



## Submissions to Consultation

### **GSM Liberalisation Project:**

**Publication of non-confidential submissions, correspondence and other material provided by interested parties (and ComReg written responses to same) in the period following publication of submissions to ComReg Document 11/11**

|                     |                    |
|---------------------|--------------------|
| <b>Document No:</b> | <b>11/37</b>       |
| <b>Date:</b>        | <b>13 May 2011</b> |

**Correspondence and other material provided by interested parties (and ComReg written responses to same) in the period following publication of submissions to ComReg Document 11/11**

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2. ComReg: Reply to Ericsson email of 5 April 2011 (*dated 6 April 2011*)
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1. Ericsson: “ComReg 10 71” (*email dated 5 April 2011*)

**From:** John Holland  
**Sent:** 05 April 2011 15:25  
**To:** George Merrigan  
**Subject:** ComReg 10 71

Dear George,

Thank you for your email of arch 9th. I am sorry we have been unable to meet officially to discuss our concerns with regard to ComReg 1071. We are still of the opinions that there is a very real risk that if this consultation progresses as is that there will be a reduction in the coverage enjoyed by Irish citizens. [Redacted]

To help an informed discussion I have created a table of some of the known positions in Europe and you can see that both the UK and Germany realise the value of this spectrum in terms of closing the digital divide and I think ComReg should take due regard of this.

**License conditions on digital dividend/refarmed spectrum sub 1GHz**

| Country | Band | Date of Auction/<br>Liberalisation | License duration (yrs) | Coverage conditions | QoS conditions | Spectrum Sharing allowed? (Y/N) |
|---------|------|------------------------------------|------------------------|---------------------|----------------|---------------------------------|
| Ireland | 800  | ~2011                              | 17.5                   | 70%                 | voice only     | N                               |
| Ireland | 900  | ~2011                              | 17.5                   | 70%                 | voice only     | N                               |
| Germany | 800  | 2010                               | 15                     | 90%                 | > 1 Mbps       | Conditional*                    |
| UK      | 800  | 2012                               | ?                      | 95%                 | 2Mbs           | ?                               |

I was also thinking about potential other options other than coverage obligations in the license that could close the gap between the 70% coverage obligation proposed in the licenses and the 30Mb/s 100% population target in the digital agenda for Europe document and I don't believe any of the options are really feasible.

One might be to expand the rural broadband scheme from the current 10% to up to 30%. But in this case market failure would have to be proven, the damage would be done and the subsequent cost to the state suboptimal.

Another option for ComReg to close this gap might be through some sort of USO obligation and I wanted to share some thoughts on any potential USO fix that may be considered by ComReg.

1. Specifying a USO for broadband will undoubtedly be very problematic (how do you define it? what kind of rules will apply about who is to be designated as the USP? what legislation will underpin it?). The existing USO regime is based on EU Directives and because it was defined as basic telephony with provision targeted at the fixed incumbent, it was simple enough to do (although that didn't stops rows about funding etc.).

With a broadband USO there are likely to be enormous disagreements over what the service is, what areas cannot be covered by existing services, who the USP will be (and how many

USPs there will be) and what the funding arrangements will be. If the operators are opposed to this (and I can't see why they wouldn't be) it could take years to put such a regime in place. In contrast, an appropriately-framed upfront coverage obligation would do the job with less uncertainty and arguable a lot more economically.

2 . Does the the USO option not postpone the issue potentially indefinitely instead of dealing with the issue head-on before any new licenses are granted? The USO option, unless implemented quickly fails to deal with the threat of coverage "erosion" that Ericsson has highlighted and if such a trend takes hold, ComReg will be pretty powerless to do anything about it, given that the licenses will have been issued with the low coverage obligations. It would seem that not having reasonable coverage obligations such as the ones that exist today makes it more likely that problems with regard to nationwide mobile broadband availability (HSPA or LTE or whatever) will arise, as the operators will face no incentive and indeed have no justification to continue rolling out new advanced networks once they've hit the modest 70% coverage obligations.

3 . As per our consultation, the economics of the mobile business are now becoming problematic just as the fixed have previously. We know mobile operators are already planning and want network sharing . Would it not be a reasonable quid pro quo to say that this kind of sharing could be allowed in return for agreement to ensure a high level of coverage at least equal to what exists today?

