



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:	12/74r
Date:	30 April 2013

A.1 Non-confidential correspondence provided by respondents in relation to ComReg’s multi-band spectrum release proposals from 30 May 2012 until 25 June 2012 (and ComReg written responses to same).

1. ComReg: reply to Telefónica letter¹ of 22 May 2012 (letter dated 30 May 2012);
2. A&L Goodbody: letter to ComReg “Multi-band Spectrum Release Consultation – 800 MHz, 900 MHz & 1800 MHz (“the Consultation”)” (letter dated 13 June 2012);
3. ComReg: reply to A&L Goodbody letter of 13 June 2012 (letter dated 15 June 2012);
4. Telefónica: letter to ComReg “Multi-band Spectrum Release– 800 MHz, 900 MHz & 1800 MHz Consultation” (letter dated 14 June 2012);
5. ComReg: reply to Telefónica letter of 14 June 2012 (letter dated 19 June 2012);
6. ComReg: reply to eircom Group letter² of 24 May 2012 (letter dated 30 May 2012);
7. Eircom Group: email (and attachment) to DotEcon “RE: WDP software licence agreement” (email dated 12 June 2012);
8. ComReg: reply to eircom Group email of 12 June 2012 (email dated 13 June 2012);
9. Eircom Group: email to ComReg “Extension to Q&A deadline” (email dated 19 June 2012);
10. ComReg: reply to eircom Group email of 19 June 2012 (email dated 19 June 2012);
11. McCann Fitzgerald: letter to ComReg “Vodafone: Multi-band Spectrum Release: Custodianship of Information” (letter dated 30 May 2012);
12. McCann Fitzgerald: letter to ComReg “Vodafone: Multi-band Spectrum Release: Custodianship of Information” (letter dated 5 June 2012);
13. ComReg: reply to McCann Fitzgerald letter of 5 June 2012 (letter dated 7 June 2012);
14. McCann Fitzgerald: reply to ComReg letter of 7 June 2012 (letter dated 8 June 2012);
15. Vodafone: email to ComReg “ComReg Multi-Band Spectrum Award Process Workshop” (email dated 11 June 2012)
16. ComReg: reply to Vodafone email of 11 June 2012 (email dated 11 June 2012);
17. McCann Fitzgerald: letter to ComReg “ComReg Consultation on NGA roll-out pursuant to ComReg Document 12/56 (the “NGA Consultation”)” (letter dated 7 June 2012);
18. ComReg: reply to McCann Fitzgerald letters of 30 May 2012 & 5 June 2012 and Vodafone’s letter of 7 June 2012 (letter dated 12 June 2012);
19. McCann Fitzgerald: letter to ComReg “Vodafone Correspondence” (letter dated 14 June 2012)
20. Vodafone: email to ComReg “ComReg Correspondence” (email dated 14 June 2012);
21. ComReg: reply to Vodafone email of 14 June 2012 (email dated 15 June 2012).
22. Vodafone: letter to ComReg (letter dated 6 July 2012);
23. ComReg: reply to Vodafone letter of 6 July 2012 (letter dated 6 July 2012);
24. ComReg: letter to Vodafone (letter dated 6 July 2012);

¹ This Telefónica letter was published as item 43 in Document 12/49

² This eircom Group letter was published as item 8 in Document 12/49

1. ComReg: reply to Telefónica letter⁵ of 22 May 2012 (letter dated 30 May 2012);

⁵ This Telefónica letter was published as item 43 in Document 12/49



Commission for
Communications Regulation

30 May 2012

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

Re: Proposed ComReg spectrum auction

Dear Mr Healy,

Thank you for your letter of 22 May 2012 concerning the above.

ComReg has considered the contents of your letter and notes that each of the four issues raised are addressed by way of its recently published Response to Consultation and Final Information Memorandum documents (being ComReg Documents 12/50-12/52). In particular, I would refer you to the following:

- the timeline as set out in paragraph 3.11 of ComReg Document 12/52; and
- section 6.5.2 of ComReg Document 12/50.

I trust this is satisfactory.

Yours sincerely

George Merrigan
Director Market Framework

2. A&L Goodbody: letter to ComReg “Multi-band Spectrum Release Consultation – 800 MHz, 900 MHz & 1800 MHz (“the Consultation”)” (letter dated 13 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 | 13 June 2012

By Registered Post &
 Email – george.merrigan@comreg.ie



Mr George Merrigan
 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 act for Telefónica Ireland Limited (“*Telefónica Ireland*”) in relation to the Consultation on the proposed 800MHz, 900 MHz & 1800 MHz spectrum auction (“*the Proposed Auction*”).

As you are aware, Telefónica Ireland has contributed significantly to the Consultation over the past four years and, along with other operators in the industry, has raised numerous concerns during that period. The purpose of this letter is not to deal with all of those concerns, but to raise on an urgent basis given this crucial point in time in the process, a number of points that need immediate clarification by ComReg.

In view of the importance of the matters raised, and the current timing that ComReg is imposing on the industry with respect to the Proposed Auction, we request full responses to the queries raised in this letter by close of business on **Friday 15 June 2012**. To assist with your responses we have numbered the queries chronologically throughout this letter. Please note that these queries are being raised because it is Telefónica Ireland’s belief and its legal advice that the issues have either not been addressed, or not been adequately addressed by ComReg.

Confidentiality Concerns

We do not intend to restate our client’s concerns in relation to the risk of commercially sensitive data being disclosed by ComReg to third parties during the remainder of the Consultation and/or assignment process. As you can appreciate, without appropriate safeguards ensuring the confidentiality of information that is provided to ComReg, significant business and legal risks arise for the industry. In light of the recent security lapses, participants in the Proposed Auction must be

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

entitled to transparency in relation to the adequacy of the procedures ComReg intends to introduce, and our client formally calls for this. In particular our client requires assurances in respect of the following:



1. **Confidentiality breaches to date:** We are extremely concerned by the subject matter of the correspondence between ComReg and Vodafone disclosed on the ComReg website, relating to confidentiality breaches by ComReg, and note that you have not to date responded to Vodafone's requests for disclosure of all data breaches that have occurred. Please provide details of all reported or possible data security breaches that have arisen within ComReg since the commencement of the Consultation in 2008.
2. **New processes:** Please provide details of the steps that ComReg have taken or plan to immediately take to ensure the confidentiality and security of Telefónica Ireland's confidential information that ComReg currently holds, and that it will receive during the remainder of the assignment process. In particular, please provide details of the arrangements that are in place regarding separate servers and email addresses for ComReg spectrum personnel, and the measures that are generally adopted to ensure integrity and security of information within ComReg.
3. **Use of information:** ComReg has in the past made a number of detailed requests for information relating to operators' finances and their businesses, in the context of matters not relating to the assignment of spectrum. Please advise whether information provided for purposes other than the assignment of spectrum, has been shared with the ComReg spectrum team or its advisers. Please also provide details of the measures in place in respect of the sharing of industry information obtained for other purposes, with the spectrum team or advisers.

Knock-Out Bids

A feature of the Proposed Auction is the ability of a party still active at the end of the primary rounds to submit a "knock-out bid" intended to guarantee to win the final primary package. This involves the party increasing the bid for its final primary round package by the value of unallocated lots in the final primary round, according to final round prices.

In a competitive auction it is typically anticipated that the premium to make a knock-out bid will be modest, as most lots should be allocated in the final primary round. However, this is not the case due to the way ComReg has designed other aspects of the process for the Proposed Auction, in

particular because of the inclusion by ComReg of party-specific lots. We are advised that such party-specific lots will increase in price even if there is no demand for them in the primary round. If all or most of the party-specific lots are unallocated at the end of the primary rounds, this would imply a need for a very large premium to submit a successful knock-out bid, even if all other lots in categories 1-6 are allocated. The proposal has the most undesirable effect of bidders being required to potentially make large knock-out bids which are unduly and unnecessarily onerous on operators in the context of current market conditions. Furthermore the fact that different bidders have access to different amounts of party-specific lots also creates a serious asymmetry in their exposure to inflated knock-out premiums (for example Meteor can ignore its own 900 and 1800 MHz party-specific lots when determining a knock-out bid). The requirement to make such type of bids is not objectively justified, transparent, non-discriminatory, nor proportionate in relation to its intended purpose. We therefore formally request ComReg to reconsider and change its position on this aspect of the Proposed Auction.



We are advised that these concerns could be reduced by way of a very simple change to the auction rules in the Information Memorandum, which could be easily made by ComReg to ensure a fairer and more proportionate process. As the auction rules are currently drafted, ComReg proposes only to release information about the level of demand for party-specific lots in the final clock round. ComReg could alternatively release a complete round-by-round history of bids for party-specific lots after the clock rounds have ended. This would have the effect of affording all bidders the option to calculate their knock-out bids based on a full assessment of the bids in the auction, as opposed to having to consider up until the penultimate round the hypothetical possibility that there was demand (when there in fact might not be) for party-specific lots. For the avoidance of doubt, this does not require ComReg to publish information in relation to demand for party-specific lots on a round-by-round basis during the clock rounds, thus avoiding any concerns that bidders may use this information for the purposes of strategic bidding.

It is also open to ComReg to provide information in relation to demand for 1800 MHz party-specific lots (i.e. categories 8, 9 and 10) on an aggregated, anonymised basis. As only Meteor has been allocated a party-specific lot in the 900 MHz band, we accept that it is not possible to aggregate data for 900 MHz, but this should not be a barrier to release because at the very least it is necessary to prevent Meteor otherwise having an unfair competitive advantage over other bidders.

- 4. Knock-Out bids: Please provide confirmation that ComReg accepts the rationale for making the above alteration to the rules of the Proposed Auction. If no such change will be considered please provide reasons as to how the imposition of the current proposal is compliant with ComReg's statutory obligations.**

Two other issues arise in relation to the rules as currently drafted for which we also request clarification.



5. **Deposit Calls:** We understand that ComReg has reserved the right to call on bidders in the Proposed Auction to top up their deposit to 100% of their highest bid after the supplementary bids round. Please confirm that ComReg will only begin calculating the winner and price determination, after the deposits have been received.

6. **Bidder Exclusion:** We understand that ComReg has reserved the right to take whatever steps it deems appropriate in the event that a bidder is excluded from the auction and that it has indicated that it does not propose removing the bids of an excluded bidder. We are instructed that in the event that ComReg determined that all bids and calculations made up to the point of the exclusion of a bidder remain valid and binding, the auction could not (except in limited circumstances), determine the correct winner and price and pursuing such a course of action could also corrupt the round by round price discovery. Further, where a bidder had dropped demand before the disqualified bidder was excluded, that bidder would then be unfairly constrained in its bidding during the supplementary round for its preferred package. Please confirm that in the event that a bidder is excluded from the auction, ComReg will remove all bids made by that bidder entirely from the auction and re-run each round which may have been impacted by the excluded bidder's presence. At the very least, ComReg must provide the remaining bidders with the ability to quantify the demand caused by the now disqualified bids by providing a full history of all disqualified bids for each round. Please also confirm that in the event that a bidder is disqualified, ComReg will immediately and before any further bidding takes place notify all remaining bidders of the exclusion, and ComReg's decision on the proposed course of action.

Licence Start Dates

Telefónica Ireland has, assuming it secures spectrum in the Proposed Auction, previously indicated and substantiated the need for time to be allowed to complete any moves to new spectrum allocation within the bands prior to licence commencement (see its previous responses in the Consultation). ComReg had decided, after carrying out formal consultation, that the overall interests of consumers would be better served by granting interim licences in the 900 MHz band until 31 January 2013 (*"the Interim Licences"*). In its recent Decision 12/25 ComReg viewed this expiry date as appropriate on the basis that it anticipated that the outcome of the Proposed Auction would be known before the end

of July 2012. That is clearly no longer going to be the case. ComReg's own adviser Vilicom has indicated that at least six months will be required, (which will require extensions of Interim Licences), and significantly longer if certain outcomes arise, such as sequential relocation or loss of spectrum by existing GSM operators.



The Interim Licences were put in place by ComReg to seek to avoid consumer disruption by ensuring continuity of mobile services until new post-auction licences came into effect. Although ComReg's timelines have slipped, the prospect of the same consumer disruption that it sought to avoid by granting the Interim Licences has not changed. ComReg itself states that it would be remiss of it not to put in place mechanisms to address the scenario where delays are likely. Those delays are now inevitable.

- 7. Licence start dates. It is clear that licence start dates will have to be moved from 1 February 2013 (which is now known to be an artificial date) to reflect Vilicom's recommendations of at least 6 months transition post assignment – as you are aware our client has produced evidence to suggest a longer period would be needed. Please confirm that this issue will be addressed by a later, more practical, start date being confirmed now with a consequential extension to the Interim Licences.**

Financial Penalties/Refunds

ComReg proposes that the various actual licence start dates for different operators will be decided at a later date. These varying start dates are to involve different financial penalties (in the form of liquidated damages) and refunds being unilaterally imposed on operators depending on the outcome of the auction and assignment. Our client, along with other operators, must therefore enter into an auction process without any clarity on the amounts that it will be liable to pay depending on the outcome of the auction, and without any clarity on when any new licence will be made available to it. Apart from ComReg's proposals making a mockery of the assignment round in Time Slice 1, the following consequences of ComReg's proposed financial penalties/refunds mechanisms are unacceptable to our client:

- (i) the adoption by ComReg of the position that its aggregate liability for all losses or damages of any nature arising from delayed access to lots in Time Slice 1 is expressly limited to the refunds or adjustments of licence fees as set out in the Information Memorandum in circumstances where there is no clarity as to the losses a prospective bidder may actually incur as a result of that delayed access, such uncertainty and risk of loss for bidders being further compounded by ComReg's



failure to confirm the commencement of Time Slice 1, (being 1 February 2013 "or such other date as may be specified by ComReg", and ComReg's express notice to bidders of the potential for delayed access);

- (ii) the uncertainty around the amount of liquidated damages a bidder may have to pay, where ComReg has simply stated that the total amount of liquidated damages would be based on the refunds of licence fees that ComReg pre-estimated that it may have to make to winning bidders (in particular, there is no clarity as to the mechanism it will use to calculate the pro-rata refund of the upfront fees already paid by winning bidders);
- (iii) the fact that ComReg proposes that where a delay by one party to meet an interim milestone causes another party to be unable to achieve one or more of its milestones, then the party initially failing to meet its interim milestone shall be the party responsible for all liquidated damage which flows as a direct result of its delay - there is no clarity as to how it will be determined that one party "caused" another party's delay or that the loss incurred is as a "direct result" of such delay – requiring bidders to proceed into a situation where they could face catastrophic claims for damages;
- (iv) the fact that the rebates proposed by ComReg in the event of delayed access to lots in Time Slice 1 are only estimates - ComReg has not provided any clarity as to the mechanism to be applied in order to calculate the proposed rebates in the now inevitable event of delayed access beyond 1 February 2013, the mechanism to calculate such rebates not being obvious to prospective bidders in circumstances where there is no price per lot;
- (v) the fact that the amount of a liquidated damages figure is to be based on higher "liberalised use licence" fees as opposed to existing spectrum usage fees, when it is inevitable that at the very least existing licensees will have to relocate within the bands post auction, and where such liberalised use licences will not commence by 1 February 2013 in any event;
- (vi) the effect of the uncertainty around access to lots in Time Slice 1 making the objectives of the proposed assignment round redundant for bidders, due to insufficient information being available to them to determine the value of particular lots of spectrum in the assignment round.

