, Regulation 19 of the Framework Regulations obliges ComReg to ensure that the licence conditions⁴¹ in the original licence continue to apply after a transfer or lease, unless ComReg specifies otherwise.
- 5.5 In relation to spectrum transfers, a licence is issued to the Transferee and the original licence conditions are transferred to the Transferee's licence unless amended by ComReg. In addition for a partial lease, the original licence conditions remain in the Transferor's licence unless amended by ComReg.
- 5.6 ComReg notes that applying the same approach to spectrum leases may not be required or appropriate, as in all spectrum leases the Lessor retains ownership rights to the spectrum rights of use and the original licence conditions will continue to apply to the Lessor's licence unless amended by ComReg.
- 5.7 In relation to a Lessee's licence, for some licence conditions ComReg observes that it may not be necessary to include these conditions in a Lessee's licence, as the Lessor would remain fully responsible for these conditions. Such licence conditions include:
- Coverage⁴² and rollout obligations; and
 - Fees.
- 5.8 For other licence conditions ComReg observes that it may be necessary to include these conditions in a Lessee's licence, as these conditions would be required to ensure the efficient usage of the radio spectrum frequency band and to protect consumers. Such licence conditions include:
- technology and service neutrality conditions;

⁴¹ In line with Part B of the Authorisation Regulations, ComReg sets licence conditions in Wireless Telegraphy licences granted under various licensing Regulations. In general these licence conditions include: (i) technology and service neutrality conditions; (ii) technical conditions (including conditions to be attached to terminal stations as may be required); (iii) spectrum usage fees; (iv) coverage and roll-out conditions (if applicable); (v) licence duration; (vi) quality of service (QoS) conditions and (vii) obligations under relevant international agreements relating to the use of frequencies.

⁴² In relation to the Coverage and/or Rollout obligation, ComReg observes that the 3.6 GHz Band Regulations provide for a spectrum leasing arrangement to count towards the rollout base station obligation of the Lessor.

"Rollout Base Stations worked and used pursuant to a spectrum leasing arrangement count towards the Rollout Base Station obligation of the Lessor's Licence" (Part 4 of the 3.6 GHz band Liberalised Use Licence, Section 4, 2 (5))

- technical conditions (including conditions to be attached to terminal stations as may be required);
- quality of service (QoS) conditions⁴³; and
- obligations under relevant international agreements relating to the use of frequencies.

5.9 As the exact nature of a spectrum lease cannot be determined in advance of a notification, ComReg proposes that the licence conditions to be inserted into a Lessee's licences would be considered on a case by case basis in line with the above guidance.

5.10 To ensure that licence obligations continue to apply following a lease, ComReg proposes to grant and issue a licence to the Lessee. This would be enforced in the normal manner in accordance with relevant legislation.

5.11 ComReg notes that that if enforcement actions are taken against a Lessor, these may also impact the Lessee. For example if a Lessor's licence is revoked then all relevant Lessee licences granted and issued on foot of a notified lease would also be revoked in full on the date of revocation.

5.3 Legislative proposals to implement the spectrum lease framework

5.12 To implement the proposed spectrum lease framework in Ireland, and similar to the Spectrum Transfer Framework, it is necessary for ComReg to introduce legislation and to specify the procedures and guidelines for spectrum leases in Ireland, including amending the Schedule to the Spectrum Transfer Regulations to include the 700 MHz as discussed above at section 2.1.2.

5.13 In addition, for ComReg to grant and issue a spectrum lease licence to a Lessee, it is necessary for ComReg to ensure that the specific WT licensing regulations covering the particular radio frequency band are fit for that purpose.

5.14 ComReg's implementing proposals are outlined below.

Proposal to amend the Spectrum Transfer Regulations, procedures and guidelines to incorporate the proposed spectrum lease framework

5.15 Noting that the same procedural framework is proposed for both the spectrum transfer and lease frameworks, ComReg's proposes to amend the

⁴³ There might be use cases whereby a quality of service obligation applying to a service in a lessor's licence would need to also apply to the same service should a lessee choose to provide that service. This would thus protect consumer interests in relation to the services.

existing legislation, procedures and guidelines of the Spectrum Transfer Framework to incorporate the proposed spectrum lease framework.

5.16 In relation to Spectrum Transfer Regulations ComReg proposes the following amendments:

- Regulation 2 (“definitions”) would be amended to define a “lease”.
- Regulation 3 would be amended to include a leasing specific regulation, which would provide for a lease of a spectrum right of use.
- The remaining Regulations (regulations 4, 5, 6, 7 and 8) in the existing Spectrum Transfer Regulations would be amended to also provide for spectrum leases as follows:
 - Regulation 4 would provide for undertakings to notify leases in the same way as it does for transfers.
 - Regulation 5 would provide for ComReg to examine both a notified transfer or lease, or both, and for ComReg to engage with the notifying parties on proposals to ameliorate effects of the proposals on competition (if any);
 - Regulation 6 would provide for ComReg to issue a determination without a full investigation on a notified transfer or lease;
 - Regulation 7 would provide for ComReg to issue a determination on a notified transfer or lease, or both, following a full investigation; and
 - Regulation 8 would apply to a notified lease in a similar way to transfers.

5.17 In relation to the Spectrum Transfer Procedures and Guidelines, ComReg proposes to amend this document by clarifying that these procedures and guidelines would apply to spectrum leases.

5.18 ComReg’s detailed proposal are set out in Annexes 4 a Redline draft Wireless Telegraphy (Transfer of Spectrum Rights of Use) (Amendment) Regulations, 2017 and Annex 5 (Redline Spectrum Transfer and Lease Framework document).

Proposed amendments to existing WT licensing regulations to enable ComReg to grant and issue lease licences in specified radio bands

5.19 ComReg grants and issues individual licences in specified radio bands pursuant to regulations made under Section 5 of the WT Act.

5.20 For each of the radio spectrum bands where spectrum transfers or leases would be allowed there are a number of existing WT licensing regulations

currently in force, which predate both the existing Spectrum Transfer Framework and the proposed spectrum lease framework. They are:

- S.I. No. 530/2003 – Wireless Telegraphy (Fixed Wireless Access Local Area Licence) (Amendment) Regulations 2003 (the “FWALA Regulations”)⁴⁴
- S.I. No. 532/2016 – Wireless Telegraphy (3.6 GHz Band Licences) Regulations 2016 (the “3.6 GHz Regulations”)
- S.I. No. 251/2012 – Wireless Telegraphy (Liberalised Use and Preparatory Licences in the 800 MHz, 900 MHz and 1800 MHz bands) Regulations (the “LU Regulations”);
- S.I. No. 340/2003 – Wireless Telegraphy (Third Generation and Gsm Mobile Telephony Licence) (Amendment) Regulations 2003 (the “GSM and 3G Regulations”);

5.21 The LU Regulations and the GSM and 3G Regulations do not provide for the grant and issue of a spectrum lease licence in the respective radio frequency bands. ComReg proposes to amend these regulations based on the spectrum lease provisions in the 3.6 GHz Regulations.

5.22 The 3.6 GHz Regulations provide for the grant and issue of a spectrum lease licence but Part 1 of Schedule 1 therein needs to be amended so as to record licensing details of lessees in force under a spectrum lease licence.

5.23 ComReg’s detailed proposals are set out in Annex 4 on the Redline draft Wireless Telegraphy (Transfer of Spectrum Rights of use) (Amendment) Regulations, 2017.

5.4 Proposed amendments to existing WT licensing regulations to enable ComReg to grant and issue transfer licences in specified radio bands

5.24 Currently the LU Regulations only provide for the grant and issue of a LU licence to a winning bidder. In order to provide for the grant and issue of a LU licence after a transfer, it would be necessary to amend the LU Regulations to provide for this.⁴⁵

⁴⁴ ComReg does not intend to make amendments to S.I. No. 530/2003 given that these Regulations cease to be in effect from 31 July 2017 after which the 3.6GHz Regulations will be in force.

⁴⁵ Such a provision would be necessary to provide for the spectrum transfer commitment included in the decision of the European Commission on the acquisition of Telefonica Ireland by Hutchison 3G UK. This commitment requires Hutchison 3G UK to provide the “Upfront MVNO” (as defined in the EC’s decision, the mobile virtual network operator (“MVNO”)) or the “Second MVNO” with a spectrum option for 10 years, from 1 January 2016, which relates to the transfer of some or all of the following

- 5.25 ComReg proposes to amend these regulations by specifying that a LU licence can be granted and issued after a transfer.
- 5.26 ComReg's detailed proposal are also set out in draft Regulation 9 of the draft Wireless Telegraphy (Transfer of Spectrum Rights of Use) (Amendment) Annex 4.

spectrum (which is referred to as the divestment spectrum in the EC decision ("Divestment Spectrum")):

- 2 x 5 MHz of 900 MHz spectrum in Time Slice 2 (13 July 2015 to 12 July 2030);
- 2 x 10 MHz of 1800 MHz spectrum in Time Slice 2 (13 July 2015 to 12 July 2030); and
- 2 x 10 MHz of 2100 MHz spectrum for the remainder of the licence period until 24 July 2022.

Chapter 6

6 Next steps and 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 / paragraph number in each chapter and annex in this document.
- 6.2 Please also provide reasoning and supporting information for any views expressed.
- 6.3 A **four** week period for comment will run until 17:00 on 29 June 2017, during which time ComReg welcomes written comments on any of the issues raised in this paper.
- 6.4 Responses must be submitted in written form (post or email) to the following recipient, clearly marked —Submissions to ComReg 15/131:

Divisional Assistant to Market Framework
Commission for Communications Regulation
1 Dockland Central
Guild Street
FREEPOST
Dublin 1
Ireland
D01 E4 XO
Email: marketframeworkconsult@comreg.ie

- 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 to support their views. In order to promote openness and transparency, ComReg will publish all respondents' submissions to, and substantive correspondence relating to, this consultation, subject to the provisions of ComReg's guidelines on the treatment of confidential information⁴⁶. In that regard, respondents are requested to provide both a confidential and non-confidential version of their submission to the consultation, with reasons as to why material marked as confidential is considered to be confidential. Alternatively, respondents are requested to place confidential material in a

⁴⁶ Document 05/24 - Response to Consultation - Guidelines on the treatment of confidential information - March 2005.

separate annex to their response, again providing supporting reasoning in that annex as to why such material is confidential.

6.1 Next Steps

- 6.7 Following receipt and consideration of submissions in response to this, and other relevant material, ComReg intends to publish its response to consultation document.
- 6.8 If deemed appropriate following consultation, ComReg will publish its Spectrum Leasing Framework at the same time, and it will present Regulations to the Minister of the Department of Communications Climate Action and Environment (the “DCCA”) seeking consent to implement the proposed Spectrum Leasing Framework into law.

Annex 1: Draft EECC Directive (relevant provisions)

- A 1.1 In September 2016, the European Commission (EC) launched a review of the regulatory framework for electronics communications with the publication of a draft Directive to establish the European Electronic Communications Code (the “EECC”) ⁴⁷.
- A 1.2 Articles 51 and 52 of the EECC, as set out below, are relevant to the transfer or lease of radio spectrum.

Article 51

Transfer or lease of individual rights to use for radio frequencies spectrum

1. Member States shall ensure that undertakings may transfer or lease to other undertakings in accordance with conditions attached to the rights of use for radio frequencies spectrum and in accordance with national procedures individual rights to use for radio frequencies spectrum in the bands for which this is provided in the implementing measures adopted pursuant to paragraph 4 or by any other Union measure such as the a radio spectrum policy programme adopted pursuant to Article 4(4).

In other bands, Member States may also make provision for undertakings to transfer or lease individual rights to use for radio frequencies to other undertakings in accordance with national procedures.

Without prejudice to paragraph 3, conditions attached to individual rights to use for radio frequencies spectrum shall continue to apply after the transfer or lease, unless otherwise specified by the competent national authority.

Member States may also determine that the provisions of this paragraph shall not apply where the undertaking's individual right to use radio frequencies was initially obtained free of charge.

⁴⁷ <https://ec.europa.eu/digital-single-market/en/news/proposed-directive-establishing-european-electronic-communications-code>

2. Member States shall ensure that an undertaking's intention to transfer rights to use of radio frequencies for spectrum, as well as the effective transfer thereof is notified in accordance with national procedures to the national regulatory authority and to the competent national authority responsible for granting individual rights of use if different and is made public. Where the use of radio frequency use for spectrum has been harmonised through the application of the Decision No 676/2002/EC (Radio Spectrum Decision) or other Community Union measures, any such transfer shall comply with such harmonised use.

3. Member States shall allow the transfer or lease of rights of use for radio spectrum where the original conditions attached to the rights of use are maintained. Without prejudice to the need to ensure the absence of a distortion of competition, in particular in accordance with Article 52 of this Directive, Member States shall:

(a) submit trading and leasing to the least onerous procedure possible;

(b) following notification by the lessor, not refuse the lease of rights of use for radio spectrum unless the lessor does not undertake to remain liable for meeting the original conditions attached to the rights of use;

(c) following a request by the parties, approve the transfer of rights of use for radio spectrum unless the new holder is unable to meet the original conditions for the right of use.

Points (a) to (c) are without prejudice to the Member States' competence to enforce compliance with the conditions attached to the rights of use at any time both with regard to the lessor and the lessee, in accordance with their national law.

Competent authorities shall facilitate the transfer or lease of rights of use for radio spectrum by giving timely consideration to any request to adapt the conditions attached to the right and by ensuring that the rights or the radio spectrum attached thereto may to the best extent be partitioned or disaggregated.

In view of any transfer or lease of rights of use for radio spectrum, competent authorities shall make all details relating to tradable individual rights publicly available in a standardised electronic format when the rights are created and keep those details as long as the rights exist.

43. The Commission may adopt appropriate implementing measures to identify the bands for which rights to use of radio frequencies may be transferred or leased between undertakings. These measures shall not cover frequencies which are used for broadcasting.

~~These technical implementing measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory examination procedure with scrutiny referred to in Article 110(4) 22(3).~~

Article 52**Competition**

1. National regulatory authorities shall promote effective competition and avoid distortions of competition in the internal market when deciding on the grant, amendment or renewal of rights of use for radio spectrum for electronic communications services and networks in accordance with this Directive.

2. When Member States grant, amend or renew rights of use for radio spectrum, their national regulatory authorities may take appropriate measures such as:

(a) limiting the amount of radio spectrum for which rights of use are granted to any undertaking, or attaching conditions to such rights of use, such as the provision of wholesale access, national or regional roaming, in certain bands or in certain groups of bands with similar characteristics;

(b) reserving, if appropriate in regard to an exceptional situation in the national market, a certain part of a frequency band or group of bands for assignment to new entrants;

(c) refusing to grant new rights of use for radio spectrum or to allow new radio spectrum uses in certain bands, or attaching conditions to the grant of new rights of use for radio spectrum or to the authorisation of new radio spectrum uses, in order to avoid the distortion of competition by any assignment, transfer or accumulation of rights of use;

(d) prohibiting or imposing conditions on transfers of rights of use for radio spectrum, not subject to national or Union merger control, where such transfers are likely to result in significant harm to competition;

(e) amending the existing rights in accordance with this Directive where this is necessary to remedy ex-post a distortion of competition by any transfer or accumulation of rights of use for radio spectrum.