I would very much like the opportunity to meet and discuss further with you and or the commissioners to ensure what we feel may be a mistake is not made .

Kind regards John

**John Holland**

2. ComReg: Reply to Ericsson email of 5 April 2011 (*dated 6 April 2011*)

**From:** George Merrigan  
**Sent:** Wed 06/04/2011 14:30  
**To:** John Holland  
**Subject:** Re: ComReg 10 71

Dear John,

Thank you for your e-mail of 5 April 2011 (attached).

ComReg notes this further material and Ericsson's previous submissions on this issue. As you know, ComReg is currently considering this and other relevant material before it. As outlined in my email of 9 March 2011, ComReg will, in due course, publish a response to consultation and draft decision on its broader spectrum release proposals, which will include some final draft proposals and invite final submissions and information from interested parties. Included in that response-to-consultation will be an analysis of, and commentary on, Ericsson's submissions on this issue. ComReg will then consider and evaluate all of the material before it prior to making a final decision.

Whilst I note your request for a meeting, I refer you to my previous email of 9 March in this regard.

As is ComReg's usual practice, correspondence, such as your email of 5 April, 2011 are treated as submissions in response to consultation, and, subject to ComReg's guidelines on the treatment of confidential information and to any comments you wish to make in that regard, your e-mail will be published as a response. Accordingly, I would be grateful if you could let this office know by return (Patrick Mulvey) if there is anything in your e-mail that Ericsson considers is confidential, and ought not to be published, in order that these materials (or, as the case may be, appropriate versions of them) might in due course be published as consultation responses.

Yours sincerely,

George Merrigan | Director, Market Framework Division |  
✉ Commission for Communications Regulation, Abbey Court, Irish Life Centre,  
Lower Abbey Street, Dublin 1, Ireland  
[www.comreg.ie](http://www.comreg.ie)

Test & Trial in Ireland - get the signal! - see [www.testandtrial.ie](http://www.testandtrial.ie)

3. Telefonica O2: “O2's 900MHz Licence” (*letter dated 11 April 2011*)





11<sup>th</sup> April 2011

Mr. George Merrigan  
Commission for Communications Regulation,  
Block DEF,  
Abbey Court,  
Irish Life Centre,  
Lower Abbey Street,  
Dublin 1.

Telefonica O2 Ireland (“O2”)  
**O2’s 900MHz Licence**

Dear George

We are writing to express our continued concerns at the delay in publishing your final decision on the liberalisation of 900 MHz radio spectrum. It now just five weeks to when the existing 900MHz licences of O2 and Vodafone are due to expire, and it has been three weeks since the last consultation period (11/11) closed.

As previously indicated, O2 continues to operate its business on the basis that an Interim Licence will be in place significantly in advance of May 2011 and it continues to reserve its rights in full, including taking all appropriate steps to safeguard its legal rights.

We look forward to an immediate response to this letter with details of ComReg’s position on the continuity of our licence in Ireland.

Yours Sincerely

Gary Healy  
Head of Regulatory & Public Policy

A *Telefonica* company

4. ComReg: Reply to Telefonica O2 of 11 April 2011 (*dated 12 April 2011*)



12 April 2011

Mr Gary Healy  
Head of Regulatory and Public Policy  
Telefonica O2 Ireland Limited  
Sir John Rogerson's Quay  
Docklands  
Dublin 2

**Ref: O2's 900 MHz Licence**

Dear Gary,

I am responding on behalf of George Merrigan to your letter of 11 April addressed to him on the above topic.

I can assure you that the Commission for Communications Regulation (ComReg) is progressing its decision making on the matter of its interim licence proposal with all speed. You will be aware of the considerable responses<sup>1</sup> which ComReg received to its recent consultation on the matter<sup>2</sup>, which requires careful consideration.

It is expected that ComReg will publish its decision on this matter in the coming days.

Yours sincerely

**Jim Connolly**  
**Senior Spectrum Advisor**

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<sup>1</sup> ComReg Document 11/27: Interim Licences for the 900 MHz band. Consultation responses received from respondents & correspondence with interested parties since publication of Consultation 11/11.

<sup>2</sup> ComReg document 11/11: Interim Licences for the 900 MHz band.