It is contrary to ComReg's statutory obligations to create a situation where significant unknown financial obligations are being imposed on bidders and the industry more widely in this manner. The uncertainties result in an inability on the part of operators to properly predict the financial implications of the outcome of the auction process.



8. Financial Penalties/Refunds:

- a. Please advise how ComReg proposes to address each of the above concerns ((i) to (vi)) on the uncertainties with regard to fees, penalties and refunds.**
- b. In particular please explain the precise criteria that would be adopted when using "other relevant information" (*footnote 30 of the Information Memorandum, page 35*) in the calculations.**
- c. Please confirm how ComReg is going to ensure that it accurately refunds operators the money they have paid for spectrum.**
- d. Please confirm on what basis ComReg views the above uncertainties, if left unaddressed, as being compliant with its statutory obligations.**

Further Consultation on Interim Licensing Arrangements

This Consultation started in July 2008 with the issue of Document 08/57. ComReg stated then that its intention was to conduct an award process in the 900 MHz band in time for the expiry dates of licences in that band and the release of associated spectrum in 2011. In September 2010 the ongoing delay in the Consultation process necessitated the holding of a separate consultation on the extension of licences in the 900 MHz band, and that consultation took seven months to complete. ComReg had decided, after carrying out a formal consultation, that the overall interests of consumers would be better served by granting interim licences in the 900 MHz band until 31 January 2013.

ComReg previously deemed it necessary to conduct a consultation on the Interim Licences, eight months before the expiry of the original licences. It appears now to adopt a position that extension of Interim Licences (and/or crucially important transitional licensing arrangements) can be simply left over until after the conclusion of the Proposed Auction. This does not make sense, and is legally unacceptable. ComReg has already consulted on the introduction of Interim Licences, concluding

that they were necessary and appropriate to avoid consumer disruption. The same analysis now applies to the necessity for an extension of those Interim Licences.



- 9. Consultation on Interim Licensing Arrangements.** In order to avoid the financial uncertainties (mentioned above) and the threat of consumer disruption (already acknowledged by ComReg), please confirm that a proper consultation will be conducted now, prior to the Proposed Auction, in relation to the need for later licence start dates; and the consequential need for an extension of the Interim Licences.

Staggered Liberalisation Start Dates

ComReg clearly envisages that licence start dates within the 900 MHz and the 1800 MHz bands may vary from lot to lot depending upon when specific lots are made available under a yet to be agreed transition plan. This causes significant concerns including but not limited to the fact that:

- (i) staggered start dates mean that a party (or parties) may be given an unjustifiable head start in launching advanced services over other parties, which could seriously undermine competition in the Irish market; and
- (ii) staggered start dates mean that if one party is given a competitive advantage by being enabled to deploy advanced services ahead of other parties, the competitive advantage afforded to the first party (or parties) would not be neutralised by the launch of advanced services by the remaining parties, as such an advantage would clearly extend long into the future, causing irreparable harm to competition in the market place.

ComReg has a duty and a responsibility to consider the risk of distortion to competition in the market place that may result from staggered liberalisation start dates. This could cause significant financial and irreparable damage to our client, clearly interfering with its economic interests, and we reserve its position to seek compensation for this loss.

- 10. Staggered Start Dates: Please confirm that ComReg will put measures in place to ensure that licence start dates for liberalised use licences will commence at the same time for all operators.**

The Decision Process and Limitations of Liability

Our client reserves its position generally with regard to the way in which ComReg purports to, on the one hand, draw operators into the most complex and expensive auction processes in the history of

the State and, on the other hand, purport to exclude all liability for the process. This is compounded by the manner and timing of the issuance of various documents. Although we do not propose to detail these issues for the purpose of this letter, we expressly reserve our client's position on the following points in the event legal proceedings become necessary:



- (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 final Information Memorandum for the industry and as an exercise of ComReg's statutory obligations, the fact that ComReg purports to suggest that it is not a binding legal document, and that it does not set out ComReg's final or definitive position on any matter (in circumstances where ComReg on the other hand expressly reserves its position to seek damages against operators) – in effect, ComReg appears to suggest that applicants are contractually bound by the terms of the Information Memorandum, but ComReg itself is not;
- (c) 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 – this is of particular concern in light of the recent security lapses and also in circumstances where 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 (which for the record, our client does not accept);
- (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 – furthermore our client does not accept a situation whereby it is to be forced, under duress or by means of undue influence, to agree to such terms before it can participate in the auction or to be deemed to have agreed to such terms by the mere submission of its application;
- (e) as the opportunity to consult on important matters remains open to ComReg, and ComReg has already held consultations on important interim matters such as the



Interim Licences, our client reserves its position in relation to 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" – these should be matters that are properly consulted on well in advance of the expiry of the Interim Licences given ComReg's awareness of the issues;

- (f) as the opportunity to consult on important matters remains open to ComReg, and ComReg has already held consultations on important interim matters such as the Interim Licences, our client reserves its position in relation to 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*) – ComReg knows that these dates cannot be changed without proper consultation, and because it is so abundantly clear that the dates will change such consultation should be held now;
- (g) our client reserves its position in relation to the situation whereby it is to be forced under duress or by means of undue influence, to agree (by mere submission of its application) 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 – as mentioned above this is a matter that should be properly consulted on in advance of the auction, and if necessary involve an extension of Interim Licences to avoid consumer disruption;
- (h) our client reserves its position in respect of 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;
- (i) finally, our client expressly reserves its position in relation to the manner in which ComReg has sought to present the different documents and their timing for publication, and will strenuously object to any attempt by ComReg to seek to avoid the statutory appeal process being available to operators; e.g. the practice of providing in Decision 12/25 that full details of decisions would appear in the



Information Memorandum, and when issuing the Information Memorandum (after the statutory appeal period in respect of decisions in Decision 12/25 would have expired) doing so in terms that disclaim the Information Memorandum as providing any representation as to how ComReg will or might act in future, yet referring at that point back to decisions made in the Decision 12/25 document - if there is any attempt in the future by ComReg to object to a statutory appeal of any decision on timing grounds, we will draw this approach, and this letter, to the immediate attention of the Court. Our client similarly strongly reserves its position in relation to where subsequent documents alter the meaning or understanding of previous “decisions”, the commencement of the appeal period is the date of the issuance of the subsequent document.

- 11. Limitation of Liability: We note that ComReg prefaces its extremely broad limitations of liability with phraseology such as “to the extent permitted by law”. We are not aware of circumstances under which ComReg is entitled to limit its liability in this process in the manner proposed. Please provide the legal basis on which ComReg believes it is entitled to rely in order to exclude liability in the manner described above and more generally. Please note that this is not a matter that can be simply left open by words “to the extent permitted by law” where the clear intention is to seek to limit liability in carrying out statutory functions. As it stands operators cannot know if they will be adequately compensated in the event of seeking damages from ComReg for any wrongdoing, given the attempt at such broad limitation – if the limitations were to have legal effect, damages would not be an adequate remedy in any action taken subsequent to the Proposed Auction.**

Outstanding Response

In a letter dated 2nd May, our client requested ComReg to clarify that the calculation of opportunity cost correctly takes account of relevant rebates for party-specific lots. In their response documents, ComReg and Dotecon state that this point has been addressed in section 5.1.2 of document 12/51. However on examination, no reference is made to this point in the document mentioned, and the point is not otherwise clarified.

- 12. Opportunity Cost and Rebate: Please expressly confirm that relevant rebates will be taken into account when calculating opportunity cost in the Winner and Price Determination.**

Please let us have your responses to Queries 1-12 above, by close of business on **Friday 15 June 2012**.

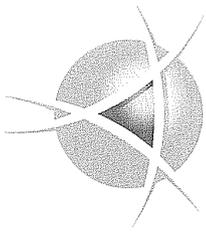


Yours faithfully

A+L goodbody

M-13046117-2

3. ComReg: reply to A&L Goodbody letter of 13 June 2012 (letter dated 15 June 2012);



Commission for
Communications Regulation

By Post and Email

15 June 2012

Mr John Whelan
Partner
A&L Goodbody Solicitors
International Financial Services Centre
North Wall Quay
Dublin 1

Multiband Spectrum Release Award Process

Dear Mr. Whelan,

I refer to your letter of 13 June 2012 concerning the above process.

As you note in your introductory remarks, Telefónica Ireland Limited (“Telefónica”) has contributed significantly to ComReg’s consultation on the above process over the past four years, and has raised a number of concerns during that period.

The extensive consultation process undergone by ComReg in this matter has served to facilitate Telefónica in making its contributions and raising its concerns.

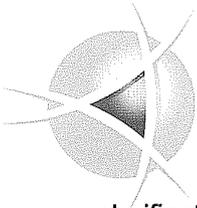
These have all been duly and carefully considered by ComReg, as reflected in the consultation documentation, and taken on board (or not, as the case may be) to the extent reflected in ComReg’s Decision (Document 12/25 and Decision 04/12 and associated documents) and ComReg’s Information Memorandum (Document 12/52).

ComReg’s position on matters that are the subject of decisions and final positions made and reflected in its Decision and its Information Memorandum is that these are not being re-opened or reconsidered in principle. Whilst requests for clarification may be put to ComReg and questions submitted via its documented procedures in the current phase of the process (see further below), queries which, or which in substance, seek to revisit matters clearly already decided upon will not be entertained in a way that would re-open such matters.

Therefore, to the extent that Telefónica now seeks to revisit certain concerns it has already fed into the consultation process prior to ComReg’s Decision and the publication of ComReg’s Information Memorandum, these will be entertained by ComReg – whether in the body of this letter, or elsewhere - in the manner and context set out above.

You mention that your letter raises a number of points that need immediate clarification by ComReg. The issue of whether the points in fact need any clarification, or immediate

1



clarification, will be dealt with in this letter on a case-by-case basis, taking each question or point in turn.

In addition, your letter requests full responses to all the queries raised in your letter. In that regard, whilst appropriate responses will be furnished in this letter to certain queries, you will note from what follows that ComReg has taken the view that a large number of the queries put forward in your letter are ones that ought appropriately to be submitted to ComReg by way of question, and responded to by way of answer, as part of the Question and Answer procedure set out in section 3.3.1 of Document 12/52. Given its view of the procedural propriety of submitting certain of Telefónica's queries by way of question, ComReg invites your client to submit the particular queries noted below by way of question in accordance with that procedure.

I now respond to each of the queries raised in your letter, in turn, below, by first quoting the query from your letter, and then setting out ComReg's response.

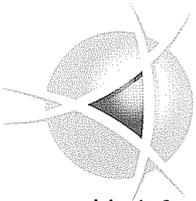
Confidentiality Concerns

You introduce the section on "Confidentiality Concerns" by stating that, without appropriate safeguards ensuring the confidentiality of information that is provided to ComReg, "significant business and legal risks arise for the industry". Accordingly, you say, participants in the auction process are entitled to transparency in relation to the adequacy of the procedures ComReg intends to introduce in relation to the auction process, as well as assurances in relation to confidentiality breaches to date; new processes; and use of information.

Before going on to respond to your particular questions relating to these three matters, it is important to set out briefly ComReg's contextual commentary in relation to this matter.

In that regard, first of all, ComReg regrets the particular incidents that occurred, as it regards information-security as an important matter and takes information-security issues very seriously. However, whilst there have been some unfortunate but minor incidents which have been the subject of recent correspondence between Vodafone and ComReg, ComReg does not agree with the idea that these may be abstracted to arrive at conclusions that, as Vodafone put it, there must necessarily be "endemic failings" in ComReg with regard to these matters, or that any failings that there are, or have been, may be inflated and stretched to have the capability to undermine the integrity and efficacy of the forthcoming auction process. ComReg also regrets that the tone of the correspondence from Vodafone and its legal advisers, published in Document 12/59, may have caused your client more concern than is justified by the actual incidents referenced in that correspondence.

Without prejudice to the generality of the foregoing, whilst, again, the incidents of communications referred to by Vodafone were unfortunate, and whilst ComReg is taking steps to seek to ensure that such incidents do not occur in future, it does not follow – as



Vodafone's correspondence suggests – that a stand-alone spectrum auction process, with its ring-fenced information-security procedures, protocols and supports which are the subject of advice and assistance from ComReg's specialist consultants, is in danger of being compromised, either because of the particular incidents that occurred historically, or by reason of certain minor documented incidents which occurred during the course of the spectrum consultation process.

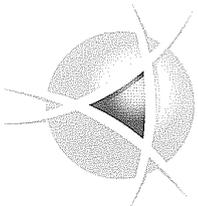
While that is so, ComReg has also set out in its recently-published Response to Consultation document and Information Memorandum some appropriate information regarding information-custodianship and security which are of relevance to the forthcoming auction process. In that regard, it has mentioned the fact that it has engaged a reputable consultancy organisation to ensure that its confidentiality and security processes before, during and after the auction are appropriate for that process.

Further, ComReg points out that the work of that consultancy organisation is ongoing, and that ComReg is confident that its engagement of this organisation and its other advisors coupled with its own detailed work in this regard should serve to satisfy interested parties that ComReg's processes surrounding the forthcoming auction are appropriate, robust and secure.

ComReg accordingly considers that it is making all appropriate arrangements for safeguarding confidential information in relation to the forthcoming auction process. The ongoing involvement of external experts is intended to provide a further safeguard as to ComReg's adoption of, and conformance with, the high standards necessary in an award of this kind.

Further, insofar as your client's requests for answers and assurances are premised on the existence of some perception of systemic problems within ComReg relating to information-security, ComReg does not feel obliged to answer or provide them, as the case may be, in circumstances where ComReg rejects that there is any such problem, and, in any event, in circumstances where ComReg rejects the alleged connection between previous incidents and the efficacy or integrity of the forthcoming auction process.

Also, should Telefónica have any specific questions concerning ComReg's information-security proposals as described in the Information Memorandum, it should avail of the ongoing question and answer process which is the platform ComReg has suggested be used where interested parties require further clarification on matters raised in that Memorandum. In that regard, please note the Question and Answer procedure set out in section 3.3.1 of Document 12/52. ComReg, therefore, invites your client to submit questions in accordance with that procedure. In that regard, your client 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.