National regulatory authorities shall, taking into account market conditions and available benchmarks, base their decision on an objective and forward-looking assessment of the market competitive conditions and of whether such measures are necessary to maintain or achieve effective competition and of the likely effects of such measures on existing and future investments by market operators in particular for network roll-out.

3. When applying paragraph 2, national regulatory authorities shall act in accordance with the procedures provided in Articles 18, 19, 23 and 35 of this Directive.

Annex 2: Spectrum trading information from Cullen International

A 1.3 This annex sets out information on spectrum trading in the RSPB bands for the 19 European countries included in the 'Spectrum Cross-Country Analysis' of Cullen International⁴⁸



Spectrum trading

CTTEEU20160184 - Oct. 20. 2016 Dieter Kronegger



Spectrum trading (or secondary trading) refers to the right of the licensee to sell the spectrum to another undertaking.

Countries typically introduce spectrum trading when they replace the traditional administrative approach to spectrum management with a market based system where spectrum usage rights are technology neutral and are awarded by auctions.

The Radio Spectrum Policy Programme (RSPB, Tracker) obliged member states to allow the transfer or leasing of spectrum usage rights in the 800 MHz, 900 MHz, 1800 MHz, 2 GHz, 2.6 GHz and 3.4–3.8 GHz bands by July 1, 2015.

All countries except Finland allow spectrum trading in the RSPB bands. In Finland, trading is generally forbidden, but allowed in the bands that were auctioned.

All countries except Slovakia require a case-by-case approval of each spectrum trade. The responsible authority is usually the authority that awarded the licence (the NRA or, in some countries, a ministry).

Slovakia only requires an announcement four weeks before trading and information on the completed trade.

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⁴⁸ <http://www.cullen-international.com/product/documents/CTTEEU20160184>

TABLE

Spectrum trading					
Regulatory approach	Approval needed?	All RSPB bands eligible to trading?	Examples of completed trades in RSPB bands	Legal basis	
AT	Trading generally allowed (only basic checks)	Yes by the NRA (for all bands that are auctioned by TTK)	Yes	Yes T-Mobile had to divest spectrum in the 2 GHz band after acquiring tele.ring in 2006. Trades following the merger of Hutchison 3G Austria and Orange Austria in 2012.	§ 56 Telecommunications Act (TKG 2003)
BE	Trading generally allowed (only basic checks)	Yes by the NRA	Yes	Yes On Dec. 23, 2015 BIPT agreed to the transfer of rights from B.lite and Mac Telecom to Broadband Belgium in the 3,5 GHz and 10,5 GHz bands. In 2011, Mac Telecom asked to transfer its rights to Clearwire (BIPT communication of March 8, 2011). This transfer was never finalised.	Electronic Communications Act of June 13, 2005 (art. 19, consolidated version) Royal decree of February 26, 2010 on the transfer of usage rights as amended by Royal Decree of April 2, 2014
CH	Trading generally allowed (only basic checks)	Yes by the NRA	Yes	No	Art. 24.d. of Telecommunication Act (LTC)
CZ	Trading is generally allowed. CTO examines whether the trade affects competition.	Yes by the NRA	Yes	No	Art. 19a of the Electronic Communications Act

Spectrum leases in Ireland

ComReg 17/47

DE	Trading generally allowed (only basic checks)	Yes by the NRA	Yes	No Several trades outside RSPP bands.	<p>§ 55 (8) Telecommunications Act (TKG 2004) allows trading on a case-by-case basis. BNetzA has repeatedly said that it would approve any trade that does not affect competition.</p> <p>The law also contains the possibility to open certain bands more generally for trading, under conditions to be defined by BNetzA. However, BNetzA has never used this option (§ 62 TKG).</p>
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Spectrum trading					
	Regulatory approach	Approval needed?	All RSPP bands eligible to trading?	Examples of completed trades in RSPP bands	Legal basis
ES	<p>Trading generally allowed but: <ul style="list-style-type: none"> partial transfer of licence and trading of rights of use – only in bands specified by royal decree. Total transfer of licence allowed regardless of the band. </p> <p>Proposed new decree on spectrum (decision pending) would:</p> <ul style="list-style-type: none"> simplify the existing forms of trading (foresees only the total transfer of the licence and the transfer of rights of use); introduce spectrum sharing; and require prior authorisation of the ministry for agreements on wholesale access services between ECS operators owning spectrum rights. <p>(Update)</p>	<p>Yes</p> <p>by the authority which granted the licence (i.e. the Ministry of Industry in most instances for ECS spectrum)</p> <p>New licences granted in the 2.6 GHz and 3.5 GHz bands in 2016 (Update) can be traded only after 2 years from the start of the licence term (i.e. from May 2018).</p>	Yes	<p>Yes</p> <p>3.5 GHz: licence holders in the band transferred part of their usage rights (only in some autonomous communities)</p> <ul style="list-style-type: none"> Iberbanda to Telefonica (Jan. 2015-Dec. 2018) Eurona Wireless to Open Cable (Dec. 2013-April 2020) (Eurona Wireless acquired its licence from MRF Cartuja S.A.) Neosky transferred rights of use to Eurona Wireless (May 2012 until May 2018) and to Red Digital de Telecomunicaciones of the Balearic Islands (Jan. 2013-June 2019) <p>2.6 GHz: Orange transferred its national 10 MHz TDD licence (Flash) to Aire Networks (a provider of voice and data guaranteed transmission services for operators, companies and public administrations) after its acquisition of Jazztel (Case) resulted in exceeding the applicable 135 MHz cap on spectrum over 1 GHz.</p> <p>Register of spectrum holders of the Ministry of Industry</p>	<p>Royal Decree 863/2008 of May 23, 2008 on the use of spectrum</p> <p>Royal Decree 458/2011 of April 1, 2011 on refarming</p> <p>Proposed new royal decree on spectrum would introduce changes in spectrum trading (Update). Decision pending.</p>
FI	Trading forbidden except for frequencies awarded in auctions	Yes by the government	No Some RSPP bands that have been awarded in auctions.	<p>Yes</p> <p>Following the bankruptcy of Datame in Nov. 2013, the government approved the transfer of its 2.6 GHz (TDD) licence to Ukkoverkot.</p> <p>(Government decision of May 8, 2014)</p>	Art. 18 of the Information Society Code 917/2014

Spectrum leases in Ireland

ComReg 17/47

FR	Trading generally allowed (only basic checks)	Yes by the NRA	Yes	Yes Several trades in the 3.4-3.6 GHz band (List in ARCEP report on WLL rollout - May 2011, p. 18)	Art. L42-3, Code of Telecommunications List set by the Minister in charge of Telecommunications
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Spectrum trading					
	Regulatory approach	Approval needed?	All RSPP bands eligible to trading?	Examples of completed trades in RSPP bands	Legal basis
HU	Trading generally allowed but some licences contain individual restrictions. For example, the 1800 MHz and 2 GHz spectrum acquired by Pannon (now Telenor) in 2004 can only be sold as a bundle.	Yes by the NRA	Yes	Yes 800 MHz spectrum lease agreement between Magyar Telekom and Telenor, approved by NMHH on Feb. 24, 2015 (Update)	Electronic Communications Act (ECA) of 2003 7/2013 NMHH decree on spectrum trading

IE	<p>Trading generally allowed (only basic checks)</p> <p>Undertakings must notify ComReg in advance on a standard form of any intention to transfer spectrum rights (in the RSPP bands). Each notification incurs a €5,000 fee.</p> <p>If ComReg determines that there will be no distortion of competition, it will approve the transfer - normally within 35 working days.</p> <p>If ComReg suspects there may be distortion of competition, it will carry out a full investigation before making a final determination whether:</p> <ul style="list-style-type: none"> ● to approve the transfer; ● to approve the transfer but only with conditions; or ● not to approve the transfer. <p>ComReg framework (including guidelines) and secondary legislation (SI 34 of 2014) on transfers of spectrum use (both from Jan. 2014).</p> <p>ComReg policy approach explained in document 14/10 of Jan. 2014.</p>	Yes by the NRA	Yes	No	Regulation 19 of Framework Regulations (SI No. 333 of 2011)
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Spectrum trading					
	Regulatory approach	Approval needed?	All RSPB bands eligible to trading?	Examples of completed trades in RSPB bands	Legal basis
IT	<ul style="list-style-type: none"> • <i>Frequencies which are considered scarce resources and have been granted to a limited number of operators</i> <p>Trading is generally allowed, but only between operators that are authorised to offer a network based on the same technology.</p> <ul style="list-style-type: none"> • <i>Other frequencies</i> <p>Trading generally allowed (only basic checks) (Under art. 25.8 of the Electronic Communications Code on the transfer of a general authorisation to a third party the assignee must fulfil some requirements)</p>	<p>Yes</p> <p>by the Ministry of Economic Development</p> <ul style="list-style-type: none"> • <i>Frequencies which are considered scarce resources and have been granted to a limited number of operators</i> <p>AGCOM verifies, before the ministry's approval, and after hearing the opinion of the competition authority (AGCM), that the trade does not distort competition.</p> <ul style="list-style-type: none"> • <i>Other frequencies</i> <p>The transfer must be notified to the ministry that may refuse it in case the assignee does not seem to be able to fulfil the requirements attached to the general authorisation.</p>	Yes	<p>Yes</p> <p>Before closing the transaction, under their merger control commitments given to the European Commission on Sep. 1, 2016 (Case), H3G/Wind JV will sell to new entrant Iliad a total of 2x35 MHz for €450m:</p> <ul style="list-style-type: none"> • 2x5 MHz in the 900 MHz band • 2x10 MHz in the 1800 MHz band • 2x10 MHz in the 2100 MHz band • 2x10 MHz in the 2600 MHz band. 	Art. 14-ter of the Electronic Communications Code 259/2003
NL	Trading generally allowed but the minister of economic affairs has to approve the trade and can make changes to licence conditions.	Yes by the minister of economic affairs.	Yes	<p>Yes</p> <p>In Sep. 2007, KPN sold 2x5 MHz of 900 MHz spectrum to TMobile for an undisclosed amount. KPN had obtained this spectrum when it acquired Telfort in June 2005.</p>	Art. 3.20 of the telecommunications law
PL	Trading generally allowed (only basic checks)	Yes by the NRA	Yes	<p>No</p> <p>Orange Poland purchased a block of frequencies (2.4 MHz) in the 1800 MHz band from Polkomtel in July 2013. However, in July 2014, Polkomtel backed out of the deal.</p> <p>On Oct 2, 2015, the District Court in Warsaw decided that Polkomtel shall indemnify Orange</p>	Art. 122 of the amended Telecommunications Law (entry into force on Jan. 21, 2013)

			and pay the contractual penalty of PLN 9m (€2.07m).	
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Spectrum trading					
	Regulatory approach	Approval needed?	All RSPB bands eligible to trading?	Examples of completed trades in RSPB bands	Legal basis
PT	<p>Trading generally allowed but:</p> <ul style="list-style-type: none"> Only two years after commercial launch, according to the multi-band auction regulation and the BWA regulation. Prior notification to Anacom is required. Anacom must decide within 45 days and examine the impact on competition and whether frequencies are used effectively, efficiently and in line with the harmonised use at EU level. Anacom may oppose the intended transfer or impose conditions to safeguard the objectives mentioned above. 	<p>Yes by the NRA</p> <p>Silence of Anacom at the end of the 45 day period is equivalent to nonopposition.</p>	Yes	<p>Yes</p> <p>Onitelecom/F300 (3.5 GHz band) in May 2011</p>	<p>Law 51/2011, of Sep. 13, 2011 amending the Electronic Communications Law (art. 34). Art. 33 (2) (f) and 37 of Anacom regulation of Oct. 2011 on the auction of the 450 MHz, 800 MHz, 900 MHz, 1800 MHz, 1900 MHz, and 2.6 GHz bands Art. 33 of Anacom BWA auction regulation, Oct. 2009</p>
RO	<p>Trading is generally permitted. ANCOM examines whether the trade affects competition.</p>	<p>Yes by the NRA</p>	Yes	Information not available	<p>Government Emergency Ordinance No. 111/2011, art. 35</p>

Spectrum leases in Ireland

ComReg 17/47

SE	Trading (or leasing) is generally permitted (subject to basic checks) PTS examines whether the trade affects competition.	Yes by the NRA PTS has approved rules on exempting shorter term spectrum leasing (up to 6 months within a 12-month period) or limited to up to 10 transmitters from the need for approval. The rules apply from Jan. 1, 2014.	Yes	<p>Yes</p> <p>On Feb. 7, 2012, PTS approved the transfer of the following spectrum to Net4Mobility, a joint venture of Telenor and Tele2:</p> <ul style="list-style-type: none"> • entire assignments in the 2.6 GHz band held by Telenor and Tele2 and in the 900 MHz held by Swefour; • parts of assignments in the 900 MHz band held by Telenor and Tele2 <p>On Aug. 15, 2011, PTS approved the transfer of 2x25 MHz of spectrum in the 1800 MHz band held by Telenor, Tele2 and Swefour to Net4Mobility.</p> <p>On Dec. 22, 2010, PTS approved the sale of the licence for 50 MHz unpaired spectrum held by Intel Capital to Hi3G.</p>	§23-24, Chapter 3, Electronic Communications Act (2003:389)

Spectrum trading					
	Regulatory approach	Approval needed?	All RSPB bands eligible to trading?	Examples of completed trades in RSPB bands	Legal basis
SI	Trading generally allowed (only basic checks)	Yes By the NRA	Yes	Yes Tušmobil bought from Vega, which exited the market in 2006, 2x15 MHz in the 1800 MHz band for an undisclosed fee. The NRA later changed this into 2x5 MHz in the 1800 MHz band and 2x10 MHz in the 900 MHz band.	Art. 55 of the Electronic Communications Act (ZEKom-1)
SK	The possibility of trading is laid down by RU in the individual licences. Trading is generally allowed.	No Announcement required (4 weeks before trading) and information on completed trade (5 days after trade)	Yes	Yes RU publishes a list of completed transfers. Only local players made use of spectrum trading.	Electronic Communications Act 351/2011 , Art. 32
UK	Trading generally allowed but only for bands covered in the Mobile Spectrum Trading Regulations Ofcom will allow all types of trade but subject to an ex ante check of the impact on competition (see statement of June 2011).	Yes by the NRA	Yes	Yes EE sold 2x15 MHz of its 1800 MHz spectrum to H3G in Aug. 2012 as part of the conditions of the Orange/T-Mobile merger that created EE (Update). Qualcomm sold its 40 MHz of 1.4 GHz spectrum to H3G and Vodafone (20 MHz each), with the consent of Ofcom in Sep. 2015 (Update).	Section 30 of Wireless Telegraphy Act 2006 Mobile Spectrum Trading Regulations (2011 Regulations) in force since April 5, 2013 – amended in 2013 by SI 646 to include the 800 MHz and 2.6 GHz bands, and in 2015 by SI 1339 to include the 1.4, 2.3 and 3.5 GHz bands).