5. Value Partners: “Clarification - Document 11/29” (*email dated 20 April 2011*)

**From:** Henry Alty  
**Sent:** 20 April 2011 09:44  
**To:** Samuel Ritchie  
**Subject:** Clarification - Document 11/29

Dear Samuel,

I am writing to you from Value Partners, one of the two consultancies supporting H3GI's recent submission to ComReg. ComReg has recently replied to all the submissions in its *Response to consultation and decision*, document number 11/29.

We noted that ComReg commented that one clause in the H3GI response was subjective (reproduced below). The intent was to be entirely objective, so we would like to amend the wording of our response to ensure that any concerns of subjectivity are addressed. To enable us to do this we would like to request a short phone call with you either today (Wednesday) or Thursday if your schedule allows this; if not, an email providing further clarification should be sufficient. We are available at any time Wednesday or Thursday.

The relevant paragraph is reproduced below:

“Finally, ComReg is concerned by the level of subjectivity expressed by H3GI’s consultants in the following sentence:

*“ComReg's decision to delay access to 900MHz spectrum (in particular that which is not already allocated) thus directly harms the interests of both H3GI and all consumers of voice and data mobile services in Ireland by reducing H3GI's ability to offer competitive pricing and new & innovative services, **entrenches the unfair competitive advantage granted to Ireland's other mobile network operators**, and runs contrary to both the EU Directive 2009/1114/EC and ComReg's stated aim of `ensuring that there is no distortion or restriction of competition in the electronic communications sector.’”*

Kind regards,

Henry

**Henry Alty**

Value Partners Management Consulting Ltd  
Greencoat House, Francis Street  
London SW1P 1DH

6. ComReg: Reply to Value Partners email of 20 April 2011 (*dated 20 April 2011*)

**From:** Samuel Ritchie  
**Sent:** 20 April 2011 17:16  
**To:** Henry Alty  
**Subject:** RE: Clarification - Document 11/29

Dear Henry,

Thank you for your e-mail of 20 April in which you express your interest in clarifying aspects of Value Partners' report, provided to ComReg by Hutchison 3G Ireland in its response to ComReg Document 11/11.

Although we note your reference to a possible telephone call, we consider that an e-mail (or other form of written correspondence) from Value Partners would be a more appropriate means by which to provide any such clarification in present circumstances.

In addition, please note that, in accordance with ComReg's consultation procedures, your e-mail of 20 April and any subsequent submission provided by Value Partners will be treated as a substantive response and will, therefore, be published in due course, subject to ComReg's *Guidelines on the Treatment of Confidential Information* (ComReg Document 05/24).

Regards

Samuel

**Dr. Samuel Ritchie**  
**Manager Spectrum Operations**

Commission for Communications Regulation  
Email [samuel.ritchie@comreg.ie](mailto:samuel.ritchie@comreg.ie)

7. Value Partners: Reply to ComReg email of 20 April 2011 (*email dated 20 April 2011*)



**From:** Henry Alty  
**Sent:** 20 April 2011 19:59  
**To:** Samuel Ritchie  
**Subject:** RE: Clarification - Document 11/29

Dear Samuel,

Thank you for your quick response. The purpose of our previous e-mail was to seek clarification from ComReg of the key point(s) underlying the “subjectivity” concern it had raised regarding one of the clauses in our report. Once we have received clarification from Comreg on this we would like to submit a written response to the point(s) raised.

Kind regards,

Henry

8. ComReg: Reply to Value Partners email of 20 April 2011 (*dated 27 April 2011*)

**From:** Samuel Ritchie  
**Sent:** 27 April 2011 11:24  
**To:** 'Henry Alty'  
**Subject:** RE: Clarification - Document 11/29

Dear Henry,

Thank you for your further e-mail.

ComReg has made its entire position clear in section 2.5.1 of ComReg Document 11/29 - in particular, pages 20-31 under the heading "*Specific comments made by H3GI on competition generally*". Accordingly, ComReg will be making no further comment.

As I previously advised, Value Partners are welcome to provide any clarification it considers appropriate in relation to its report.

Regards

Samuel

9. Hutchison 3G Ireland: “Decision No. 003/11: Response to Consultation and Decision – Interim Licences for the 900 MHz Band” (*letter dated 21 April 2011*)

Hutchison 3G Ireland Limited  
Registered office

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

Registered Number: 316982  
Place of Registration: Republic of Ireland



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

21 April 2011

Dear Samuel

**Decision No. D03/11: Response to Consultation and Decision - Interim Licences for the 900 MHz Band**

I refer to the above decision to grant interim licences to Vodafone Ireland Limited ("Vodafone") and T el efonica O2 Ireland Limited ("O2") in respect of the use of 900 MHz spectrum from 16 May 2011 until 31 January 2013 (the "Decision").