In light of the foregoing, ComReg now responds as set out below.

- 1. Confidentiality breaches to date:** We are extremely concerned by the subject matter of the correspondence between ComReg and Vodafone disclosed on the ComReg website, relating to confidentiality breaches by ComReg, and note that you have not to date responded to Vodafone's requests for disclosure of all data breaches that have occurred. Please provide details of all reported or possible data security breaches that have arisen within ComReg since the commencement of the Consultation in 2008.

ComReg's response:

ComReg is not aware of any information-handling incidents of possible relevance to the auction process of the type forming the subject-matter of the correspondence between ComReg and Vodafone to which you refer, other than the particular incidents referred to and dealt with in that correspondence (including incidents redacted in that correspondence).

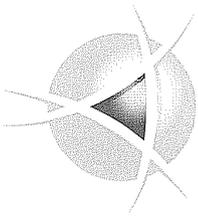
- 2. New processes:** Please provide details of the steps that ComReg have taken or plan to immediately take to ensure the confidentiality and security of Telefónica Ireland's confidential information that ComReg currently holds, and that it will receive during the remainder of the assignment process. In particular, please provide details of the arrangements that are in place regarding separate servers and email addresses for ComReg spectrum personnel, and the measures that are generally adopted to ensure integrity and security of information within Com Reg.

ComReg's Response:

Please see the contextual commentary above, as well as the Information Memorandum.

Further, ComReg considers that, in part at least, this query is appropriately addressed through its Question and Answer procedure set out in section 3.3.1 of Document 12/52. ComReg, therefore, invites your client to submit this question in accordance with that procedure. A response will then issue in due course.

- 3. Use of information:** ComReg has in the past made a number of detailed requests for information relating to operators' finances and their businesses, in the context of matters not relating to the assignment of spectrum. Please advise whether information provided for purposes other than the assignment of spectrum, has been shared with the ComReg spectrum team or its advisers. Please also provide details of the measures in place in respect of the sharing of industry information obtained for other purposes, with the spectrum team or advisers.



ComReg's Response:

ComReg has not shared, and does not share, information inappropriately.

Knock-Out Bids

- 4. Knock-Out bids: Please provide confirmation that ComReg accepts the rationale for making the above alteration to the rules of the Proposed Auction. If no such change will be considered please provide reasons as to how the imposition of the current proposal is compliant with ComReg's statutory obligations.**

ComReg's response:

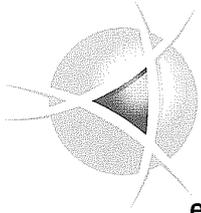
ComReg considers that a query of this nature is appropriately addressed through its Question and Answer procedure set out in section 3.3.1 of Document 12/52. ComReg, therefore, invites your client to submit this question in accordance with that procedure. A response will then issue in due course.

- 5. Deposit Calls: We understand that ComReg has reserved the right to call on bidders in the Proposed Auction to top up their deposit to 100% of their highest bid after the supplementary bids round. Please confirm that ComReg will only begin calculating the winner and price determination, after the deposits have been received.**

ComReg's response:

ComReg considers that a query of this nature is appropriately addressed through its Question and Answer procedure set out in section 3.3.1 of Document 12/52. ComReg, therefore, invites your client to submit this question in accordance with that procedure. A response will then issue in due course.

- 6. Bidder Exclusion: We understand that ComReg has reserved the right to take whatever steps it deems appropriate in the event that a bidder is excluded from the auction and that it has indicated that it does not propose removing the bids of an excluded bidder. We are instructed that in the event that ComReg determined that all bids and calculations made up to the point of the exclusion of a bidder remain valid and binding, the auction could not (except in limited circumstances), determine the correct winner and price and pursuing such a course of action could also corrupt the round by round price discovery. Further, where a bidder had dropped demand before the disqualified bidder was excluded, that bidder would then be unfairly constrained in its bidding during the supplementary round for its preferred package. Please confirm that in the event that a bidder is**



excluded from the auction, ComReg will remove all bids made by that bidder entirely from the auction and re-run each round which may have been impacted by the excluded bidder's presence. At the very least, ComReg must provide the remaining bidders with the ability to quantify the demand caused by the now disqualified bids by providing a full history of all disqualified bids for each round. Please also confirm that in the event that a bidder is disqualified, ComReg will immediately and before any further bidding takes place notify all remaining bidders of the exclusion, and ComReg's decision on the proposed course of action.

ComReg's response:

ComReg considers that a query of this nature is appropriately addressed through its Question and Answer procedure set out in section 3.3.1 of Document 12/52. ComReg, therefore, invites your client to submit this question in accordance with that procedure. A response will then issue in due course.

7. **Licence start dates.** It is clear that licence start dates will have to be moved from 1 February 2013 (which is now known to be an artificial date) to reflect Vilicom's recommendations of at least 6 months transition post assignment - as you are aware our client has produced evidence to suggest a longer period would be needed. Please confirm that this issue will be addressed by a later, more practical, start date being confirmed now with a consequential extension to the Interim Licences.

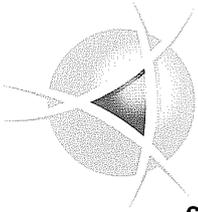
ComReg's response:

ComReg would point out that it has already addressed this issue in, amongst other places, sections 2.2.2 and 2.2.6 of Document 12/52 and does not propose to revisit the matter in this letter.

If your client wishes additional clarification on this issue as it relates to the Award Process and Auction Rules, ComReg considers that a query of that nature would be appropriately addressed through its Question and Answer procedure set out in section 3.3.1 of Document 12/52. ComReg, therefore, invites your client to submit any further question it might have in accordance with that procedure. A response would then issue in due course.

8. Financial Penalties/Refunds:

- a. Please advise how ComReg proposes to address each of the above concerns ((i) to (vi)) on the uncertainties with regard to fees, penalties and refunds.
- b. In particular please explain the precise criteria that would be adopted when using "other relevant information" (footnote 30 of the Information Memorandum, page 35) in the calculations.



- c. Please confirm how ComReg is going to ensure that it accurately refunds operators the money they have paid for spectrum.
- d. Please confirm on what basis Com Reg views the above uncertainties, if left unaddressed, as being compliant with its statutory obligations.

ComReg's response:

ComReg considers that, given the nature of the above queries, they would be appropriately addressed through its Question and Answer procedure set out in section 3.3.1 of Document 12/52. ComReg, therefore, invites your client to submit these questions in accordance with that procedure. A response will then issue in due course.

- 9. Consultation on Interim licensing Arrangements. In order to avoid the financial uncertainties (mentioned above) and the threat of consumer disruption (already acknowledged by ComReg), please confirm that a proper consultation will be conducted now, prior to the Proposed Auction, in relation to the need for later licence start dates; and the consequential need for an extension of the Interim licences.**

ComReg's response:

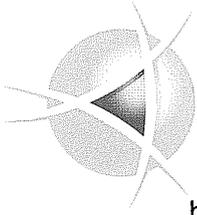
ComReg would point out that it has already addressed this issue in section 6.5 of Document 12/50 and does not propose to revisit the matter in this letter. In that regard, ComReg notes that there have been no developments since the publication of Document 12/50 to justify re-opening the issue.

- 10. Staggered Start Dates: Please confirm that ComReg will put measures in place to ensure that licence start dates for liberalised use licences will commence at the same time for all operators.**

ComReg's response:

ComReg notes that, under this heading, your client is essentially requesting ComReg to significantly amend the Award Process by removing the advanced commencement option provided therein. Not to mention the obvious conflict that such a course of action would have with its consultation and other statutory obligations (e.g. the efficient use of spectrum) and with its statutory discretion, ComReg would point out that it has already addressed the issue of start dates in its Decision and Information Memorandum documents and does not propose to revisit the matter in this letter. See, for example, sections 4.4 and 7 of Document 12/25; sections 2.2.2, 2.2.6 and 2.4.2 of Document 12/50; and sections 2.2.2 and 2.2.6 of Document 12/52.

If your client wishes additional clarification on this issue as it relates to the Award Process and Auction Rules, ComReg considers that a query of that nature would



be appropriately addressed through its Question and Answer procedure set out in section 3.3.1 of Document 12/52. ComReg, therefore, invites your client to submit any further question it might have in accordance with that procedure. A response would then issue in due course.

- 11. Limitation of Liability:** We note that ComReg prefaces its extremely broad limitations of liability with phraseology such as "to the extent permitted by law". We are not aware of circumstances under which ComReg is entitled to limit its liability in this process in the manner proposed. Please provide the legal basis on which ComReg believes it is entitled to rely in order to exclude liability in the manner described above and more generally. Please note that this is not a matter that can be simply left open by words "to the extent permitted by law" where the clear intention is to seek to limit liability in carrying out statutory functions. As it stands operators cannot know if they will be adequately compensated in the event of seeking damages from ComReg for any wrongdoing, given the attempt at such broad limitation - if the limitations were to have legal effect, damages would not be an adequate remedy in any action taken subsequent to the Proposed Auction.

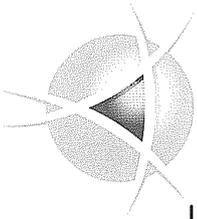
ComReg's response:

ComReg's intention is to seek to exclude or limit its liability in the manner expressed in the Information Memorandum to the extent to which the law permits it to exclude or limit its liability in any given respect. Accordingly, ComReg has been transparent about the exclusions and limitations it will seek to rely upon.

If, as you say, as Telefónica's legal advisers, you are not aware of circumstances under which ComReg is entitled to limit its liability in this process in the manner proposed, then you are capable of advising your client that you take a more restrictive view of ComReg's exclusions and limitations of liability than ComReg.

Also, although not specifically addressed in the above query, ComReg notes your comment at point (b) on page 9 of your letter. In that regard, your client should note that the disclaimer included on page 2 of Document 12/52 (the final Information Memorandum) which is identical to the disclaimer included in Document 11/75 (the draft Information Memorandum) was included in the final Information Memorandum in error. ComReg, therefore, confirms that Document 12/52 should be read minus the disclaimer on page 2 of that document. Please note that ComReg intends to notify all interested parties of the above clarification in its forthcoming publication of the further tranche of provisional answers under its Questions and Answers process.

ComReg otherwise notes but wholly rejects the assertions made in your letter with regard to the Award Process and limitations of liability.



In addition, ComReg would consider that any references to duress and undue influence in your letter are entirely inappropriate and misplaced given the context in which they are made and the applicable law concerning these issues.

Finally, in relation to point (h), ComReg notes that it has already addressed issues regarding spectrum trading, pooling and sharing in Documents 11/88 and 11/89, Document 12/25 and, most recently, Document 12/52, and does not propose to revisit the matter here.

12. Opportunity Cost and Rebate: Please expressly confirm that relevant rebates will be taken into account when calculating opportunity cost in the Winner and Price Determination.

ComReg's response:

ComReg would point out that your client's letter of 2 May 2011 is expressly referenced by DotEcon in Document 12/51. Specifically, the issue raised by your client is set out in section 5.1.1 of same (paragraph 359) and the issue is addressed in section 5.1.2 (paragraph 377).

If your client wishes additional clarification on this issue as it relates to the Award Process and Auction Rules, ComReg considers that a query of that nature would be appropriately addressed through its Question and Answer procedure set out in section 3.3.1 of Document 12/52. ComReg, therefore, invites your client to submit any further question it might have in accordance with that procedure. A response would then issue in due course.

ComReg looks forward to responding to any questions which your client may raise during the ongoing questions and answers process.

Finally, please note that ComReg will publish this exchange of correspondence in accordance with its usual procedures (and with such redactions as required to protect the anonymity of your client in respect of questions submitted by your client in the Question and Answer procedure set out in section 3.3.1 of Document 12/52), and A&L Goodbody is invited to inform ComReg of any confidential material in your letter of 13 June that it considers ought not to be published in accordance with these procedures.

Yours sincerely,

George Merrigan
Commission for Communications Regulation

4. 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

Strictly Private and Confidential

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.

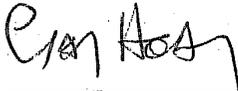
Separately, we understand that as part of the application process, applicants are required to declare that "*failure to obtain consents, approval, apparatus or funding necessary to deploy a network or complete transitional activities shall be deemed to be a breach of the Auction Rules by that Winning 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

Telefonica

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:

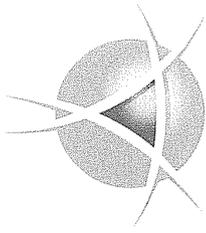
Yours sincerely



Gary Healy
Head of Regulatory and Public Policy
Telefonica Ireland Limited

Copy: Dr. Samuel Ritchie, Commission for Communications Regulation

5. 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,

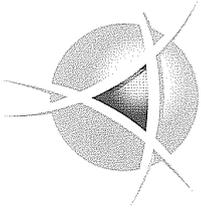
I refer to your letter of 14 June 2012, postmarked 15 June, concerning the above matter which I received by post on 18 June 2012 (and not by email as your letter indicates). I have responded separately to the letter from A&L Goodbody, sent on your behalf, dated 13 June.

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.

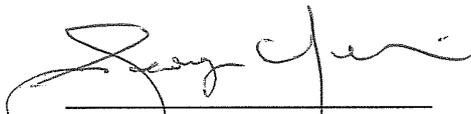
ComReg, therefore, invites Telefónica to submit its queries in accordance with that procedure. Responses will then issue in due course. In that regard, you should note that the deadline for submission of questions is 16.00 hours (local time) on 22 June 2012, and that all questions received in due time 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.



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

6. ComReg: reply to eircom Group letter⁸ of 24 May 2012 (letter dated 30 May 2012);

⁸ This eircom Group letter was published as item 8 in Document 12/49



30 May 2012

Mr William McCoubrey
Head of Regulatory Policy – Mobile and Consumer Affairs
Meteor Mobile Communications Limited
1 Heuston South Quarter
St John's Road
Dublin 8

Re: Multi-band spectrum award

Dear Mr McCoubrey,

Thank you for your letter of 24 May 2012 concerning the issue of security of data in relation to the Commission for Communication's (ComReg) multi-band spectrum award.

In relation to the two matters raised in the second paragraph of your letter, I would refer you particularly to:

- firstly, the relevant correspondence between Vodafone and ComReg relating to (a) the misdirection of non-confidential correspondence, and (b) the inadvertently sent e-mail, as contained in ComReg Document 12/49; and
- secondly, section 6.9.2 of ComReg Document 12/50.

I trust this is satisfactory.

