



Commission for
Communications Regulation

Information Notice

GSM Liberalisation Project: Publication of correspondence provided by interested parties (and ComReg's written responses to same)

Document No:	12/94r
Date:	30 April 2013

A.1 Non-confidential correspondence provided by respondents in relation to ComReg’s multi-band spectrum release proposals from 14 June 2012 until 24 August 2012 (and ComReg written responses to same).

1. Telefónica: letter to ComReg “Multi-band Spectrum Release– 800 MHz, 900 MHz & 1800 MHz Consultation” (letter dated 14 June 2012);
2. ComReg: reply to Telefónica letter of 14 June 2012 (letter dated 19 June 2012);
3. Telefónica: reply to ComReg letter of 19 June 2012 (letter dated 22 June 2012);
4. ComReg: reply to Telefónica letter of 22 June 2012 (letter dated 12 July 2012);
5. A&L Goodbody: letter to ComReg “Multi-band Spectrum Release Consultation – 800 MHz, 900 MHz & 1800 MHz (“the Consultation”)” (letter dated 25 June 2012);
6. ComReg: reply to A&L Goodbody letter of 25 June 2012 (letter dated 12 July 2012);
7. A&L Goodbody: reply to ComReg letter of 12 July 2012 (letter dated 20 July 2012);
8. ComReg: reply to A&L Goodbody letter of 20 July 2012 (letter dated 10 August 2012);
9. H3GI: letter to ComReg “COMREG DOC. NO. 12/49” (letter dated 18 June 2012);
10. ComReg: reply to H3GI letter of 18 June 2012 (letter dated 12 July 2012);
11. Vodafone: letter to ComReg (letter dated 18 July 2012);
12. ComReg: reply to Vodafone letter of 18 July 2012 (letter dated 20 July 2012);
13. Vodafone: reply to ComReg letter of 20 July 2012 (letter dated 1 August 2012);
14. ComReg: reply to Vodafone letter of 1 August 2012 (letter dated 24 August 2012);
15. Telefónica: letter to ComReg “Multi-band Spectrum Release Consultation (the “Consultation”) – Question and Answer Procedure” (letter dated 20 July 2012)¹;
16. ComReg: reply to Telefonica letter of 20 July 2012 (letter dated 10 August 2012)².

¹ Previously unpublished due to issues of confidentiality

² Previously unpublished due to issues of confidentiality

A.1 Non-confidential correspondence provided by respondents in relation to ComReg's multi-band spectrum release proposals from 14 June 2012 until 24 August 2012 (and ComReg written responses to same).

1. Telefónica: letter to ComReg "Multi-band Spectrum Release– 800 MHz, 900 MHz & 1800 MHz Consultation" (letter dated 14 June 2012);

**By Post &
Email-george.merrigan@comreg.ie**

George Merrigan
Commission for Communications Regulation
Abbey Court
Irish Life Centre
Lower Abbey Street
Dublin 1

14th June 2012

[REDACTED]

Multi-band Spectrum Release - 800 MHz, 900 MHz & 1800 MHz Consultation

Dear Mr Merrigan,

We refer to the above matter and to our separate letter of 13th June 2012. This letter is being sent to you separately on the basis that it addresses a specific issue and is confidential in its entirety. It must not to be published by ComReg as part of the consultation procedure.

We are writing to you in relation to a specific issue in relation to the requirement for all applicants to submit an Applicant's Declaration as part of their application to participate in the Proposed Auction.

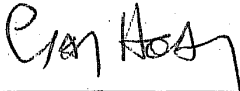
As you are aware, Telefónica Ireland and Meteor entered into a network sharing arrangement called Mosaic in 2011, details of which arrangement were provided to ComReg. Through Mosaic, Telefónica Ireland and Meteor jointly procure network leases, equipment, software and services which procurement is carried out by the Mosaic team, a team separated from the two companies with detailed restrictions in place to prevent the transmission of company specific information back to either Telefónica Ireland and/or Meteor and the details around such restrictions were previously notified to ComReg. Telefónica Ireland assumes that the declarations contained in sections 5 and 6 of the Applicant's Declaration do not apply to its network sharing arrangement with Meteor, which arrangement will continue to operate, with the usual safeguards in place, during the Proposed Auction. For the avoidance of doubt, Telefónica Ireland will be signing the Applicant's Declaration on the basis that its network sharing arrangement with Meteor is disclosed to ComReg against sections 5 and 6 of the Applicant's Declaration.

Separately, we understand that as part of the application process, applicants are required to declare that "*failure to obtain consents, approval, apparatus or funding necessary to deploy a network or complete transitional activities shall be deemed to be a breach of the Auction Rules by that Winning Bidder*". As you are aware, it is a necessary element of deploying a network to apply for planning permission for sites and to purchase equipment. Telefónica Ireland assumes therefore that for the

purposes of the Proposed Auction a refusal of planning permission for a site (being outside the control of the applicants) will not of itself be deemed a failure to obtain consents. Equally, in circumstances where a supplier fails to deliver equipment for which an applicant has placed an order, Telefonica Ireland assumes that this will not of itself be deemed a breach of the auction rules. Please let us know if either of these assumptions are incorrect.

We look forward to hearing from you with confirmation as to the above mentioned issues by no later than 19th June 2012:

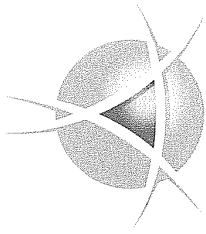
Yours sincerely



Gary Healy
Head of Regulatory and Public Policy
Telefonica Ireland Limited

Copy: Dr. Samuel Ritchie, Commission for Communications Regulation

2. ComReg: reply to Telefónica letter of 14 June 2012 (letter dated 19 June 2012);



Commission for
Communications Regulation

By Post and Email

19 June 2012

Dr. Gary Healy
Head of Regulatory and Public Policy
Telefónica Ireland Limited
28-29 Sir John Rogerson's Quay
Docklands
Dublin 2

Multi-Band Spectrum Award Process

Dear Dr. Healy,

I refer to your letter of 14 June 2012, postmarked 15 June, concerning the above matter which I received by post on 18 June 2012 (and not by email as your letter indicates). I have responded separately to the letter from A&L Goodbody, sent on your behalf, dated 13 June.

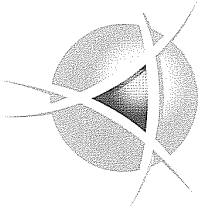
You write in relation to two specific issues regarding the application process for the Multi-Band Spectrum Award Process:

1. Whether the declarations contained in sections 5 and 6 of the Applicant Declaration (as set out in Annex 5 of Document 12/52) relate to network sharing arrangements already entered into by an Applicant; and
2. Whether (a) refusal of planning permission for a site (being outside the control of an Applicant) and/or (b) where a supplier fails to deliver equipment for which an Applicant has placed an order will be deemed a breach of the auction rules.

ComReg considers that queries of this nature, particularly given their general applicability to Interested Parties, are appropriately addressed through its Question and Answer procedure, as set out in section 3.3.1 of Document 12/52.

ComReg, therefore, invites Telefónica to submit its queries in accordance with that procedure. Responses will then issue in due course. In that regard, you should note that the deadline for submission of questions is 16.00 hours (local time) on 22 June 2012, and that all questions received in due time will be replied to on an on-going basis and as far as possible within 8 working days. In any case, ComReg anticipates publishing all questions and associated answers no later than 6 July 2012.

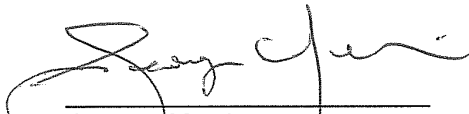
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Commission for Communications Regulation
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Commission for
Communications Regulation
Coimisiun Um
Railail Cumarsaide

As you know, it is ComReg's policy to publish exchanges of correspondence such as this in accordance with its usual procedures (and also with such redactions as required to protect the anonymity of a person submitting a question in the Question and Answer procedure). Whilst noting your view that your letter is confidential in its entirety, I would nevertheless be grateful if you would re-consider same in light of this reply and inform ComReg of any specific confidential material in your letter that Telefónica considers ought not to be published in accordance with these procedures.

Yours sincerely,



George Merrigan
Director
Market Framework Division

3. Telefónica: reply to ComReg letter of 19 June 2012 (letter dated 22 June 2012);

~~Strictly Confidential~~22nd June 2012

Dr Samuel Ritchie
 Multi-Band Spectrum Award
 Commission for Communications Regulation
 Abbey Court, Irish Life Centre
 Lower Abbey Street
 Dublin 1

Dear Samuel

Multi-Band Spectrum Award

I refer to Telefonica's letter dated 14th June, and ComReg's response dated 19th June.

In your letter you invited Telefonica to "submit its queries" in accordance with the process set out in section 3.3.1 of Document 12/52. To clarify, we do not categorise as a query the point made in paragraph 3 of our letter, concerning sections 5 & 6 of the Applicant's Declaration and the ongoing operation of Mosaic including joint procurement activities. It was putting ComReg on notice (along with the other points in our letter) of the assumption that Telefonica is making and will make in submitting any application. In light of your request and to avoid any ambiguity about ensuring that our position is on record with ComReg, we are restating paragraph 3 in this document, which is being submitted in accordance with the process set out in section 3.3.1 of Document 12/52. However we reiterate the view that this is a notification and not a query seeking a response from ComReg. We further reiterate that this document is confidential in its entirety and not for publication.