Hutchison 3G Ireland Limited ("H3GI") participated fully in all the consultations to date relating to the release and liberalisation of 900 MHz spectrum and set out in detail in its responses to those consultations why it believes that the grant of interim licences to Vodafone and O2 is unjustified and liable to distort competition. Accordingly, H3GI is very disappointed with the Decision.

Notwithstanding H3GI's disappointment with the Decision, it notes some of the more positive aspects of the Decision, namely, (i) the setting of a fixed expiry date of 31 January 2013 for the interim licences; and (ii) ComReg's indication that the 900 MHz band could be liberalised prior to 31 January 2013 and the interim licences revoked at such earlier date.

*The setting of a fixed expiry date of 31 January 2013 for the interim licences*

H3GI is unclear about the level of comfort that the 31 January 2013 long stop date confers. In particular, H3GI notes that each of Vodafone and O2 sought to have the 31 January 2013 date extended and/or a mechanism for such extension introduced and they each have a strong incentive to delay, such as to ensure that the 31 January 2013 deadline is extended and to act in such a way to make an extension likely.

Accordingly, H3GI would be grateful if ComReg could clearly identify the measures it will put in place so as to ensure that liberalised 900 MHz spectrum will be made available no later than 31 January 2013 eg an indicative timetable in respect of the proposed award process taking into account that ComReg has not yet made any final decision regarding its broader spectrum proposals. At this stage, ComReg should be in a position to provide such an indicative timetable. H3GI would like to understand the steps involved as regards the forthcoming award process so that it can be confident that all necessary measures will be carried out in advance of 31 January 2013.

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



*ComReg's indication that the 900 MHz band could be liberalised prior to 31 January 2013 and the interim licences revoked at such earlier date*

H3GI is encouraged by certain of ComReg's statements at various places in the Decision, which might tend to suggest that there is real support for possible liberalisation of the 900 MHz band prior to 31 January 2013 but notes that certain other statements are inconsistent with this sentiment and thus discouraging. For example, H3GI notes the following statements from the Decision:

At the top of page eight of the Decision:

"To be clear: no decision on the availability of liberalised 900 MHz spectrum has been made and a decision by ComReg to grant interim licences does not, and should not, be construed to mean that it could not adopt a broader spectrum release proposal that could result in the earlier release of the 900 MHz band on a liberalised basis (such as in the manner proposed by H3GI or in some other manner). In that regard, ComReg notes the following:

- ComReg has, itself, put forward a potential modification to its current broader spectrum release proposal that could result in the earlier release of the 900 MHz band on a liberalised basis (see Section 3.2 of Document 11/11);
- ComReg continues to have regard to alternative broader spectrum release proposals which could bring about the availability of liberalised 900 MHz spectrum earlier than 2013; and
- Article 3.3 of the Draft Decision (on page 95 of Document 11/11) and Article 3.3 of the Decision (see Annex 2) specifically provides that ComReg would be able to shorten or amend the duration of the interim licences granted (pursuant to Regulation 15 of the Authorisation Regulations) to facilitate liberalisation of rights of use of 900 MHz spectrum at a date earlier than January, 2013, following a transparent and lawful process." (emphasis added)

First sentence in the third bullet point on page 16 of the Decision:

"Whilst the currently proposed end-date of 31 January 2013 would clearly facilitate the adoption of ComReg's current broader spectrum release proposal (i.e. joint availability of liberalised 800 MHz, 900 MHz and 1800 MHz spectrum in 2013), it is critical to note that the Interim Licence Proposal does not prevent ComReg from adopting a broader spectrum release proposal that could result in availability of liberalised 900 MHz spectrum earlier than 2013, for instance, under the potential modification put forward by ComReg in Document 11/11." (emphasis added)

Final sentence of the second paragraph on page 57 of the Decision and Section 3.3 of the Decision (Annex 2):

"However, ComReg would note that as set out in Document 11/11. ComReg is considering an early liberalisation option whereby the 900 MHz band could be released on a liberalised use basis earlier than January 2013....."