Yours sincerely



George Merrigan
Director Market Framework

7. Eircom Group: email (and attachment) to DotEcon “RE: WDP software licence agreement” (email dated 12 June 2012);

From: William McCoubrey,
To: "IrishMultiBand2012@dotecon.com"
Date: 12/06/2012 17:30
Subject: RE: WDP software licence agreement

Hi,

We have reviewed the proposed software licence agreement and request that the comments included in the attached word document be taken into account.

Regards,
William

SOFTWARE LICENCE AGREEMENT

1. LICENCE ACCEPTANCE

Where the Software is downloaded by a natural person for his or her own use:

1. The word "you" used in this licence applies to you the individual who downloads, installs and or uses this software.
2. By downloading, installing and/or using the Software, you agree to be legally bound by this agreement and you warrant that you are the authorised user of this Software. If you do not agree to all of the terms of this agreement, then do not download, install or use the Software.

Where the Software is downloaded by a natural person either in the course of his or her employment, or in performing services under a contract for services with another person (whether a natural person or otherwise):

1. The word "you" used in this licence applies to you the individual who downloads, installs and/or uses this software and his or her employer as the case may be.
2. Any natural person who downloads, installs or uses this software warrants and represents that he or she is appropriately authorised to bind his or her employer to the terms of this agreement.
3. By downloading, installing and/or using the Software, you agree both on your own behalf and on behalf of your employer to be legally bound by this agreement and you warrant that you are the authorised user of this Software. If you do not agree to all of the terms of this agreement, then do not download, install or use the Software.

2. LICENCE

You are granted a royalty-free, non-exclusive, non-transferable licence to use the Software Materials on the terms of this agreement during the Licence Term in the normal course of your business solely for the purpose of carrying out test calculations to understand how ComReg will determine the winning bidders in the Auction and the prices to be paid by the winning bidders as specified in the Information Memorandum (ComReg 12/52).

Comment [O1]: Defined term but cannot locate a definition. Is it Comreg document 12/52?

You shall treat the Software Materials as confidential and shall not, without the prior written consent of DotEcon Ltd, disclose the whole or any part of them to any third party. You shall ensure that your employees comply with these confidentiality and non-disclosure obligations. You are permitted to use the Software Materials for the purpose of providing services to a third party in connection with the Auction but, in so doing you become an Insider of that third party (as defined in the Information Memorandum).

Comment [O2]: Defined term but cannot locate a definition

You may not make more than a reasonable number of copies of the Software Materials for security back-up. All copies of the Software Materials are subject to the terms and conditions of this agreement.

You shall implement and maintain reasonable security measures to safeguard the Software Materials, and all copies of the Software Materials, from access or use by any unauthorised person.

You shall not alter or modify the whole or any part of the Software, or merge any part of the Software with any other computer software programs or, save to the extent expressly

permitted by applicable law, decompile, disassemble or reverse engineer the executable code of the Software or attempt to do any of these things.

You shall not alter, obscure, remove, interfere with or add to any of the trade marks, trade names, markings or notices affixed to or contained in the Software Materials at the time they are first accessed by you and you shall ensure that all those trade marks, trade names, markings and notices are reproduced on all copies of the Software Materials.

At the end of the Licence Term you shall destroy all copies of the Software in your possession.

You covenant that you will bring any error or omission in the operation of the Software and/or in the Software Materials to the attention of ComReg promptly on becoming aware of same.

A copy of this software licence is included in the file within the documentation directory of the Software Materials. You shall not alter or remove this file.

3. WARRANTY

DotEcon warrants that it is authorised to grant licences to use the Software Materials on the terms and conditions contained in this agreement. This warranty does not extend to the Third Party Software which is licensed separately under LGPL licences (hereinafter defined).

The Software Materials ~~are~~ supplied on an "as is" basis meaning that DotEcon Ltd makes no warranty in relation to the Software's performance or functionality and DotEcon Ltd takes no responsibility for the performance or non-performance of this Software.

Deleted: is

Save as expressly provided in this agreement, no representation, warranty or condition, express or implied, statutory or otherwise, as to condition, quality, performance, merchantability or fitness for purpose are given or assumed by ComReg or DotEcon Ltd. in respect of the Software Materials and all such representations, warranties and conditions are excluded save to the extent that such exclusion is prohibited by law.

4. INTELLECTUAL PROPERTY RIGHTS

You acknowledge that all Intellectual Property Rights in the Software Materials are vested, and shall remain vested, in DotEcon Ltd.

Comment [O3]: Normally one would expect an intellectual property right (ipr) indemnity from the supplier in the event that a third party sues eircon claiming that eircon breached that third parties ipr. However in this instance we are not paying a licence fee

5. USE OF THIRD PARTY SOFTWARE LIBRARIES

This Software is a work that uses the lp_solve linear programming and the QuadProg++ quadratic programming libraries. Unmodified versions of these libraries are statically linked by the Software Materials. Both libraries are licensed pursuant to the Lesser GNU Public Licence (LGPL), the text of which is included with the Software Materials and which shall not be removed from the Software Materials.

Source code for the lp_solve library may be obtained by following instructions provided with the Software Materials (see the file lpsolve_licensing.txt); these instructions for obtaining the source code of the lp_solve library as well as the source code itself (provided in the file lp_solve_5.5.2.0_source.tar.gz) shall not be removed from the Software Materials.

The source code for the QuadProg++ library is provided in the file quadprog++-1.2.tgz. This file shall not be removed from the Software Materials.

6. LIABILITY

Subject as provided in this agreement and to the extent permitted by law, neither ComReg nor DotEcon Ltd. shall have any liability to you under this agreement, whether arising from negligence, breach of contract or otherwise.

Subject as provided in this agreement, ComReg and DotEcon Ltd. shall not be liable to you for any indirect or consequential loss or damages or for any loss of business or profits whether arising from negligence, breach of contract or otherwise.

Without prejudice to the generality of the foregoing, DotEcon's and ComReg's aggregate liability under this agreement for all liabilities and losses arising directly or indirectly from this agreement and your use of the Software Materials shall not exceed €1,000.

Deleted: A

Comment [O4]: A third party ipr claim should be uncapped

Deleted: A

7. ASSIGNMENT

You may not assign, sub-license, transfer or otherwise dispose of any of your rights or sub-contract, transfer or otherwise dispose of any of your obligations under this agreement without the prior written consent of DotEcon Ltd.

8. GOVERNING LAW AND JURISDICTION

This validity, construction and performance of the obligations under this licence shall be governed by the laws of England and Wales and the courts of England and Wales shall have exclusive jurisdiction in relation to any disputes arising herefrom, save that DotEcon Ltd. or ComReg shall be entitled to seek interim or injunctive relief hereunder in any court of appropriate jurisdiction.

Comment [O5]: Ideally we would prefer Ireland

9. INTERPRETATION

In this agreement:

"Auction" means the auction for frequencies in the 800MHz, 900MHz and 1.8GHz bands in Ireland described in ComReg document 12/52;

"Auction Rules" means the rules which will govern the conduct of the Auction as specified in the Information Memorandum;

"ComReg" means the Commission for Communications Regulation in Ireland, as established by the Communications Regulation Act, 2002;

"DotEcon Ltd" means a company called DotEcon Ltd whose registered office is at 17 Welbeck Street, London, W1G 9XJ;

"Intellectual Property Rights" means all rights in inventions, patents, copyrights, design rights, trade marks and trade names, service marks, trade secrets, know-how and any other intellectual property rights (whether registered or unregistered) and all applications for any of them, anywhere in the world;

"Licence" means the licence in respect of the Software Materials granted to you under clause 2;

"Licence Term" means the period of time starting with the date on which you first download, install or use the Software and ending one week after the date on which ComReg announces the results of its multi-band spectrum award process or otherwise terminates that award process.

"Software" means the software developed by DotEcon Ltd for the purpose of calculating the winning bidders in the Auction and the amount of the winning bids and for the avoidance of doubt does not include Third Party Software which are provided therewith;

"Software Documentation" means the electronic or hard copy user manual supplied with the Software; and

"Software Materials" means the Software and the Software Documentation.

"Third Party Software" means the lp_solve linear programming and the QuadProg++ quadratic programming libraries.

Words importing the singular shall include the plural and vice versa; words denoting persons shall include bodies corporate and unincorporated associations of persons and vice versa.

DECLARATION: I accept the licence conditions shown above.

NAME:.....
ORGANISATION:
ADDRESS:
DATE:

8. ComReg: reply to eircom Group email of 12 June 2012 (email dated 18 June 2012);

From: Samuel Ritchie
Sent: 18 June 2012 16:25
To: William McCoubrey
Cc: Samuel Ritchie
Subject: RE: WDP software licence agreement

Dear William

Your email of the 12 June 2012 (and attachment) was forwarded to me for response.

ComReg has considered your comments in relation to the software licence being provided in respect of the beta winner and price determination software and responds as set out below.

The software licence is a DotEcon licence. It is provided on the same terms to all interested parties and therefore, for consistency purposes, it is not appropriate to negotiate individual terms and conditions with each interested party. ComReg is of the view that none of the comments highlight material mistakes or matters which necessitate changes to the software licence.

As this is a free licence, the software is being provided “as is” and consequently, ComReg is of the view that some of Meteor’s proposed substantive changes are inappropriate here.

Finally, ComReg notes that it is clear that “Information Memorandum” is defined to be ComReg Document 12/52 in the licence.

Accordingly, ComReg does not propose to request DotEcon to make any changes to the licence being offered.

Yours sincerely

Samuel

Dr. Samuel Ritchie
Manager Spectrum Operations

Commission for Communications Regulation

9. Eircom Group: email to ComReg “Extension to Q&A deadline” (email dated 19 June 2012);

From: McCoubrey, William
Sent: 19 June 2012 15:02
To: Samuel Ritchie
Cc: Patrick Mulvey
Subject: Extension to Q&A deadline

Dear Samuel,

With reference to the multi-band spectrum award process deadline for submission of questions regarding the award process. I am writing to request an extension to the deadline to 29th June for submission of any questions in respect of the WDP software. We are making this request in order to have sufficient time to evaluate the software bearing in mind that the software was not available for use before 12th June and that the software requires specialised hardware that takes time to procure.

Regards,
William

William McCoubrey
Head of Regulatory Policy - Mobile and Consumer Affairs

10. ComReg: reply to eircom Group email of 19 June 2012 (email dated 19 June 2012);

From: Samuel Ritchie
Sent: 19 June 2012 17:16
To: 'McCoubrey, William'
Cc: Patrick Mulvey
Subject: RE: Extension to Q&A deadline

William,

ComReg has considered eircom's request for an extension to the deadline to 29 June for submission of any questions in respect of the WDP software and reasons for same.

ComReg does not propose to accede to your request for the reasons set out in its response to Question 5 (of the Q&A process), which is available from ComReg's web-site at the following address:
http://www.comreg.ie/radio_spectrum/questions_and_answers_and_clarifications.713.1097.html

As you know, it is ComReg's policy to publish exchanges of correspondence such as this in accordance with its usual procedures. Accordingly, I would be grateful if you could indicate whether there is any specific confidential material in your e-mail that eircom considers ought not to be published in accordance with these procedures.

Regards

Samuel

Dr. Samuel Ritchie
Manager Spectrum Operations

Commission for Communications Regulation

11. McCann Fitzgerald: letter to ComReg “Vodafone: Multi-band Spectrum Release: Custodianship of Information” (letter dated 30 May 2012);

McCann FitzGerald

Solicitors

40 Square de Meeûs
1000 Brussels

Tel: +32-2-740 0370

Fax: +32-2-740 0371

Email: inquiries@mccannfitzgerald.ie

www.mccannfitzgerald.ie

MCCANN FITZGERALD

OUR REF

YOUR REF

DATE

DPC\5206320.1

30 May 2012

Alex Chisholm Esq
Commission for Communications Regulation,
Block DEF,
Abbey Court,
Irish Life Centre,
Lower Abbey Street,
Dublin 1

**BY EMAIL AND
BY POST**

Vodafone: Multi-band Spectrum Release: Custodianship of Information

Dear Commissioner Chisholm,

1. Introduction

We refer to the following documents published by ComReg during last weekend:

- ComReg Document 12/50: Multi-band Spectrum Release: Response to Consultation; and
- ComReg Document 12/52: Multi-band Spectrum Release: Information Memorandum

We also refer to our correspondence with you on behalf of our client Vodafone and to earlier Vodafone correspondence with you following the publication of ComReg Document 12/25 in March of this year.

We note that ComReg has decided, without providing adequate reasoning, not to accept Vodafone's suggestion that it should consult with industry participants in the context of, and prior to, the forthcoming auction concerning the adoption of a protocol for the custodianship of information that would reflect best industry and regulatory practice and that would seek to mitigate the effect of the endemic failures Vodafone has identified in ComReg's current information custodianship systems.

John Cronin, David Clarke, Timothy Bouchier-Hayes, Jane Marshall, Ronan Molony, Lenan McDowell, Julian Conlon, Damian Collins, Catherine Deane, Paul Helleman, Terence McCann, Muriel Walls, Roderick Boucke, Ambrose Loughlin, Niall Powdery, Kevin Kelly, Hilary Marren, Eamonn O'Hanrahan, Roy Parker, Patricia Lawless, Barry Devereux, Geraldine Hickey, Helen Kilroy, Judith Lawless, James Murphy, David Lydon, David Byers, Sean Barton, Colin Fanning, Paul Lavery, Julie Quin, Alan Fuller, Claire Lenny, Maureen Dolan, Michelle Doyle, Hugh Beattie, Fergus Gillen, Valerie Lawlor, Mark White, Rosaleen Byrne, Eamon de Valera, Joe Fay, Ben Gaffikin, Donal O'Raghallaigh, Karyn Harty, Philip Andrews, Barrett Chapman, Mary Bassil, Audrey Byrne, Shane Fahy, Georgina O'Riordan, Adrian Farrell, Michael Murphy, Annette Hogan, Aidan Lawlor, Daraugh Murphy, Brian Quigley, Stephen FitzSimons, David Hurley, Philip Murphy, Fiona O'Beirne, Garrett O'Brien.
Consultants: Eleanor MacDonagh (fca), Peter Osborne, Michael Ryan (fca), Tony Spratt (aca).

DUBLIN Riverside One, Sir John Rogerson's Quay, Dublin 2, Tel: +353-1-829 0000, Fax: +353-1-829 0010.

LONDON Tower 42, Level 38C, 25 Old Broad Street, London EC2N 1HQ, Tel: +44-20-7621 1000, Fax: +44-20-7621 9000.

CONFIDENTIAL

McCANN FITZGERALD

We have been instructed to write to you protesting in the strongest possible terms concerning ComReg's failure in the two recently published documents to take any adequate steps to deal with those endemic failures and also concerning ComReg's failure to address in those documents the issues drawn to its attention by Vodafone on information management and security.