Annex 3: The Draft RIA on the procedures for the competition assessment of spectrum leases

Introduction

- A 1.4 This Annex sets out ComReg’s draft Regulatory Impact Assessment (RIA) on the procedures for the competition assessment of spectrum leases, and draws upon the final RIA for spectrum transfers as set out in Annex 2 of ComReg Document 14/10⁴⁹ (the “Transfer RIA”).
- A 1.5 Spectrum leases and transfers are related but distinct mechanisms.
- Spectrum leases and transfers are related in so far as both mechanisms can increase the efficient use of spectrum by allowing another party rights to the spectrum rights of use.
 - Spectrum leases and transfers are distinct from each other in that:
 - a spectrum transfer is the assignment by a licensee (the “Transferor”) of some or all of a right of use granted under a licence to another party (the “Transferee”). A spectrum transfer is permanent in that the transferred right of use *does not* revert to the Transferor; and
 - the assignment by a licensee (the “Lessor”) of some or all of a spectrum right of use held under licence to another undertaking (the “Lessee”) for a set period of time shall expire prior to the expiry of the leased right of use as specified in the Lessor’s licence, after which the leased right of use shall revert to the Lessor.
- A 1.6 This draft RIA has been drafted having regard to relevant information such as:
- the responses submitted to Document 12/76;
 - the background information on spectrum leases as set out in Chapter 2 of this consultation;

⁴⁹ ComReg Document 14/10 put in place a framework to consider proposals for the full or partial transfer of spectrum rights of use within the RSPB bands. Annex 2 of Document 14/10 sets out ComReg’s RIA on the procedure for assessing the potential effects of spectrum trades on competition. The RIA contained in Document 14/10 did not specifically consider spectrum leases.

- the responses received to ComReg's consultation on the radio spectrum management strategy for 2016 to 2018 (Document 15/131) in relation spectrum leases.⁵⁰; and
- ComReg's proposals on spectrum leases as set out in this consultation.

RIA Framework

A 1.7 In general terms, a RIA is an analysis of the likely effect of a proposed new regulation or regulatory change, and, indeed, of whether regulation is necessary at all. A RIA should help identify the most effective and least burdensome regulatory option and should seek to establish whether a proposed regulation or regulatory change is likely to achieve the desired objectives, having considered relevant alternatives and the impacts on stakeholders. In conducting a RIA, the aim is to ensure that all proposed measures are appropriate, effective, proportionate and justified.

Structure of a RIA

A 1.8 As set out in ComReg's RIA Guidelines,⁵¹ there are five steps in a RIA. These are:

Step 1: Identify the policy issues and identify the objectives.

Step 2: Identify and describe the regulatory options.

Step 3: Determine the impacts on stakeholders.

Step 4: Determine the impact on competition.

Step 5: Assess the impacts and choose the best option.

A 1.9 In the following sections ComReg identifies the relevant stakeholder groups, specific policy issues to be addressed and relevant objectives (i.e. Step 1 of the RIA process). This is followed by the identification of two fundamental policy issues.

A 1.10 ComReg then considers these two policy issues in separate RIAs, in accordance with the four remaining steps of ComReg's RIA process.

Identification of stakeholders

A 1.11 The focus of Step 3 is to assess the impact of the proposed regulatory options available to ComReg on stakeholders. A precursor to the

⁵⁰ A summary of the views submitted and ComReg's response to same is set out in Section 3.3.5 of ComReg's response to consultation document (Document 16/49).

⁵¹ See Document 07/56a - Guidelines on ComReg's approach to Regulatory Impact Assessment - August 2007.

subsequent steps in the RIA, therefore, is to identify the relevant stakeholders. Stakeholders consist of two main groups:

- consumers; and
- industry stakeholders.

A 1.12 There are a number of key industry stakeholders in relation to the matters considered in this chapter: These are:

- potential Lessors, including;
 - existing License holders in the RSPP Bands;
 - potential future Licence holders in the 700 MHz and future RSPP bands;
- potential Lessees, including;
 - potential new entrants;
 - existing incumbent operators.

A 1.13 Prior to receiving submissions on ComReg's various proposals contained in this consultation, ComReg has, in the following analysis, taken a reasonable and pragmatic approach to considering the likely impact of each option on the various stakeholders having regard to its experience and expertise and the responses received by interested parties to Document 12/76 and Document 15/131.

A 1.14 The focus of Step 4 is to assess the impact on competition of the proposed regulatory options available to ComReg. In that regard, ComReg notes that it has various statutory, objectives, regulatory principles and duties which are relevant to the issue of competition.

A 1.15 Of themselves, the various RIA guidelines and the RIA Policy Direction provide little guidance on how much weight should be given to the positions and views of each stakeholder group (Step 3), or the impact on competition (Step 4). Accordingly, ComReg has been guided by its statutory objectives which it is obliged to pursue when exercising its functions. ComReg's statutory objectives in managing the radio frequency spectrum, as set out in Annex 1 to Document 16/50 include:

- the promotion of competition;
- contributing to the development of the internal market; and
- to promote the interest of users within the Community.

A 1.16 In this document, ComReg has adopted the following structure in relation to Step 3 and Step 4 – the impact on industry stakeholders is considered first, followed by the impact on competition, followed by the impact on

consumers. The order of this assessment does not reflect any assessment of the relative importance of these issues but rather reflects a logical progression. For example, a measure which safeguards and promotes competition should also, in turn, impact positively on consumers. In that regard, the assessment of the impact on consumers draws substantially upon the assessment carried out in respect of the impact on competition.

Identify the policy issues & identify the objectives (Step 1)

Policy Issues

- A 1.17 Under Regulation 19(1) of the Framework Regulations, ComReg is required to ensure that undertakings may transfer or lease their spectrum rights of use, subject to various other provisions including Regulation 9(11) of the Authorisation Regulations which requires ComReg to ensure that radio frequencies are efficiently and effectively used. Regulation 9(11) of the Authorisation Regulations also empowers ComReg to take appropriate measures such as mandating the sale or the lease of rights of use for radio frequencies.
- A 1.18 In setting out a procedure for assessing the competition impacts of spectrum leasing which reflects its relevant statutory functions, duties and objectives, ComReg does not wish to adversely affect the extent to which leases or transfers (noting that transfers are a related mechanism to leases) would otherwise take place. ComReg also does not wish to reduce incentives to engage in leases which would be neutral in terms of any effects on competition, or which may result in more efficient uses of spectrum to the benefit of consumers without having any distortive effect upon competition.
- A 1.19 ComReg is therefore of the view that the primary policy issue to be addressed is the procedures for how to assess the potential effects of spectrum leases on competition.

Objectives

- A 1.20 ComReg's statutory functions, objectives and duties in relation to radio spectrum are set out in Annex 1 of to Document 16/50. In particular, one of its core statutory objectives under section 12 of the 2002 Act of promoting competition by, among other things:
- Ensuring that users derive maximum benefit in terms of choice, price and quality;
 - Encouraging efficient use and ensuring effective management of radio frequencies;

- Ensuring that there is no distortion or restriction of competition in the electronic communications sector;
- Contributing to the development of the internal market; and
- Promoting the interest of EU citizens.

Identify and describe the regulatory options (Step 2)

A 1.21 An important consideration in the choice of procedures for the competition assessment of spectrum leases is the potential for Type 1 or Type 2 errors. These errors are described as follows:

- A Type 1 error would arise where the assessment process resulted in a lease being blocked, where that lease would not have a distortive effect on competition.
- A Type 2 error would arise where the assessment process allowed a lease to proceed, where that lease would have a distortive effect on competition.

A 1.22 If the goal is to minimise Type 1 errors, the process should be designed so that all leases are allowed in principle, with specific leases contested only where it is very clear that the trade would result in a distortion to competition.

A 1.23 If the goal is to minimise Type 2 errors, all leases would be blocked in principle and only allowed to proceed in cases where it is very clear that the lease would not result in a distortion to competition.

A 1.24 The competition impacts of spectrum leasing could be assessed by relying solely on an *ex-post* review (i.e. minimise Type 1 errors) or by introducing an *ex-ante* (minimise Type 2 errors) framework.

A 1.25 Therefore the two options under consideration are as follows:

Option 1 – An *ex-post* competition assessment under Section 4 and/or 5 of the Competition Act 2002.

A 1.26 Under Option 1 all proposed spectrum leases notified to ComReg pursuant to Regulation 19 of the Framework Regulations could be implemented without the need for prior approval from ComReg. Regulatory intervention could arise after the lease has been implemented if there is a suspected breach of sections 4 and/or 5 of the Competition Act 2002⁵² - i.e. unlawful arrangements between undertakings and/or an abuse of dominance.

A 1.27 An *ex-post* procedure, therefore could be considered as a 'do nothing' option, in that it would not involve a new framework per se, but rather would

⁵² [Competition Act 2002](#) (no 14 of 2002) as amended

involve relying on existing legislative provisions for the assessment of the competition impacts of spectrum leases. This approach would reduce or eliminate the potential for Type 1 errors but could increase the likelihood of Type 2 errors.

Option 2 – An *ex-ante* competition assessment using the procedures specified in the Spectrum Transfer Framework.

A 1.28 Under an *ex-ante* framework all proposed spectrum leases notified to ComReg pursuant to Regulation 19 of the Framework Regulations, would be subject to prior assessment by ComReg, before it could be implemented, and ComReg could either allow or disallow any notified lease, or it could allow such a lease subject to one or both parties accepting certain conditions. This approach would reduce or eliminate Type 2 errors but it could give rise to Type 1 errors. A lease which is approved under such an *ex-ante* framework would still be subject to the provisions of the Competition Act 2002.

Impact on stakeholders (step 3)

A 1.29 A lease that is subject to an *ex-post* investigation under Option 1 could create a number of difficulties for stakeholders which any stakeholder would likely prefer to avoid. These include:

- Competition cases tend to be lengthy, and can take in the region of **at least two years** to reach the full trial of the action.⁵³
- A business can be fined up to €5 million or 10% of its annual business turnover, whichever is greater, if convicted on indictment;
- The possibility of third party damages actions⁵⁴ in the future as a result of behaviour brought about from a lease;
- The potential unwinding of the spectrum lease is likely to be highly disruptive and could potentially be very costly for businesses involved;⁵⁵
- The risk of reputational damage connected with an infringement; and
- The uncertainty as to future viability of services dependant on the lease.

⁵³ European Commission, Ireland Report, John Meade, p17.

⁵⁴ Follow-on actions are facilitated by a provision in the Competition (Amendment) Act 2012 whereby a finding by an Irish court of a breach of sections 4 or 5 of the Competition Act, or Articles 101 or 102 TFEU, will be regarded as already adjudicated and unnecessary to be considered again in any subsequent civil proceedings.

⁵⁵ Secondly, implementation of a trade may involve significant sunk costs on the part of the trading parties. If, on the basis of *ex-post* intervention, the trading parties were required to comply with a court decision to terminate a trade and reverse its effects, this could involve significant additional costs and administrative burdens on the trading parties to unwind the transaction

- A 1.30 Therefore, a key factor in assessing a stakeholders preferred option concerns the likelihood of an *ex-post* intervention by ComReg.
- A 1.31 Under an *ex-post* investigation under the Competition Act 2002, with a Court having final decision in the matter, the burden of proof lies with ComReg to establish that:
- a lease constituted or formed part of an agreement(s) between undertakings, decisions by associations of undertakings and/or a concerted practice which had as their object or effect the prevention, restriction or distortion of competition in trade in a market or markets for electronic communications; and/or
 - an abuse⁵⁶ by one or more undertakings of a dominant position in trade for electronic communications services in the State or in any part of the State had occurred.
- A 1.32 As a result, *ex-post* enforcement of spectrum leases would likely be difficult to enforce. A spectrum lease would likely involve only one aspect of many interrelated factors required to assess whether there has been a breach of section 4 and or section 5 of the Competition Act 2002. Furthermore, since a spectrum lease is only an intermediate input in providing services to end users, it would be difficult, in certain cases, to assess whether any *ex-post* market outcomes resulted from the effect of the lease or other reasons related to the behaviour of others thus limiting ComReg's ability to intervene *ex-post*. As a result, an operator or operators that may seek to benefit from engaging in a lease that could raise competition concerns would likely prefer Option 1 over Option 2.
- A 1.33 Therefore, where the likelihood of *ex-post* intervention is not high stakeholders may prefer Option 1 for a number of reasons, including that it would:
- reduce the administrative burden and compliance costs for the notifying parties at the outset of any trade;
 - likely lead to faster implementation of the lease as an *ex-ante* regulatory approval process would not be required to put the lease into effect;
 - provide additional certainty to new entrants that their entry would not be restricted or delayed from regulatory approval; and

⁵⁶ For example, the lease may:

- (a) be used to inform whether an undertaking had a dominant position where an abuse of that dominant position is alleged; or
- (b) be part of the action subject to the abuse of a dominant position.