*"Without limitation to section 3.2 above, licences granted pursuant to this Decision may be amended pursuant to Regulation 15 of the Authorisation Regulations in such a way as to shorten their duration in order to facilitate liberalisation of rights of use of 900 MHz spectrum at a date earlier than January, 2013, following a transparent and lawful process". (emphasis added).*

However, ComReg's statements suggesting that there could be liberalisation of the 900 MHz band prior to 31 January 2013 do not provide much comfort when read with some other statements of ComReg in the Decision which seem very tentative and inexact leaving the approach to be adopted very uncertain. For example at the fifth paragraph on page 39 of the Decision:

*"Accordingly, while ComReg remains open, as previously indicated, to evaluating the potential for earlier liberalisation once the result of the currently-proposed broader spectrum release process is known, it is of the view that it is not possible or appropriate, at this stage of its deliberations and at this time, to predict matters or to predetermine the approach that it will take in this regard, noting also the possible severe impacts on consumers and operators, matters which ComReg is entitled to consider." (emphasis added)*

In particular, ComReg's broad reference to the possibility of severe impacts on "consumers and operators" making early liberalisation difficult is of considerable concern to H3GI. H3GI notes that the consumer disruption argument was the main argument raised by Vodafone and O2 in support of their requests for the award of the interim licence, notwithstanding that they could have taken steps to plan for expiry and avoid such disruption and indeed should have taken such steps and the very considerable influence that those arguments appear to have had on ComReg in its later consultations.

H3GI therefore requests that ComReg explain in detail the nature and extent of ComReg's commitment to seek earlier liberalisation of the 900 MHz band including the mechanisms that it is proposing to use to secure earlier liberalisation.

As the timeline for the appeal of a ComReg decision as set down in the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003 as amended by Regulation 4(2) of the European Communities (Electronic Communications Networks and Services) (Framework) (Amendment) Regulations 2007 (together the "Framework Regulations") is short, we should be grateful of the opportunity to meet you in the course of next week, the week commencing 25 April 2011 to discuss each of the points identified above.

I look forward to hearing from you with confirmation as to the proposed date and time for the requested meeting.



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Registered office

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One Clarendon Row,  
Dublin 2, Ireland

Registered Number: 316982  
Place of Registration: Republic of Ireland



Yours sincerely

  
Mark Hughes  
**HEAD OF REGULATORY**

**Copy:** Mr Alex Chisholm, Chairperson, ComReg (alex.chisholm@comreg.ie)

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

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10. ComReg: Reply to Hutchison 3G Ireland letter of 21 April 2011 (*dated 28 April 2011*)



28 April 2011

Mr Mark Hughes  
Head of Regulatory  
Hutchison 3G Ireland  
1 Clarendon Row  
Dublin 2

Dear Mr Hughes

**Re: Decision No. D03/11: Response to Consultation and Decision – Interim Licences for the 900 MHz band**

I refer to your letter of 21 April 2011 in which you express Hutchison 3G Ireland's (H3GI) disappointment with the Commission for Communications Regulation's (ComReg) Decision 03/11 ('the Decision') as a whole, but in which you also note certain positive aspects of the Decision from H3GI's perspective.

You also referred to H3GI's full participation in all the consultations to date relating to the release and liberalisation of 900 MHz spectrum, and ComReg is pleased to acknowledge this and to confirm that these and other submissions from interested parties have helped to inform its deliberations.

You further raise a number of issues in relation to ComReg's spectrum release proposals for, amongst others, the 900 MHz spectrum band which are currently the subject of ongoing consultation. In that regard, you have indicated that, whilst acknowledging that ComReg has not yet made any final decisions with regard to the broader spectrum-release proposals, it would nevertheless be of assistance to H3GI if ComReg were to clarify and explain certain matters, to the extent possible and appropriate, regarding:

- the indicative timetable leading to the availability of 900 MHz spectrum on a liberalised basis by 31 January, 2013, and ensuring such availability at that time; and
- the nature and extent of ComReg's commitment to making liberalised 900 MHz spectrum available earlier than 31 January, 2013, and the manner in which ComReg envisages that such earlier liberalisation might be secured.

ComReg is pleased to respond to these matters to the extent possible at this time, although you will appreciate that there is a limit to the further detail it can provide at this stage, given that the detail sought by H3GI relates to proposals that have not yet been finalised and decided upon.



*The setting of a fixed expiry date of 31 January 2013 for the interim licences*

H3GI rightly notes that each of Vodafone Ireland Limited (Vodafone) and Telefónica O2 Ireland Limited (O2) sought, in their respective responses to Consultation Document 10/71 and Document 11/11, to have the 31 January 2013 fixed expiry date extended and/or a mechanism for such extension introduced.

As H3GI would be aware, ComReg took these views, and those of other interested parties (including H3GI), into account when considering what ought to be the position on expiry of interim licences under the Regulations. See, for example, section 2.4 of Document 11/29.

In the Decision, ComReg decided upon a fixed expiry date of 31 January, 2013.

Moreover, as Article 3.3 of the Decision and Regulations 5(4) and 7(2) of the Wireless Telegraphy (Interim GSM Mobile Telephony Licence) Regulations (S.I 189 of 2011) ('the Regulations') make clear, ComReg may shorten or amend the duration of any interim licences granted to, amongst other things, facilitate liberalisation of rights of use of 900 MHz spectrum at a date earlier than January 2013.

*H3GI would be grateful if ComReg could clearly identify the measures it will put in place so as to ensure that liberalised 900 MHz spectrum will be made available no later than 31 January 2013 eg an indicative timetable in respect of the proposed award process taking into account that ComReg has not yet made any final decision regarding its broader spectrum proposals.*

Whilst the setting of a fixed expiry date of 31 January 2013 for any interim licences granted does not of itself oblige ComReg to provide greater clarification of the indicative timing surrounding its broader spectrum-release proposals, and whilst it is necessarily constrained in that regard by the fact that it has not finally decided on any particular proposals, ComReg is nevertheless happy to set out the following macro-level information with regard to indicative timing:

- H3GI will be aware that ComReg has received an extensive amount of material from interested parties on its broader spectrum release proposals. ComReg must give careful consideration to all the issues raised in these materials and in other information currently before it;
- Notwithstanding the foregoing, at this time, it appears that ComReg should be in a position to publish a Response to Consultation and Draft Decision on its broader spectrum proposals by the end of Quarter 2 of this year;
- ComReg would then need to provide a sufficient period for interested parties to provide comments on these documents, and would itself require sufficient time to carefully consider such material prior to issue of its decision;





- Considerable preparatory work would also be required prior to the holding of any auction of the type currently envisaged, including the publication, consultation and settling of an information memorandum as well as conducting auction workshops, mock auctions, and so on, as necessary. It is also noted that an auction itself may extend over a number of weeks; and
- Taking all of the above into account, but without making allowance for any delays arising from legal challenge or other developments outside ComReg's control, ComReg considers, at this point in time, that any such auction might reasonably be completed by the end of Quarter 4 of this year.

*ComReg's indication that the 900 MHz band could be liberalised prior to 31 January 2013 and the interim licences revoked at such earlier date*

Whilst H3GI states that it "*is encouraged by certain of ComReg's statements at various places in the Decision, which might tend to suggest that there is real support for possible liberalisation of the 900MHz band prior to 31 January 2013*", it notes that "*certain other statements are inconsistent with this sentiment and thus discouraging*". In relation to the latter view, ComReg notes that H3GI cites the example of paragraph 5 of page 39 of Document 11/29.

ComReg does not consider there to be any material inconsistency between its statements as suggested by H3GI. ComReg believes that H3GI needs to consider ComReg's statement at paragraph 5 of page 39 of Document 11/29 in the context of the entire section in which it appears. In summary, ComReg was making the following points, in addition to that cited by H3GI:

- ComReg had not made a decision to delay availability of liberalised 900 MHz spectrum to January 2013;
- ComReg was proposing to issue interim licences—which were capable of being amended in the event of earlier liberalisation proving to be possible—in a manner that was designed to facilitate and not unduly constrain its deliberations on, and implementation of, its broader spectrum release proposals;
- ComReg was not in a position to know which operators would win spectrum nor what blocks of spectrum any operator would hold; and
- While ComReg remained open, as previously indicated, to evaluating the potential for earlier liberalisation once the result of the currently-proposed broader spectrum release process was known, it was of the view that it was not possible or appropriate, at this stage of its deliberations and at this time, to predict matters or to predetermine the approach that it would take in this regard, noting also the possible severe impacts on consumers and operators - matters which ComReg was entitled to consider.



Accordingly, the passage quoted by H3GI largely refers to the fact that ComReg's proposals have not yet been finalised or decided upon and that, in any event—as flagged in section 3.2 of Document 11/11, for example - early liberalisation would appear to depend on certain facts and circumstances being in place in the future, which cannot be predicted at this point in time.

Furthermore, it should be borne in mind, in particular, that ComReg made the statement referred to by H3GI in the context of the “theoretically possible, although very unlikely” example of Vodafone and/or O2 not winning any 900 MHz spectrum rights. As you can appreciate, in these very unlikely circumstances, ComReg would be required by its statutory objectives to consider issues of consumer disruption, amongst other things.

*H3GI therefore requests that ComReg explain in detail the nature and extent of ComReg's commitment to seek earlier liberalisation of the 900 MHz band including the mechanisms it is proposing to use to secure earlier liberalisation*

As I noted earlier, ComReg's current broader spectrum release proposals, including the potential release of the 900 MHz band earlier than January 2013, are the matter of on-going consultation. ComReg's broader spectrum release proposals have been, and continue to be, influenced by, amongst other things, submissions provided by interested parties, and ComReg continues to refine and recalibrate its proposals in light of such material, including submissions provided by H3GI.

Nevertheless, and without prejudice to the foregoing, as H3GI would be aware, ComReg detailed, in section 3.2 of Document 11/11, how its current spectrum release proposals for the 800 MHz, 900 MHz and 1800 MHz bands could, in principle, be modified so as to provide the potential for liberalisation of the 900 MHz band earlier than 31 January 2013.

In addition, as highlighted in your letter, the interim licences provided for in the Decision and in the Regulations are capable of fitting in with and facilitating the possible earlier liberalisation of the 900 MHz band.

ComReg is still interested in, and continues to carefully consider this particular aspect of its broader spectrum-release proposals in light of submissions provided by interested parties and in the context of ComReg's statutory functions, objectives and duties. H3GI will have the opportunity of making submissions and providing material in response to ComReg's final proposals in relation to this aspect, in due course, and further to assess ComReg's proposals at the appropriate time.

#### *Request for meeting with ComReg*

As earlier outlined, ComReg will, in due course, publish a Response to Consultation and Draft Decision on its broader spectrum-release proposals, which will include final draft proposal(s) and will also invite final submissions and information from interested parties. That Response to Consultation and Draft Decision will also include analysis of,





draft proposal(s) and will also invite final submissions and information from interested parties. That Response to Consultation and Draft Decision will also include analysis of, and commentary on, H3GI's submissions on the issues raised by H3GI in its current letter. ComReg will then consider and evaluate all of the material before it prior to making a final decision.

In these circumstances, whilst ComReg in no way wishes to restrict any party in making effective and full submissions, or in providing relevant information during the course of a consultation process, it does not appear necessary in this instance to hold bilateral meetings with interested parties. In principle, and in practice, it would appear that all relevant submissions and information can be adduced by way of written material provided to ComReg through the normal mechanisms. In this regard, a response to consultation and draft decision is expected to be completed on which all interested parties would be able to provide comment in the next 8 weeks or so. Therefore, ComReg is not currently minded to hold such a meeting.

Finally, as indicated in Document 11/29 and as is ComReg's usual practice, correspondence, such as your letter of 21 April 2011, is treated as a submission in response to consultation, and, subject to ComReg's *Guidelines on the Treatment of Confidential Information* and to any comments you wish to make in that regard, your letter will be published as a response in due course. I also advise that ComReg will, in the interests of ensuring utmost transparency of its consultation process, be publishing this letter in due course.

I trust this adequately clarifies the matters raised.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. Ritchie'.