Vodafone's view is that ComReg's unjustified and unreasonable refusal to address these issues increases the ever-present risk that failures in information custodianship by ComReg may result in the auction process being compromised or, to the extent that it had already been compromised, being further compromised.

2. The Inadequacy of ComReg's Response

As far as the protection of confidential information is concerned, ComReg sets out its "final position" for the auction process in paragraph 6.9.2 of ComReg Document 12/50.

Not only is the "final position" inadequate for the purpose of protecting confidential information in the auction process (for reasons that will be explained below), it is also rather peculiar and unjustifiable as a "final" position because:

- ComReg says its "[final] position is likely to evolve in the near term"; in other words, it is not final. Thus, potential auction participants are being told that the "various enhanced protocols in respect of [ComReg's] information-management and security for the auction process" (which are not, in any event, being disclosed to them) may change during the auction process. Vodafone has expressed its concern on the lack of certainty and transparency in relation to information custodianship since it began corresponding with ComReg on this issue: the protocols for information custodianship are an integral part of the process and should be clear, transparent and ratified broadly by the industry. They should not be secretive and subject to undisclosed changes, nor dealt with in a manner which is outside ComReg's usual processes and procedures; and
- ComReg refuses, without providing any adequate basis for this refusal, to disclose the "various enhanced protocols in respect of its information-management and security for the auction process" because the provision of "insights into those protocols ... could compromise their effectiveness". This is extraordinary; ComReg seems to suggest that the "enhanced protocols" it is developing are so fragile that they will disintegrate if subjected to human gaze. Vodafone cannot have confidence in protocols that it cannot see, particularly where ComReg itself says that the integrity of the protocols would not withstand being disclosed to the potential auction participants whose information they are intended to protect. ComReg has a statutory duty to behave in a reasonable and proportionate manner and, by acting in this manner, it is not, in Vodafone's view, conforming to that statutory standard.

As mentioned above, Vodafone's concerns about the endemic nature of the problems ComReg has in managing information, including confidential information, remain as acute as ever and are not in any way addressed by ComReg's "Final Position" as set out in paragraph 6.9.2 of ComReg Document 12/50. On the contrary, the unreasonable, superficial and inadequate nature of ComReg's response to Vodafone's concerns (which have been explained at length and with precision in recent correspondence) makes Vodafone more anxious than ever that ComReg has failed to understand the problems it has and that ComReg's insouciance when it comes to the protection of confidential information increases the risk of the auction process being compromised or, to the extent that it had already been compromised, being further compromised.

CONFIDENTIAL

McCANN FITZGERALD

ComReg appears to have maintained this approach in its responses to other potential auction participants on this issue, as evidenced in the correspondence recently published in ComReg Document Number 12/49, where (in an email dated 24 April 2012 from George Merrigan to Gary Healy) ComReg dismissed Telefonica O2 Ireland's concerns regarding the robustness of ComReg's information handling processes in the context of the auction, which arose following another misdirection of communication by ComReg, and denied that the incident in question was a data breach. Meteor Mobile Communications Limited has also (in its letter of 24 May 2012 to George Merrigan) raised concerns about data security; no response from ComReg has been published.

In relation to the reasonableness, adequacy and justifiable basis of ComReg's response, Vodafone notes, first, that ComReg has provided no indication to potentially affected stakeholders of the nature and extent of its problem in relation to information custodianship. Vodafone's view is that ComReg's problem is endemic and grave and continues to raise many serious questions that have not been satisfactorily addressed. Are the lapses that Vodafone has drawn to ComReg's attention (based on its own direct experience), the only lapses that have occurred? Have there been other lapses? Did they involve confidential information? Does ComReg know? What steps has ComReg taken to identify lapses? Vodafone does not have answers to these questions (and to the other questions posed in recent correspondence that remain unanswered by ComReg).

As a matter of principle, it is not possible to address a problem without knowing its scope and gravity; if ComReg has failed properly to establish the extent of its information custodianship problem, its response and the measures it takes to address that problem will inevitably be inadequate and fall far short of what is required, especially given the significance of the auction process and ComReg's statutory obligations. For this reason, the questions raised by Vodafone need to be addressed urgently by ComReg. Potential auction participants also need to know the nature and extent of ComReg's problems in order to be able to make their own appraisal of the sufficiency of the remedial measures proposed by ComReg and realistically to assess the potential effect that inadequate measures in this context could have on the integrity of the auction process. Currently, those potential auction participants (including Vodafone) are completely in the dark about the extent of ComReg's problem (and do not even know if ComReg has itself established the dimensions of its problems).

Secondly, to the extent that ComReg is taking steps to remedy the inadequacies in its systems for information custodianship, these seem not to have been completed prior to the publication of the Information Memorandum. Vodafone notes that ComReg says that its "procedures for information-management and security for the Award Process have been and *will be* enhanced" it "has implemented and *is in the process* of implementing enhancements to the physical and logical controls" (emphasis added). To be effective, in the context of the auction process, these enhancements should have been completed before the publication of the Information Memorandum.

Thirdly, Vodafone notes that the only insight into the "enhancements" ComReg claims to have adopted (or to be in the process of adopting) is contained in the outline of four so-called "practical enhancements" provided in paragraph 6.103 of ComReg Document 12/50. Vodafone is concerned that these examples confirm that ComReg, to the potential prejudice of the auction participants, has entirely failed to grasp the nature, scope and gravity of the problem it has in relation to information custodianship and security. In circumstances where there is a record of ComReg, their legal advisers and external consultants engaged on their behalf

CONFIDENTIAL

McCANN FITZGERALD

- [REDACTED]
- sending correspondence intended for one operator to another operator;
- allowing senior staff to use office e-mail addresses for non-work related purposes;
- being aware of a situation in which a senior staff member involved in a key role in the auction process communicates a password together with his office e-mail address to third parties using the ComReg e-mail system;
- maintaining an e-mail system which is ineffective to prevent a senior staff member misdirecting e-mails; and
- permitting internal e-mails to be disclosed to external parties (see attached e-mail of 16 May from Paddy Mulvey of ComReg containing an internal ComReg email trail from Chairman Alex Chisholm to George Merrigan and copying Caroline Dee Brown, Adrian Rahman, Samuel Ritchie and Commissioner Kevin O'Brien. This is astonishing (not least given the extensive correspondence on this issue to date): a further failure that has just come to light despite whatever procedures (if any) ComReg may already have implemented and despite ComReg's much stated awareness of the requirements for robust procedures and its obligations and responsibilities in this regard.

Vodafone's concern is not so much that the four "practical enhancements" are not adequate, it is more that they are not relevant. Vodafone says this because:

- Switching from soft copy to hard copy questions and answers and changing the application procedure to ensure the anonymity of applicants will not in any way reduce the risk of repetition of data breaches of the type already experienced (some of which, Vodafone learns (to its bemusement), ComReg refuses to accept, without even an attempt to provide a single supporting argument and in the face of contrary evidence, as data breaches (c.f. paragraph 6.91 of ComReg Document 12/50)).
- Equally, Vodafone can have no confidence that the engagement of a so-called "reputable consultancy organisation" will result in any improvement where it does not know the identity or qualifications of the organisation, the nature of the brief it has been given or the extent to which the unidentified consultancy will be able to procure compliance by ComReg and its staff. In this context, Vodafone recalls the press articles it has read concerning a report from Deloitte, which reportedly criticized ComReg more than a year ago 'for insufficient security implementation'. If this report existed, it was clearly ineffective in terms of prompting ComReg to make its information custodianship systems fit for purpose and sufficiently robust to manage an auction process for which it has sole responsibility as the statutory regulator and which is of crucial commercial importance to all potential auction participants, to Irish consumers and the broader Irish economy. It is not possible for Vodafone to be confident that the engagement of another team of external consultants will be sufficient to solve ComReg's endemic failings, particularly in circumstances where ComReg's previous failure appropriately to manage its external legal advisers and consultants in relation to security matters has given rise to many of the issues that now concern Vodafone and other potential auction participants.

CONFIDENTIAL

McCANN FITZGERALD

3. ComReg's Failure to Respond

Without prejudice to the generality of Vodafone's submission on the inadequacy and unreasonableness of ComReg's response to its submissions on the endemic failures within ComReg's systems for information custodianship, Vodafone has asked us specifically to recall to ComReg our letter of 16 May and the questions we posed in that letter. To date, those questions (and the other issues raised in that letter) have not been addressed by ComReg.

This is despite the lengthy process ComReg has deployed and the extensive paperwork issued by it to date, including the statement contained in the letter of 18 May sent to Damian Collins of this firm from your office: "I also refer to your letter dated 16 May regarding the same matters. ComReg will address the issues raised in this letter separately, including in relation to the report from Deloitte referred to in both letters."

We have not received any letter; neither our questions nor the Deloitte report are dealt with in ComReg Documents 12/50 or 12/52.

The issues we raised in our letter of 16 May are directly relevant to the integrity of the auction process; they have not been addressed by ComReg which, instead, has unreasonably and without justification decided to plough ahead with the publication of the Information Memorandum and related documents, ignoring the information custodianship and security issues which we raised in that 16 May letter. ComReg appears to be actively avoiding disclosure of information which could give clarity to the issues raised, without providing any sound reasoning as to why it believes the process is intact and beyond scrutiny, despite clear and compelling evidence to the contrary.

This failure by ComReg to provide the response it had promised (or any response) is another reason for Vodafone's concern that insufficient rigour in ComReg's approach to information custodianship may result in a greater risk of the current auction process being compromised or, to the extent that it had already been compromised, being further compromised.

4. Concluding Remarks

Vodafone again calls on ComReg to provide, within a stated timeframe, to Vodafone and the other interested parties a reasoned, coherent, thorough and comprehensive response to the growing volume of issues regarding ComReg's approach to information custodianship (outlined in this letter and other correspondence) and to address the potential impact of those issues on the integrity of the auction process.

Specifically, Vodafone requests that ComReg discloses:

- the full extent of any other breaches of which it is aware;
- the steps taken (if any) to remedy those breaches;
- the steps it has taken to identify and remedy other possible breaches of which it is not currently aware; and
- the further remedial measures that ComReg intends to put in place in the context of information custodianship generally.

Vodafone now has a very real concern that the compromise of the auction process could be the

CONFIDENTIAL

MCCANN FITZGERALD

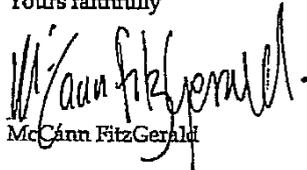
consequence of ComReg's approach. In circumstances where this approach may have already led to the auction process being compromised, this situation will not be remedied by ComReg's ongoing intransigence with regard to the issues raised.

This letter does not contain any confidential information or business secrets and may be published by ComReg in its current form without redaction.

However, if ComReg proposes to redact this letter prior to publication, we request that we should be informed of the proposed redactions and the reasons for which the redactions are proposed and that our consent to the redactions should be obtained prior to any publication.

Finally, we have been asked by Vodafone formally to continue to reserve its right to damages for any loss it may suffer, including any loss arising by virtue of any delays in the process, and all of Vodafone's costs associated with the matters raised in this and previous correspondence.

Yours faithfully



Michael FitzGerald

Collins, Damian [mailto:Damian.Collins@mccannfitzgerald.ie]

From: Patrick Mulvey [patrick.mulvey@comreg.ie]
Sent: 16 May 2012 18:11
To: Collins, Damian [mailto:Damian.Collins@mccannfitzgerald.ie]
Subject: RE: Vodafone: Spectrum Auction [MF-LIVE.FID1374183] [Confidential]

Dear Damian,

In the interests of transparency, ComReg intends to publish McCann Fitzgerald's letter of 16 May 2012 as part of its ongoing multi-band spectrum release process.

I would appreciate if you would confirm whether or not any or all of the material in the letter submitted 16 May 2012 is considered confidential. If McCann Fitzgerald considers this letter (or any parts of this letter) in its current form to be confidential, ComReg requests that McCann Fitzgerald submit a redacted version by close of business on 18 May 2012. In doing so, ComReg requires that you disclose what exactly is deemed confidential by McCann Fitzgerald and for what reasons the text is considered confidential.

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

Kind Regards,

Paddy

-----Original Message-----

From: Alex Chisholm
Sent: 16 May 2012 15:06
To: George Merrigan
Cc: Caroline Dee Brown; Adrian Rahman; Samuel Ritchie; Kevin O'Brien
Subject: FW: Vodafone: Spectrum Auction [MF-LIVE.FID1374183] [Confidential]

Classification: Confidential | Not Legally Privileged

George,

Please consider the attached letter (just received), marked 'Confidential', and provide advice and a draft response in due course.

I will ask Marie to send an acknowledgement in the meantime.

Thanks and regards

Alex

The information in this email is confidential and may be legally privileged. It is intended solely for the addressee. Access to this email by anyone else is unauthorised. If you are not the intended recipient, any disclosure, copying, distribution or any action taken or omitted to be taken in reliance on it is prohibited and may be unlawful.

-----Original Message-----

From: Damian.Collins@mccannfitzgerald.ie [mailto:Damian.Collins@mccannfitzgerald.ie]
Sent: 16 May 2012 14:44
To: Alex Chisholm
Subject: Vodafone: Spectrum Auction [MF-LIVE.FID1374183]

Please see attached. The original will follow by post.

Damian Collins | McCann FitzGerald Solicitors | Square de Meeûs 40, 1000 Brussels, Belgium | T +32 2 7400370 | Fax + 32 2 7400371 | www.mccannfitzgerald.ie

Ireland Law Firm of the Year 2011 | Chambers Europe Ireland Law Firm of the Year 2011 and 2012 | International Financial Law Review

This email is from McCann FitzGerald, Solicitors, Riverside One, Sir John Rogerson's Quay, Dublin 2.
Ph: +353 1 829 0000 - Fax: +353 1 829 0010 (Dublin Office)
Ph: +44 207 621 1000 - Fax: +44 207 621 9000 (London Office)
Ph: +32 2 740 0370 - Fax: +32 2 740 0371 (Brussels Office)

www.mccannfitzgerald.ie

This email and any files transmitted with it are confidential and may be privileged and are intended solely for the use of the individual or entity to whom they are addressed. As email can be subject to operational or technical difficulties and time delays, communications that are subject to deadlines should also be sent by post. Any unauthorised direct or indirect dissemination, distribution or copying of this message and any attachments is strictly prohibited. If you have received the email in error please notify postmaster@mccannfitzgerald.ie or telephone +353 1 829 0000 and ask for the Help Desk.