- allow operators to benefit from anti-competitive actions where implemented.
- A 1.34 Alternatively, provided the process for granting approval to a lease was appropriate and did not unduly delay the process of leasing spectrum rights of use stakeholders may prefer Option 2.
- A 1.35 If stakeholders consider that the likelihood of an *ex-post* intervention is high or if there is sufficient uncertainty between either the Lessor or the Lessee about the competitive nature of the trade, stakeholders may prefer option 2 for a number of reasons including that:
- it provides assurance that if a lease is cleared *ex-ante* that it will not be subject to a future *ex-post* enforcement action on the specifics of the lease;
 - the lease will be assessed within a fixed timetable. There is no timetable for *ex-post* enforcements which could continue indefinitely; and
 - it ensures that spectrum leases are assessed on the same basis as spectrum transfers.
- A 1.36 As noted by Eircom in its response to Document 12/76 in reference to the transfer framework:
- “We believe that this can be achieved with an ex-ante regime that is consistent with the broader competition framework and a process that works to conclude assessments in a prompt manner. In this context, we agree that it is prudent to initially adopt an ex-ante framework for all proposed spectrum trades.”* [Emphasis added]
- A 1.37 ComReg’s proposal is that the distortion to competition assessment would take the form of a two phase assessment and this should provide the notifying parties with a reasonable level of certainty in terms of timelines.
- Phase 1 assessments would take place within **35 working days** after the Commencement Date and would be mandatory timelines within which ComReg must comply with (see for example Regulation 6(1) of the Spectrum Transfer Regulations for the spectrum transfer procedure).
 - In Phase 2 assessments ComReg would be required, in so far as practicable, to keep within the indicative timeline of **105 working days** for carrying out full investigations (see for example Regulation 7(1) of the Spectrum Transfer Regulations for the spectrum transfer procedure)⁵⁷

⁵⁷ In Document 14/10 ComReg observed that it would like keep the issue of indicative timelines under review in light of the experience gained and lessons learned once the Spectrum Transfer Framework is up and running. However, there has been no spectrum transfers since the beginning of the

- A 1.38 In addition Eircom in its response to Document 15/131 observe the value in ensuring that spectrum leases are assessed on the same basis as spectrum transfers. Eir notes that “*we believe that an over-arching objective should be to ensure that the leasing framework is established in accordance with the same principles and operates with the same checks and balances consistently with the already established trading framework. As ComReg notes in the footnote it will be important “to ensure that potential transfer/leasing parties do not have incentives to “game” the respective review processes.” [Emphasis added]*
- A 1.39 Therefore, while certain stakeholders may prefer Option 1, ComReg is of the view that, on balance, stakeholders are likely to prefer Option 2.

Impact on competition (Step 4)

- A 1.40 Given that the spectrum transfer regime is currently governed by an *ex-ante* framework, an *ex-post* regime for leasing would likely have a negative impact on competition. In particular, it could lead to certain interested parties reverting to the leasing framework at the expense of spectrum transfers. This would prevent the *ex-ante* assessment of some spectrum trades, which could have a negative impact on competition due to the likely increase in Type 2 errors.
- A 1.41 More generally, spectrum leases could create a more efficient assignment of spectrum and improve competition by creating new entry and improving service provision of smaller incumbents. Insofar as the lease has a positive impact on competition, and in the absence of Type 2 errors, the benefits for competition (and consumers) would be achieved regardless of whether ComReg chose Option 1 or Option 2, although such benefits would likely occur earlier under Option 1.
- A 1.42 Such "pro-competition" leases could be somewhat delayed under an *ex-ante* framework (Option 2), with the length of delay being determined by the assessment process put in place and the nature of the lease itself. Option 1 would also remove the potential for Type 1 errors.
- A 1.43 However, under Option 1, it may be difficult to establish, through an *ex-post* investigation that any perceived distortion in competition is attributable to a spectrum lease which has already occurred. Any post-lease market developments which were negative in terms of the effect on competition may arise directly from the lease, but on the other hand they may result from other causes unrelated to the lease. The potential difficulties in linking a lease to the resultant negative effects on competition could reduce

ComReg's ability to effectively intervene in cases where a lease which has been implemented, appears to be having anti-competitive effects on a market.

- A 1.44 Also, because it is often far more difficult and costly to unwind a commercial transaction rather than to prevent it from occurring in the first place, it may be especially difficult to convince a court that a spectrum lease should be dissolved and unwound, in order to reverse its anti-competitive effects.
- A 1.45 Subjecting a proposed lease to an *ex-ante* assessment of its likely effects upon competition would likely provide better protection for existing competition in any market, since leases that would likely result in a distortion to competition would not proceed after the review process. However if the test was too restrictive, it could prevent leases which, on balance, are pro-competitive or neutral as to their effect upon competition (Type 1 errors). On the other hand, if the test was too loose, it could fail to prevent trades which are likely to result in a distortion in competition (Type 2 errors).
- A 1.46 Provided that the test applied under an *ex-ante* framework is appropriate, ComReg could determine that a proposed lease which is likely to result in a distortion in competition may not be put into effect, or may be put into effect subject to conditions specified by ComReg being complied with.
- A 1.47 Finally, the RSPB bands are important harmonised bands that have been identified as necessary to support increasing demand for wireless data traffic. For example, existing spectrum rights of use in the 800 MHz, 900 MHz, 1800 MHz and 2100 MHz bands are used to provide services to 5,969,928 mobile subscribers in Ireland, including mobile broadband and Machine to Machine ('M2M') subscriptions (valid as of December 2016). ComReg is therefore of the view that Option 2 and an appropriate *ex-ante* assessment is particularly important for these bands as the potential for distortions to competition are more likely to arise as these bands are essential inputs to the provision of mobile services.
- A 1.48 Therefore, ComReg is of the preliminary view that Option 2 would have the most positive impact on competition.

Impact on consumers

- A 1.49 Under Option 1, consumers may benefit from the earlier implementation of leases which, on balance, were pro-competitive or neutral as to their effect upon competition. Such benefits would likely result from increased efficiencies and lower incurred costs for undertakings, leading to improved services and/or lower retail prices.

- A 1.50 However, under Option 1, a distortion to competition resulting from a spectrum lease may have already occurred by the time an investigation by ComReg commences, and such *ex-post* investigations often take a considerable length of time to complete and are dependent upon the requisite amount of evidence being found. Therefore, consumers may have already been negatively affected by the time any such investigation commences and may continue to be negatively affected for a considerable period of time thereafter. Further, depending on the particular circumstances, it may be difficult to reverse the negative effects that have occurred to competition or compensate consumers who have been negatively affected.
- A 1.51 An *ex-ante* framework might result in a slower implementation of notified leases as regulatory approval would be required before parties could proceed with the lease. As result under an *ex-ante* framework, consumers would likely have to wait longer for spectrum leases to proceed, and would therefore have to wait longer for the resultant benefits to flow from such leases. However, as noted above, ComReg proposes that a spectrum lease would be assessed within a certain timetable. Further, the framework provides for certain leases which are unlikely to raise competition concerns to be assessed within 35 working days or potentially up to no more than 105 working days. Therefore, the extent of any delay is likely to be limited unlike an *ex-post* intervention which is an indefinite process and is likely to last at least two years.
- A 1.52 Furthermore, any such delays under an *ex-ante* framework would protect consumers by ensuring that spectrum leases which are likely to result in a distortion in competition may not be put into effect, or may only be put into effect subject to conditions specified by ComReg being complied with.
- A 1.53 Finally, as described above, Option 2 would have the most positive impact on competition. Therefore, by extension, Option 2 would be better for consumers than Option 1. Therefore, ComReg is of the preliminary view that consumers would prefer Option 2.

ComReg's Preferred Option

- A 1.54 ComReg is of the view that an *ex-ante* framework for spectrum leases is preferable and that the procedures for this *ex-ante* this framework should be the same as that used for the Spectrum Transfer Framework.
- A 1.55 While the procedures for the Spectrum Transfer Framework remain to the tested ComReg is of the view that these procedures are appropriately designed for determining whether or not the result of a spectrum transfer or lease in the RSPB Bands would be a distortion to competition. Among other things, these procedures:

- are not overly onerous on the parties involved,
- provide the notifying parties and third parties with proper opportunity to submit their views to ComReg and for ComReg to consider those submissions and, if required, to seek additional information to assist ComReg's assessment,
- provide for determination at the end of either phase 1 (without a full investigation) or phase 2 (with a full investigation); and
- ensure that ComReg's assessment is carried out in a timely manner.

A 1.56 If an *ex-post* regime was used for spectrum leases or if the *ex-ante* framework for spectrum leases was different to that used for spectrum transfers, ComReg observes that this may provide improper incentives where undesirable consequences might arise. For example, undertakings might have an incentive to engineer a transaction to fit within the spectrum lease framework in order to avoid the *ex-ante* assessment of a spectrum transfer. Transactions which could have a distortive effect on competition would then be allowed, whereas such transactions would have been blocked or approved with conditions under the Spectrum Transfer Framework. Applying the same competition assessment procedures to both spectrum leases and transfers avoids such undesirable consequences.

A 1.57 ComReg recognises that under an *ex-ante* framework, in the case of leases which were pro-competitive or neutral as to their effects upon competition, the parties thereto and consumers would have to wait longer for such trades to be implemented. However, to the extent that any such delay may disadvantage the leasing parties and/or consumers, such disadvantage is likely to be outweighed by the following benefits of an *ex-ante* framework:

- It would be consistent with the Spectrum Transfer Framework thus avoiding the potential for regulatory shopping between the transfer and lease frameworks and the negative effects this may have.;
- It would provide greater certainty to market that competition would be protected. This is a particularly important consideration in light of the spectrum bands where spectrum leases would be allowed, namely the spectrum bands suitable for mobile wireless broadband;
- It would better enable ComReg to prevent anticompetitive effects in the market (resulting from leases) and would therefore better protect the interest of consumers. This is a particularly important consideration in light of the number of subscribers that are currently supported with these

bands, namely 5,969,928 mobile subscribers⁵⁸ and an estimated 25,625 fixed broadband subscribers in the 3.6 GHz band⁵⁹; and

- It would pre-empt any structural competition concerns before they materialise. This is particularly important in light of the spectrum bands where spectrum leases would be allowed.

⁵⁸ Valid for December 2016. This includes mobile broadband and Machine to Machine ('M2M') subscriptions. See ComReg [Document 17/15](#), Irish Communications Market, Quarterly Key Data Report, Q4 2016, published 16 March 2017.

⁵⁹ ComReg Quarterly, Q4 2016.

Annex 4: Redline draft Wireless Telegraphy (Transfer Spectrum Rights of Use Procedures) (Amendment) Regulations 2017

- A 1.58 The draft Regulations, as presented in draft format, are subject to the Minister providing his consent under section 37 of the Communications Regulation Act 2002, as amended, and therefore in this respect may be subject to further change.

STATUTORY INSTRUMENTS

S.I. No. of **20142017**

**Wireless Telegraphy (Transfer of Spectrum Rights of Use) (Amendment) Regulations
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The Commission for Communications Regulation, in exercise of the powers conferred on it by section 6(1) of the Wireless Telegraphy Act 1926 (No. 45 of 1926) (as substituted by section 182 of the Broadcasting Act 2009 (No. 18 of 2009)) and for the purposes of giving effect to Regulation 19 of the European Communities (Electronic Communications Network and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011) and Regulation 9(11) of the European Communities (Electronic Communications Network and Services) (Authorisation) Regulations 2011 (S.I. No. 335 of 2011) and with the consent of the Minister for Communications, Energy and Natural Resources pursuant to section 37 of the Communications Regulation Act 2002 (No. 20 of 2002), hereby makes the following Regulations:

Citation

1. ~~1.~~ These Regulations may be cited as the Wireless Telegraphy (Transfer of Spectrum Rights of Use) (Amendment) Regulations 2014~~17~~.
2. The Principal Regulations and these Regulations may be cited together as the Wireless Telegraphy (Transfer of Spectrum Rights of Use) Regulations, 2014 and 2017 and shall be construed together as one.
3. The Principal Regulations are amended as follows by substituting Regulations 2 to 8 with the following Regulations 2 to 9.

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Interpretation

2. (1) In these Regulations, unless the context otherwise requires:

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

“Act of 2002” means Communications Regulation Act 2002 (No. 20 of 2002);

“assessment commencement date” means the date on which the Commission commences its assessment of a proposed transfer which in any event shall be on the working day following receipt of a valid notification in accordance with Regulation 4;

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

“Commission” means Commission for Communications Regulation;

“condition” means an obligation on the part of an undertaking arising by virtue of a proposal put forward by it being subject to a statement in writing by the Commission such as is mentioned in Regulation 5(5);

“electronic communications network”, “electronic communications service” and “associated facilities” have the meanings assigned to them in the Framework Regulations;

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

“lease” means the assignment by a Licensee (the “lessor”) of some or all of a right of use granted under a licence for a period less than the remaining duration of the right of use to another party (the “lessee”), after which the right of use reverts to the lessor;

“licence” means a licence granted in accordance with section 5 of the Act of 1926 to keep, have possession of, install, maintain, work and use apparatus for wireless telegraphy in any specified place in the State or in any specified ship or other vessel or aircraft;

“licensee” means the holder of a licence for the time being in force;

“notification” means a notification of a proposed transfer made to the Commission under Regulation 4(1);

“notification fee” means the administrative fee payable by the notifying parties pursuant to Regulation 4(2);

“notifying party” means the transferor and/or the transferee as the context so requires;

“right of use” means the right of a licensee to use certain radio frequencies within the spectrum bands set out in the Schedule and which frequencies are specified in a licence subject to such conditions and restrictions as prescribed by the licence itself or by any Regulations governing the licence made by the Commission under section 6 of the Act of 1926;

“Schedule” means the schedule to these Regulations;

“transfer” means the assignment by a licensee (“the transferor”) of some or all of a right of use granted under a licence to another party (“the transferee”).

(2) In these Regulations –

(a) a reference to an enactment or regulation shall be construed as a reference to the enactment or regulation as amended or extended by or under any subsequent enactment or regulation;

(b) a reference to a Regulation or a Schedule is to a Regulation of or Schedule to these Regulations, unless it is indicated that a reference to some other enactment is intended; and

(c) a reference to a paragraph or subparagraph is to the paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended.

(3) A word or expression that is used in these Regulations and that is also used in the Act of 1926 has, unless the context otherwise requires, the same meaning in these Regulations as it has in that Act;

(4) A word or expression that is used in these Regulations and that is also used in the Act of 2002 has, unless the context otherwise requires, the same meaning in these Regulations as it has in that Act;

(5) A word or expression that is used in these Regulations and that is also used in the Framework Regulations or the Authorisation Regulations has, unless the context otherwise requires, the same meaning in these Regulations as it has in those Regulations;

Transfer or Lease, or both, of a spectrum right of use

3. (1) These Regulations apply to any proposed transfer or lease of rights of use in the spectrum bands set out in the Schedule.

(2) The regulations under which licences are granted to use rights of use in the spectrum bands set out in the Schedule are hereby amended solely for the purpose of permitting the transfer or lease of those rights of use in accordance with these Regulations.

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(3) For the purposes of these Regulations a transfer occurs when a transferee lawfully acquires one or more rights of use from a transferor and the transferor divests itself of all such rights of use. The transferor and the transferee must be undertakings. The lessor and lessee must be undertakings.

(4) A transfer or lease, or both, notified under Regulation 4(1) must be submitted by the notifying parties in accordance with procedures specified by the Commission and shall be assessed by the Commission in accordance with guidelines published by the Commission, which may be varied by the Commission from time to time.

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(5) A transferred right of use shall remain in effect for the remainder of the term of the transferor's licence in which the transferred right of use was originally vested and shall expire in full on the same date as the transferor's licence was due to expire and shall not be renewed or extended beyond that date.