As you are aware, Telefónica Ireland and Meteor entered into a network sharing arrangement called Mosaic in 2011, details of which arrangement were provided to ComReg. Through Mosaic, Telefónica Ireland and Meteor jointly procure network leases, equipment, software and services which procurement is carried out by the Mosaic team, a team separated from the two companies with detailed restrictions in place to prevent the transmission of company specific information back to either Telefónica Ireland and/or Meteor and the details around such restrictions were previously notified to ComReg. Telefónica Ireland assumes that the declarations contained in sections 5 and 6 of the Applicant's Declaration may be made subject to its network sharing arrangement with Meteor, which arrangement will continue to operate, with the usual safeguards in place, during the Proposed Auction. For the avoidance of doubt, Telefónica Ireland will be signing the Applicant's

Declaration on the basis that its network sharing arrangement with Meteor is disclosed to ComReg against sections 5 and 6 of the Applicant's Declaration.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Tom Hickey', with a long horizontal flourish extending to the right.

Tom Hickey

4. ComReg: reply to Telefónica letter of 22 June 2012 (letter dated 12 July 2012);



Commission for
Communications Regulation

12 July 2012

Mr Tom Hickey
Telefónica Ireland Limited
28-29 Sir John Rogerson's Quay
Docklands
Dublin 2

Multi-Band Spectrum Award Process

Dear Tom,

We refer to your letter of 22 June and to preceding and related correspondence concerning ComReg's Multi-Band Spectrum Award Process.

~~Confidential~~ Your letter concerns sections 5 and 6 of the Applicant's Declaration attached to the Information Memorandum (as it appeared in Annex 5 of Document 12/52 and Document 12/52a).

As you might be aware, ComReg, on Friday last, published (a) its Questions and Answers and Clarifications and (b) a revised Application Form, in connection with its Multi-Band Spectrum Award Process, by way of Information Notice (Document 12/73) and Document 12/52aR, respectively.

As part of this Question and Answer process, ComReg, amongst other things, identified textual changes required to the application form (as it appeared in Annex 5 of Document 12/52 and Document 12/52a) and we would therefore draw your attention to the revised sections 5 and 6 of the Applicant's Declaration of the Application Form (per Document 12/52aR):

5. The Applicant will ensure that the Applicant and any Connected Persons and any Insiders - shall refrain from entering into agreements or negotiations with a view to entering into agreements with other interested parties or their Connected Persons in relation to matters concerning the Award Process, including without prejudice to the generality of the foregoing agreements relating to spectrum, network or infrastructure sharing, from the time at which this Application is submitted to the date that the results of the Auction have been notified to all Bidders and in tandem made public (in accordance with section 4.6 of the Information Memorandum).

6. The Applicant has ensured and will ensure that the Applicant - and, to the best knowledge of the Applicant, any Connected Persons and any Insiders - neither prior to the submission of the Application, nor after the submission thereof and until the date that the results of the Auction have been notified to all Bidders and in tandem made

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public (in accordance with section 4.6 of the Information Memorandum), shall enter into agreements or establish any understanding with a provider of equipment or software which:

- *regulates such provider's possibility of supplying equipment or software to another Applicant or their Connected Persons concerning the planning, establishment or operation of a network using the frequencies dealt with in this Award Process, or*
- *regulate the prices or other terms and conditions that a provider of equipment or software may offer another Applicant or their Connected Persons in connection with the planning, establishment or operation of a network using the frequencies dealt with in this Award Process.*

The Applicant has ensured that agreements already entered into or understandings already established, as mentioned in this paragraph 6, have been terminated, and to the best knowledge of the Applicant, any Connected Persons and any Insider have ensured that any such agreements or understandings have been terminated.

We would also refer you ComReg's answer to Question 78 and would, accordingly, respond to your letter as follows.

Telefónica might note that section 5 of the Applicant's Declaration concerns arrangements entered into "from the time at which this Application is submitted...". Thus, infrastructure sourcing arrangements entered into by interested parties *prior* to the date on which Applications are submitted are not relevant to section 5 of the Applicant's Declaration.

Section 6 of the Applicant's Declaration applies to and includes arrangements entered into *prior* to the submission of an Application which continue to apply. Therefore, the arrangements which Telefónica describe as Mosaic will need to comply with section 6. ComReg will not accept qualified Applications in this respect. In other words and by way of example, should the Mosaic arrangements entered into by Telefónica contain restrictions on vendors of relevant equipment or software from supplying such equipment or software to Meteor or concerning the price at which they can sell such equipment or software to Meteor, then such restrictions would need to be terminated prior to the submission of an Application by Telefónica.

Finally, please note that ComReg will publish this exchange of correspondence in accordance with its usual procedures (and with such redactions as required in accordance with the procedures set out in ComReg's Information Memorandum). In that regard, we note your view that your letter of 22 June is confidential in its entirety. ~~Confidential~~

Yours sincerely,

A handwritten signature in blue ink, appearing to read "S. Ritchie", is written over a light blue circular stamp.

Dr. Samuel Ritchie
Manager Spectrum Operations

5. A&L Goodbody: letter to ComReg “Multi-band Spectrum Release Consultation – 800 MHz, 900 MHz & 1800 MHz (“the Consultation”)” (letter dated 25 June 2012);

A&L Goodbody Solicitors International Financial Services Centre North Wall Quay Dublin 1
 Tel: +353 1 649 2000 Fax: +353 1 649 2649 email: info@algoodbody.com website: www.algoodbody.com dx: 29 Dublin

A&L Goodbody

our ref | JFW/MEH 01366740

your ref |

date | 25 June 2012

Commission for Communications Regulation
 Abbey Court
 Irish Life Centre
 Lower Abbey Street
 Dublin 1



**Multi-band Spectrum Release Consultation - 800 MHz, 900 MHz & 1800 MHz
 ("the Consultation")**

Dear Sirs

We refer to your letter of 15 June 2012.

Our client maintains that it is fully entitled to have raised the issues contained in our letter of 13 June 2012, on the basis of legal advice and its view that such matters have not been adequately addressed by ComReg in the Consultation. We would draw your attention to the fact that although a lengthy and delayed consultation process has been carried out, this does not as you suggest simply translate to all matters being duly and carefully considered, or fully and properly addressed.

It is disappointing that of the 12 questions raised, our client has been requested by ComReg to resubmit 10 of those questions to what ComReg considers to be a separate question and answer procedure. The remaining 2 questions were not in fact answered, insofar as the answers given were not to the questions posed. Our client reserves its position with regard to the delay that has arisen as a result of the approach adopted by ComReg to this exchange of legal correspondence.

Confidentiality Concerns

In relation to the confidentiality concerns raised in our letter of 13 June 2012, we note the following from your response:

- (i) ComReg regards information-security as an important matter, takes information-security issues very seriously, and regrets the incidents that have occurred;
- (ii) ComReg has engaged a reputable consultancy organisation to ensure that such incidents do not occur in future, and that the work of the consultancy organisation is ongoing;

Dublin Belfast London New York Palo Alto

R.B. Buckley	B.M. Cotter	S.M. Doggett	M.P. McKenna	E.A. Roberts	A.C. Burke	D.R. Baxter	B. Walsh	R.M. Moore	K. Furlong	D.R. Francis
P.M. Law	J.G. Grennan	B. McDermott	K.A. Feeney	C. Rogers	J. Given	A. McCarthy	A.M. Curran	D. Main	P.T. Fahy	L.A. Murphy
J.H. Hickson	J. Coman	C. Duffy	M. Sherlock	G. O'Toole	D. Widger	J.F. Whelan	A. Roberts	J. Cahir	A.J. Johnston	A. Walsh
M.F. O'Gorman	P.D. White	E.M. Brady	E.P. Conlon	J.N. Kelly	C. Christie	J.B. Somerville	C. Widger	M. Traynor	M. Rasdale	A. Casey
C.E. Gill	V.J. Power	P.V. Maher	E. MacNeill	N. O'Sullivan	S. Ó Cróinín	M.F. Barr	M. Dale	R.M. Murray	D. Inverarity	B. Hosty
E.M. FitzGerald	L.A. Kennedy	S. O'Riordan	K.P. Allen	M.J. Ward	J.W. Yarr	M.L. Stack	C. McCourt	N. Ryan	M. Coghlan	

Consultants: J.R. Osborne S.W. Haughey T.V. O'Connor Professor J.C.W. Wylie A.F. Browne M.A. Greene A.V. Fanagan J.A. O'Farrell I.B. Moore

- (iii) ComReg is not aware of any information-handling incidents "of the type forming the subject matter of the correspondence between ComReg and Vodafone" other than the incidents referred to in our letter. (emphasis added)



It is unfortunate that ComReg goes on to say that it "*does not feel obliged*" to provide our client with the assurances that it seeks regarding the confidentiality of its information. Instead you again direct our client to a question and answer procedure, with a unilaterally imposed closing date, to raise matters of such importance. Please note that our client has resubmitted the questions, but expressly reserves its position to raise queries at any time, as and when it deems appropriate, in relation to the protection of the confidentiality of its information.

Please note that question number 3 was not in fact answered – the question was not whether ComReg believes that it has inappropriately shared information, which is a separate issue, but whether and what information has been shared.

Please note that our client does not agree that Question 7 or Question 10 is adequately or properly addressed in the referenced sections of the consultation documents.