12. McCann Fitzgerald: letter to ComReg “Vodafone: Multi-band Spectrum Release: Custodianship of Information” (letter dated 5 June 2012);

McCann FitzGerald

Solicitors

Riverside One
Sir John Rogerson's Quay
Dublin 2

Tel: +353-1-829 0000
Fax: +353-1-829 0010
Email: inquiries@mccannfitzgerald.ie
Dx 31 Dublin
www.mccannfitzgerald.ie

MCCANN FITZGERALD

OUR REF
SEB\5240110.1

YOUR REF

DATE
5 June 2012

Alex Chisholm Esq
Commission for Communications Regulation,
Block DEF,
Abbey Court,
Irish Life Centre,
Lower Abbey Street,
Dublin 1

**BY EMAIL AND
BY POST**

Vodafone: Multi-band Spectrum Release: Custodianship of Information

Dear Commissioner Chisholm

We refer to our letter of 30 May 2012 (copy attached for ease of reference) on behalf of Vodafone, and to our and Vodafone's previous correspondence with you, referenced in our 30 May 2012 letter.

That sequence of correspondence provides Vodafone's views on ComReg's information custodianship and on ComReg's decision not to accept Vodafone's suggestion that it should consult with industry participants in the context of, and prior to, the forthcoming auction concerning the adoption of a protocol for information custodianship that would reflect best industry and regulatory practice and that would seek to mitigate the effect of the endemic failures Vodafone has identified in ComReg's current information custodianship systems.

We have not had a response to our letter of 30 May 2012. Nor has ComReg responded to the questions posed in our letter of 16 May 2012 and, despite the letter of 18 May 2012 sent to Damian Collins of this firm by your office, ComReg has not dealt either with those questions or with the report from Deloitte referred to in those letters.

In circumstances where we have still not received a substantive response to the many significant issues raised in that sequence of correspondence, could you now please urgently either provide us with ComReg's substantive response, or let us know the timeframe within which we may expect to receive that substantive response?

This letter does not contain any confidential information or business secrets and may be published

John Cronin, David Clarke, Timothy Bouchier-Hayes, Jane Marshall, Ronan Molony, Lonan McDowell, Julian Conlon, Damian Collins, Catherine Deane, Paul Heffernan, Terence McCrann, Muriel Walls, Roderick Bourke, Ambrose Loughlin, Niall Powderly, Kevin Kelly, Hilary Marren, Eamonn O'Hanrahan, Roy Parker, Patricia Lawless, Barry Devereux, Geraldine Hickey, Helen Kilroy, Judith Lawless, James Murphy, David Lydon, David Byers, Sean Barton, Colm Fanning, Paul Lavery, Julie Quin, Alan Fuller, Claire Lenny, Maureen Dolan, Michelle Doyle, Hugh Beattie, Fergus Gillen, Valerie Lawlor, Mark White, Rosaleen Byrne, Eamon de Valera, Joe Fay, Ben Gaffikin, Donal O Raghallaigh, Karyn Harty, Philip Andrews, Barrett Chapman, Mary Brassil, Audrey Byrne, Shane Fahy, Georgina O'Riordan, Adrian Farrell, Michael Murphy, Annette Hogan, Aidan Lawlor, Darragh Murphy, Brian Quigley, Stephen FitzSimons, David Hurley, Philip Murphy, Fiona O'Beirne, Garreth O'Brien.

Consultants: Eleanor MacDonagh (FCA), Peter Osborne, Michael Ryan (FCA), Tony Spratt (ACA).

BRUSSELS 40 Square de Meeûs, 1000 Brussels, Tel: +32-2-740 0370, Fax: +32-2-740 0371.

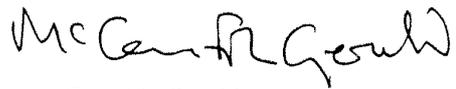
LONDON Tower 42, Level 38C, 25 Old Broad Street, London EC2N 1HQ, Tel: +44-20-7621 1000, Fax: +44-20-7621 9000.

MCCANN FITZGERALD

by ComReg in its current form without redaction.

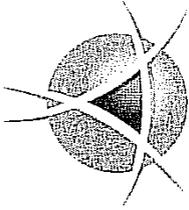
Vodafone continues to reserve its rights as set out in our letter of 30 May 2012.

Yours faithfully

A handwritten signature in black ink, appearing to read "McCann FitzGerald", written in a cursive style.

McCann FitzGerald

13. ComReg: reply to McCann Fitzgerald letter of 5 June 2012 (letter dated 7 June 2012);



Commission for
Communications Regulation

7 June 2012

Mr Damian Collins
McCann FitzGerald Solicitors
Square de Meeûs 40
1000 Brussels
Belgium

Dear Mr Collins,

Ref: DPC\5167054.1 and 5117183.2 - Vodafone: Proposed Spectrum Auction

I refer to the following correspondence, sent by you on behalf of your client, Vodafone Ireland Limited (Vodafone), in relation to the Commission for Communications Regulation's (ComReg) multi-band spectrum award:

- letter dated 16 May;
- letter dated 23 May;
- letter dated 30 May; and
- letter dated 5 June.

ComReg notes the continued rehearsal by Vodafone of its views regarding custodianship of information and data-security.

ComReg appreciates that Vodafone may have genuinely-held sensibilities in these respects.

However, as I will set out in more detail below, ComReg feels that, at its core, Vodafone's perspective is unreasonable, insofar as it fastens upon a number of scarcely relevant and non-prejudicial human errors and inflates them. ComReg does not agree that

- they must be "endemic", as you put it,
- one can conclude that ComReg's stand-alone spectrum auction process, with its ring-fenced procedures and supports, can reasonably be judged to be capable of being compromised by them.

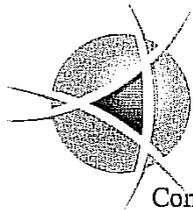
In that regard also, ComReg is concerned that Vodafone's continued rehearsal of its views may be unduly and disproportionately damaging to ComReg, to the forthcoming auction process, and to ComReg's advisers and consultants, who are referred to indiscriminately in your correspondence as also being involved in information-security lapses. Appropriate rights are reserved in these respects.

ComReg accordingly wishes to continue to give the appropriate level of assurance to interested parties, including Vodafone, whilst at the same time seeking to mitigate the damage that might be caused by Vodafone's perspectives gaining undue and disproportionate currency.

An Coimisiún um Rialáil Cumarsáide

Commission for Communications Regulation

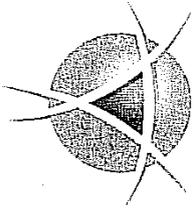
Abbey Court Irish Life Centre Lower Abbey Street Dublin 1 Ireland
Telephone +353 1 804 9600 Fax +353 1 804 9665 Email info@comreg.ie Web www.comreg.ie



Commission for
Communications Regulation

ComReg's perspective on, and response to, these matters may be summarised as follows:

1. ComReg is not, as a matter of law, obliged to consult separately in relation to information-custodianship and security, and ComReg is entitled to take the view that no such separate consultation is, or was, necessary or appropriate as a general matter.
2. Contrary to the view expressed by you on behalf of Vodafone, ComReg's reference to these matters as matters of procedural detail was certainly not intended to diminish their importance. Rather, that reference was intended to distinguish between a *substantive* matter on which ComReg would appropriately consult in a process such as this, rather than a *procedural* matter relating to the operational implementation of consulted-upon substantive matters.
3. Whilst ComReg has not consulted separately on these matters, it has had regard to Vodafone's extensive submissions and views in relation to information-custodianship and security, and will continue to have regard to views submitted by it, or by any other interested party, with regard to these matters, going forward.
4. Whilst ComReg has set out in its recently-published Response to Consultation document and Information Memorandum some appropriate information regarding information-custodianship and security which are of relevance to the forthcoming auction process, it points out that the work of the reputable consultancy organisation it has engaged is ongoing, and that - unlike Vodafone - ComReg is confident that this engagement should serve to satisfy interested parties that ComReg's processes surrounding the forthcoming auction are appropriate, robust and secure.
5. ComReg considers that it is making appropriate arrangements for safeguarding confidential information during the forthcoming auction process. The ongoing involvement of the external experts is intended to provide a further safeguard as to our adoption of, and conformance with, the high standards necessary in an award of this kind.
6. Whilst there have been some unfortunate misdirections of communications which have been the subject of recent correspondence between your firm / Vodafone and ComReg, ComReg does not agree with your abstraction of these to arrive at conclusions that
 - a. there must necessarily be "endemic failings" in ComReg with regard to these matters; and
 - b. any failings that there are, or have been, may be stretched to have the capability to undermine the very integrity and efficacy of the forthcoming auction process;



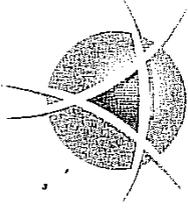
Commission for
Communications Regulation

7. Without prejudice to the generality of the foregoing, whilst, again, the misdirections of communications referred to by Vodafone were unfortunate, and whilst ComReg is taking steps to seek to ensure that such lapses do not occur in future, it does not follow – as your correspondence suggests – that a stand-alone spectrum auction process, with its ring-fenced procedures and supports, is in danger of being compromised, either because of the particular lapses that occurred historically, or by reason of similar such lapses during the course of the implementation of the auction process.
8. ComReg does not feel obliged to answer the various interrogatories sent by you on behalf of Vodafone, which are premised on the existence of an “endemic...problem”
- a. which Vodafone has constructed on the foundation of the various lapses to which it has referred in correspondence;
 - b. in circumstances where ComReg rejects there is an “endemic problem”; and
 - c. in circumstances where ComReg rejects the alleged connection of the ‘problem’ to-, or its relationship with, the efficacy or integrity of the forthcoming auction process.

Engaging with the inquisition you are prosecuting on behalf of Vodafone in this connection would, in ComReg’s view, serve to perpetuate the damaging and misconceived idea being ventilated by you that certain lapses in information-custodianship can be said to result in ComReg suffering from an “endemic problem” in that regard, and that that “endemic problem” can, in turn, be said to cause ComReg to be unable properly to run its forthcoming spectrum-auction process.

9. In your letters you refer to a newspaper report regarding a report by Deloitte “which reportedly criticized ComReg ‘for insufficient security implementation’”. You noted that “the report itself was reported to have been leaked”. The report in question was one of a number of reports prepared for ComReg by Deloitte as part of our Internal Audit process. A copy of the report was obtained under Freedom of Information legislation - it was not ‘leaked’. The recommendations of the Internal Audit Review of Information Systems Controls report were implemented in full by ComReg.
10. Without prejudice to the foregoing, ComReg states as follows:
- a. ComReg is not aware of any lapses in information-custodianship of possible relevance to the auction process that have not already been addressed in this correspondence¹.

¹ I note for completeness the revelation by your client yesterday of an error made by another commercial party in the preparation and submission of confidential/non-confidential data in another area of work. This does not speak to ComReg’s information handling procedures in relation to the auction and will be addressed in a separate communication with your client.



Commission for
Communications Regulation

- b. The only information-custodianship issue of which ComReg is aware that might have any potential relevance to this process is the issue concerning the



- c. In common with the lapses referred to by Vodafone in correspondence generally, the misdirection to Vodafone by Dr. Ritchie of a personal e-mail regarding cricket scores, and how to obtain them, is not a matter of consequence having a bearing on information-custodianship or security as it relates to the forthcoming auction process. Without prejudice to that, however, ComReg confirms that
- i. ComReg will not, in any event, use e-mail at all when dealing with confidential information during the auction process;
 - ii. Dr. Ritchie does not use the cricket-score-related password referred to by Vodafone for other purposes, and in particular, does not use them for access to ComReg systems;
 - iii. The "other Paul Ryan" has not ever received e-mails intended for Vodafone's Paul Ryan.

Finally, please note that, subject to appropriate redaction, ComReg will publish this exchange of correspondence in accordance with its usual procedures. Whilst you have franked your letter of 30 May with the notation "Confidential", you then go on to state at its conclusion that it contains no confidential information, and may be published 'as is.' In that regard, however, you will have noted from the contents of this letter that ComReg considers some of the contents of your letter to be inappropriate for publication, and ComReg intends to redact same.

Yours sincerely

George Merrigan
Director Market Framework

14. McCann Fitzgerald: reply to ComReg letter of 7 June 2012 (letter dated 8 June 2012);



8 June 2012

Alex Chisholm Esq
Commission for Communications Regulation,
Block DEF,
Abbey Court,
Irish Life Centre,
Lower Abbey Street,
Dublin 1

**ComReg Consultation on NGA roll-out pursuant to ComReg Document 12/56 (the "NGA consultation")
Multi-band Spectrum Release
Custodianship of Information**

Dear Alex

I refer to my letter of 7 June 2012 on the NGA Consultation and to George Merrigan's letter also of 7 June 2012 to Damian Collins of McCann FitzGerald responding to our correspondence, written originally in the context of the Multi-band Spectrum Release, concerning data custodianship issues.

We disagree with much of what is said in George Merrigan's letter and we will separately respond in full to it. However, that letter does not address the data custodianship issues in light of [REDACTED] mentioned in my letter of 7 June 2012, which transforms the context in which our concerns had been expressed, and in which ComReg is responding.

[REDACTED] the case that we have been making for the establishment of a separate process (including a consultation) on data custodianship issues has become unanswerable. This kind of process now must be part of the response to [REDACTED]

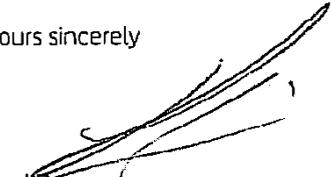
We would urge ComReg now to take the initiative in establishing such a process, including the elements we have previously set out. You may of course consider it appropriate that it would include other aspects, such as operator interface with ComReg on confidential and sensitive data.

Such a process would be essential to restore confidence in the data management aspects of the regulatory processes, which has undoubtedly been damaged, and we believe that it would be supported by other operators and stakeholders in the industry. While such an initiative may take some time (we believe that a realistic timeframe for a comprehensive and thorough review to be undertaken could take approximately six weeks) to coordinate and implement, we feel that an open and transparent engagement on these issues with all relevant and affected stakeholders would go a significant way to addressing the concerns we have raised to date.

Vodafone Ireland Limited
MountainView Leopardstown Dublin 18, Ireland
P: +353 (0)1 203 7777 F: +353 (0)1 203 7790 19 www.vodafone.ie
Registered Office: MountainView Leopardstown Dublin 18, Ireland
Company No: 274047

Page 121
ComReg
14

Yours sincerely



Paul Ryan
Director
Vodafone Ireland

15. Vodafone: email to ComReg “ComReg Multi-Band Spectrum Award Process Workshop” (email dated 11 June 2012)

From: Crowley, Patrick, Vodafone Ireland
Sent: 11 June 2012 16:34
To: George Merrigan
Subject: ComReg Multi-Band Spectrum Award Process Workshop

Dear George,

I note that the presentations given at ComReg's Multi-band Spectrum Award Process Workshop on 8 June do not yet appear to have been published on ComReg's website. Could you indicate when ComReg envisages that the presentations will be made available, and when the ComReg response to questions raised at the workshop (for example in relation to the maximum number of Authorised Agents that can be designated by an Applicant) will be published?

Best regards,

Patrick

Patrick Crowley
Regulatory Executive
Strategy
Vodafone Ireland

16. ComReg: reply to Vodafone email of 11 June 2012 (email dated 11 June 2012);

From: George Merrigan
Sent: 11 June 2012 17:14
To: Crowley, Patrick, Vodafone Ireland
Subject: RE: ComReg Multi-Band Spectrum Award Process Workshop

Dear Patrick,

ComReg will very shortly publish the various presentations from Friday last. In addition we will also publish a short Information Notice which will reflect ComReg's treatment of the questions raised.

Kind Regards

George Merrigan | Director, Market Framework Division |
✉ Commission for Communications Regulation, Abbey Court, Irish Life Centre,
Lower Abbey Street, Dublin 1, Ireland

17. McCann Fitzgerald: letter to ComReg “ComReg Consultation on NGA roll-out pursuant to ComReg Document 12/56 (the “NGA Consultation”)” (letter dated 7 June 2012);



7 June 2012

Mr Alex Chisholm
Commissioner,
Commission for Communications Regulation,
Block DEF,
Abbey Court,
Irish Life Centre,
Lower Abbey Street,
Dublin 1

ComReg Consultation on NGA roll-out pursuant to ComReg Document 12/56 (the "NGA consultation")

Dear Alex

I refer to the telephone conversation yesterday afternoon between you and Vodafone Ireland's CEO, Jeroen Hoencamp.

[REDACTED]

[REDACTED]

[REDACTED]

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. 328667
Directors: Jeroen Hoencamp (CEO), Thomas Reilly (CFO), Paul Feltz

Our ref:
M

[REDACTED]

2. Endemic Failures in ComReg's Data Custodianship Processes

[REDACTED]

We note that we have still yet to receive a response to the most recent letter of Tuesday 5 June last sent from McCann FitzGerald on our behalf and the various issues and correspondence referred to in that letter.

[REDACTED]

The assurances given by ComReg in the recent publication of the Information Memorandum relating to the information security processes it is proposing to adopt for the purpose of the spectrum auction, including the appointment of the as yet unidentified security consultant, have now been proven to be grossly inadequate and unsatisfactory and do not address past breaches of which we are aware and any others which may already have occurred but have not yet come to light. We trust that your response to the many data custodianship concerns that we have identified and you have yet to satisfactorily address will comprehensively take into account and be referenced by this latest episode.

3. [REDACTED]

[REDACTED] It also calls into question ComReg's ability to conduct a robust, fair and non-discriminatory process.

[REDACTED]

This disadvantage is heightened when considered in the context of the ComReg's expedited timelines, which we have continually asked to be reviewed and extended to give adequate time for consultation. In this regard, it is our view that the short extension announced today is insufficient. To ensure our position is not further prejudiced, we would ask you to immediately clarify how you propose to address these concerns and confirm if

you intend to continue with the NGA consultation in its proposed form and along the currently proposed timelines. At this juncture, we do not believe this is possible for the reasons outlined above and we reserve the right to make further submissions in this regard.

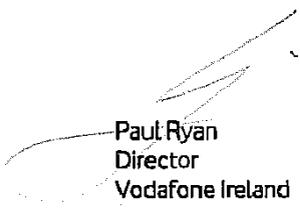
4. Concluding Remarks

In summary, the spectrum auction and the NGA roll-out are potentially the most significant matters related to telecommunications infrastructure investment in Ireland that the industry has seen to date or is likely to see for some time. It is not an exaggeration to state that the successful completion of these processes is of critical strategic national importance. To put this in context, the combined investment of the industry at stake is likely to be well in excess of €2 billion. This clearly puts an onus on ComReg, as the statutory body with responsibility for managing these processes, to ensure that they are operated in a transparent and robust manner taking into account at all stages the concerns of all participants involved. This has not happened to date and the seemingly endless flow of incidents relating to the integrity of ComReg's data custodianship processes in the context of the spectrum auction, and now the NGA consultation, must lead to the inevitable conclusion that both processes are now irreparably compromised.

Yesterday's development confirms beyond doubt that the industry's and Vodafone's previously highlighted and well documented concerns in this regard were and are fully justified. To our dismay, they continue to remain unaddressed by ComReg. We await your response on those concerns, together with the additional matters raised above, and again request a thorough consultation setting out all of the facts and their consequences and what mitigating steps ought to be taken to give the industry sufficient comfort in the context of the proposed substantial investments in spectrum and fibre infrastructure, which are now subjected to extraordinary and utterly unreasonable jeopardy.

Please note that this letter does not contain any confidential information or business secrets and may be published by ComReg in its current form without redaction.

Yours sincerely



Paul Ryan
Director
Vodafone Ireland

18. ComReg: reply to McCann Fitzgerald letters of 30 May 2012 & 5 June 2012 and Vodafone's letter of 7 June 2012 (letter dated 12 June 2012);



Commission for
Communications Regulation
Coimisiún Um
Rialáil Cumarsáide

from the chairperson

12 June 2012

Mr Jeroen Hoencamp
Chief Executive Officer
Vodafone Ireland Limited
MountainView
Leopardstown
Dublin 18

Ref: Vodafone correspondence

Dear Jeroen,

I refer to correspondence between Paul Ryan of Vodafone Ireland Limited ("Vodafone") and Vodafone's legal advisers, McCann Fitzgerald, and the Commission for Communications Regulation ("ComReg") on the issue of ComReg's "custodianship of information" in the context of ComReg's upcoming multi-band spectrum award, as well as ComReg's decision not to hold a specific consultation in relation to information-handling matters in the context of that award process. I also refer to recent correspondence relating to ComReg's consultation on Next Generation Access ("NGA") roll-out.

Whilst ComReg continues to engage with Vodafone and its legal advisers on these issues in the context of these specific processes, I am writing to you separately to express ComReg's overall concern regarding Vodafone's approach to same.

First, Vodafone has expressed issues it has with regard to ComReg's information-custodianship and its view of what impact its concerns might have on Vodafone and the respective processes, as well as its view that a separate consultation is required in the spectrum-award process with regard to information-custodianship-related issues.

In that regard, ComReg notes that other parties who are involved in the processes concerned, or who have been involved in, or affected by, particular information-handling events which have been referred to in the correspondence, have not raised issues in the way that Vodafone has, nor called for a separate consultation.



[Confidential: X.]

In the multi-band spectrum-award process, ComReg notes Vodafone's particular approach to the prior incident in April, involving non-confidential correspondence with Vodafone and Telefónica Ireland Limited (Telefónica), and the inadvertent misdirection of same by ComReg to one and the other party. Telefónica's response to that incident has been measured and brief. However, Vodafone and its legal advisers have directed a large volume of correspondence at ComReg since then, containing claims of damage, compromise to regulatory processes, and intimations of legal action while also referring to certain unrelated and questionable media reports and unconnected events.

Also, while Vodafone, in more recent correspondence, appears to consider itself to speak on behalf of industry in calling for consultation on ComReg's information security procedures for the multi-band award process¹, industry views are by no means the only views to which ComReg should have regard. Furthermore, no other interested and affected parties, from industry or otherwise, have, in fact, expressed any need for such consultation or requested same of ComReg. Indeed, they are consistent in calling for progress in bringing the award process to an expeditious conclusion.

Whilst ComReg has, in separate correspondence with Vodafone and its legal advisers, set out its clear positions on these matters, I consider it appropriate and desirable (a) to bring to your attention an unfortunate lack of a constructiveness of approach which ComReg perceives on Vodafone's part in the respective processes; and (b) clearly to re-state in summary terms ComReg's key positions, as mentioned in its correspondence heretofore.

Without prejudice to the generality of the foregoing, I felt it appropriate, in particular, to mention these things in circumstances where correspondence, dated 7 June, has referred to both of these processes now being "irreparably compromised" and future infrastructure investments being "now subjected to extraordinary and utterly unreasonable jeopardy"—both unfounded characterisations and assertions with which ComReg strongly disagrees (as our previous correspondence will reflect), and for which Vodafone has provided no evidence.

Page 2 of 6

¹ ComReg's decision not to hold such a specific consultation is set out and explained in earlier, published correspondence.



In summary, ComReg's key positions as mentioned in its previous correspondence are that:

1. As first set out in our letter to Vodafone dated 4 May 2012 ComReg does not consider it necessary or appropriate for ComReg to hold a specific consultation concerning information-custodianship and security processes.
2. ComReg treats information security as an important matter and takes information security issues very seriously.
3. ComReg recognises that there were certain, unfortunate, information handling events, as referred to in previous correspondence, but does not agree that they can be abstracted to found a claim, as urged by Vodafone, that it suffers from endemic problems or that the ongoing spectrum award process [~~Confidential: X~~] can justifiably be said to be compromised in any way .
4. Without prejudice to the above, the spectrum award process is in any event a separate, ring-fenced process with its own information-security procedures, protocols and supports which are the subject of advice and assistance from ComReg's specialist consultants, and which should serve to satisfy interested parties that ComReg's processes surrounding the forthcoming auction are appropriate, robust and secure. Should Vodafone have any specific questions concerning ComReg's information security proposals described in the Information Memorandum, Vodafone should avail of the ongoing question and answer process which is the platform ComReg has suggested be used where interested parties require further clarification on matters raised in the Information Memorandum.
5. Given that there is no requirement for a separate information security consultation, as urged by Vodafone, the consequences of which in practice would most likely be to delay the overall spectrum award process, the award process timetable should run as set out in the recently published Information Memorandum.
6. Accordingly also, as well as generally, the position set out by ComReg in section 6.5 of its recently-published response to consultation on its draft Information Memorandum (Document 12/50) on the timing of, or the need or otherwise in the short term to start, a consultation process or other procedure to cater for the possibility of further interim licensing of Vodafone and Telefónica beyond 31 January 2013, remains appropriate and reasonable. Therefore, ComReg reiterates the position adopted in same and in its correspondence with Vodafone and/or its legal advisers in this regard. This position has reflected ComReg's view that Vodafone's attempt to link alleged issues in the current implementation of the multi-band spectrum award process on the one hand, to the alleged need for ComReg immediately to start a process leading to a possible further interim GSM 900 MHz licensing of Vodafone from February, 2013, on the other, is misplaced.



7. Vodafone's request for an additional consultation in circumstances where there appears to be no objective justification for same, together with the consequent delays which this would realistically cause to ComReg's multi-band spectrum award, seems to indicate a change in position on Vodafone's part, given that Vodafone was advocating every haste as recently as in its response to ComReg's draft decision on this matter (see, for example, paragraph 13 of Vodafone's response to Document 11/60, published on the ComReg website²).

[Confidential: X.]

While fully respecting Vodafone's considerable investments and market positions in Ireland, and wishing to afford the company every reasonable opportunity to make its views known and to further develop its commercial interests in Ireland, I do, at this juncture, need to highlight to Vodafone that any approach that would, directly or indirectly, entail strictly unnecessary delay to ComReg's multi-band spectrum award and/or its NGA consultation process would not be without serious adverse consequences for Irish telecommunications markets and consumer welfare, given the critical importance of these matters.

In particular, Vodafone's proposals – the adoption of which, in ComReg's view, is not called for and would cause unnecessary delay - occur in the context of a spectrum award process that has been the subject of multiple rounds of detailed consultation in which Vodafone has participated very actively, and for which ComReg has

- reached its substantive decisions (ComReg document D04/12, published 16 March 2012);
- finalised its Information Memorandum to begin to implement these decisions (ComReg document 12/52, published 25 May 2012); and
- set a deadline for when applications for spectrum covered by this award must be submitted (20 July 2012).

Page 4 of 6

² See pages 46 and 47 of ComReg Document 11/102 at <http://www.comreg.ie/fileupload/publications/ComReg11102.pdf>.



In ComReg's view, the multi-band spectrum award process is:

- of enormous strategic importance to the Irish communications markets;
- vital to the prospects for consumers and businesses of accessing 4G and other advanced mobile services;
- equally vital to the competitive structure of the market;

- of great interest and concern to a wide range of public and private stakeholders; and
- legally necessary and appropriate, given ComReg's statutory responsibilities under Irish law and applicable EC legislation.

In the case of NGA, ComReg is also strongly of the view that:

- it is essential to establish an appropriate regulatory regime, taking the utmost account of the EU NGA Recommendation;
- this needs to be progressed in a timely fashion; and
- outcomes should be positive for consumer welfare.

We note that in Vodafone's letter of 7 June, the view is put forward that the spectrum auction and the NGA roll-out project are

"potentially the most significant matters related to telecommunications infrastructure investment in Ireland"

and that

"it is not an exaggeration to state that the successful completion of these processes are of critical national importance".

On this we can agree. But Vodafone then goes on to make the misplaced and unfounded assertion that both of these processes are now *"irreparably compromised"* (my emphasis).

ComReg is surprised that a company of Vodafone's stature should make a remark in such incautious terms as this, and adopt such a position, both generally and in correspondence intended for publication. Because of our growing concern regarding the stance Vodafone recently appears to have adopted, and given the potentially serious consequences for Irish telecommunications markets and consumer welfare, ComReg is considering bringing Vodafone's approach to the attention of interested and affected parties, both domestic and international, noting in the latter respect that the multi-band spectrum award represents the State's implementation of several pieces of European legislation. ComReg shall also take all appropriate measures to ensure that both processes continue without undue and unwarranted delays.

Page 5 of 6



Whilst ComReg will continue to engage appropriately with Vodafone and its legal advisers on any substantive issues that remain, ComReg feels that its time and effort would be better employed currently in not reiterating in several items of correspondence its perspective on the information-custodianship and other issues Vodafone has sought to rehearse and re-rehearse in correspondence over the past several weeks. ComReg is also concerned at the effect of Vodafone's publicly-available commentaries on this matter which, in ComReg's view, cast doubt on these important and legitimate processes without proper justification. I therefore urge Vodafone to engage more constructively with the regulatory processes and, in particular, the NGA consultation due to close on 13 July, and the multi-band spectrum award, for which applications are due no later than 20 July.

[Confidential: ✂]

Yours sincerely

Alex Chisholm
Chairperson

Note:

Sections marked [Confidential: ✂] have been redacted to protect the confidentiality of a third party.

19. McCann Fitzgerald: letter to ComReg "Vodafone Correspondence" (letter dated 14 June 2012)

McCann FitzGerald

Solicitors

Riverside One
Sir John Rogerson's Quay
Dublin 2

Tel: +353-1-829 0000
Fax: +353-1-829 0010
Email: inquiries@mccannfitzgerald.ie
Dx 31 Dublin
www.mccannfitzgerald.ie

MCCANN FITZGERALD

OUR REF

YOUR REF

DATE

SEB\5297036.1

14 June 2012

Alex Chisholm Esq
Commission for Communications Regulation,
Block DEF,
Abbey Court,
Irish Life Centre,
Lower Abbey Street,
Dublin 1

**BY EMAIL AND
BY POST**

Vodafone correspondence

Dear Commissioner Chisholm

We refer to your letter of 12 June 2012 to Mr Jeroen Hoencamp of Vodafone Ireland Limited, to which we have been instructed to respond in part in this letter. We will respond separately to a number of points of detail therein by separate letter which will responds also to Mr Merrigan's letter of 7 June 2012.

The following statement is made at page 5 of your letter: *"Because of our growing concern regarding the stance Vodafone recently appears to have adopted, and given the potentially serious consequences for Irish telecommunications markets and consumer welfare, ComReg is considering bringing Vodafone's approach to the attention of interested and affected parties, both domestic and international, noting in the latter respect that the multi-band spectrum award represents the State's implementation of several pieces of European legislation."*

Vodafone has expressed its views on the data custodianship issues which affect or may affect its commercial position, both in the context of its participation in the multi-band spectrum award and more generally by reference to the sequence of relevant facts and matters concerning data custodianship, and to their actual and potential consequences. Vodafone believes, as do we, that its relevant views are based on its legitimate and genuine commercial concerns as to its position in the Irish markets in which it operates, and that those views are reasonable, rational and justified by reference to the facts and matters which inform them. Those views have been expressed consistently over time and Vodafone continues to maintain them.

John Cronin, David Clarke, Timothy Bouchier-Hayes, Jane Marshall, Ronan Molony, Lonan McDowell, Julian Conlon, Damian Collins, Catherine Deane, Paul Hoffeman, Terence McCrann, Muriel Walls, Roderick Bourke, Ambrose Loughlin, Niall Powderly, Kevin Kelly, Hilary Marren, Eamonn O'Hanrahan, Roy Parker, Patricia Lawless, Barry Devereux, Geraldine Hickey, Helen Kilroy, Judith Lawless, James Murphy, David Lydon, David Byers, Sean Barton, Colm Fanning, Paul Lavery, Julie Quin, Alan Fuller, Claire Lenny, Maureen Dolan, Michelle Doyle, Hugh Beattie, Fergus Gillen, Valerie Lawlor, Mark White, Rosaleen Byrne, Eamon De Valera, Joe Fay, Ben Gaffikin, Donal O'Raghallaigh, Karvyn Harry, Philip Andrew, Barrett Chapman, Mary Brassil, Audrey Byrne, Shane Fahy, Georgina O'Riordan, Adrian Farrell, Michael Murphy, Annette Hogan, Aidan Lawlor, Darragh Murphy, Brian Quigley, Stephen FitzSimons, David Hurley, Philip Murphy, Fiona O'Beirne, Garreth O'Brien.

Consultants: Eleanor MacDonagh (ECA), Peter O'Herne, Michael Ruan (FCA), Tony Spratt (ACA).

BRUSSELS 40 Square de Meets, 1000 Brussels, Tel: +32-2-740 0370, Fax: +32-2-740 0371.

LONDON Tower 42, Level 38C, 25 Old Broad Street, London EC2N 1HQ, Tel: +44-20-7621 1000, Fax: +44-20-7621 9000.

McCANN FITZGERALD

ComReg is of course entitled to reach different views from Vodafone's on these issues. However, your above statement conveys implications which go considerably beyond any expression of disagreement with Vodafone's views on those issues. In the specific context of ComReg's relationship as regulator with Vodafone, a regulated entity operating in regulated markets and entitled to expect fair and transparent procedures and objective outcomes. Accordingly we believe it necessary that particular aspects of the implications of your above statement be clarified. You might please therefore clarify the following:

1. Does ComReg intend to convey, as is suggested by this statement, that Vodafone's stance on these issues as previously expressed is improper, unreasonable or based on some inappropriate consideration?
2. Does ComReg intend to convey, as is suggested by this statement, that Vodafone's stance on these issues may have "*potentially serious consequences for Irish telecommunications markets and consumer welfare*", and if so, what are these consequences and how is it possible that they may follow from Vodafone's stance on the issues identified? Clarification in this regard would be appreciated because Vodafone is of course heavily invested in Irish telecommunications markets and in the welfare of consumers in those markets who are its sources of revenue.
3. Does ComReg intend to convey, as is suggested by this statement, that Vodafone's stance on these issues is intended to frustrate, or may have the effect of frustrating, the State's implementation of the European legislation mentioned? If so, please explain how ComReg believes that Vodafone's stance may involve such an intention or effects.
4. Who are the "interested and affected parties" to whose attention ComReg is considering bring Vodafone's stance on these issues and in what regulatory context or process and/or for what purpose would such a notification be made?
5. Is it intended or suggested that such a notification would be made in respect only of Vodafone's stance or would the expressed views of other operators or interested parties likewise be the subject of such a notification? What process will ComReg use to determine whether to make such a notification and how will any such determination be communicated to Vodafone and other stakeholders? Vodafone has expressed its views on the relevant issues on the record and it plainly does not object in principle to the transmission of its publicly expressed views to other persons, but it is entitled to understand what new process would now be commenced by ComReg if it decides to do as it is says it is considering.

Your concluding statement urging Vodafone "*to engage more constructively with the regulatory processes and, in particular, the NGA consultation...and the multi-band spectrum award....*" necessarily implies that ComReg holds the view that Vodafone's engagement with the regulatory processes generally (and specifically with the two processes identified) has been less than sufficiently constructive.

The two statements in your letter convey that ComReg is generally dissatisfied with the way in which Vodafone has expressed its views on the data custodianship issues and with Vodafone's engagement in the regulatory processes generally. If those statements accurately reflect ComReg's disposition towards Vodafone then they are obviously capable of giving rise to apprehensions and potential repercussions which would be of particular concern to Vodafone as a regulated entity participating in various regulatory processes on an ongoing basis, and for this reason in particular, we would welcome the clarifications sought above.

MCCANN FITZGERALD

Given their significance, we would request such clarification by 18 June 2012.

Yours faithfully

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

McCann FitzGerald

20. Vodafone: email to ComReg “ComReg Correspondence” (email dated 14 June 2012);

From: Hoencamp, Jeroen, Vodafone Ireland
Sent: 14 June 2012 17:33
To: Alex Chisholm
Subject: ComReg Correspondence

Dear Alex

I acknowledge receipt of your letter dated 12 June last and I note the contents thereof.

I confirm that all matters raised in your letter and in previous correspondence between Vodafone Ireland and ComReg will be addressed and dealt with by Paul Ryan, Vodafone Ireland's internal legal team and McCann FitzGerald. I would ask that you and your colleagues direct all future correspondence on these matters to these parties as appropriate.

Lastly, I understand that McCann FitzGerald will be responding to the points raised in your letter in due course.

Regards

Jeroen

21. ComReg: reply to Vodafone email of 14 June 2012 (email dated 15 June 2012).

From: Alex Chisholm
Sent: 15 June 2012 11:33
To: 'Hoencamp, Jeroen, Vodafone Ireland'
Subject: RE: ComReg Correspondence

Dear Jeroen,

Thank you for your email to myself of the afternoon of 14 June, the contents of which are noted.

With respect to your particular request that I and my colleagues direct all future correspondence on these matters to Paul Ryan, Vodafone Ireland's internal legal team and McCann FitzGerald as appropriate, I would like to note the following.

My letter to you of 12 June was sent in the belief that it was appropriate to conduct such high level communications from myself as Chairperson to yourself as Chief Executive, given the significance of the issues, the advanced stage we have reached in our overall process, and the commonly acknowledged importance of this process. The letter was also sent in the belief that the manner of Vodafone's engagement with ComReg in relation to the matters referred to in that letter, and the Commission's expressed concerns regarding this, were assumed to be such that you might reasonably be expected to wish to assess for appropriateness from your perspective as Chief Executive, and to consider changing.

I note we have now received a response to my letter of 12 June from your external solicitors who you have instructed to represent Vodafone, and as such we will further engage in respect of that letter with McCann Fitzgerald.

Regards

Alex

Alex Chisholm
Chairperson

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

22. Vodafone: letter to ComReg “Vodafone Ireland Limited (“Vodafone”):
Custodianship of Information”(letter dated 6 July 2012);



6 July 2012

Alex Chisholm Esq
 Commission for Communications Regulation,
 Block DEF,
 Abbey Court,
 Irish Life Centre,
 Lower Abbey Street,
 Dublin 1

Vodafone Ireland Limited ("Vodafone"): Custodianship of Information

Dear Alex

I refer to the correspondence that has passed between Vodafone and ComReg in relation to the upcoming auction for the multi-band spectrum release ("**Spectrum Auction**"), which has from Vodafone's perspective, sought, for the most part, to articulate Vodafone's concerns regarding ComReg's processes for the security and custodianship of information.

Vodafone has clearly set out its issues and concerns with ComReg's information custodianship and security processes in detailed correspondence and these concerns are now a matter of public record. Our decision not to address in any detail the points made in the letter of your colleague, George Merrigan, dated 7 June to McCann FitzGerald or your letter of 12 June to Jeroen Hoencamp, should not be understood as acceptance of or acquiescence in the points made by ComReg in those letters.

However, I feel it may be necessary to address an element of my letter of 7 June to you, where I suggested, in my "Concluding Remarks", that both the current process and the NGA consultation process were "*irreparably compromised*" due to the series of information custodianship and security episodes we have felt it necessary to raise with ComReg in recent months. On reflection, specifically in relation to the highlighted phrase, I believe it may be appropriate to clarify that my intention was to caution ComReg that repeated information custodianship lapses tend to increase the risk or perception of compromise rather than to suggest that the current processes had been compromised beyond repair.

I trust this clarifies Vodafone's position in this regard and in relation to this matter generally.

As far as this letter is concerned, it does not contain any confidential information or business secrets and can be published by ComReg in its current form without redaction. If ComReg proposes to make redactions to this letter prior to publication, I request that I should be informed of the proposed redactions and the reasons for which the redactions are proposed and that my consent to the redactions should be obtained prior to any publication.

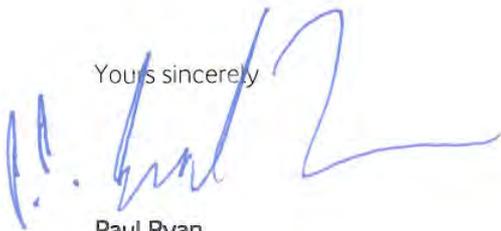
Vodafone Ireland Limited

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. 32896.
 Company no. 32896. Incorporation (Ireland) 1997. Paid Up:

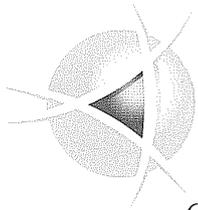
YOU REF
 COM REF
 M

Yours sincerely



Paul Ryan
Director
Vodafone Ireland

23. ComReg: reply to Vodafone letter of 6 July 2012 (letter dated 6 July 2012);



Commission for
Communications Regulation
Coimisiún Um
Rialáil Cumarsáide

from the chairperson

6 July 2012

Mr. Paul Ryan
Director
Vodafone Ireland Limited
Mountain View
Leopardstown
Dublin 18

RE: Vodafone Ireland Limited (“Vodafone”): Custodianship of Information

Dear Paul,

I refer to your letter dated 6 July 2012, and to the related correspondence between ComReg and Vodafone and/or McCann FitzGerald solicitors on Vodafone’s behalf, which preceded that letter.

ComReg notes Vodafone’s decision not to address in detail the points made in George Merrigan’s letter to McCann FitzGerald dated 7 June, 2012, and in my letter to Jeroen Hoencamp dated 12 June, 2012, but that this is not to be taken as acceptance of, or acquiescence to, the points made on behalf of ComReg in these letters.

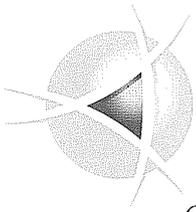
ComReg particularly welcomes your clarification on behalf of Vodafone to the effect that the reference in your earlier correspondence to an ‘irreparably compromised’ Spectrum Auction process and NGA Consultation process was not intended to suggest that Vodafone actually considered those ComReg processes in fact to have been compromised beyond repair, but, rather, to caution ComReg that the information-handling issues identified by Vodafone had the potential to increase the risk or perception of compromised processes.

For its part, ComReg similarly reiterates that it has clearly set out its responses and positions concerning the information-handling issues Vodafone has rehearsed in recent times, and that these are also the subject of published correspondence and a matter of public record. ComReg similarly stands by the contents of its correspondence generally.

Yours sincerely,

Alex Chisholm
Chairperson

24. ComReg: letter to Vodafone “Vodafone Ireland Limited (“Vodafone”):
Custodianship of Information” (letter dated 6 July 2012);



Commission for
Communications Regulation
Coimisiún Um
Rialáil Cumarsáide

from the chairperson

6 July 2012

Mr. Paul Ryan
Director
Vodafone Ireland Limited
Mountain View
Leopardstown
Dublin 18

RE: Vodafone Ireland Limited (“Vodafone”): Custodianship of Information

Dear Paul,

I refer to your letter dated 6 July 2012 and to my reply of today.

For completeness, I also wish to respond to the following remaining correspondence relating to these matters, which comprises of an e-mail from Ian Quigley to Marie Cussen of 13 June, 2012 (5:28 p.m.), and a letter to me from McCann FitzGerald, dated 14 June, 2012.

In relation to the e-mail from Ian Quigley, you will recall that this referred to my letter dated 12 June, 2012, and questioned the basis upon which ComReg had claimed confidentiality over the contents of that letter. ComReg has redacted that correspondence as required by our statutory obligations and consistent with our confidentiality guidelines (ComReg document No. 05/24). Where these requirements are adhered to the decision to redact, and the extent of those redactions, is a matter for ComReg to decide.

In relation to the letter from McCann FitzGerald to me, dated 14 June, 2012, ComReg notes that, in general terms, that letter appears to express concern that Vodafone may not be afforded fair and transparent procedures, or may not obtain outcomes that are objectively justified. ComReg would like to assure Vodafone that it has to date afforded it the fair and transparent procedures to which it is entitled, and will continue to do so in the future. ComReg’s decisions are made on the basis of, amongst other things, objective justification, and according to our statutory obligations.

In any event, in light of the constructive position being adopted by Vodafone, as reflected in your letter dated 6 July 2012, nothing further arises.

Yours sincerely,

Alex Chisholm
Chairperson