(6) A leased right of use shall remain in effect until the date the lease licence is due to expire as specified in the lease licence unless amended by , or until it is withdrawn by the Commission or withdrawn upon request by the lessee. A lease licence shall not be renewed or extended beyond the date specified in the lease licence without the Commission setting out a determination in accordance with these Regulations, which shall require a full notification to be furnished to the Commission by the notifying parties accordingly.

(67) Save as otherwise provided in these Regulations, no part of these Regulations shall operate so as to amend an existing licence condition or to enable or permit a licensee to avoid compliance with any licence condition save where the Commission gives its prior consent in writing to any such amendment or condition not being complied with.

(78) These Regulations shall not apply to any transfer that forms part of a merger or acquisition which is required to be notified to the Competition Authority in accordance with Part 3 of the Competition Acts 2002 to 2012 or to the European Commission in accordance with Council Regulation (EC) No 139/2004. The Commission must be informed of any such merger or acquisition at the same time it is notified to the Competition Authority or the European Commission, as appropriate.

Notification of Proposed Transfer or Lease, or both

4. (1) Where a proposed transfer or lease, or both, to which these Regulations apply is intended or will occur if a public bid that is made is accepted, the transferor and the transferee, or the lessor and the lessee, or both sets of ~~share~~ undertakings, shall notify the Commission in writing of the proposed transfer or lease. The notification shall be provided in such format and contain such information and documentation as the Commission may specify.

(2) A notification under paragraph (1) shall be accompanied by an administrative fee of €5,000.

(3) A notification under paragraph (1) shall be invalid if any of the information or documentation required by the Commission or the notification fee is not provided to the Commission in full or if any statement made is found to be false or misleading in a material respect. Any determination made by the Commission on foot of such a notification is void.

Examination by the Commission of notification

5. (1) Within 7 working days of the receipt of a notification in accordance with Regulation 4, the Commission shall cause a notice to be published on its website setting out details in respect of the notification and inviting interested parties to make submissions in writing to the Commission no later than 10 working days after the date of publication of such notice, or such shorter or longer period as the Commission may specify. The Commission shall consider all submissions received in writing within the period specified pursuant to this paragraph.

(2) The notifying parties shall, if so requested by the Commission by notice in writing, furnish within a time period specified by the Commission, such additional information as the Commission may reasonably require at any stage of an assessment of a notification. The Commission may extend the time period specified pursuant to this paragraph at the request of the notifying parties.

(3) Save where the Commission states otherwise in writing, where the Commission requires further information to be furnished to it pursuant to paragraph (2) during either the initial stage of its assessment and/or during the full investigation, the time periods indicated in Regulations 6(1) and 7(1) of these Regulations shall be suspended until such information has been provided to the satisfaction of the Commission.

(4) In the course of its assessment of a notification, the Commission may enter into discussions with the notifying parties with a view to identifying measures which would ameliorate any effects of the notified transfer or lease, or both, on competition.

(5) In the course of any discussions entered into pursuant to paragraph (4), any of the notifying parties may submit proposals to the Commission of the kind mentioned in paragraph (6) with a view to the proposals becoming binding on it or them if the Commission takes the proposals into account and states in writing that the proposals form the basis or part of the basis of its determination under Regulation 6 or 7.

(6) The proposals referred to in paragraph (5) are proposals with regard to the manner in which the transfer or lease, or both, may be put into effect or to the adoption of any other measure referred to in paragraph (4).

(7) Where a transfer or lease, or both, notified in accordance with Regulation 45, a measure identified under paragraph (4) or a proposal made under paragraph (5) would involve amending a condition of an existing licence, the Commission shall review any such amendment of a licence condition having regard to its statutory functions, objectives and duties and the relevant

facts including the circumstances under which the licence was first granted and is held at that time. Such review may include public consultation.

(8) Where a review under paragraph (7) is required, the time periods indicated in Regulations ~~67~~(1) and ~~78~~(1) of these Regulations may be suspended by the Commission until such time as the Commission has concluded its review pursuant to paragraph (7) and made a determination in respect of the proposed amendment to the relevant licence condition.

Determination of issues concerned without full investigation

6. (1) In respect of a notification received in accordance with Regulation 4, the Commission shall, subject to Regulation 5, within 35 working days of the assessment commencement date, inform the notifying parties of one of the following determinations:

(a) that the transfer or lease, or both, may be put into effect on the grounds that, in the opinion of the Commission, the result of the transfer or lease, or both, would not be to distort competition;

(b) that the transfer or lease, or both, may be put into effect subject to conditions specified by the Commission being complied with on the grounds that, in the opinion of the Commission, the result of the transfer, or lease, or both, will not be to distort competition if the conditions so specified are complied with; or

(c) that it intends to carry out a full investigation under Regulation 7 in relation to the proposed transfer, or lease, or both (referred to as a “full investigation”).

(2) Where the Commission makes a determination under subparagraph (a) or (b) of paragraph (1), it shall publish on its website that determination with due regard for confidentiality, within 2 months after the making of the determination.

Determination of issues following a full investigation

7. (1) Within 5 working days of informing the parties of its determination to carry out a full investigation pursuant to subparagraph (c) of paragraph (1) of Regulation 6, the Commission shall form an opinion of the time period necessary to carry out a full investigation (referred to as a “provisional time period”), which shall not, in so far as practicable, and subject to Regulation 5, exceed 105 working days from the forming of that opinion. The Commission shall inform the notifying parties of the provisional time period in writing. Where the Commission does not make a determination under paragraph (2) within the provisional time period, the full investigation may continue according to revised timelines and the Commission may determine further provisional time period(s) and will inform the notifying parties accordingly.

(2) On completion of a full investigation, the Commission shall make whichever of the following determinations it considers appropriate, namely that the transfer:

(a) may be put into effect on the grounds that, in the opinion of the Commission, the result of the transfer or lease, or both will not be to distort competition;

(b) may be put into effect subject to conditions specified by the Commission being complied with on the grounds that, in the opinion of the Commission, the result of the transfer or lease, or both will not be to distort competition if the conditions so specified are complied with; or

(c) may not be put into effect on the grounds that, in the opinion of the Commission, the result of the transfer or lease, or both, will be to distort competition.

(3) Before making a determination under paragraph (2), the Commission shall have regard to any relevant international obligations of the State.

(4) Where the Commission makes a determination under paragraph (2), it shall furnish the notifying parties a copy of the written determination within the time period specified by the

Commission under paragraph (1) and will publish on its website the determination with due regard for commercial confidentiality, within 2 months after the making of the determination.

Limitation on transfer or lease, or both, being put into effect

8. (1) A transfer or lease, or both, that has been notified to the Commission in accordance with Regulation 4 shall subject to paragraph (3), not be put into effect until:

(a) the Commission, in pursuance of Regulation 5, has determined under Regulation 6(1)(a) or (b) or Regulation 7(2)(a) or (b) that the transfer, or lease, or both may be put into effect; or

(b) subject to Regulation 5, a period of 35 working days after the assessment commencement date has elapsed without the Commission having informed the notifying parties of the determination (if any) it has made under Regulation 6;

whichever first occurs.

(2) Any transfer or lease, or both which purports to be put into effect where the putting into effect contravenes paragraph (1), is void.

(3) Any transfer or lease, or both, which purports to be put into effect following the occurrence of one of the events listed in paragraph (1) must be put into effect within 12 months of the day immediately following the date on which that event occurs, or it shall be void.

(4) A transfer or lease, or both, which purports to be put into effect, where that putting into effect would contravene Regulation 4 shall be void.

(5) The Commission may refuse to consider a notification where the proposed transfer or lease, or both, is dependent upon the proposed transferee or lessee, or both, becoming an authorised

undertaking under the Authorisation Regulations, and the transferee or lessee, or both, has not already done so.

(6) In the event that the Commission consents to a proposed transfer notified to it pursuant to Regulation 45(1), the Commission shall grant or amend all relevant licences.

(7) Compliance by the notifying parties with a determination made by the Commission under Regulation 6(1)(a) or (b) or Regulation 7(2)(a) or (b), including any conditions forming the basis or part of the basis of such determination in accordance with Regulation 5(5), shall be made a condition of any licence under which the rights of use to the transferred spectrum are made available by the Commission.

Grant and issue of spectrum transfer and lease licence(s) in the 800 MHz, 900 MHz, 1800 MHz and 2100 MHz radio bands

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9. (1) The Wireless Telegraphy (3.6 GHz band Licences) Regulations 2016 (S.I. No 532 of 2016), The Wireless Telegraphy (Liberalised Use and Preparatory Licences in the 800 MHz, 900 MHz and 1800 MHz Bands) Regulations 2012 (S.I. No. 251 of 2003), and the Wireless Telegraphy (Third Generation and GSM Mobile Telephony Licence) (Amendment) Regulations 2003 (S.I. No. 340 of 2003) are amended by Schedule 2 of these Regulations.

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SCHEDULE 1

Spectrum Bands to which these Regulations apply

<u>694-790 MHz</u>
790-862 MHz
880-915 MHz
925-960 MHz
1710-1785 MHz
1805-1880 MHz
1900-1980 MHz
2010-2025 MHz
2110-2170 MHz
2.50-2.69 GHz
3.40-3.80 GHz

SCHEDULE 2

Amendments, extensions and substitutions to which these Regulations apply

(1) The Wireless Telegraphy (3.6 GHz band Licences) Regulations 2016 is amended as follows:

(a) by substituting the definition of a “Lease” in Regulation 2 with:

“Lease” has the meaning set out in the Wireless Telegraphy (Transfer of Spectrum Rights of Use) (Amendment) Regulations, 2017 (S.I. No. XX of 2017);

(b) by substituting the definition of the Transfer Regulations with:

“Transfer Regulations” means the Wireless Telegraphy (Transfer and Lease of Spectrum Rights of Use) (Amendment) Regulations 2017 (S.I. No. XX of 2017);

(c) by substituting Regulation 4. (5) with:

Regulation 4. (5) The Commission may grant a 3.6 GHz Band Spectrum Lease Licence to a Lessee in accordance with the Transfer Regulations;

(d) by substituting Regulation 6. (18) and (19) with:

only lease spectrum rights of use for radio frequencies attaching to a Licence in accordance with the Transfer Regulations;

(e) by amending Part 1 of Schedule 1 with:

text set out in Schedule 3 (of these Regulations).

(f) by substituting Part 4 of Schedule 2 with:

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The Licence conditions will be specified by the Commission in accordance with the Transfer Regulations.

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(2) The Wireless Telegraphy (Liberalised Use and Preparatory Licences in the 800 MHz, 900 MHz and 1800 MHz Bands) Regulations 2012 is amended as follows:

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(a) by inserting the following definitions in Regulation 2:

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“Lease” has the meaning in the Transfer Regulations

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“Liberalised Use Spectrum Lease Licence” means a Licence in the form set out in Schedule 4 to keep and have possession of Apparatus, in accordance with and subject to the terms and conditions contained in the Licence;

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“Licence” means a Liberalised Use Licence, a Liberalised Use Spectrum Lease Licence or a Preparatory Licence, as the case may be;

“Transfer” has the meaning in the Transfer Regulations

“Transfer Regulations” means the Wireless Telegraphy (Transfer of Spectrum Rights of Use) (Amendment) Regulations, 2017 (S.I. No. XX of 2017);

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(b) by substituting Regulation 3. (1) with:

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Regulation 3. (1) These Regulations apply to:

(a) Liberalised Use Licences,

(b) Preparatory Licences, and

(c) Liberalised Use Spectrum Lease Licences

in the form of the respective Licences set out in Schedules 1,2 and 4 to these Regulations.

(c) by extending Regulation 4 with the following insertions:

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Regulation 4. (6): The Commission may grant a Liberalised Use Licence to a transferee in accordance with the Transfer Regulations, 2017, and the Commission may grant a

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Liberalised Use Spectrum Lease Licence to a lessee in accordance with the Transfer Regulations, 2017:

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Regulation 4. (7): A Liberalised Use Spectrum Lease Licence to which these regulations apply shall be in the form specified in Schedule 4, with such variation, if any, whether by addition, deletion or alteration as the Commission may determine from time to time or in any particular case:

(d) by extending Regulation 5 the following insertion:

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Regulation 5. (3): The commencement date and expiry date of a Liberalised Use Spectrum Lease Licence shall be set by the Commission and specified in the Liberalised Use Spectrum Lease Licence. A Liberalised Use Spectrum Lease Licence to which these Regulations apply shall in any event expire before 31 July 2032.

(e) by substituting Regulation 6. (15) with:

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Regulation 6. (15): notify the Commission of its intention to transfer or lease any rights of use for radio frequencies attaching to a licence.

(f) by substituting Regulation 6. (16) and (17) with:

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Regulation 6. (16): only transfer or lease spectrum rights of use for radio frequencies attaching to a Licence in accordance with the Transfer Regulations.

(g) by deleting Regulation 6. (19):

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(h) by extending Regulation 7 with:

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Regulation 7. (6): A Liberalised Use Spectrum Lease may be revoked, suspended or withdrawn by the Commission including if it emerges that the Lessor's Liberalised Use Licence has been revoked, suspended or withdrawn under Regulation 7.

(i) by extending Regulation 8 with the following insertions:

Regulation 8. (16): The Spectrum Usage Fees for a Liberalised Use Licence granted on foot of a transfer are the Spectrum Usage Fees specified in paragraphs (4) and (5) of this Regulation.

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(j) by substituting Part 1 of Schedule 1 with:

the text set out in Schedule 4 (of these Regulations);

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(k) by extending the Schedules by inserting a new Schedule 4 with:

the text set out in Schedule 5 (of these Regulations);

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(3) The Wireless Telegraphy (Third Generation and GSM Mobile Telephony Licence) (Amendment) Regulations 2003 is amended as follows:

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(a) by inserting the following definitions in Regulation 2:

“Lease” has the meaning in the Transfer Regulations, 2017

“Lease Licence” means a Licence in the form set out in Schedule 6 to keep and have possession of Apparatus, in accordance with and subject to the terms and conditions contained in the Licence

“Transfer” has the meaning in the Transfer Regulations, 2017

“Transfer Regulations” means the Wireless Telegraphy (Transfer of Spectrum Rights of Use) (Amendment) Regulations, 2017 (S.I. No. XX of 2017);

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(b) by substituting Regulation 3. (3) with:

Regulation 3. (3) The Commission may grant a Licence or a Lease Licence in

accordance with the provisions of the Authorisation Regulations and the Transfer Regulations.

(c) by substituting Regulation 4. (1) and (2) with:

Regulation 4. (1) A Licence or a Lease Licence shall (unless it has been revoked, suspended or withdrawn) be in force for a period of up to one year from the date on which it comes into operation and, unless renewed, shall then expire.