Limitation of Liability

We do not see a ComReg response that we should be "*capable*" of advising on liability issues, as being an appropriate or helpful response from a Regulator. As was stated, we are not aware of circumstances under which ComReg is entitled to limit its liability in the manner that it purports to do so. We are therefore putting ComReg on notice that our client is continuing with this process on the understanding that ComReg may not limit its liability in the manner suggested. If ComReg believes that it can, then it has a duty as a Regulator and in law to clarify the legal basis on which it relies to do so.

We continue to expressly reserve our client's position in relation to the following:

- (a) notwithstanding the importance of Decision 12/25 for the industry and as an exercise of ComReg's statutory obligations, the fact that ComReg seeks to exclude all liability for any loss, consequential loss, or damage of any kind that may be claimed by any party in connection with the process;
- (b) notwithstanding the importance of the auction process the fact that ComReg purports in the Information Memorandum to exclude all liability in relation to the contents of any written or oral information made available by ComReg or its personnel or agents

to interested parties or any third party relating to the award process;

- (c) the fact that ComReg seeks to make it a mandatory pre-condition to entry into the auction process that our client accept that no liability exists for ComReg with respect to the software used to implement the electronic auction system;
- (d) the fact that ComReg purports to suggest that its aggregate liability for all losses or damages of any nature arising from delayed access to Lots in Time Slice 1 and/or 2 is expressly limited to the refunds or adjustments of licence fees as set out in subsection 2.2.6 of the Information Memorandum – and, given ComReg’s position, that it seeks to require the operators to agree to such terms before they can participate in the auction and/or to be deemed to have agreed to such terms by the mere submission of their application;
- (e) ComReg’s suggestion in Decision 12/25 and the Information Memorandum, that it has sole and unfettered discretion (as part of “transitional” activities or otherwise) to vary an existing GSM licence, or that ComReg may amend the rights, obligations and procedures relating to a liberalised use licence “from time to time”;
- (f) ComReg’s statements regarding licence commencement and timelines that Time Slice 1 is to be from 1 February 2013 (or such other date as may be specified by ComReg) to 12 July 2015 (or such other date as may be specified by ComReg) and that Time Slice 2 is from 13 July 2015 (or such other date as may be specified by ComReg) to 12 July 2030 (*emphasis added*);
- (g) the fact that, again ComReg’s position, seeks to require the operators to agree (by mere submission of their applications) to various onerous, one sided and/or significant terms, including that the commencement date of lots in the 800 MHz, 900 MHz and 1800 MHz bands in Time Slice 1 and/or Time Slice 2 may be delayed by ComReg;
- (h) ComReg’s refusal (despite acknowledging that spectrum trading will be permitted) to have clarified in advance of the Proposed Auction the rules and procedures associated with spectrum trading, pooling and sharing – we note your comment that this matter has been addressed, however our client reserves its position in relation to the impact and effect that the lack of a decision in these areas will have on other aspects of the process as matters progress;



- (i) the manner in which ComReg has sought to present the different documents and their timing for publication, as set out in our letter of 13 June 2012, and any attempt by ComReg to seek to avoid the statutory appeal process being available to operators.



We note ComReg's error in the disclaimer of liability in the opening paragraphs of the Information Memorandum, and are grateful for this clarification.

Our client reserves its position with regard to the fact that decisions, designations, determinations, specifications, requirements, directions, notifications and notices, and acts of equivalent nature, are only being made, or being made clear, as the auction process proceeds through its various stages.

Please note that our client does not require any redactions to this correspondence.

Yours faithfully

A+L Goodbody

M-13110163-3

6. ComReg: reply to A&L Goodbody letter of 25 June 2012 (letter dated 12 July 2012);



Commission for
Communications Regulation

By Post and Email

12 July 2012

A&L Goodbody Solicitors
International Financial Services Centre
North Wall Quay
Dublin 1

Multi-Band Spectrum Award Process

Dear Sirs,

We refer to your letter of 25 June, 2012, concerning the above matter. We refer also to your earlier letter of 13 June and our letter of response dated 15 June.

In relation to the point you make concerning the raising of particular issues by your client at this stage, ComReg was not, as you assert, merely suggesting that, simply by virtue of there having been a lengthy and detailed consultation process, this necessarily translated into all matters having been duly and carefully considered. The points sought to be made in our letter of 15 June were that, with regard to issues raised by you on behalf of your client in your letter of 13 June which were also raised by it during the course of ComReg's consultation on its Multi-Band Spectrum Award Process ("the Consultation"):

- if your client now feels they were not adequately addressed in the Consultation, ComReg does not agree that there is any substance to this;
- ComReg feels that all such matters were in fact duly and carefully considered by it, as reflected in the Consultation documentation, and taken on board (or not, as the case may be) to the extent reflected in ComReg's Decision (Document 12/25 and Decision 04/12) and ComReg's Information Memorandum (Document 12/52); and
- whilst, of course, ComReg cannot force Telefónica to agree that all matters were duly and carefully considered, that does not mean that ComReg is not entitled to take the view that they have indeed been so considered, to draw a line under its decision-making, and at this juncture to decline to entertain any revisiting of issues perceived by Telefónica not to have been adequately addressed in the Consultation.

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Next, whilst you characterise as “*disappointing*” ComReg’s request that a number of the queries put in your letter of 13 June be re-submitted as formal questions as part of the question-and-answer phase of ComReg’s documented process in that connection, ComReg still maintains that this was required as a matter of procedural propriety. Whilst there may have been no legal or other imperative from Telefonica’s point of view to re-submit these queries in a procedurally different way, ComReg certainly felt that there was such an imperative from its own perspective, and continues to take this view.

Further, ComReg does not understand your reference to ComReg ‘considering’ the question-and-answer procedure to be a separate procedure. The particular and separate nature of that procedure is well-known to your client, having previously been flagged during the consultation phase (Document 11/75), and having then been incorporated in the final Information Memorandum (Document 12/52), and outlined in section 3.3.1 of Document 12/52.

Moreover, ComReg does not understand your reference to any delay being entailed by the use of that procedure, given that it is a structured part of the overall process, with a built-in, previously advised (and, indeed, previously consulted upon) deadline. In the latter regard, we would note that the reference in your letter to the question-and-answer procedure to which your client was referred having “...*a unilaterally imposed closing date...*” is also misconceived, insofar as the proposed closing date was made known to all parties, and consulted on, prior to its being fastened upon.

Confidentiality Concerns

In relation to your comment concerning ComReg not ‘feeling obliged’ to provide your client with the assurances it sought in your letter of 13 June, and this being “*unfortunate*”, ComReg points out for clarity that this was not an obstructive refusal, but, rather one based on principle, and on ComReg’s view that your requests for replies to particulars sought and for certain assurances were based on a premise of there being systemic problems within ComReg relating to information-handling and security, with which ComReg does not agree for the reasons set out by it in recent correspondence, both with you and with Vodafone (see Documents 12/49R and 12/74). There being, in ComReg’s view, no platform for requiring the furnishing of particulars and assurances with regard to these matters generally, beyond those already appropriately given by ComReg with regard to the information-handling arrangements specific to the current process, ComReg did not, and does not, as a matter of law, feel obliged to furnish such particulars and assurances.



In relation to your comment that question number 3 in your letter of 13 June was not answered, ComReg disagrees. In that regard, again, ComReg does not consider that there is any premise or platform for requiring it to conduct an audit of whether any particular information was shared, and, if so, what information that might have been. ComReg, accordingly, provided an answer that was called for, and ought to be sufficient for your client, which is that it has not shared, and does not share, information inappropriately.

We also note your comment that your client does not agree that questions 3 and 7 in your letter of 13 June are adequately or properly addressed in the referenced sections of the Consultation documents. In that regard, ComReg's position, again, is that:

- if your client now feels they were not adequately addressed in the Consultation, ComReg does not agree that there is any substance to this;
- ComReg feels that all such matters were in fact duly and carefully considered by it, as reflected in the Consultation documentation, and taken on board (or not, as the case may be) to the extent reflected in ComReg's Decision (Document 12/25 and Decision 04/12) and ComReg's Information Memorandum (Document 12/52); and
- whilst, of course, ComReg cannot force Telefónica to agree that all matters were duly and carefully considered, that does not mean that ComReg is not entitled to take the view that they have indeed been so considered, to draw a line under its decision-making, and at this juncture to decline to entertain any revisiting of issues perceived by Telefónica not to have been adequately addressed in the Consultation.

Limitation of Liability

ComReg rejects your comment to the effect that it is inappropriate for it to respond that, insofar as you, as a large and competent law firm, feel able to state that you are not aware of any circumstances under which ComReg is entitled to limit its liability in this process in the manner proposed by ComReg, you are accordingly "*capable*" of so advising your client.

Also, ComReg is unable to see how pegging the extent of its wish to limit its liability to that which is permitted by law puts your client, or any party, at a disadvantage, or is in any way inappropriate or lacking in transparency.

ComReg notes that you have now advised your client that it may proceed on the understanding that ComReg may not limit its liability in the manner suggested. That



is a matter for, and between, you and your client. Whilst your client is entitled to take its own view, based on its legal advice, on the extent of ComReg's ability to limit its liability, at the end of the day, the true extent of that ability can only be decided by a judge in accordance with law. You have advised your client in that regard, and it is a matter for it as to whether it wishes to proceed on foot of same. It is not ComReg's function to advise or counter-advise your client, and the inclusion of the particular limitation of liability provision in Document 12/25, in effect, invites participants to seek their own legal advice concerning the extent of the limitation, so that such parties can then satisfy themselves as to the basis upon which they apply to participate in the auction process. In theory, different parties' legal advisers may arrive at different conclusions, but each party will have to decide, on the basis of the best advice it can obtain, whether it wishes to apply to participate in the required, unqualified, way and on the basis of the provisions included in ComReg's process documentation.