**Dr. Samuel Ritchie**  
**Spectrum Operations Manager**

11. Hutchison 3G Ireland: Reply to ComReg letter of 28 April 2010 (*letter dated 11 May 2011*)

Hutchison 3G Ireland Limited  
Registered office

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

Registered Number: 316982  
Place of Registration: Republic of Ireland



Dr. Samuel Ritchie, Spectrum Operations Manager  
Commission for Communications Regulation  
Abbey Court  
Irish Life Centre  
Lower Abbey Street  
Dublin 1

**BY COURIER AND EMAIL:** [samuel.ritchie@comreg.ie](mailto:samuel.ritchie@comreg.ie)

11 May 2011

Dear Samuel

**Decision No. D03/11: Response to Consultation and Decision – Interim Licences for the 900 MHz Band**

I refer to your letter dated 28 April 2011. Hutchison 3G Ireland Limited (“H3GI”) wishes to reiterate its considerable disappointment concerning ComReg’s decision to grant interim licences to Vodafone Ireland Limited (“Vodafone”) and T  l  fonica O2 Ireland Limited (“O2”) in respect of the use of 900 MHz spectrum (the “Interim Licence Decision”).

Notwithstanding H3GI’s disappointment with the Interim Licence Decision, H3GI welcomes the content of your letter dated 28 April 2011 including, in particular:

1. The provision by ComReg of an indicative timetable in respect of the proposed award process, including the publication of a Response to Consultation and Draft Decision on its broader spectrum proposals by the end of Quarter 2 of this year and completion of the auction by the end of Quarter 4 of this year;
2. ComReg’s emphasis of the final nature of the expiry date for the interim licences to be granted to Vodafone and O2 in respect of the use of 900 MHz spectrum; and
3. ComReg’s confirmation that it is still interested in early liberalisation of 900 MHz and that H3GI will have the opportunity to make submissions and provide material in response to ComReg’s final proposals in relation to this aspect, in due course, and further to assess ComReg’s proposals at the appropriate time.

H3GI has been considering an appeal of the Interim Licence Decision. However, notwithstanding our considerable concerns about the Interim Licence Decision, we are no longer considering this course of action. The decision not to pursue an appeal of the Interim Licence Decision has been made in reliance on the statements made in ComReg’s letter of 28 April 2011 (summarised above); our reasonable expectation that ComReg is committed to the steps outlined below and our desire to avoid taking any step which could jeopardise or delay release and liberalisation.

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

A Hutchison Whampoa Company





It is important that ComReg understands the importance that H3GI attached to the following steps in taking its decision:

1. ComReg will closely follow the indicative timetable set out in its letter of 28 April 2011, so as to ensure that liberalised 900 MHz spectrum will be made available at latest by 31 January 2013, and where practicable earlier;
2. ComReg will publish its Response to Consultation and Draft Decision by the end of Quarter 2 of this year. In this respect, H3GI reasonably assumes that the Response to Consultation and Draft Decision will address, in particular, the following matters:
  - a. The issue of fees in respect of early liberalisation of 900 MHz.
  - b. The adoption by ComReg of a sufficiently robust and transparent process to ensure prompt completion of transitional activities by Vodafone, O2 and Meteor Mobile Communications Limited ("Meteor") (e.g. setting of milestones for specific tasks, sufficiently robust and transparent mechanisms to monitor compliance with milestones set, and appropriate sanctions for non-compliance). It is imperative that the process adopted by ComReg includes the involvement of third party operators such as H3GI and/or its advisors, having regard to the protection of commercially sensitive information.
  - c. The provision of an indicative timetable in respect of:
    - The publication by ComReg of its Response to Consultation and Decision on its broader spectrum proposals;
    - The publication, consultation and settling by ComReg of an Information Memorandum dealing with the award process and conduct of that process going forward;
    - The provision by ComReg to interested parties of auction software, if applicable;
    - The timing of workshops, mock auctions, etc.; and
    - The commencement date of the auction.
3. ComReg will ensure that it has sufficient information in relation to the networks of Vodafone, O2 and Meteor in advance of the auction to allow ComReg to properly consider the issue of early liberalisation of 900 MHz in the light of those auction results, so as to seek liberalisation of 900 MHz as early as possible, and in advance of 31 January 2013.

H3GI looks forward to real momentum in this process so that ComReg's final consultation in relation to its broader spectrum proposals takes place by the end of Quarter 2 of this year as promised, and that there is an open-minded consideration of the various options with the auction of 800, 900 and 1800 MHz taking place by the end of Quarter 4 of this year.

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Dublin 2, Ireland

Registered Number: 316982  
Place of Registration: Republic of Ireland



Yours sincerely

  
MARK HUGHES  
Head of Regulatory

Copy: Mr Alex Chisholm, Chairperson, ComReg ([alex.chisholm@comreg.ie](mailto:alex.chisholm@comreg.ie))

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