Regulation 4. (2) Notwithstanding paragraph (1) of these Regulations where:

(a) the licensee is a holder of a Lease Licence under these Regulations, its licence shall be for a fixed period of time which shall not exceed the period of time for which the spectrum right was originally granted (to the Lessor), following which the leased spectrum right would revert to the Lessor; and

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(b) the licensee is a holder of a Licence, which may be leased, under these Regulations, its licence shall not be renewed on the 21st anniversary after the first grant of the licence and shall then expire;

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(d) by substituting Regulation 5. (2) with:

Regulation 5. (2) that Licensee will ensure that it makes payments of the spectrum access fees as outlined in the Regulations unless it is a licence to be granted in accordance with the Transfer Regulations where the fees will be determined under those Regulations.

(e) by substituting Regulation 5. (4) with:

Regulation 5. (4) that the Licensee shall notify the Commission of its intention to transfer or lease any rights of use for radio frequencies attaching to a licence. The

Licensee shall only transfer or lease spectrum rights of use for radio frequencies attaching to a Licence in accordance with the Transfer Regulations, 2017.

(f) by substituting Schedule 3 with:

Radio frequency channels on which the Apparatus is authorised by this Licence to be used, name of Spectrum Lessee, lease commencement date per spectrum block or part thereof and lease expiry date per spectrum block (if leased).

(g) by extending the Schedules by inserting a new Schedule 4 with:

the text set out in Schedule 6 (of these Regulations).

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SCHEDULE 3

New Part 1 of SCHEDULE 1 of S.I. No 322 of 2016

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Part 1 of SCHEDULE 1

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Commencement and Expiry dates per Spectrum Block or part thereof.

<u>Region</u>	<u>Name of Spectrum Block</u>	<u>Frequency Assigned to Spectrum Block</u>	<u>Commencement Date per Spectrum Block</u>	<u>Expiry Date per Spectrum Block</u>	<u>Name of Spectrum Lessee (if Leased)</u>	<u>Lease Commencement Date per Spectrum Block</u>	<u>Lease Expiry Date per Spectrum Block</u>
	<i>Block A, B, C etc.</i>	<i>From _____ MHz to _____ MHz</i>	<i>DD Month YYYY</i>	<i>DD Month YYYY</i>		<i>DD Month YYYY</i>	<i>DD Month YYYY</i>

SCHEDULE 4

New Part 1 of SCHEDULE 1 of S.I. 251 of 2012

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Part 1 of SCHEDULE 1

Commencement and Expiry dates per Spectrum Block or part thereof.

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<u>Authorised Band</u>	<u>Name of Spectrum Block</u>	<u>Uplink / Downlink Frequency Assigned to Spectrum Block</u>	<u>Commencement Date per Spectrum Block</u>	<u>Expiry Date per Spectrum Block</u>	<u>Name of Spectrum Lessee (if Leased)</u>	<u>Lease Commencement Date per Spectrum Block</u>	<u>Lease Expiry Date per Spectrum Block</u>
<i>800, 900 or 1800MHz as appropriate</i>	<i>Block A, B, C etc.</i>	<i>From _____ MHz to _____ MHz</i>	<i>DD Month YYYY</i>	<i>DD Month YYYY</i>		<i>DD Month YYYY</i>	<i>DD Month YYYY</i>

SCHEDULE 5

New SCHEDULE 4 of S.I. 251 of 2012,

SCHEDULE 4 of

WIRELESS TELEGRAPHY ACT, 1926

**WIRELESS TELEGRAPHY (LIBERALISED AND PREPARATORY LICENCES IN
THE 800 MHZ, 900 MHZ AND 1800 MHZ BANDS) REGULATIONS 2012**

**Liberalised Use Spectrum Lease Licence for terrestrial systems capable of providing
Electronic Communications Services**

Licence under section 5 of the Wireless Telegraphy Act, 1926, to keep and have possession of
apparatus for wireless telegraphy for terrestrial systems capable of providing Electronic
Communications Services.

The Commission for Communications Regulation, in exercise of the powers conferred on it by
section 5 (as substituted by section 182 of the Broadcasting Act 2009 (No. 18 of 2009)) of the
Wireless Telegraphy Act, 1926 (No. 45 of 1926), hereby grants to the Licensee specified [insert
name of Licensee] of [insert address of Licensee]:

Authorisation to keep and have possession of apparatus for wireless telegraphy for terrestrial
systems capable of providing Electronic Communications Services as specified in Part 2 to this
Licence, subject to such apparatus being installed, maintained, worked and used in accordance
with the terms and conditions and restrictions set out in the Wireless Telegraphy (Liberalised Use
Licence and Preparatory Licences in the 800 MHz, 900 MHz and 1800 MHz band) Regulations,
2012 (S.I. No. 251 of 2012) (“the Regulations”), including, but not limited to, the following:

(1) The Licensee shall ensure that it complies with all of the conditions contained within
Parts 1 to 4 of this Licence; and

This Licence shall come into effect on DD/MM/YY (the “Licence Commencement Date”) and,
subject to revocation, suspension or withdrawal, expires on DD/MM/YY (the “Licence Expiry
Date”).

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Signed:

For and on behalf of the Commission for Communications Regulation

Official Stamp

Part 1

Lease Commencement and Expiry dates per Spectrum Block or part thereof

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<u>Lessor Liberalised Use Licence Number</u>	<u>Authorised Band</u>	<u>Name of Spectrum Block</u>	<u>Uplink / Downlink Frequency Assigned</u>	<u>Commencement Date per Spectrum Block</u>	<u>Expiry Date per Spectrum Block</u>
	<i>800, 900 or 1800MHz as appropriate</i>	<i>Block A, B, C etc.</i>	<i>From _____ MHz to _____ MHz</i>	<i>DD Month YYYY</i>	<i>DD Month YYYY</i>

Part 2

The Apparatus to which this Lease Licence applies

<u>Equipment Index Reference</u>	<u>Terrestrial System</u>	<u>Equipment Description</u>	<u>Manufacturer</u>	<u>Model</u>

Part 3

Apparatus Location and Details

(1) 800 MHz band

<u>Site Identity</u>	<u>Latitude and Longitude</u>	<u>Equipment at location</u>	<u>Maximum EIRP¹</u>

(2) 900 MHz band

<u>Site Identity</u>	<u>Latitude and Longitude</u>	<u>Equipment at location</u>	<u>Maximum EIRP</u>

¹ EIRP is the Equivalent Isotropically Radiated Power

(3) 1800 MHz band

<u>Site Identity</u>	<u>Latitude and Longitude</u>	<u>Equipment at location</u>	<u>Maximum EIRP</u>

Part 4

Licence Conditions

The Licence Conditions will be specified by the Commission in accordance with the Regulations, 2017.

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SCHEDULE 6

New SCHEDULE 6 of S.I 340 of 2003

SCHEDULE 6 of

**WIRELESS TELEGRAPHY (THIRD GENERATION AND GSM MOBILE
TELEPHONY LICENCE) (AMENDMENT) REGULATIONS, 2003**

Licence under section 5 of the Wireless Telegraphy Act, 1926, to keep and have possession of
apparatus for wireless telegraphy for the purpose of providing 3G and GSM mobile telephony

The Commission, in exercise of the powers conferred on it by section 5 of the Wireless Telegraphy
Act, 1926 (No. 45 of 1926) and section 4 of the Telecommunications (Miscellaneous Provisions)
Act, 1996 (No. 34 of 1996) and Section 9 (1) of the Communications Regulation Act, 2002 (No.
20 of 2002) hereby grants to the licensee specified authorisation to keep, have possession of,
install, maintain, work and use apparatus as specified in the Second Schedule of this licence and
subject to the terms and conditions as set out in the Wireless Telegraphy (Third Generation and
GSM Mobile Telephony Licence)(Amendment) Regulations, 2003 (S.I. No. 340 of 2003) and the
Transfer Regulations, 2017

The Commission for Communications Regulation, grants the following Lease Licence to:

of

1. This Lease Licence will come into operation on the _____ day of _____, YYYY ,
and unless previously revoked or renewed will expire on the _____ day of _____,

2. The Licensee will ensure that it complies with the geographical and technical
conditions contained within the First - third schedules to this Licence;

Part 1

Lease Commencement and Expiry dates per Spectrum Block or part thereof

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<u>Lessor 3G and GSM Licence Number</u>	<u>Authorised Band</u>	<u>Name of Spectrum Block</u>	<u>Uplink / Downlink Frequency Assigned</u>	<u>Commencement Date per Spectrum Block</u>	<u>Expiry Date per Spectrum Block</u>
		<i>Block A, B, C etc.</i>	<i>From _____ MHz to _____ MHz</i>	<i>DD Month YYYY</i>	<i>DD Month YYYY</i>

Part 2

The Apparatus to which this Lease Licence applies

<u>Equipment Index Reference</u>	<u>Terrestrial System</u>	<u>Equipment Description</u>	<u>Manufacturer</u>	<u>Model</u>

Part 3

Apparatus Location and Details

<u>Site Identity</u>	<u>Latitude and Longitude</u>	<u>Equipment at location</u>	<u>Maximum EIRP²</u>

Part 4

Licence Conditions

The Licence Conditions will be specified by the Commission in accordance with the Transfer Regulations.

² EIRP is the Equivalent Isotropically Radiated Power

GIVEN under the Official Seal of the Commission for Communications Regulation this,
2017.

~~Kevin O'Brien~~Gerry Fahy, Chairperson,
for and on behalf of the Commission of Communications Regulation.

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The Minister for Communications, Energy and Natural Resources consents to the making of the foregoing Regulations.

GIVEN under the Official Seal of the Minister for Communications, ~~Climate Action and Energy~~
~~Environment and~~
~~Natural Resources~~ this 20142017

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~~Pat Rabbitte~~Denis Naughten
Minister for Communications, ~~Climate Action and Energy~~Environment and Natural Resources

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EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These Regulations provide for the transfer or lease, or both, of spectrum rights of use between undertakings in accordance with published procedures adopted by the Commission and not otherwise in the radio bands specified in the Schedule 1. These Regulations also prescribe substitutions, amendments and extensions to Wireless Telegraphy Regulations in relation to granting and issuing licences for apparatus for Wireless Telegraphy for terrestrial systems providing Electronic Communications Services in the radio bands specified.

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Annex 5: Redline Spectrum Transfer and Lease Framework in Ireland



Commission for
Communications Regulation

Spectrum Transfer and Lease Framework in Ireland

Procedures and Guidelines, and Notification Form(s)

Procedures and guidelines

Reference: Document YY/XX

Date: DD/MM/201X

An Coimisiún um Rialáil Cumarsáide

Commission for Communications Regulation

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Additional Information

Document No:	
Revision Date:	DD/MM/201X

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1 Introduction

1. This document sets out the Commission for Communications Regulation's (the "Commission") framework for the transfer¹ or lease² of rights of use of spectrum in
 - the bands designated by Decision No. 243/2012/EU of the European Parliament and of the Council of 14 March 2012 establishing a multiannual Radio Spectrum Policy Programme (the "RSPP Decision") (the "Framework"); and
 - the 694-790 MHz.
2. The Framework consists of:
 - procedures specified by the Commission concerning how undertakings must notify their intention to transfer or lease, or both, individual rights of use to radio frequencies to the Commission (the "Procedures"); and
 - guidance on how the Commission will determine whether or not a transfer or lease, or both, would distort competition (the "Guidelines").
3. For the avoidance of doubt, the Procedures detailed in Chapter 2 are the procedures specified by the Commission pursuant to Regulation 3(4) of the Wireless Telegraphy (Transfer Spectrum Rights of Use) (Amendment) Regulations 2017 (the "Regulations") (Statutory Instrument **No. XX of 2017**).

¹ A transfer means:

- the assignment by a licensee (the "Transferor") of some or all of a right of use granted under a licence to another party (the "Transferee") (Regulation 2 of the Spectrum Transfer Regulations); where
- the Transferor must divest itself of all rights of use transferred (Regulation 3(3) of the Spectrum Transfer Regulations).

² "lease" means the lease by a Licensee (the "lessor") of some or all of a right of use granted under a licence for a period less than the remaining duration of the right of use to another party (the "lessee"), after which the right of use reverts to the lessor;

4. Chapter 3 offers guidance on how the Commission will determine whether or not a transfer or lease, or both, would distort competition. These Guidelines reflect the Commission's analytical approach at the time of publication and should provide an enhanced level of predictability and certainty to notifying parties, their advisers, the business community and the public. However, it is not possible for the Guidelines to cover every issue or circumstance that may arise in a review of a notification. In practice, individual notifications involve a great variety of facts and situations, and the analysis of particular issues may need to be tailored to the specific circumstances at notification or deal with competition issues not specifically considered in these guidelines. Therefore, the Guidelines are interpreted in a flexible manner, and the Commission reserves the right to deviate from the Guidelines if it forms the view that it would be appropriate to do so in the specific circumstances of any particular case.
5. A notification form is attached at Annex 1 (the "Notification Form") which sets out the information which must be provided to the Commission in accordance with Regulation 3, or 4, of the Regulations. Interested parties are reminded that under Regulation 5(2) of the Regulations every notification of a spectrum transfer or lease, or both must be accompanied by a administrative fee of €5,000.
6. Interested parties will note that the Commission may update the Procedures and Guidelines from time to time following public consultation as appropriate.

2 Spectrum transfer and lease procedures

Notification and Publication

7. In accordance with Regulation 3 (*“Transfer or Lease, or both, of a spectrum right of use”*) and Regulation 4 (*“Notification of proposed Transfer or Lease, or both”*) of the Regulations, a notification of an intention to transfer or lease, or both, rights of use to radio frequencies between undertakings must be made on the Notification Form made available by the Commission for that purpose.³
8. Undertakings may make a joint notification, though they are not obliged to do so.⁴
9. Notification Forms must be delivered to the below address between the hours of 09.00 and 17.00, Monday – Friday (excluding public holidays). Where a Notification Form is received later than 17.00 it shall be deemed to have been received on the next working day. In addition to the hard copy, the Notification Form and as many of the associated supporting documents as are capable of being supplied electronically should be so supplied. All Notification Forms and associated supporting documents should be addressed to:

Spectrum Licensing Manager
Commission for Communications Regulation
1 Dockland Central
Guild Street
Dublin 1
Ireland
D01 E4 XO email: licensing@comreg.ie

³ Annex 1 sets out the details of the Notification Form.

⁴ Interested parties should note that prior to making any formal notification of a proposed spectrum transfer or lease, the parties thereto may request a ‘pre-notification meeting’ with the Commission in order to discuss the information that they shall be required to provide as part of their formal notification.