In the latter connection, also, ComReg therefore points out that your client may not, as it purports to do, reserve its position with regard to the matters listed at (a) to (h) on pages 2 and 3 of your letter insofar as this indicates your client's application to partake in the Award Process might in some way be qualified by this reservation. This is because:

- applicants need to sign up to the process on the basis of an acceptance of its terms, and, in the absence of a legal challenge to that element of the process, they must either sign up and accept in an unqualified way, or decline to do so;
- again, certain other aspects of the process and ComReg's decision-making set out in paragraphs (a) to (h) have not been the subject of a legal challenge, and are therefore part of the process in respect of which no position can be reserved or qualified application made;
- finally, certain aspects of the process in paragraphs (a) to (h) relate to the limitation or exclusion of liability on ComReg's part, and, once your client has decided that it wishes to participate in the auction on the basis of its advice as to the meaning and effect of these exclusions and/or limitations, there is no basis for reserving your client's position because it must accept these exclusions and limitations as part of its participation. We also note that, insofar as limitations or exclusions of liability by ComReg are conditioned on these being only to the extent permitted by law, your client's position in relation to such exclusions or limitations is, at least at the level of objective legal principle, preserved in any event, in that it would be open to it to challenge any particular exercise by ComReg of its rights of exclusion or



limitation of liability on the basis of such not having, in fact, been such as the law would permit.

In relation to paragraph (i) on page 4 of your letter, ComReg rejects the suggestion that it has "*sought*" to present different documents for publication in a particular manner and with particular timings, insofar as that is intended to convey the idea that ComReg has set out to publish the process documentation in a manner that would achieve some untoward objective or end.

In particular also, ComReg rejects the idea that it might have been attempting to seek to avoid the statutory appeal process being available to operators. In this regard, ComReg notes simply that it has been attending to the various strands of this process using its best endeavours to progress them as expeditiously and coherently as possible, and has not sought by means of the structuring of its process to avoid the statutory appeal process being available to operators. In the latter regard, ComReg notes that the appeal process has been provided for by law, and that the matters of when an appeal may crystallise and/or when the commencement of an appeal period may be triggered are matters determined by the proper interpretation of the relevant statutory provisions and legal principles and their application to particular facts and circumstances, and not by any alleged acts or omissions of ComReg.

Finally, please note that ComReg will publish this exchange of correspondence in accordance with its usual procedures (and with such redactions as may be required in accordance with the procedures set out in ComReg's Information Memorandum). In that regard, we note that your client does not require any redactions to this correspondence.

Yours faithfully,



George Merrigan
Director, Market Framework

7. A&L Goodbody: reply to ComReg letter of 12 July 2012 (letter dated 20 July 2012);

A&L Goodbody Solicitors International Financial Services Centre North Wall Quay Dublin 1
 Tel: +353 1 649 2000 Fax: +353 1 649 2649 email: info@algoodbody.com website: www.algoodbody.com dx: 29 Dublin

A&L Goodbody

our ref | JFW/MEH 01366740

your ref |

date | 20 July 2012

Commission for Communications Regulation
 Abbey Court
 Irish Life Centre
 Lower Abbey Street
 Dublin 1



**Multi-band Spectrum Release Consultation - 800 MHz, 900 MHz & 1800 MHz
 ("the Consultation")**

Dear Sirs,

We refer to your letter of 12 July 2012.

Our client is writing to you separately with regard to important issues that remain to be more fully addressed in the Consultation. Whether such matters have been adequately addressed to date is a matter to be determined by the proper interpretation of the relevant statutory provisions, ComReg's legal obligations and objectives, and their application to the facts and circumstances. Our client, along with other operators in the industry, remains of the view that there are key issues outstanding from the Consultation documents and the Question and Answer procedure that followed. It remains the case that the auction proposed fundamentally conflicts with many of ComReg's statutory and non-statutory legal obligations. ComReg is obliged in law to take the option that has the least adverse effect on the market, licensees and ultimately consumers, which has not been the case. In response to your query about the reference to the Question and Answer procedure being a separate procedure, what we mean is that it is separate to this legal correspondence.

Confidentiality Concerns

Our client made no reference to "systematic" problems within ComReg, but simply sought basic assurances with regard to safeguards around the confidentiality of its information, and transparency in relation to adequacy of procedures. We had on behalf of our client raised three questions on the issue of confidentiality. ComReg's response was to invite Telefonica to submit questions on confidentiality to the ongoing Question and Answer procedure. Telefonica did so. ComReg's response then, in the Question and Answer procedure, was that it did not consider such a request to be appropriate in the context of that procedure. We fully reserve our client's position in relation to the manner in which this issue has been handled, the fact that ComReg has refused to provide the necessary legal comfort to our client, and the fact that we may raise such matters again.

ComReg's Limitation of Liability

We agree with your statement that at the end of the day the true extent of ComReg's ability to limit its liability can only be decided by a Judge in accordance with law. This equally applies to our client's reservation of rights with regard to the matters listed at (a) to (i) of our letter of 25 June 2012. We

Dublin Belfast London New York Palo Alto

R.B. Buckley	B.M. Cotter	S.M. Doggett	M.P. McKenna	E.A. Roberts	A.C. Burke	D.R. Baxter	B. Walsh	R.M. Moore	K. Furlong	D.R. Francis
P.M. Law	J.G. Grennan	B. McDermott	K.A. Feeney	C. Rogers	J. Given	A. McCarthy	A.M. Curran	D. Main	P.T. Fahy	L.A. Murphy
J.H. Hickson	J. Coman	C. Duffy	M. Sherlock	G. O'Toole	D. Widger	J.F. Whelan	A. Roberts	J. Cahir	A.J. Johnston	A. Walsh
M.F. O'Gorman	P.D. White	E.M. Brady	E.P. Conlon	J.N. Kelly	C. Christle	J.B. Somerville	C. Widger	M. Traynor	M. Rasdale	A. Casey
C.E. Gill	V.J. Power	P.V. Maher	E. MacNeill	N. O'Sullivan	S. Ó Cróinín	M.F. Barr	M. Dale	P.M. Murray	D. Inverarity	B. Hosty
E.M. FitzGerald	L.A. Kennedy	S. O'Riordan	K.P. Allen	M.J. Ward	J.W. Yarr	M.L. Stack	C. McCourt	N. Ryan	M. Coghlan	

Consultants: J.R. Osborne S.W. Haughey T.V. O'Connor Professor J.C.W. Wylie A.F. Browne M.A. Greene A.V. Fanagan J.A. O'Farrell I.B. Moore

regret your suggestion that we and our client were seeking legal advice from ComReg, which is not the case. Instead we were and are putting ComReg on notice that our client is continuing with this process on the understanding that ComReg may not limit its liability in the manner suggested. Again if ComReg believes that it can, then in our view it has a duty as a Regulator and in law to clarify the legal basis for that. As ComReg knows, our client, along with certain other operators, have little or no option but to participate in the auction and agree to ComReg's terms and so it is in that context that we continue to expressly reserve our client's position as set out in paragraphs (a) to (i) of our letter of 25 June 2012.



In particular, our client continues to reserve its position with regard to the fact that decisions, designations, determinations, specifications, requirements, directions, notifications and notices, and acts of equivalent nature, are only being made, or being made clear, as the auction process proceeds through its various stages.

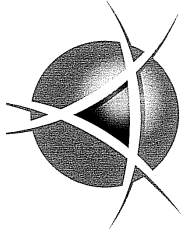
Finally, in the interests of transparency we request that this and our recent correspondence be published in unredacted form in accordance with ComReg's usual procedures. We note that despite already confirming this in response to a request from you on 27 June 2012, our letter of 25 June 2012 was for some reason omitted from the documents that ComReg published on 6 July 2012. We trust that this will be corrected.

Yours faithfully

A+L Goodbody

M-13275465-2

8. ComReg: reply to A&L Goodbody letter of 20 July 2012 (letter dated 10 August 2012);



Commission for
Communications Regulation

10 August, 2012

A&L Goodbody Solicitors
International Financial Services Centre
North Wall Quay
Dublin 1

**Multi-Band Spectrum Award Process – 800 MHz, 900 MHz & 1800 MHz
("the Process")**

Dear Sirs,

We refer to previous correspondence in relation to the above matter, resting with your letter to us dated 20 July, 2012.

ComReg's position(s) in relation to the matters raised in your latest letter remain(s) as fully articulated in previous correspondence, which it reiterates and adopts, and, where reference is made by you to ComReg's position-taking elsewhere (such as in the Question and Answer phase of the Process), ComReg also reiterates and adopts its position(s) as there expressed.

The matters rehearsed in your letter under reply have, accordingly, been fully rehearsed between your firm and ComReg at this stage, and a difference of views remains in relation to a number of them. In light of this, there is nothing ComReg can usefully add.

The only remaining issue is for ComReg to disagree strongly with the general assertions contained in the first paragraph of your letter, to the effect that there are "key" outstanding issues in the Process, and to the effect that ComReg's proposed auction conflicts with ComReg's obligations at law.

Finally, we note your request that the correspondence be published in un-redacted form in accordance with ComReg's usual procedures.

Yours faithfully,

Dr Samuel Ritchie

An Coimisiún um Rialáil Cumarsáide

Commission for Communications Regulation

Abbey Court Irish Life Centre Lower Abbey Street Dublin 1 Ireland
Telephone +353 1 804 9600 Fax +353 1 804 9665 Email info@comreg.ie Web www.comreg.ie

9. H3GI: letter to ComReg “COMREG DOC. NO. 12/49” (letter dated 18 June 2012);

Hutchison 3G Ireland Limited
Registered office

3rd Floor
One Clarendon Row,
Dublin 2, Ireland

Registered Number: 316982
Place of Registration: Republic of Ireland



Three.ie

Dr Samuel Ritchie
Multi-Band Spectrum Award
Commission for Communications Regulation
Abbey Court, Irish Life Centre
Lower Abbey Street
Dublin 1
Ireland
BY COURIER

18 June 2012

Dear Dr Ritchie

COMREG DOC. NO. 12/49

I refer to ComReg Doc. No. 12/49, *"Information Notice – GSM Liberalisation Project: Publication of correspondence provided by respondents (and ComReg written responses to same) and redacted paragraphs from Document 12/25"*. Hutchison 3G Ireland Limited ("H3GI") has the following comments and questions.

Can the Commission for Communications Regulation ("ComReg") please clarify whether it has published the letter from eircom Limited ("eircom") to ComReg dated 9 March 2012 referred to in eircom's letter to ComReg dated 3 April 2012? If not, when does ComReg expect to publish this letter?

Can ComReg please: (i) clarify the reference to *"as below"* in the email from Mr Alex Chisholm, Chairperson, ComReg to Vodafone Ireland Limited ("Vodafone") dated 23 April 2012; (ii) confirm that this email has been published in full; and (iii) if not, clarify why not? This email should be published in full by the final date for responses to questions on the award process to be published on ComReg's website, failing which H3GI reserves all rights.

In relation to the letter from Mr Paul Ryan, of Vodafone to Mr Alex Chisholm, Chairperson, ComReg dated 23 April 2012 and subsequent correspondence, H3GI shares Vodafone's concerns. Can ComReg please confirm that there has been no misdirection of correspondence intended for H3GI?

In relation to the email from Vodafone to ComReg dated 8 May 2012 and entitled *"Custodianship of Data and Spectrum auction process – Confidential"*, can ComReg please confirm when this email will be published (in redacted or non-redacted format)?

In relation to the letter from Mr George Merrigan, of ComReg to Mr Damian Collins, of McCann Fitzgerald Solicitors ("McCann Fitzgerald") dated 18 May 2012 and the following statement: *"I also refer to your letter dated 16 May regarding the same matters. ComReg will address this issues raised in this letter separately, including in relation to the report from Deloitte referred to in both letters"*, can ComReg please confirm whether ComReg has responded to the letter from McCann Fitzgerald dated 16 May? If so, can ComReg please confirm when this response will be published? If not, when does ComReg expect to respond to this letter? ComReg's response to this letter should be published by the final date for

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

A Hutchison Whampoa Company

Hutchison 3G Ireland Limited
Registered office

3rd Floor
One Clarendon Row,
Dublin 2, Ireland

Registered Number: 316982
Place of Registration: Republic of Ireland



Three.ie

responses to questions on the award process to be published on ComReg's website, failing which H3GI reserves all rights.

In relation to the letter from McCann Fitzgerald to ComReg dated 23 May 2012, can ComReg please confirm when this email will be published (in redacted or non-redacted format)?

Given the importance of and resources required for the upcoming 800, 900 and 1800 MHz auction, and the potentially adverse consequences of delay in ComReg clarifying its position regarding the Information Memorandum/award process, can ComReg please confirm that it will publish correspondence in relation to the award process within one working day of its responses, or in the case of correspondence the subject of a confidentiality claim, it will publish an information notice highlighting the existence of such correspondence within one working day of any such claim? Given the timing of the bidding rounds publication within one working day is reasonable.

Yours sincerely


MARK HUGHES
Head of Regulatory

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

A Hutchison Whampoa Company

10. ComReg: reply to H3GI letter of 18 June 2012 (letter dated 12 July 2012);



12 July 2012

Mr Mark Hughes
Head of Regulatory
Hutchison 3G Ireland Limited
3rd Floor
One Clarendon Row
Dublin 2

Dear Mr. Hughes,

Ref: COMREG DOC. NO. 12/49

We refer to your letter of 18 June 2012 in relation to publication of correspondence by the Commission for Communications Regulation ("ComReg") in connection with its Multi-Band Spectrum Award Process in Document 12/49 ("H3GI's Submission").

We would respond to the specific questions in H3GI's Submission as follows.

Question 1: "Can the Commission for Communications Regulation ("ComReg") please clarify whether it has published the letter from eircom Limited ("eircom") to ComReg dated 9 March 2012 referred to in eircom's letter to ComReg dated 3 April 2012? If not, when does ComReg expect to publish this letter?"

Answer 1: ComReg published this letter from eircom in Document 12/21 on 15 March 2012.

Question 2: "Can ComReg please: (i) clarify the reference to "as below" in the email from Mr Alex Chisholm, Chairperson, ComReg to Vodafone Ireland Limited ("Vodafone") dated 23 April 2012; (ii) confirm that this email has been published in full; and (iii) if not, clarify why not?"

Answer 2: The reference to "as below" in Alex Chisholm's e-mail of 23 April 2012 (as published in Document 12/49) refers to his previous e-mail of 23 April 2012, which was also published in Document 12/49.

Question 3: "Can ComReg please confirm that there has been no misdirection of correspondence intended for H3GI?"

1



Answer 3: ComReg can confirm that there has been no misdirection of correspondence intended for H3GI in the context of the Multi-Band Spectrum Award Process.

Question 4: "In relation to the email from Vodafone to ComReg dated 8 May 2012 and entitled "Custodianship of Data and Spectrum auction process - Confidential", can ComReg please confirm when this email will be published (in redacted or non-redacted format)?"

Answer 4: ComReg published this e-mail in Document 12/49R on 3 July 2012.

Question 5: "can ComReg please confirm whether ComReg has responded to the letter from McCann Fitzgerald dated 16 May? If so, can ComReg please confirm when this response will be published? If not, when does ComReg expect to respond to this letter?"

Answer 5: ComReg has responded to this letter and this letter was published as item 13 in Document 12/74 on 6 July 2012.

Question 6: "In relation to the letter from McCann Fitzgerald to ComReg dated 23 May 2012, can ComReg please confirm when this email will be published (in redacted or non-redacted format)?"

Answer 6: ComReg published this letter in Document 12/49R on 3 July 2012.

Question 7: "can ComReg please confirm that it will publish correspondence in relation to the award process within one working day of its responses, or in the case of correspondence the subject of a confidentiality claim, it will publish an information notice highlighting the existence of such correspondence within one working day of any such claim?"

Answer 7: ComReg will continue to publish substantive correspondence as soon as practicable in accordance with its Guidelines for the Treatment of Confidential Information (Document 05/24) and, where relevant, the procedures set out in ComReg's Information Memorandum.

Finally, please note that ComReg will publish this exchange of correspondence in accordance with its usual procedures (and with such redactions as may be required in accordance with the procedures set out in ComReg's Information Memorandum). In that regard, we note your view that parts of your letter of 18 June are confidential for reasons set out in your e-mail to Dr. Ritchie of 20 July, and we will write separately to you concerning H3GI's claim for confidentiality over these sections.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "S. Ritchie".

Dr. Samuel Ritchie
Manager Spectrum Operations

11. Vodafone: letter to ComReg (letter dated 18 July 2012);

18 July 2012



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

Dear Samuel

Re: Request for Clarification in Relation to Elements of ComReg's MBSA Information Memorandum

Vodafone notes the process for Interested Parties to bring to ComReg's attention errors or lack of clarity in the Multi-Band Spectrum Award Process ("**Spectrum Auction**") Information Memorandum (ComReg document 12/52) ("**Information Memorandum**") as set out in section 5.25 of that document.

Vodafone has recently identified some areas in the Information Memorandum where we consider there is a lack of clarity that needs to be addressed. Accordingly, as the Spectrum Auction is now at a critical juncture, we would appreciate if the following matters could be urgently clarified by ComReg in advance of the 20 July deadline for submitting applications to participate in the Spectrum Auction:

1. Lack of Clarity on Section on 'Validity of Bids'

In section 4.102 of the Information Memorandum, Vodafone notes that a key word appears to have been omitted from the final sentence. The sentence reads: *"In respect of Bidders other than Winning Bidders this commitment remains in force until ComReg announces the conclusion of the Award Process as specified in paragraph 5.31 of this document and in respect of Winning Bidders this commitment remains in force in line with the terms and conditions as set out in document."* It appears that a word (or words) should be included before the final word of the sentence to clarify the document referred to. In any event the reference to terms and conditions appears to be unclear.

Can ComReg clarify whether the terms and conditions referred to in section 4.102 of the Information Memorandum relate: i) solely to those in the Information Memorandum or to ii) both those in the Information Memorandum and some other document (e.g. a new spectrum licence), or iii) to the terms and conditions in the Information Memorandum and subsequently any terms set out in new spectrum licences?