10. Every notification of a spectrum transfer or lease, or both, must be accompanied by an administrative fee of €5,000 made payable to the Commission. A notification unaccompanied by the administrative fee of €5,000 is invalid.
11. Notifying parties should clearly identify information provided on the Notification Form and in any other associated supporting documents which should be treated as confidential.⁴

PHASE 1 ASSESSMENT

(a) Preliminary assessment

12. Upon its receipt by the Commission, the notification will be assessed as follows: (i) to ensure that it is a transfer or lease, or both, to which the Regulations apply; and (ii) to confirm that all requisite information and the administrative fee have been furnished.
13. Where the Commission considers that the transfer or lease, or both, are not ones to which the Regulations apply, it will so inform the notifying parties as soon as possible. In such an event, the Notification Form and associated supporting documents and the administrative fee paid will be returned to the notifying parties involved.
14. If, a notified transfer or lease would involve an amendment to a licence condition, the time period within which the Commission will assess the notification and issue a determination will be suspended until after it has completed its review of the amendment. In carrying out its review, the Commission will consult with the notifying parties and may publicly consult on the matter. Where, following its preliminary review of the amendment, the Commission considers that the amendment should not be permitted, the Commission will inform the notifying parties of its preliminary view and the reasons for same. The notifying parties will then be given the opportunity to amend the notified transfer or lease to address the Commission's concerns. For the avoidance of doubt, the time period will remain suspended until the Commission's concerns regarding the amendment have been addressed to the Commission's satisfaction.

(b) Publication

15. Within 5 working days from the receipt of a valid notification, the Commission will publish a notice on its website, which will contain the following information:

⁴ Guidance on the treatment of confidential information by the Commission is set out in its published Guidelines on the treatment of confidential Information (Document 05/24).

- the names of the notifying parties (and trading names);
 - the reference number of the notification (which will be assigned by the Commission);
 - the name and contact details of the Commission's officer(s) assigned to the transfer or lease notification;
 - the technical details of the transfer or lease notification;
 - the business activities of the undertakings involved in the transfer or lease notification; and
 - notice to third parties wishing to make submissions about the transfer or lease notification that they must do so within 10 working days from the Commencement Date.
16. The above mentioned notice will indicate whether the Commission's assessment has been suspended in order to carry out a review of any proposed amendments to licence conditions (see paragraph 14 above). Upon receipt of a valid notification and Notification Form, and subject to paragraph 14 above, the Commission's assessment of the notification will commence. The date on which the assessment commences is referred to herein as the 'Commencement Date'.

(c) Submissions

17. A closing date for submissions will be clearly set out in the above mentioned notice. The Commission will consider all submissions made within the specified deadline. The Commission may by notice on its website change the time limit for receipt of submissions, if it considers that circumstances so require. Submissions from third parties should clearly indicate any information which they consider should be treated as confidential, and that material should be set out in a separate annex.

(d) Requirement to provide further information

18. The Commission may request further information from the notifying parties and from other sources to aid in its assessment of the notification.⁵

⁵ Where information requested from the notifying parties, pursuant to Regulation 5(2) of the Regulations, is not provided to it within the timeframe specified in such a request, the Commission will suspend the time period within which the assessment of a notification must be completed and a determination made.

(e) Proposals

19. In the course of its assessment of a notification, the Commission may enter into discussions with the notifying parties with a view to identifying measures which would ameliorate any effects of the notified transfer or lease on competition (as referred to in paragraphs 4, 5 and 6 of Regulation 6 of the Regulations). In the course of any such discussions entered into, any of the notifying parties may submit proposals to the Commission with a view to the proposals becoming binding on it or them if the Commission takes the proposals into account and states in writing that they form the basis or part of the basis of its determination pursuant to the Regulations.

(f) Determination that the Spectrum Transfer or Lease may be put into effect

20. Having considered the information provided and all submissions received, the Commission, if it forms the opinion that the result of the transfer or lease will not be to distort competition, will determine that the transfer or lease may be put into effect. The Commission will, within 35 working days after the Commencement Date inform the notifying parties and any other undertakings or third parties who have made submissions, that it has so determined. On the date of the determination, the Commission, in addition to informing the notifying parties, will publish notice of the making of the determination on its website. The Commission will publish a non-confidential version of the text of its determination on its website at the earliest possible date thereafter (and in any event, no later than two months from the date of the determination).

PHASE 2 (FULL INVESTIGATIONS)

(a) Determination to carry out a full investigation

21. Where having considered the information provided and all submissions received, the Commission is unable on the basis of the information before it to form a view that the result of a transfer or lease will not be to distort competition, the Commission will make a determination to carry out a full investigation, i.e. to proceed to phase 2.

(b) Publication of the determination to carry out a full investigation

22. The Commission will publish a notice on its website that it has decided to conduct a full investigation. The Commission will also engage with the notifying parties as to the basis for its determination to conduct a full investigation.

(c) Submissions

23. The notifying parties and any other undertakings or other third party is entitled to make submissions in writing no later than 15 working days from the date of publication of the above mentioned notice to conduct a full investigation. The Commission will consider all submissions made within the specified deadline. The Commission may by notice on its website change the time limit for receipt of submissions, if it considers that circumstances so require. Submissions should clearly indicate any information which should be treated as confidential which should be set out in a separate annex.

(d) Early determination to transfer or lease

24. If the Commission, within the provisional time period (as referred to in Regulation 7(1) of the Regulations), is satisfied that in its opinion the result of the transfer or lease (without or subject to conditions as the case may be) will not be to distort competition, it will, without proceeding to make an Assessment of the proposed transfer or lease, determine that the transfer or lease may be put into effect, or may be put into effect subject to conditions. The Commission will inform the notifying parties on the same date of its determination.

(e) Assessment

25. If, having considered all submissions, the Commission is not satisfied that the result of the transfer or lease will not be to distort competition, it will, within 40 working days of the date of the determination⁶ to conduct a full investigation, furnish its assessment (the "Assessment") to the notifying parties. This time period may be adjusted following discussion and agreement between the notifying parties and the Commission. The Assessment will set out clearly the Commission's concerns regarding the effect of the proposed transfer or lease on competition.

(f) Response to Assessment

26. Within 15 working days from the delivery of the Assessment, the notifying parties may respond thereto in writing.

(g) Consequences of failure to respond

27. Failure by any one of the notifying parties to respond within the time provided may be deemed to constitute a waiver of that party's right to contest the issues set out in the Assessment. Failure of all notifying parties to so respond may authorise the Commission, without further notice, to find the facts to be as set out in the Assessment and to adopt a final determination on the basis of such findings.

⁶ Subject to any suspension of the time period within which the Commission must complete its assessment and make a determination.

(h) Discussions and Proposals

28. Within 15 working days from the furnishing of the Assessment, the Commission may enter into discussions with the notifying parties and the notifying parties may make proposals to the Commission with regard to the manner in which the transfer or lease may be put into effect, or to the adoption of measures which would ameliorate any effects of the notified transfer or lease on competition.

FINAL DETERMINATION

(a) Phase 2 Final Determination

29. On completion of the phase 2 review period, the Commission shall make one of the following determinations:
 - That the transfer or lease may be put into effect;
 - That the transfer or lease may not be put into effect; or
 - That the transfer or lease may be put into effect subject to conditions specified by the Commission being complied with.

(b) Publication of Commission's determination

30. The Commission will publish notice of its determination on its website on the same day as the determination is made.

(c) Contents of the Commission's written determination

31. In every case, the Commission's final written determination in regard to the transfer or lease will include a statement of the facts, a summary of the information, evidence and submissions considered by the Commission and the reasons grounding that determination. The Commission will publish the written determination on its website, within 2 months after the making of that determination, after allowing the notifying parties an appropriate period to indicate whether certain information in the written determination should be redacted on the grounds of constituting a business secret. Such requests will be assessed in accordance with the Commission's procedures on the treatment of confidential information (Document 05/24) as may be amended from time to time.

3 Guidelines for assessment

3.1 Introduction

32. This chapter offers guidance on how the Commission will determine whether or not a transfer or lease would distort competition.
33. Circumstances may arise that are not clearly envisaged in these guidelines, and the Commission shall consider such circumstances on a case-by-case basis. These guidelines are interpreted in a flexible manner, and the Commission reserves the right to deviate from the Guidelines if it forms the view that it would be appropriate to do so given the specific circumstances of any particular case. Statements relating to distortive effects of the spectrum transfer or lease in this document should be interpreted as referring to the views of the Commission based on the information available to it.
34. To assist readers, explanations are set out below of a number of technical terms that are used in these guidelines, as follows:
 - a) The term **coordinated effects** refers to engagement between competitors in coordinated interaction, such as agreeing amongst themselves, either tacitly or expressly, to raise their prices or reduce their output;
 - b) The term **non-horizontal transfer or lease** refers to a situation where there is no overlap in terms of the products or services provided on the transferors or lessors' spectrum rights and products or services to be provided by the transferee or lessee on current (if any) and acquired spectrum rights of use;
 - c) The term **notification** means a notification of a proposed transfer or lease made to the Commission under Regulation 3(1) or 4(1) of the Regulations;
 - d) The term **notifying party** means the transferor or lessor and the transferee or lessee as the context so requires;
 - e) The term **transfer or lease** is set out in the Regulations; and

- f) The term **unilateral effects** refers to a situation where a transfer or lease would strengthen any undertaking's position in a market to such an extent as to allow it to act more independently, to an appreciable extent, of its competitors than it could otherwise do. For example, increasing the undertaking's market power to such an extent that it could largely ignore the reactions of its competitors and/or customers to actions on its part such as (but not limited to) profitably increasing its prices.
35. Transfers or leases are considered by assessing a number of factors, including amongst others:
- a) The effect of the transfer or lease on market structure (both wholesale and retail)⁷;
 - b) Whether the transfer or lease would likely have an effect on the level of competition among existing competitors in the market. In this regard, both unilateral and coordinated effects are examined; and
 - c) Whether the transfer or lease would likely have an effect of leading directly to efficiency gains⁸ that cannot be realised by any means other than the transfer or lease.
36. All lists of factors in these guidelines are considered to be non-exhaustive unless otherwise stated.

⁷ This can, for example, involve reviewing whether the spectrum transfer or lease would give rise to changes in the number of market participants, their capacity to provide wireless electronic communications services or other services, their market shares for different services (data, voice, etc) and other factors.

⁸ A spectrum transfer or a spectrum lease may lead to potential benefits to customers in terms of higher quality services and/or at lower prices (translated from the lower costs enjoyed by the undertaking), which may outweigh any potential distortions to competition (see also, paragraph 71 in relation to efficiencies).

3.2 Market definition

37. Having regard to established economic principles, relevant European Commission guidance⁹ and Irish and EU statutes and case law, the Commission will, where appropriate, seek to define the product and geographic scope of the relevant market(s) which may be impacted by all proposed spectrum transfer or lease which are notified to it. This provides a basis for deciding whether or not a transfer or lease would distort competition. In defining the relevant product and geographic scope of the market, the Commission may also distinguish between wholesale and retail markets (i.e. “upstream” and “downstream” markets) that are directly and indirectly relevant to a spectrum transfer or lease.
38. However, it should also be noted that in some circumstances the Commission may assess the effects upon competition directly, without having first defined the relevant market(s). For example, the distortion to competition test can be applied by identifying the competitors of the parties to the proposed spectrum transfer or lease. This may include competitors who are outside the relevant market(s) but are nevertheless potentially impacted by the proposed spectrum transfer or lease. Such additional factors may be relevant for the assessment of a proposed spectrum transfer or lease and therefore may be taken into consideration by the Commission when deciding whether or not a transfer or lease distorts competition.
39. Market definition, where utilised, provides a conceptual framework within which the impact of a proposed spectrum transfer or lease can be assessed. It is not always necessary to reach a firm conclusion on market definition - for example, where it is clear that the proposed spectrum transfer or lease is not likely to raise competition concerns on any reasonable definition of the market.

⁹ European Commission (1997), ‘Commission Notice on the definition of relevant market for the purposes of Community competition law’, Official Journal C 372 , 09/12/1997 P. 0005 – 0013.

40. Market definition recognises that a spectrum right of use is a factor of production that combines with other intermediate inputs to provide a product to end-users. The Commission's approach is generally to be technologically neutral (unless specific circumstances dictate otherwise) and to focus on the actual use of spectrum, rather than on the technology employed. This general approach is based on the assumption that end-users of a particular electronic communications service, provided over a wireless network, generally have no preference as to the technological means of delivering that service (subject to considerations regarding quality, price and relevant product parameters, and speed of services). In this context, technologies and spectrum rights of use are both factors of production which enable undertakings to provide electronic communications networks and services.
41. In defining any relevant market(s), the Commission will consider whether any effective demand-side or supply-side substitutes exist such as would directly or indirectly constrain the price setting behaviour of a hypothetical monopolist supplier of the product being sold by the firm in question. To the extent that such effective substitutes may exist, and may constrain pricing behaviour, a broader product market definition may be appropriate.
42. A geographic market, is an area in which the parties to a proposed spectrum transfer or lease are involved in the supply of the relevant products or services, and in which the conditions of competition are sufficiently similar or homogeneous as to distinguish that area from other geographic areas in which the conditions of competition are appreciably different.
43. Overall, in order that the Commission may decide whether or not a transfer or lease would distort competition in any market(s), the parties thereto are encouraged to identify all relevant markets which may be affected (in the Notification Form attached at Annex 1), even though a firm conclusion on market definition may not be necessary in every case.

3.3 Market concentration

44. Assessment of market concentration takes into account the number of competitors in a market and their shares in that market. High concentration means a market containing a relatively small number of large firms. Any assessment of the effects of a proposed spectrum trade on market concentration, pre and post transfer or lease, should include an assessment of the extent to which different spectrum bands can be employed to provide substitutable services to end-users, or to other undertakings in the context of wholesale arrangements, while comparing the differing costs of providing the same service using different spectrum bands.

45. The Commission may assess the concentration of spectrum holdings across substitutable bands (rather than market shares or turnover which are unlikely to immediately change as a result of a transfer or lease). Any assessment would need to ensure that the bands being compared are in fact comparable. Assessments would be carried out in a flexible manner and on a case-by-case basis and also consider the extent to which pre and post transfer or lease that the two parties are able to provide specific services across their entire spectrum holdings.
46. The Commission will assess the potential effects of any proposed spectrum transfer or lease on the concentration of spectrum holdings having regard to a number of considerations, including:
 - Cost advantages for undertakings with larger (or more suitable) spectrum holdings and cost disadvantages for undertakings with smaller (or less suitable) spectrum holdings;
 - Increased capacity for undertakings with larger spectrum holdings and relative capacity constraints for undertakings with smaller holdings;
 - Ability of holders of larger quantity of spectrum rights to provide specific services (e.g. with faster speeds) verses holders of smaller quantify of spectrum rights; and
 - Whether any relevant spectrum right of use is being used efficiently.