2. Correspondence Remaining to be Published /Outstanding Correspondence

Vodafone Ireland Limited

MountainView, Leopardstown, Dublin 18, Ireland
 T: +353 (0)1 203 7777 F: +353 (0)1 203 7778 W: www.vodafone.ie

Registered Office: MountainView, Leopardstown, Dublin 18. Registered in Ireland No. 328967
 Directors: Jeroen Hoencamp (CEO) (NL) (Chairman), Thomas Rusten (DE), Paul Ryan


In relation to the Spectrum Auction more broadly, Vodafone notes that in the publication of correspondence in ComReg document 12/74, ComReg sets out in footnotes (such as in the footnote to letter number 4) that ComReg is awaiting clarification on the confidentiality status of the correspondence and will publish it at a later date. Can ComReg confirm when it will be in a position to publish those letters for which the confidentiality status was unclear at the time that ComReg document 12/74 was issued on the ComReg website? Can ComReg also confirm that there are no further letters awaiting publication other than the two letters referred to in document 12/74? As you will appreciate, all participants in the Spectrum Auction need to have full information at their disposal in advance of submitting their application forms to ensure that there is nothing undisclosed which may have an influence on the applications submitted or could have a material affect on the conduct of the Spectrum Auction itself.

3. Letter from A&L Goodbody dated 13 June 2012

We note that the letter from A&L Goodbody, acting on behalf of Telefonica Ireland Limited ("**Telefonica**"), dated 13 June 2012 has been substantially redacted and that in fact, approximately ten whole pages of the letter have been blacked out. This approach seems inconsistent with ComReg's standard approach of only redacting particular words or phrases that are deemed confidential but printing the balance of the letter. In particular, given that the part of page 2 of the letter which has not been redacted seeks assurances from ComReg on certain matters relating to the procedures for the Spectrum Auction, in our view it is not clear how the seeking of any such assurances could be deemed confidential in their entirety in order to warrant a complete blackout of the consequent ten pages. Again, to ensure that all participants have full information in advance of submitting their application forms for the Spectrum Auction and in the interests of full transparency, please specifically confirm that Telefonica were in agreement with the extent of these redactions and that either ComReg or Telefonica (as appropriate) provided substantive grounds to support the redaction of the final ten pages (approximately) of this letter and that the subject matter specifically required it to be redacted in full. Please provide details of these grounds and if this is not the case, we would ask that you publish as much of the non-confidential parts of the letter as possible.

Given the imminent application deadline on Friday 20 July, we should be obliged to hear from you by close of business on Thursday, 19 July next.

Yours Sincerely



Patrick Crowley

12. ComReg: reply to Vodafone letter of 18 July 2012 (letter dated 20 July 2012)



Patrick Crowley
Regulatory Executive
Vodafone Ireland Limited
Mountain View
Leopardstown
Dublin 18

Dear Patrick

I refer to your letter and email to me of 18 July 2012.

I note that your letter contains three separate queries which I will address separately below.

In relation to your first query regarding paragraph 4.102 of Document 12/52, please see Clarification 16 published on 20 July 2012¹ which addresses this issue.

In relation to your second query regarding the publication of outstanding correspondence, ComReg confirms that it has and will publish all correspondence and information relating to the Multi Band Spectrum Award Process in non-confidential format in a timely manner. ComReg is also satisfied that the type of information which will become available once non-confidential versions of outstanding correspondence are published would not influence applications submitted or have a material effect on the conduct of the Auction.

In relation to your final point regarding A&L Goodbody's letter dated 13 June 2012, please note that ComReg has treated the correspondence in question in the same manner as other correspondence relating to the Multi Band Spectrum Award Process. That is to say, all correspondence has been subject to the process as detailed in Document 05/24 and Document 12/52. In accordance with its processes and procedures, ComReg does not divulge the nature of or the reasoning for redaction of confidential material.

I trust this deals adequately with your queries.

Kind Regards,



Dr. Samuel Ritchie

¹ Please see http://www.comreg.ie/fileupload/MBSA_Clarification_16.pdf

13. Vodafone: reply to ComReg letter of 20 July 2012 (letter dated 1 August 2012);



1 August 2012

Dr Samuel Ritchie
Multi-Band Spectrum Award
Commission for Communications Regulation
Abbey Court, Irish Life Centre
Lower Abbey Street
Dublin 1
Ireland
BY EMAIL

Re: Request for Clarification in Relation to Elements of ComReg's MBSA Information Memorandum

Dear Samuel

I refer to my letter of 18 July and to your response received after business hours on 20 July 2012, the contents of which are noted.

In relation to the second query regarding the publication of outstanding correspondence, I note your confirmation that ComReg will publish all correspondence and information relating to the Multi-Band Spectrum Award Process in non-confidential format in a timely manner.

Notwithstanding this confirmation, the outstanding correspondence still does not yet appear to have been published. I should be obliged if you could please confirm when ComReg intends to publish all outstanding correspondence.

Yours Sincerely

A handwritten signature in black ink that reads "Patrick Crowley".

Patrick Crowley

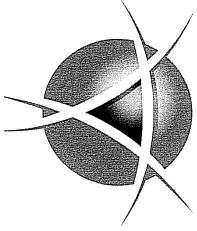
Regulatory Executive

Vodafone Ireland Limited

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Registered Office: MountainView, Leopardstown, Dublin 18, Registered in Ireland No. 326967
Directors: Jeroen Hoencamp (CEO) (NL) (Chairman), Thomas Reisten (DE), Paul Ryan

14. ComReg: reply to Vodafone letter of 1 August 2012 (letter dated 24 August 2012).



Commission for
Communications Regulation

24 August 2012

Mr. Patrick Crowley
Regulatory Executive
Vodafone Ireland Limited
Mountain View
Leopardstown
Dublin 18

Re: Vodafone letter of 1 August 2012

Dear Mr. Crowley,

Thank you for your letter of 1 August 2012.

Please note that the correspondence to which you refer, and all other outstanding correspondence, will be published today.

Yours sincerely

Dr. Samuel Ritchie

15. Telefónica: letter to ComReg “Multi-band Spectrum Release Consultation (the “Consultation”) – Question and Answer Procedure” (letter dated 20 July 2012)¹;

¹ Previously unpublished due to issues of confidentiality



20 July 2012

Mr. George Merrigan
ComReg
Abbey Court
Irish Life Centre
Lower Abbey Street
Dublin 1

Dear Mr. Merrigan

Multi-band Spectrum Release Consultation (the “Consultation”) – Question and Answer Procedure

I refer to the above mentioned matter and in particular to the questions Telefónica Ireland submitted to ComReg in accordance with the question and answer procedure outlined by ComReg in its Information Memorandum and the responses to those questions which were published by ComReg in its Questions & Answers and Clarifications Document dated 6 July 2012 (the “**Clarifications Document**”).

Telefónica Ireland remains of the view that there are key issues outstanding from the question and answer procedure which remain to be more fully addressed in the Consultation. We have identified the following issues which we believe require further consideration by ComReg.

1. Question 36 - Party Specific Lots and the Knockout Bid

As part of the question and answer procedure, Telefónica Ireland requested clarification from ComReg that it will provide information regarding aggregate demand for party specific lots at the conclusion of the primary round. Telefónica Ireland notes ComReg’s response to this question was (i) that the premise of the question was incorrect; and (ii) that the question of how round-by-round information affects knockout bids is one which had not been previously raised in the Consultation. ComReg also fails to address the merits of Telefónica Ireland’s proposal that the information regarding aggregate demand for party specific lots as it stood in

each round could be provided by ComReg, and this could be done on an anonymised basis with the exception of category 7 (Meteor 900 MHz).

In relation to ComReg's first assertion, that the premise of the question is incorrect, Telefónica Ireland believes differently and that there may have been unintentional oversight by ComReg. Telefónica Ireland notes ComReg's statement in the Clarifications Document that *"the release of information about demand in the Party-specific Lot categories in the final Primary Bid Round is a limited exception from these principles intended to permit a more refined calculation of "knock-out bids" as Final Primary Packages affect the final price cap. Demand for Party-specific Lot categories in rounds prior to the final round do not affect the final price cap, so are not subject to the same rationale."*

ComReg also stated in the Clarifications Document that *"as Annex 9 of Document 12/52 explains, knock-out bids" emerge from the certain features of the activity rules (specifically the final price cap). By definition, a "knock-out bid" is a bid that can be made for a Bidder's final primary package that will be a winning bid regardless of the supplementary bids made by rivals. However, the final price cap constrains the bid amounts for supplementary bids relative to the highest bid made for a Bidder's final primary package. Therefore, a "knock-out bid" for a Bidder arises specifically because its rivals are limited in the additional amount that they can bid for packages other than their final primary packages. Therefore, it is the position at the end of the final primary round that is determinative of the level of the "knock-out bid", not bids from earlier rounds."*

Telefónica Ireland point out that the above statement by ComReg is incorrect, and in forming it, ComReg has overlooked one of the specific features of this auction – the relative price cap. This particular feature means that bidding activity for party specific lots in rounds prior to the final round can impact on the knock-out bid calculation. The absence of this critical information means that bidders must assume the worst case scenario, which may have the undesirable effect of making the knock-out bid appear to be significantly greater than it actually is and potentially make it appear unfeasible for the bidder e.g. if it is above valuation. ComReg must reconsider this issue in light of the above explanation and release a complete round-by-round history of bids for party specific lots after the clock rounds have ended. Telefónica Ireland expressly reserves its rights in relation to this matter.

In relation to the second point, that this question has not been raised previously in the Consultation, Telefónica Ireland point out that the requirement for existing GSM operators to retain access to 900MHz spectrum has been persistently stated by us on numerous previous occasions throughout the Consultation, and the knock-out bid is the only means by which this is possible within ComReg's proposed assignment process. By way of example, in ComReg Document No. 09/99, Telefónica Ireland rejected the proposal for a single-round sealed-bid auction for this reason. Furthermore, when ComReg initially proposed to use a combinatorial clock auction format (ComReg Document No. 10/71), Telefónica Ireland supported that proposal specifically on the understanding that a bidder could be guaranteed *"not to be outbid in the supplementary round for lots where it was the highest bidder in the primary*

round". Finally, we draw ComReg's attention to ComReg Document No. 11/60¹ in which ComReg provided that "an algorithm will be provided in the Information Memorandum, which will allow a bidder who had won lots in the combinatorial clock rounds, to calculate the minimum price that it would need to bid to be guaranteed to win those lots in the supplemental round". Subsequent to that document, we specifically raised our concerns regarding the difficulties posed by party specific lots in the context of the calculation of the knockout bid, including in particular by way of letters dated 13 March 2012, 13 June 2012 and more recently, as part of the questions and answers procedure.

2. Question 38 - Bidder Exclusion

We note ComReg's statement that it would typically expect to remove all bids of an excluded bidder, but that this is not guaranteed as ComReg wishes to retain its discretion in this regard in order to avoid it being used by a bidder as a means of escape from the auction. Telefónica Ireland questions the rationale of this, as ComReg has already provided for the forfeiture of deposits in such circumstances, which is the incentive to keep bidders honest.

Telefónica Ireland notes that in the event that a bidder is excluded subsequent to the supplementary round, ComReg have suggested that there will be no mechanism in place to re-run the supplementary bids. Furthermore, Telefónica Ireland notes ComReg's refusal in the Clarifications Document to provide full information to the remaining bidders in the event that a bidder is excluded. Telefónica Ireland believes that this would effectively result in an incorrect outcome in the auction and hereby expressly reserves its position in this regard.

3. Question 39 - Time between auction end and licence start

ComReg acknowledged in the Clarifications Document that "as the Award Process progresses and further information becomes available, it may become clear that (a) the transition activities of Existing GSM Licensees may not be completed in advance of 1 February 2013; and (b) this may delay the licence commencement date of one or more Lots in the 900 MHz and/or 1800 MHz bands." Telefónica Ireland point out that in the circumstances, the prospect of consumer disruption ComReg previously sought to avoid by granting interim licences, is very real. Although ComReg itself has previously acknowledged that it would be remiss of it not to put in place mechanisms to address the scenario where delays are likely, it has failed to address the risk of consumer disruption. In the circumstances Telefónica Ireland hereby expressly reserves its position in relation to the proposed commencement of Time Slice 1.

¹ Paragraph 3.3.3 page 159

4. **Question 41 – Interim Licence Extensions**

Telefónica Ireland notes ComReg’s response that it will not be in a position to complete any consultation process in relation to licence extensions until after the auction outcome is known. ComReg has not provided any clarity as to whether it intends to start consulting with the industry on the issue of licence extensions before the auction. We request clarification from ComReg as to when it anticipates it will commence consultation on this issue. In light of ComReg’s acknowledgment mentioned at point 3 above, Telefónica Ireland believes that it is now clear that extensions to interim licences will be required and in this regard we continue to expressly reserve our position in relation to the various financial penalties and refunds proposed by ComReg in the event of the delayed availability of spectrum.

5. **Question 44 – Rebates in the Event of Delayed Access to Spectrum**

ComReg acknowledge in the Clarifications Document that a bidder subject to delayed commencement will have won its lots as part of a package for a given price, and that there is no explicit price per lot which could be used as the basis upon which to calculate a refund in the event of delayed commencement. Furthermore, we note that in light of this ComReg is considering using round prices in the final primary bid round to calculate the value of the refund due for the lots subject to delay. Telefónica Ireland would like to point out to ComReg that this is not an accurate calculation of the amount to be refunded, rather a proxy or estimate of the refund due and Telefónica Ireland hereby expressly reserves its position in this regard.

6. **Question 46 – Distortion to Competition as a Result of Staggered Start Dates**

ComReg states that notwithstanding the different contexts, section 7.5 of ComReg Document No. 12/25 sets out its consideration of the risk of distortion to competition in the context of Advanced Commencement, and accordingly ComReg has duly considered this issue. In particular, ComReg states it has considered the risk of distortion of competition and decided that the potential to have a negative impact on competition is small because:

- (i) the maximum time lag is short;
- (ii) there are certain consumer and operator benefits; and
- (iii) advanced commencement by one operator would likely incentivise timely and efficient transitional activities by other winners of spectrum.

In this regard, we point out to ComReg that in relation to the latter, there is a key difference between the negative impact that advanced commencement would have as opposed to staggered liberalisation dates resulting from the delayed availability of certain lots of spectrum. Staggered liberalisation dates do not incentivise timely and efficient transitional activities as the circumstances giving rise to the delay are outside of the winning bidders’ control.

Furthermore, we note that ComReg has not addressed at all in the Clarifications Document, Telefónica Ireland’s concern that the possibility of staggered

liberalisation dates has the potential to make the assignment round of the auction redundant. ComReg acknowledges that it is possible that the commencement date of lots in the 800 MHz, 900 MHz and 1800 MHz bands in Time Slice 1 could differ and proposes that bidders take this information into account when participating in the auction. However, in the context of the assignment round, the bidders will not have the relevant information as to which particular lots may be subject to delayed commencement. Telefónica Ireland hereby expressly reserves its rights in this regard.

7. Question 47 - Rebate and Opportunity Cost

Telefónica Ireland notes ComReg's response to this question, namely that the rebate will be applied after the determination of winning bidders and base prices where it is relevant to a package won by the bidder and ComReg's clarification that the calculation of a rebate will not be taken into account during the calculation of base prices.

Telefónica Ireland believes that ComReg's winner and price determination algorithm will accordingly produce an incorrect result in certain circumstances, in particular where a bid for a package to liberalise one or more party specific lots is made. In such circumstances, ComReg's winner and price determination will be based on the bid price, however as provided for above, the bidder making that bid will never pay the bid amount, but rather the bid price minus R, or the net price. ComReg should only use the bid price net of the rebate for both winner determination and calculation of opportunity cost. Telefónica Ireland believes that in the event that ComReg fails to do so, the auction algorithm may produce an incorrect winner determination or an incorrect opportunity cost and we hereby expressly reserve our rights in this regard.

8. Question 59 - Bidding as a Consortium

ComReg have previously acknowledged that sharing of passive and active telecommunications infrastructure can potentially promote a successful, vibrant and competitive telecommunications market² and has stated that it will permit joint bidding. By refusing to allow for augmented spectrum caps for a joint bidder and by stipulating in the Clarifications Document that (i) only a single licence will be issued to the bidding consortium; and (ii) that in the case of the party specific lots for incumbent GSM licence holders, the operators would have to assign their existing GSM spectrum to the bidding consortium if they wish to make a bid to liberalise and that such assignment is subject to ComReg's prior consent, it is clear that ComReg is in practice prohibiting joint bidding.

9. Network Sharing

² *ComReg Document No. 10/43 paragraph 6.5 page 80*

We also wish to refer to the announcement on Friday 13 July of a network sharing joint venture between Vodafone Ireland Limited and Hutchison 3G Ireland Limited (the "**Netshare**"). We are assuming that, in light of its statutory obligations as regulator, ComReg is as a matter of course taking steps to satisfy itself as to the legal compliance of this Netshare as it did when Telefónica Ireland and Meteor established Mosaic last year. In particular, we assume ComReg is taking all appropriate steps to ensure that the integrity of its spectrum auction process is not impacted.

In the event of any auction delay materialising we trust that ComReg will take appropriate steps to return deposits given the negative financial implications for applicants otherwise. As ComReg will be aware, Telefónica Ireland will not be in a position to permit ComReg holding deposits for an extended indefinite period.

Yours sincerely,

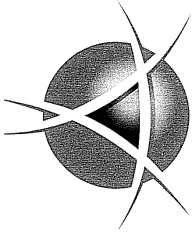


Tom Hickey

CC: Dr. Samuel Ritchie

16. ComReg: reply to Telefonica letter of 20 July 2012 (letter dated 10 August 2012)²

² Previously unpublished due to issues of confidentiality



Commission for
Communications Regulation

Mr Tom Hickey
Telefonica Ireland Limited
28-29 Sir John Rogerson's Quay
Docklands
Dublin 2

Matter: Multiband Spectrum Release – Question & Answer Procedure

Dear Mr Hickey,

I refer to the above matter, and to your letter dated 20 July 2012.

First, I note that your letter does not expressly seek clarification of any of the matters raised in the Information Memorandum as clarified by ComReg in its Questions and Answers and Clarifications document dated 6 July 2012 (ComReg Document 12/73). Also, some of the matters dealt with in your letter do not appear to be in the nature of requests for clarification, correction or necessary supplementation of the information contained in the Information Memorandum. Accordingly, ComReg is of the view that some of the issues raised are not entirely suitable to be dealt with pursuant to paragraph 5.25 of the Information Memorandum.

Accordingly, without prejudice to the above, ComReg has sought to deal with the issues raised by you to the extent, and in the manner, that it considers appropriate at this time, as set out below and in the appendix to this letter.

Next, ComReg notes that your letter is marked 'Strictly Confidential', but it is of the view that its responses to some of the issues raised should be provided equally to all Interested Parties, and, accordingly, proposes to publish an appropriately anonymised response to most of the issues raised in your letter while deferring publication of your letter itself. ComReg hereby invites you to set out in detail which of the contents of your letter you consider to be confidential, and why, and to indicate to ComReg those parts of your letter which you consider suitable for publication. Further, given ComReg's view that its responses to some of the issues raised by you should be provided equally to all Interested Parties, ComReg intends shortly to publish the responses set out in the appendix to this letter on its website.

Leaving aside the last-mentioned responses, ComReg is of the view that some of the issues raised in your letter should be dealt with by way of unpublished (for now) direct, bilateral, response to Telefonica, and sets out its views on these issues further below, in the main body of this letter.

Finally, in relation to ComReg's overarching comments, ComReg notes that in a number of places your letter seeks to reserve Telefonica's rights. In that connection, as previously pointed out to Telefonica's solicitors in this context, ComReg points out

that in the absence of a timely legal challenge to any element of the process in respect of which a right is purported to be reserved (of which types of challenge there have been none), under the Information Memorandum, a party must either sign up and accept in an unqualified way, or decline to do so (see paragraph 5.17). Accordingly, a party may not reserve its position with regard to matters insofar as this is intended to indicate that any application to partake in the award process might in some way be qualified by such reservation, and, whilst it is a matter for Telefónica to obtain its own legal advice with regard to the effectiveness of any purported reservation, this is ComReg's view of the matter.

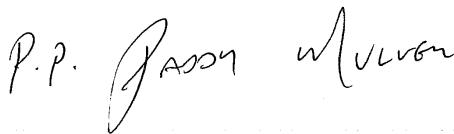
In relation to the matters that ComReg considers appropriate for direct, bilateral, response to Telefonica at this time:

1. ComReg notes Telefónica's position (set out in numbered paragraph 3 of your letter) in relation to ComReg's response to Question 39 in Document 12/73. Apart from disagreeing with Telefónica, and referring to its previous commentary in relation to this matter, as well as its overarching commentary above, ComReg does not consider it appropriate to comment further in this regard.
2. ComReg notes Telefónica's concerns in relation to the network sharing agreement announced between Vodafone Ireland Limited and Hutchison 3G Ireland Limited. ComReg will, in considering this Network Sharing Agreement, comply with its statutory functions, objectives and duties.

ComReg sees no reason why this network sharing agreement should lead to any delay in the auction, and, absent a legal challenge to the auction (in which case any return of deposits might be a matter for the court), ComReg intends to run the auction on the timetable that it has set out.

Yours sincerely,

Dr Samuel Ritchie

A handwritten signature in black ink, appearing to read "P.P. Paddy Mulvan". The signature is written in a cursive, somewhat stylized script.

APPENDIX

Multi-Band Spectrum Release Consultation Response to Correspondence

Following the publication of the Information Memorandum in relation to the Multi-band Spectrum Award Process, and the Questions, Answers and Clarifications document (ComReg Document 12/73), ComReg has received further correspondence from an interested party relating to issues discussed in Document 12/73.

ComReg does not intend to publish this correspondence until after the conclusion of the Award Process, as this could reveal information about the parties who intend to participate in the auction.

Notwithstanding this, in the interests of transparency, ComReg is publishing this document without identifying the party which raised these issues.

Question 36 - Party Specific Lots and Knockout Bids

An interested party has asserted that:

1. a more refined calculation of knockout bid would be possible with more information about the bids of rivals; and
2. to minimise the level of this knockout bid, more information should be provided by ComReg prior to the Supplementary Bids Round (specifically a complete history of demand for party specific lots).

The party raising this issue points to a statement in ComReg Document 11/60 (Response to Consultation and Draft Decision) that "*an algorithm will be provided in the information memorandum which will allow a bidder who has won lots in the combinatorial clock rounds to calculate the minimum price that it would need a bid to be guaranteed to win those lots in the Supplementary Round*" [emphasis added].¹

ComReg points out that the reference to "minimum" in that paragraph was a reference to a minimum price in light of the specific information that it was proposed to make available to all bidders. There is clearly a relationship between the level of information provided to bidders in relation to the bids of others and the calculation for the minimum value of a knockout bid.

ComReg remains of the view that the level of information that it is appropriate to provide is that which was consulted on and that the restrictions proposed are proportionate, justified and appropriate in mitigating the risk of collusion.

Question 38 – Bidder Exclusion

1. An interested party has questioned ComReg's statement that it would typically expect to remove all bids of an excluded bidder but this is not guaranteed as

¹ Paragraph 3.3.3. at page 159.

ComReg wishes to retain its discretion in this regard. The party questions the rationale for this as ComReg has already provided for the forfeiture of deposits in such circumstances which is, in the questioning party's view, sufficient, as it were, to 'keep bidders honest.'

ComReg notes that deposit forfeiture may be a disproportionate response in some cases, and equally, as it is within ComReg's discretion not to make deposit calls, deposits may be too small to provide an adequate incentive to prevent a bidder from walking away from the auction. Accordingly, ComReg does not propose to change its position in this regard.

2. An interested party has questioned ComReg's suggestion that there will be no mechanism in place to re-run the Supplementary Bids Round if a bidder is excluded, in consequence of a deposit call, subsequent to that round.

ComReg notes that the Information Memorandum is quite clear that Bidders are required to make Supplementary Bids on the basis that there is a risk – even if remote – that some Bidders might fail to meet deposit requirements and have some or all their bids excluded. As a result, the second price rule provides good incentives for straightforward bidding. If a Bidder considers that there is some chance that a rival Bidder might fail a deposit call, then it could make supplementary bids for larger packages to acquire otherwise unallocated lots. Therefore, given the incentives created by the auction mechanism, ComReg is of the view that there is no particular reason to expect that excluding a Bidder would result in an inefficient allocation to the remaining Bidders.

Question 41 - Interim Licence Extensions

On the assumption that there is no significant delay to the auction process, which ComReg believes to be a reasonable one, ComReg does not anticipate commencing any consultation on the issue of potential extensions to existing Interim GSM 900 MHz rights of use (or further interim licensing in the 900 MHz band) until after the auction outcome is known. This reflects, in particular, ComReg's position as set out in its answers to questions 39, 40, 41, 42 and 43 of Document 12/73 (and the materials referred to in same). In any event, ComReg notes that it has already been through a substantial consultation in relation to interim licensing, and, if such a consultation were required, is of the view that this could be carried out in a timely and efficient manner.

Question 44 – Rebates in the event of delayed access to Spectrum

An interested party has questioned ComReg's proposal to use final round prices in the final primary bids round to calculate the value of a refund due for lots subject to any delay.

ComReg acknowledges that Winning Bidders will pay a price for an overall package of lots, whereas a rebate might need to be given in regard to just some of the lots in

that package. Therefore, it is entirely unavoidable that some allocation of the price of the package will be needed to its component lots. The final clock prices are a fair and reasonable basis for this allocation. For the avoidance of any doubt, final clock prices will solely be used for allocating the price of the package won to its component lots, which will then be used as the starting point for the calculation of any rebate; final prices will not be used directly as an estimate of the price of a lot for calculating a rebate.

Question 46 – Distortion to Competition as a result of Staggered Start Dates

An interested party has further questioned ComReg's view that the potential for negative impacts on competition as a result of possibly staggered start dates is small.

ComReg remains of the view that this is a low risk. Moreover, ComReg notes that it has a range of powers and rights at its disposal to encourage operators to transition in a timely manner, and it does not believe, in any event, that, in practice, there are likely to be significant difficulties in this regard.

Question 47 – Rebate and Opportunity Costs

An interested party has suggested that the rebate be applied before the determination of winning bidders and base prices, rather than after.

ComReg is of the view that this could effectively require those parties bidding for Party Specific Lots to increase their bids by the value of the rebate only to receive the same rebate back. Accordingly, this appears to entirely negate the rebate mechanism.

ComReg notes that the rebate mechanism was included to produce a more level playing field between those parties that had already paid for spectrum rights of use on a GSM-only basis, and new entrants. Accordingly, ComReg is not minded to follow this suggestion.

Joint Bidding and Spectrum Caps

An interested party has asserted that by refusing to allow increased Spectrum Caps for a joint bidder and by stipulating that:

1. only a single licence will be issued to a bidding consortium; and
2. in the case of Party Specific Lots where incumbent GSM licence holders would have to assign their existing GSM Spectrum rights of use to the bidding consortium if they wished to make a bid to liberalise those holdings under such assignment subject to ComReg's prior consent,

it is clear that ComReg is in practice prohibiting joint bidding.

ComReg is not prohibiting joint bidding. However, ComReg is of the view that if more than one licence was issued to members of the bidding consortium, this could in effect lead to spurious arrangements whereby parties who were not bound together except for the purposes of the Auction could bid together. Moreover, ComReg is of the view that a bidding consortium is a single entity in the auction process and there is no reason why a bidding consortium should be permitted a higher spectrum cap than any other bidder in the auction. Once these considerations are taken into account, ComReg is of the view that it is clear that if a bidding consortium were to be permitted to bid on Party Specific Lots currently licenced to multiple operators, these lots would have to be assigned to the consortium prior to the start of the auction.