3.4 Analysis of competitive effects

47. This section outlines the Commission's approach to analysing the effects of a spectrum transfer or lease on rivalry between existing competitors. It includes analysis of the effects on the behaviour of the parties to a transfer or lease and on the reactions of other market participants, particularly competitors and customers. The Commission's focus is on identifying the immediate constraints on the exercise of market power.
48. Spectrum transfer or lease do not affect undertakings' competitive positions directly. Without a corresponding sale of the hardware assets and customer base, undertakings' actual market shares in any upstream or downstream markets are generally unaffected in the direct aftermath of transfer or lease. The Commission's assessments of the likely competitive effects of spectrum transfer or lease recognise that allocated spectrum rights of use influence undertakings' ability to compete.

49. While spectrum transfer or lease will in many instances be expected to have positive results, some such transfer or lease could increase unilateral market power or increase the likelihood of collusion among existing competitors (known as coordinated effects). In both cases, only an increase in market power that is sustainable over time may be problematic.
50. Any assessment of potential unilateral and coordinated effects must cover a sufficiently long time horizon over which spectrum holdings can affect undertakings' cost structures and capacity (as opposed to focusing on immediate market shares and pricing which most likely would not change in the immediate aftermath of a spectrum transfer or lease).
51. The factors which the Commission may consider include all or any of the following:
 - Wholesale and retail market shares;
 - Concentration of spectrum holdings;
 - Incentives to increase prices post-transfer or post-lease owing to unilateral effects;
 - Incentives to coordinate;
 - Barriers to entry;
 - changes in potential service quality (e.g. speeds) post transfer or lease that could be replicated by competitors, absent increased costs to competitors; and
 - Efficiencies arising from the transfer or lease.

Unilateral effects

52. The Commission shall consider whether a proposed spectrum transfer or lease would strengthen any undertaking's position in a market to such extent as to allow it to act more independently of its competitors than it could otherwise do. For example, if a spectrum transfer or lease resulted in such significant cost advantages or quality of service advantages for one undertaking or in such a concentration of spectrum held by one undertaking, which increased the undertaking's market power to such extent that it could largely ignore the reactions of its competitors and/or customers to actions on its part such as profitability increasing its prices by a small but significant amount, then that would constitute a unilateral effect of the spectrum transfer or lease.

53. The Commission will assess whether any increased spectrum holding, post-transfer or lease, would likely give an undertaking the ability and incentive to increase its prices (or reduce its output) without concern as to the reactions of its competitors and/or customers. The Commission will consider both the short-term and the long-term effects of a proposed transfer or lease. The long-term horizon is relevant, in particular, if spectrum acquired through a transfer or lease is likely to lead to a significant long-term cost advantage for the acquiring undertaking over its competitors.
54. The Commission's assessment of an undertaking's ability and incentive to increase its prices will take into account a range of factors including the following:
- The ability of the undertaking's competitors to compete effectively with it, post-transfer or post-lease;
 - The likelihood of new market entry;
 - The likelihood of new spectrum bands becoming available;
 - The ability of the undertaking's customers to react to a price increase by switching to a competitor; and
 - whether there are any strong customers or groups of customers that can constrain the pricing behaviour of the undertaking (countervailing buyer power).

Coordinated Effects

55. A spectrum transfer or lease may negatively distort competition if it facilitates competitors engaging in coordinated interaction (tacitly or expressly), such as agreeing amongst themselves to raise their prices or reduce their output. Such behaviour is known as coordinated effects.
56. The Commission's assessment of the coordinated effects of any proposed spectrum transfer or lease would consider whether the transfer or lease would increase the ability and/or incentivise undertakings to engage in tacit or explicit collusion. The factors which the Commission shall consider include:
- Whether the transfer or lease has an impact on transparency in the market;
 - The availability of a punishment mechanism; and
 - Barriers to entry.

57. Concentration of spectrum may feed into further concentration in upstream and/or downstream market(s), and could create a situation whereby two or more undertakings could collude, in any market or markets.
58. The Commission's assessment would focus on whether the spectrum transfer or lease may result in more symmetric cost structures and capacities among competitors and/or a reduction in product differentiation, which may be conducive to tacit or explicit collusion.
59. Collusive behaviour need not be equivalent to monopolist behaviour to be harmful to consumers, and collusion may harm consumers even where some competitors are not party to the collusive arrangements or where there are occasional lapses into price wars.
60. The Commission also recognises that there are dynamic factors such as new technologies which may make it difficult to sustain collusive behaviour even if the spectrum transfer or lease were to result in a more concentrated and/or symmetric market structure.
61. If a spectrum transfer or lease was likely to increase cost heterogeneity then the likelihood of resulting coordinated effects should reduce. Where appropriate, the Commission may choose to consider dynamic factors in its analysis of competitive effects.

Spectrum transfer or lease with an entrant

62. Spectrum transfer or leases do not necessarily increase market concentration. A spectrum right of use may be transferred or leased to a smaller competitor by a larger competitor, or to a new entrant without any existing spectrum rights of use.
63. While each notified spectrum transfer or lease shall be assessed on its own merits, the Commission is unlikely to prohibit a transfer or lease from being put into effect where a new entrant without any existing spectrum right of use acquires such a right of use. Such a transfer or lease leading to the entry of an additional competitor would generally result in a more fragmented market and is accordingly less likely to result in competition concerns.

3.5 Other competitive effects considered by the Commission

Entry

64. If entry into a market is relatively easy, such that the behaviour of competitors in the market is constrained by the threat of potential entry, then the impact of a spectrum transfer or lease on competition in such a market may be minimal as the threat of potential entry may prevent both unilateral and coordinated effects.
65. The Commission would note, however, that in some markets for electronic communications services, there is a scarcity of spectrum and so market entry is difficult (although some barriers to entry may be lowered by liberalisation of the usage of spectrum in certain bands which may allow for the provision of substitutable services utilising alternative technologies).

Closeness of competition between parties

66. The extent to which the notifying parties were competitors before the transfer or lease may affect the impact on competition, and therefore the distortion to the competitive dynamic in the market. In particular, the impact on or reduction of competition would be greater the closer competitors the undertakings were before the transfer or lease (e.g. two undertakings targeting similar customer profiles and/or offering similar tariffs and bundles, which are perceived by consumers to be close substitutes).

Implications on adjacent markets (non-horizontal transfer or lease)

67. A spectrum transfer or lease could take place as a 'non-horizontal' transfer or lease where there is no overlap in terms of the services provided on the transferee's or lessee's current (if any) and acquired spectrum. Such a transfer or lease does not produce any change in the level of concentration in the relevant market. However, while non-horizontal transfer or lease are less likely than horizontal transfer or lease to create competitive concerns, distortions to competition are still possible in certain circumstances.
68. For an example, an undertaking with a strong position with respect to certain services provided using spectrum could enter a new market and leverage its market power to the detriment of competition in the long term. In considering the likelihood of anti-competitive leveraging, the Commission will consider, in particular:

- if the services are unrelated (i.e. neither substitutes nor complements), in which case it is unlikely that the undertaking could engage in anti-competitive leveraging;
- whether the transfer or lease may be efficiency-enhancing, in particular if the downstream services are complements, which may offset any detriment to competition;
- whether the acquiring undertaking may provide greater variety of services post-transfer or lease and achieve economies of scope which may offset any detriment to competition;
- the market position of the acquiring undertaking pre-transfer or pre-lease, in particular whether that undertaking already holds a position of market power one of the markets.

Efficiencies

69. If a spectrum transfer or lease gives rise to anti-competitive effects, it is possible that these could be compensated for/outweighed by improvements in efficiencies resulting directly from the spectrum transfer or lease. A transfer or lease of spectrum may lead to potential benefits to customers in terms of higher quality and lower prices (translated from the lower costs enjoyed by the undertaking), which may outweigh any potential distortions to competition. This depends on the spectrum band in question, as the marginal benefits of holding spectrum, and the ability to aggregate spectrum across bands, or holding contingent blocks of spectrum, differ across bands. It will be important to assess the likely magnitude of these benefits and to ensure that any benefits are passed on to customers.
70. The burden of proof for demonstrating that any efficiency benefits outweigh any negative effects would lie with the notifying parties, who may also need to demonstrate that the efficiencies would emerge with a sufficient likelihood.
71. The spectrum transfer or lease could also result in demand-side efficiencies that result in either an increase in the demand for one or more of the products provided over a certain spectrum band or bands in the spectrum trade, or that result in the creation of a new product or set of products (for example, a new wireless service).
72. Factors which the notifying parties may label as “efficiencies” but which the Commission would not consider to be relevant as part of its assessment include:
 - savings due to the integration of administration or head office functions;

- input price reductions related to buyer power;
- efficiencies related to economies of scale and scope that do not involve marginal cost reductions; and
- efficiencies that may reduce prices in one market but cannot compensate for price increases in another.

Annex: 1 Notification Form

Undertakings involved in a transfer or lease of spectrum rights of use to which the Wireless Telegraphy (Transfer or Lease of Spectrum Right of Use) Regulations 2014 (**S.I. No. 34 of 2014**) apply, must provide the following information set out below.

Undertakings may make a joint notification, though they are not obliged to do so.

List of required information:

1. General information¹

- i. Please specify the undertakings intending to transfer or lease individual rights of use to spectrum i.e. the 'Transferor or lessor'. Please also specify the other party to the proposed transaction i.e. the 'Transferee or lessee' (the transferor, lessor, transferee and lessee shall together be referred to as the "notifying parties").
- ii. Please provide the legal name, business address, telephone number, fax number, and web site of each notifying party and state the jurisdiction in which each is incorporated and their respectively geographical area of activity.
- iii. Please provide a description of the notifying parties (including their respective corporate groups, if relevant) in the proposed transfer or lease.
- iv. Please provide the name and contact details of the authorised legal representative, for each notifying party and an address for service of correspondence. Indicate to whom acknowledgement of receipt of the administrative fee paid should be sent.
- v. Please indicate whether the notifying parties are providing information separately or together as part of making a joint notification of the intention to transfer or lease.
- vi. Please provide the turnover of each of the notifying parties (including that of their respective corporate groups), both worldwide and in the State for the last financial year for which such information is available and for any available interim period in the current year.
- vii. Please provide details of the spectrum holdings of each notifying party and details of the spectrum holdings that the parties' subsidiaries hold in Ireland.

¹ Interested parties should note that prior to making any formal notification of a proposed spectrum transfer or lease, the parties thereto may request a 'pre-notification meeting' with the Commission in order to discuss the information that they shall be required to provide as part of their formal notification. At such a meeting, parties may request to submit less information than is set out in the Notification Form (because, for example, it is very clear that the proposed transfer or lease would not distort competition) and the Commission will consider any such request and may adjust its information requirements accordingly – i.e. the Commission may inform the parties that they may omit certain information from their notification (while reserving its right to require this information at a later stage).

2. Description of proposed transfer or lease

- i. Please specify the licence number of the licence involved in the transfer or lease, the specific spectrum blocks, or parts thereof, to be transferred or leased and the intended usage of the spectrum after the transfer or lease.
- ii. Please provide an explanation about the current and post-transfer or post-lease capacity utilisation with the appropriate technical information.
- iii. Please provide information on the options considered as strategic alternatives to the transfer or lease such as equipment upgrades, spectrum re-farming and change of technology.
- iv. Please outline a proposal for the division of spectrum usage fees between the licence holder and the transferee so that there is no net reduction in the spectrum usage fees payable to the Commission as a result of the transfer. In the case of a lease, the lessor shall continue to remain responsible for paying the licence fees.
- v. Please outline network investment plans in relation to the spectrum bands associated with the transfer or lease.
- vi. Please outline any contractual arrangements made in relation to the transfer or lease.

3. Market information

- i. Please provide a description and definition of what the notifying party/parties consider to be the relevant upstream and downstream markets that may be affected by the usage of the spectrum which it is proposed to be transfer or lease.²
- ii. Please provide an estimate of the size of the markets described above, information on recent entry, any potential entry, cost of entry, comment on the minimum efficient scale and minimum spectrum requirements for a viable business.

4. Views of notifying parties

- i. Please provide your views as to why you consider that the transfer or lease will not be to distort competition in markets described by you above in the State.
- ii. Please provide estimates of the shares of each of the transferee or lessee (including aggregated market share of any relevant group companies) and of the transferor or lessor in the market(s) described by you above. Provide also estimates of the shares of competitors in these markets and explain the basis of these estimates.
- iii. Please provide your views as to possible efficiencies which may occur as a result of the transfer or lease. Quantify these efficiencies and the extent to which consumers would benefit from them.

² This should include wholesale markets such as any MVNO arrangements

- iv. Please provide your views as to why the notifying parties believe the transfer or lease does not create a risk of radio interference.

5. Supporting Documentation

- i. Provide a copy of the most recent audited annual report for each of the notifying parties.
- ii. Provide a copy of any reports or other documentation relating to any analysis undertaken on the competitive effect of the transfer or lease on any market.

6. Licence Conditions

- i. Where the notifying parties consider that an amendment to a condition in the original licence may be necessary, or desirable, as a result of the transfer or lease (see also paragraph 7 iii below) please describe same in detail and the reasons why. In addition please provide detailed reasoning as to why in your view such an amendment with accord with ComReg's statutory functions, objectives and duties.

7. Notifying Parties Declarations

- i. Declaration by the transferor in a partial transfer⁴ (i.e. the current holder of the right of use of spectrum to be transferred): The transferor is and will continue to comply with all the licence conditions attaching to the rights of use to spectrum to be transferred following a partial transfer.
- ii. Declaration by the lessor: The lessor is and will continue to comply with all the licence conditions attaching to the rights of use to spectrum to be leased.
- iii. Declaration by the transferee: The transferee will comply with all licence conditions attaching to the original rights of use of radio frequencies that are to be transferred.
- iv. Declaration by the lessee: The Lessee will comply with the licence conditions to be inserted into the Lessee's licence as determined by ComReg.³
- v. Declaration by both the transferor or lessor and transferee or lessee: The notifying parties confirm that they have considered whether an amendment to a condition in the original licence may be necessary, or desirable, as a result of the transfer or lease, and where this is the case have provided details of same pursuant to paragraph 6 above.

Transferor	<input type="checkbox"/>
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Lessor	<input type="checkbox"/>
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Transferee	<input type="checkbox"/>
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Lessee	<input type="checkbox"/>
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⁴ In the case of a transfer where all the rights and obligations transfer (i.e. a full transfer), as the transferor would divest itself of the rights it does not have to continue to comply with the licence conditions attaching to the transferred spectrum. This would be different in a partial transfer or lease where the transferor or lessor would have to commit to meeting all the relevant licence obligations.

³ In line with Chapter of Document **XX/YY**, please note that the Lessee's licence conditions would be considered on a case by case basis, noting that it may only be necessary and appropriate to insert some of the Lessor's licence conditions into the Lessee's licence.

8. Declaration and Signature

	Transferor or Lessor	Transferee or Lessee
Signed:
Name (Print):
Position:
Company:
Date: