



Commission for  
**Communications Regulation**

## Information Notice

### **GSM Liberalisation Project: Publication of correspondence provided by respondents (and ComReg written responses to same)**

<b>Document No:</b>	<b>12/74</b>
<b>Date:</b>	<b>6 July 2012</b>

**A 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 letter<sup>1</sup> 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);<sup>2</sup>
5. ComReg: reply to Telefónica letter of 14 June 2012 (letter dated 19 June 2012);<sup>3</sup>
6. ComReg: reply to eircom Group letter<sup>4</sup> 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 18 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);

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

<sup>2</sup> Note, ComReg are awaiting clarification of confidentiality of this letter, and will publish this letter at a later date.

<sup>3</sup> Note, ComReg are awaiting clarification of confidentiality of this letter, and will publish this letter at a later date.

<sup>4</sup> This eircom Group letter was published as item 8 in Document 12/49

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 "Vodafone Ireland Limited ("Vodafone"): Custodianship of Information"(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 "Vodafone Ireland Limited ("Vodafone"): Custodianship of Information" (letter dated 6 July 2012);

1. ComReg: reply to Telefónica letter<sup>5</sup> of 22 May 2012 (letter dated 30 May 2012);

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



**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**

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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

our ref | JFW/MEH 01388740

your ref |

date | 13 June 2012

By Registered Post &  
Email – [george.merrigan@comreg.ie](mailto: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. Maln	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	R.D. White	E.M. Brady	E.P. Conlon	J.N. Kelly	C. Christie	J.B. Somerville	C. Widge	M. Traynor	M. Rasdale	A. Casey	
C.E. Gill	V.J. Power	P.V. Maher	E. MacNeill	N. O'Sullivan	S. Ó Cróinín	M.F. Barr	M. Dale	R.M. Murray	D. Inverarity	B. Hosty	
E.M. FitzGerald	L.A. Kennedy	S. O'Riordan	K.P. Allen	M.J. Ward	J.W. Yarr	M.L. Stack	C. McCourt	N. Ryan	M. Coghlan		
Consultants:	J.R. Osborne	S.W. Haughey	T.V. O'Connor	Professor J.C.W. Wylie	A.F. Browne	M.A. Greene	A.V. Fanagan	J.A. O'Farrell	I.B. Moore		

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:

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A&  
LG

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

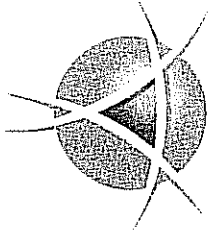


Yours faithfully

*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.

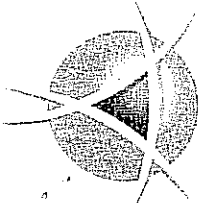
These have all been duly and carefully considered by ComReg, as reflected in the consultation documentation, and taken on board (or not, as the case may be) to the extent reflected in ComReg's Decision (Document 12/25 and Decision 04/12 and associated documents) and ComReg's Information Memorandum (Document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

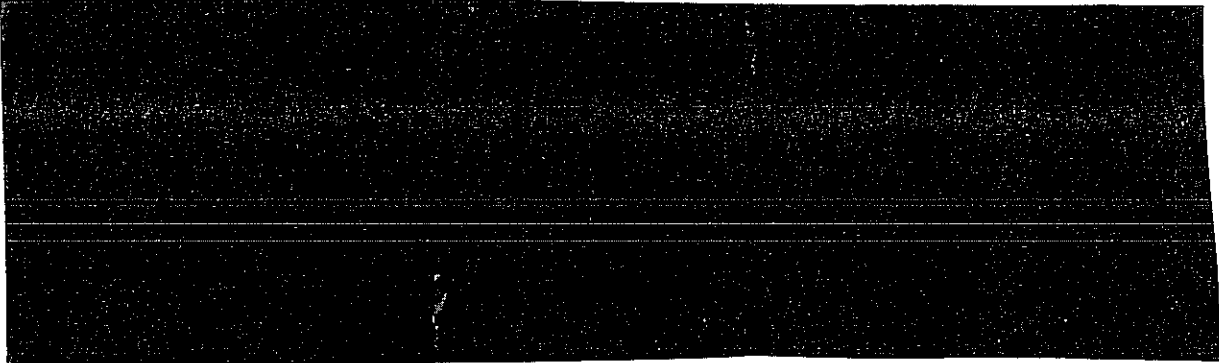
Therefore, to the extent that Telefónica now seeks to revisit certain concerns it has already fed into the consultation process prior to ComReg's Decision and the publication of ComReg's Information Memorandum, these will be entertained by ComReg – whether in the body of this letter, or elsewhere - in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

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



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.

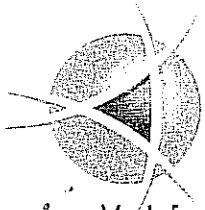
### **Confidentiality Concerns**

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



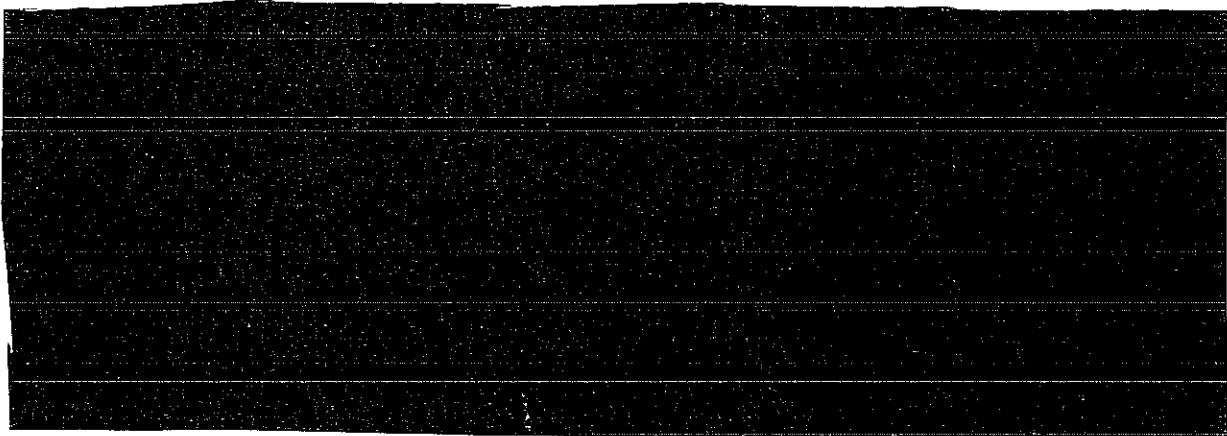
Vodafone's correspondence suggests – that a stand-alone spectrum auction process, with its ring-fenced information-security procedures, protocols and supports which are the subject of advice and assistance from ComReg's specialist consultants, is in danger of being compromised, either because of the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

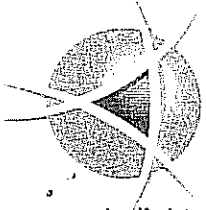
While that is so, ComReg has also set out in its recently-published Response to Consultation document and Information Memorandum some appropriate information regarding information-custodianship and security which are of relevance to the forthcoming auction process. In that regard, it has mentioned the 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.

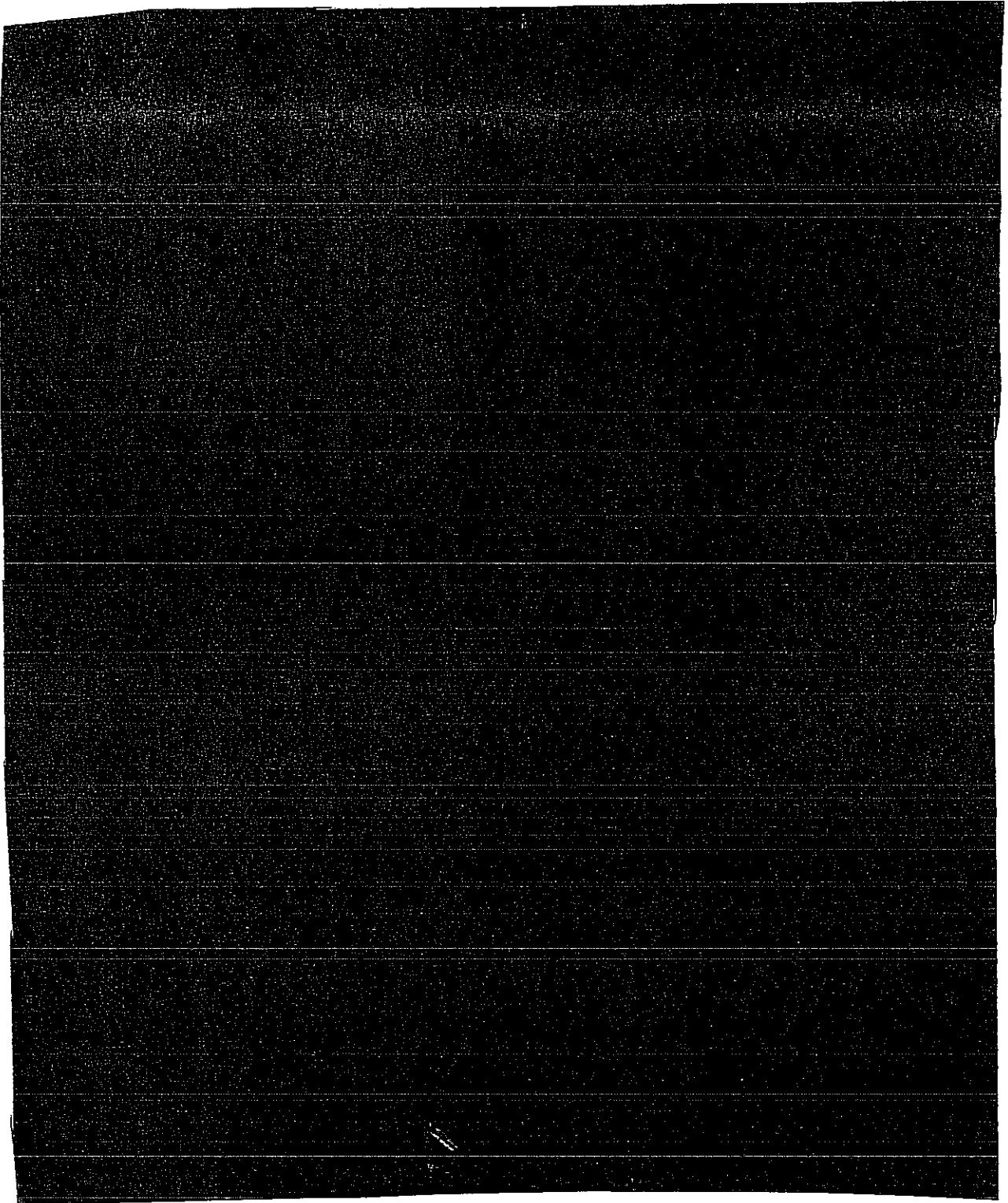
ComReg accordingly considers that it is making all appropriate arrangements for safeguarding confidential information in relation to the forthcoming auction process. The ongoing involvement of external experts is intended to provide a further safeguard as to ComReg's adoption of, and conformance with,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

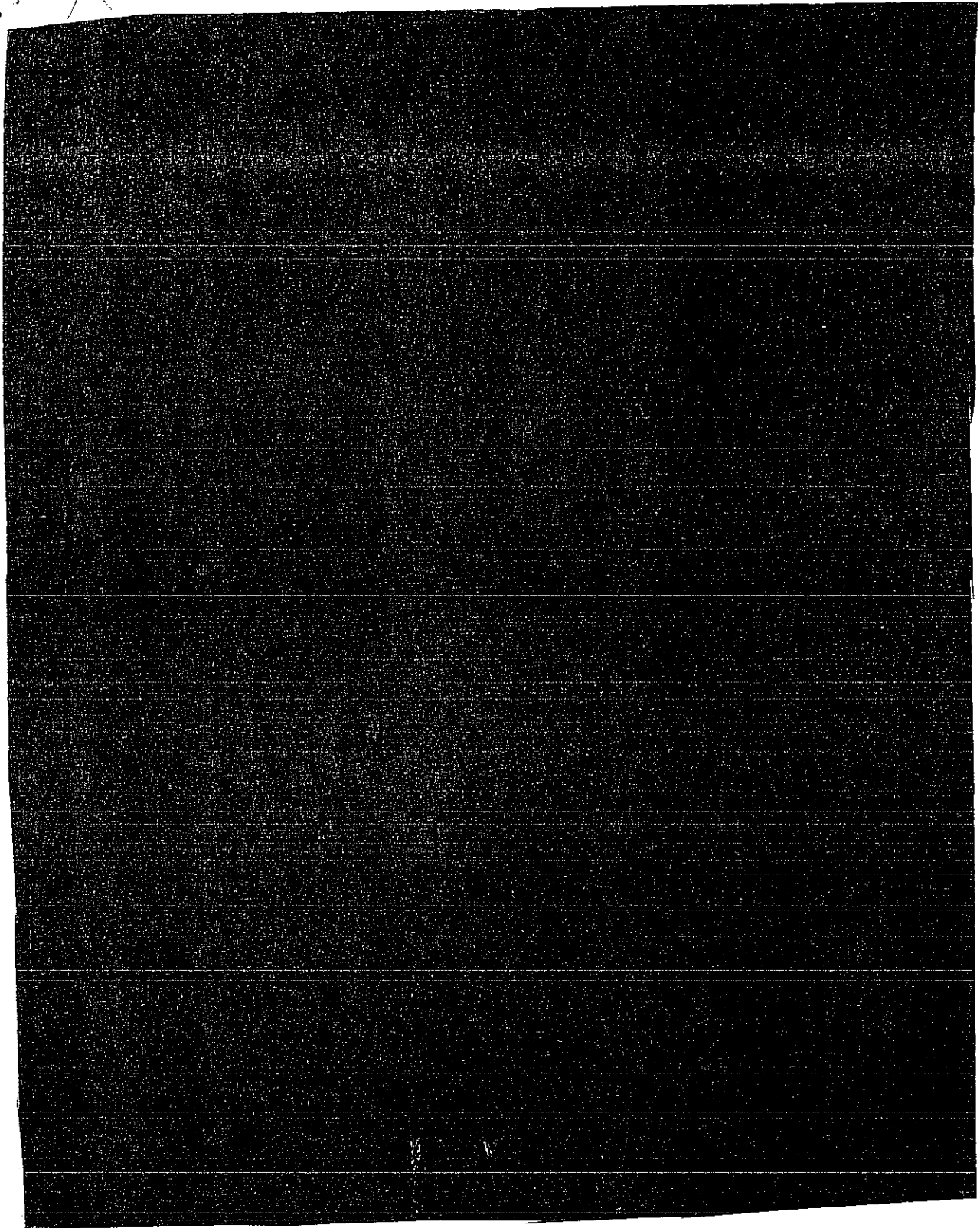
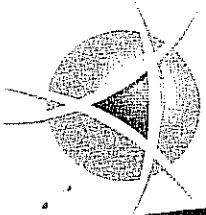
Further, insofar as your client's [REDACTED] are premised on the existence of some perception of systemic problems within ComReg relating to information-security, ComReg does not feel obliged to answer or provide them, as the case may be, in circumstances where ComReg rejects that there is any such problem, 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.



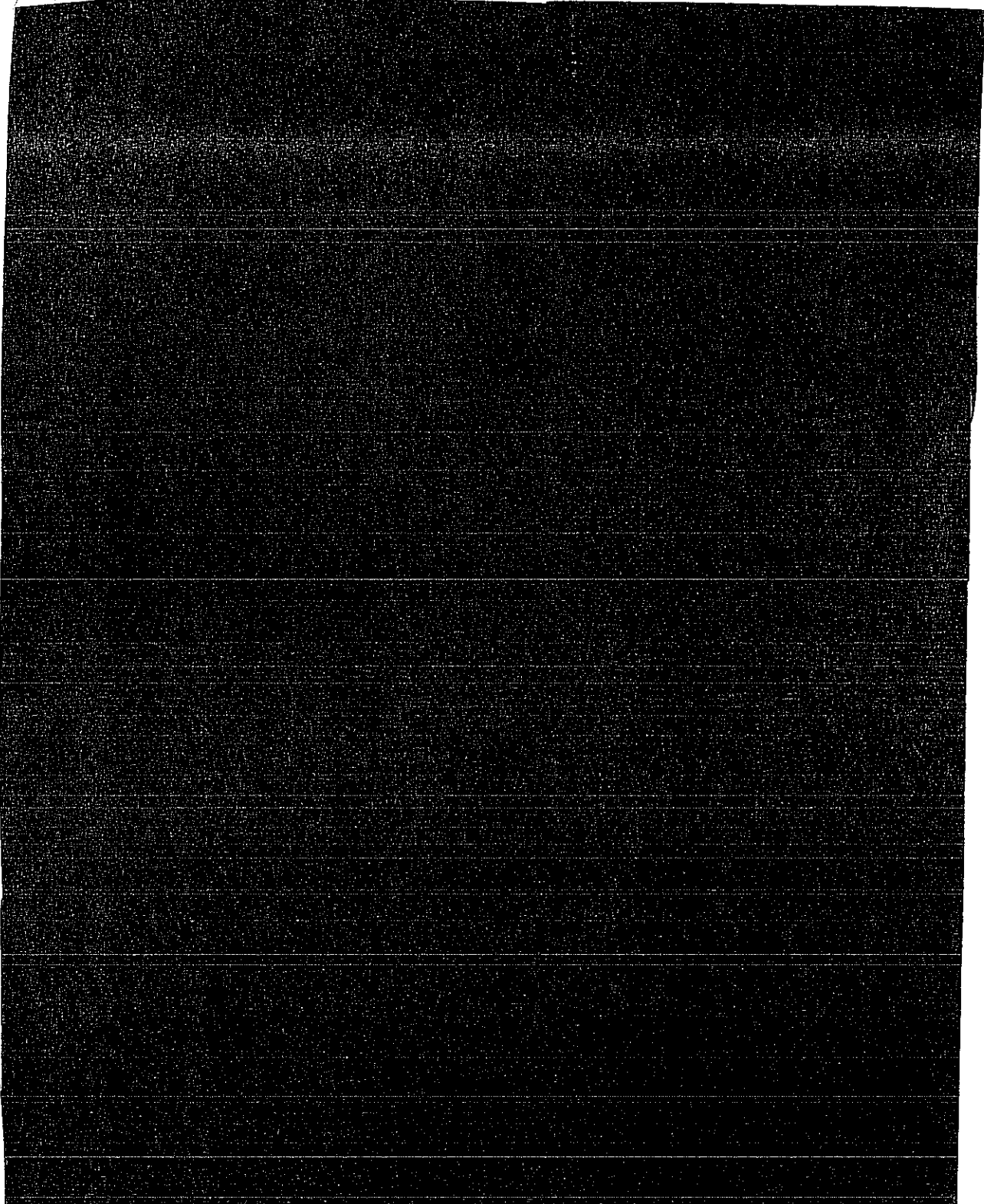
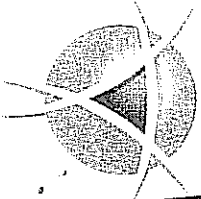


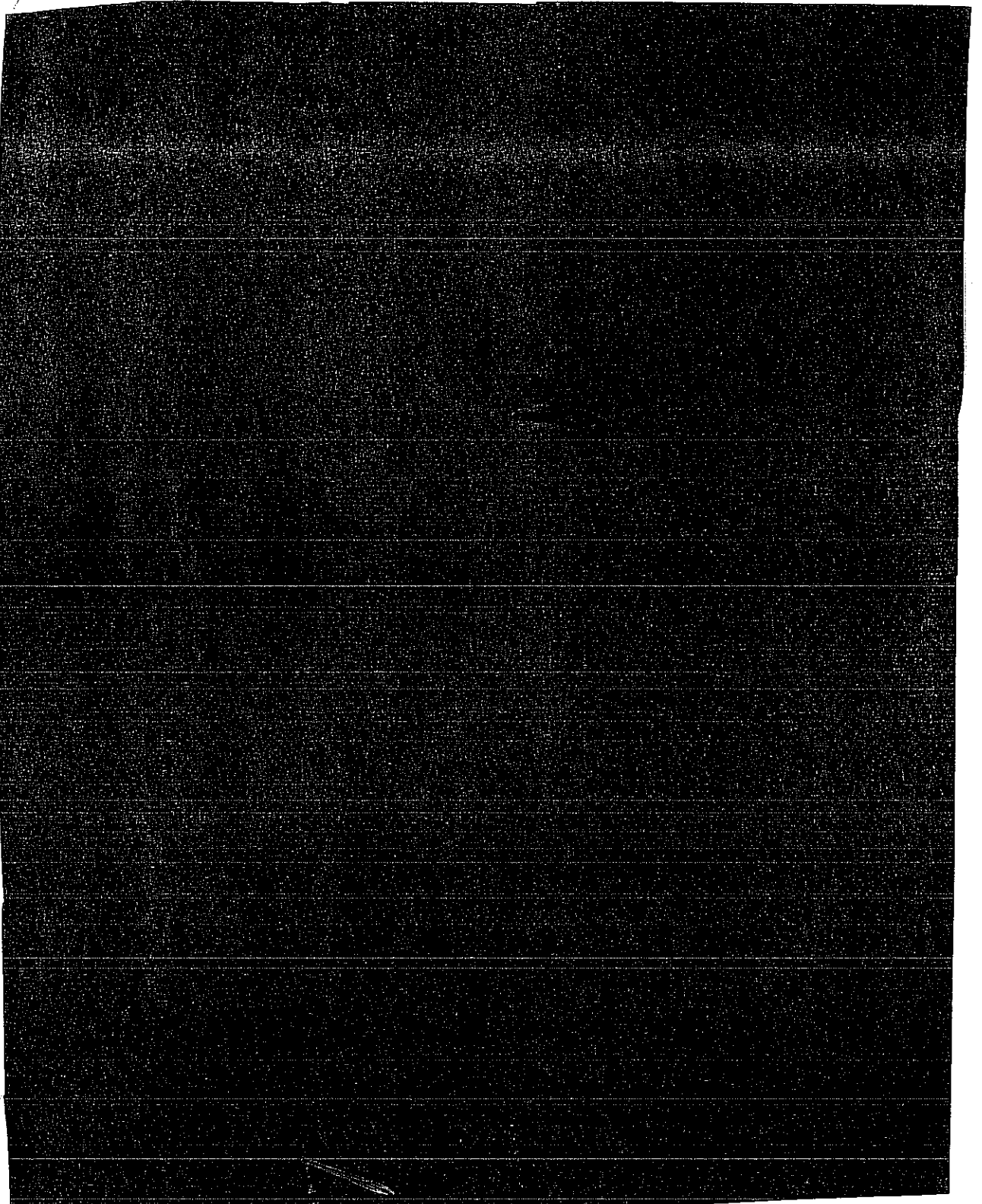
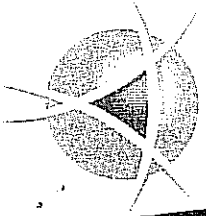
In light of the foregoing, ComReg now responds as set out below.

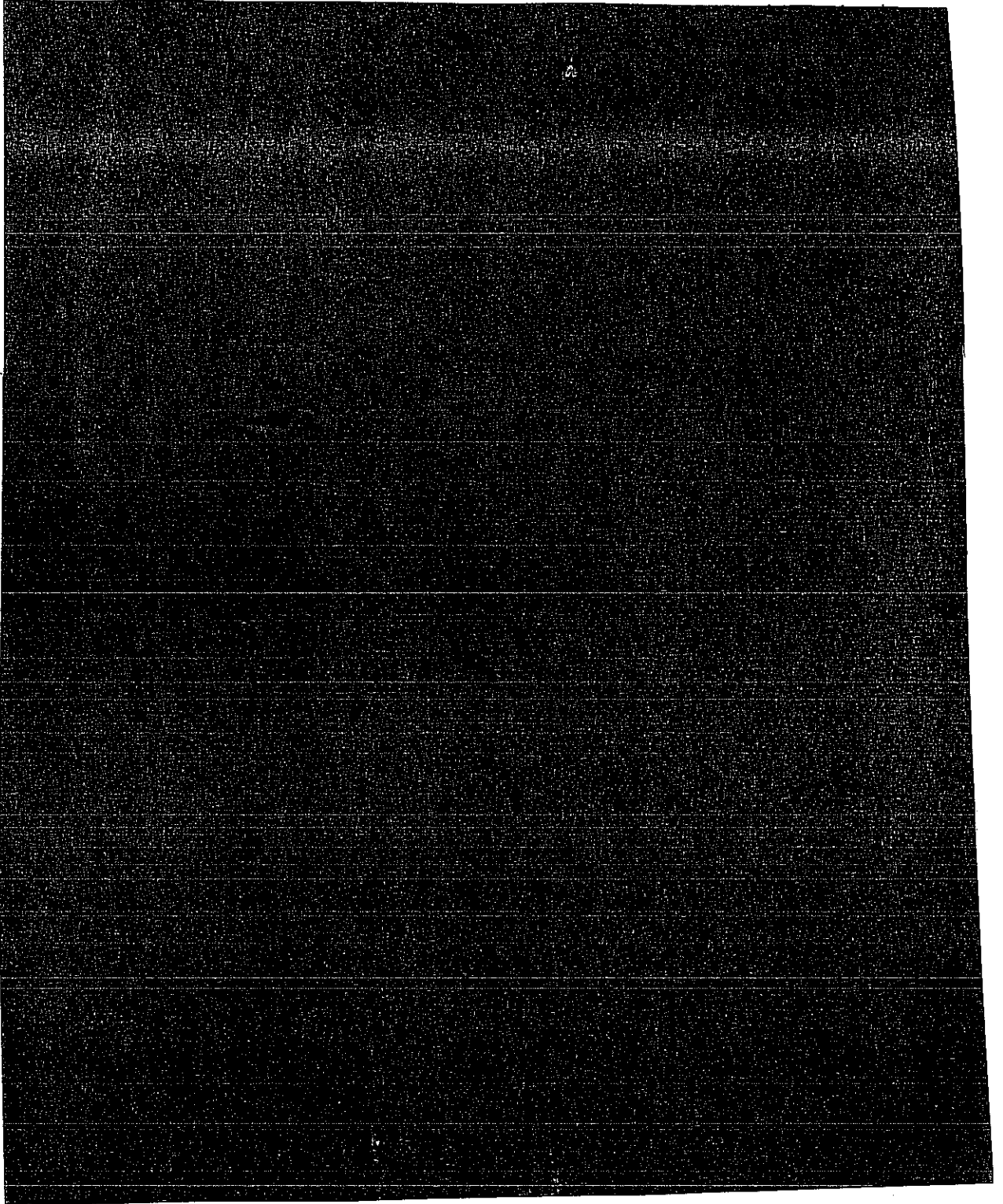
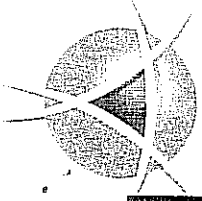


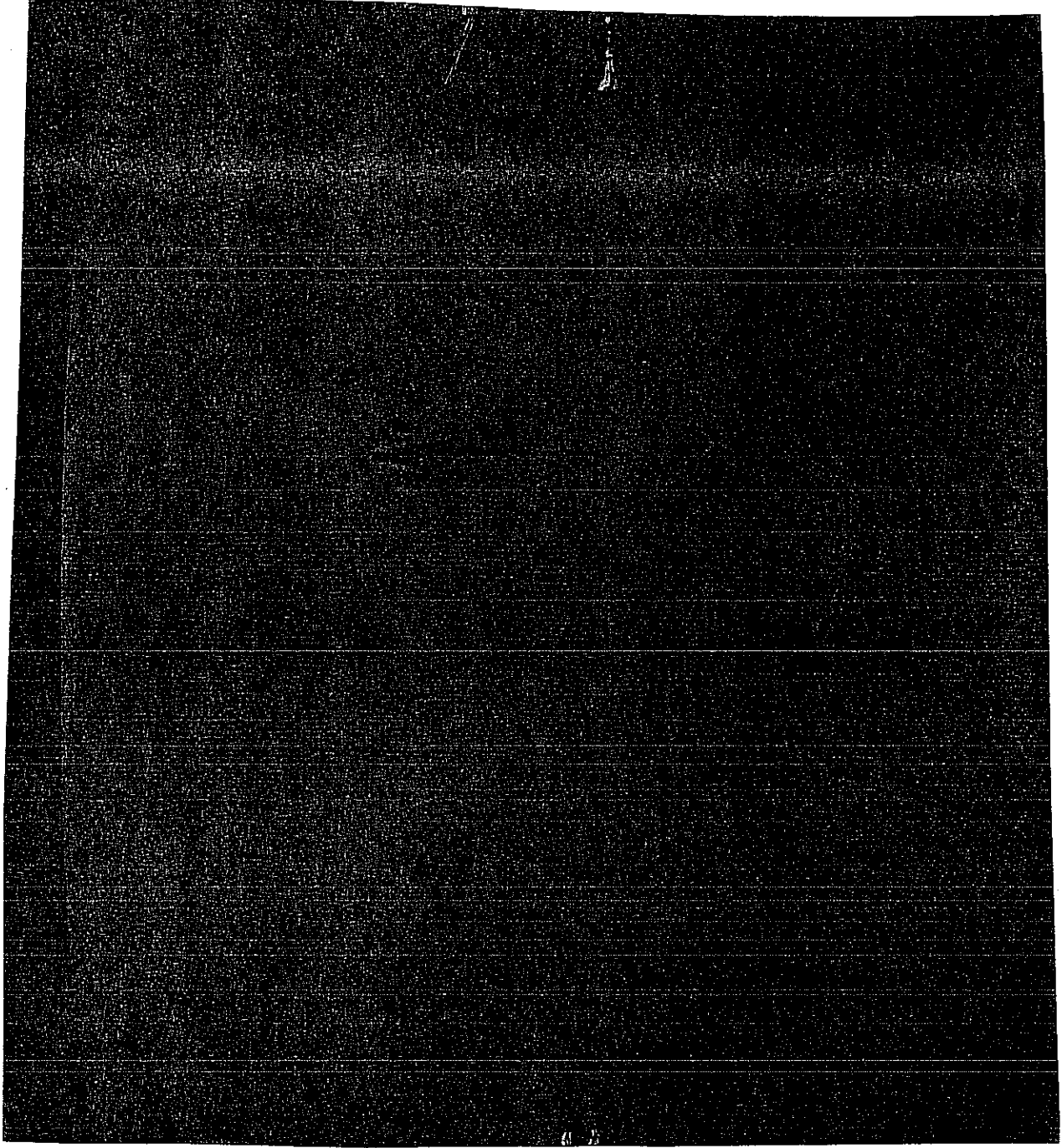
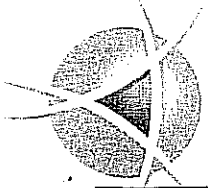












Yours sincerely,

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);<sup>6</sup>

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<sup>6</sup> Note, ComReg are awaiting clarification of confidentiality of this letter, and will publish this letter at a later date.

5. ComReg: reply to Telefónica letter of 14 June 2012 (letter dated 19 June 2012);<sup>7</sup>

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<sup>7</sup> Note, ComReg are awaiting clarification of confidentiality of this letter, and will publish this letter at a later date.

6. ComReg: reply to eircom Group letter<sup>8</sup> of 24 May 2012 (letter dated 30 May 2012);

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<sup>8</sup> 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.

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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.

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DECLARATION: I accept the licence conditions shown above.

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

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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 29<sup>th</sup> 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 12<sup>th</sup> 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](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 Meeùs  
1000 Brussels

Tel: +32-2-740 0370

Fax: +32-2-740 0371

Email: [inquiries@mccannfitzgerald.ie](mailto:inquiries@mccannfitzgerald.ie)

[www.mccannfitzgerald.ie](http://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, Lonan McDowell, Julian Conlon, Damian Collins, Catherine Deane, Paul Heffernan, Terence McCrann, Muriel Walls, Roderick Bourke, Ambrose Loughlin, Niall Powderly, Kevin Kelly, Hillary Marren, Eamonn O'Hanrahan, Roy Parker, Patricia Lawless, Barry Devereux, Geraldine Hickey, Helen Kilroy, Judith Lawless, James Murphy, David Lyden, David Byers, Sean Baxton, 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'Ragballaigh, Karyn Harty, Philip Andrews, Barrett Chapman, Mary Crossil, 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, Gareth 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.

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.

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:



- [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.

### 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

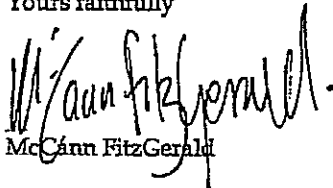
consequence of ComReg's approach. In circumstances where this approach may have already led to the auction process being compromised, this situation will not be remedied by ComReg's ongoing intransigence with regard to the issues raised.

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](http://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.  
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\*\*\*\*\*

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

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Fax: +353-1-829 0010  
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**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 Kibroy, 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).

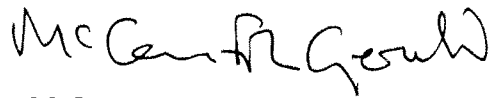
BRUSSELS 40 Square de Meeûs, 1000 Brussels, Tel: +32-2-740 0370, Fax: +32-2-740 0371.

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

by ComReg in its current form without redaction.

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

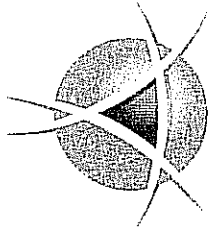
Yours faithfully

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: DPC5167054.1 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.

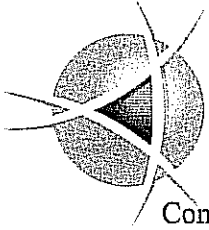
ComReg appreciates that Vodafone may have genuinely-held sensibilities in these respects.

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.

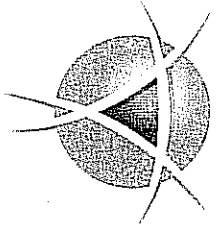
ComReg accordingly wishes to continue to give the appropriate level of assurance to interested parties, including Vodafone, whilst at the same time seeking to mitigate the damage that might be caused by Vodafone's perspectives gaining undue and disproportionate currency.



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**

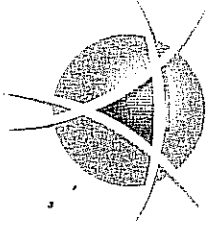
7. Without prejudice to the generality of the foregoing, whilst, again, the misdirections of communications referred to by Vodafone were unfortunate, and whilst ComReg is taking steps to seek to ensure that such lapses do not occur in future, it does not follow – as your correspondence suggests – that 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 correspondence<sup>1</sup>.

---

<sup>1</sup> 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.

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]

Our ref:  
M

Vodafone Ireland Limited  
MountainView, Leopardstown, Dublin 18, Ireland  
T - +353 (0)1 203 7777 F - +353 (0)1 203 7778 W - [www.vodafone.ie](http://www.vodafone.ie)

Registered Office: MountainView, Leopardstown, Dublin 18. Registered in Ireland No. 328967  
Director: Jeroen Hoencamp (CEO), Thomas Reilly (DE), Paul Reid

[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]

[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);



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 process<sup>1</sup>, 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

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<sup>1</sup> 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 website<sup>2</sup>).

*[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).

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<sup>2</sup> 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.



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  
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**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 respond 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 Melony, 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 Fauning, Paul Lavery, Julie Quin, Alan Fuller, Claire Lenny, Maureen Dolan, Michelle Doyle, Hugh Beattie, Fergus Gillen, Valerie Lawlor, Mark White, Resaileen Byrne, Eamon de Valera, Joe Fay, Ben Gaffikin, Donal O'Raghallaigh, Karvn Harry, Philip Andrew, Parrett Chapman, Mary Brassil, Audrey Byrne, Shane Fahy, Georgina O'Riordan, Adrian Farrell, Michael Murphy, Annette Hogan, Aidan Lawler, 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 Meeùs, 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.

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:

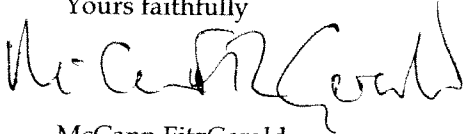
1. Does ComReg intend to convey, as is suggested by this statement, that Vodafone's stance on these issues as previously expressed is improper, unreasonable or based on some inappropriate consideration?
2. Does ComReg intend to convey, as is suggested by this statement, that Vodafone's stance on these 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 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.

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.

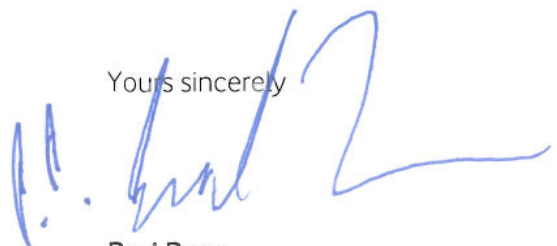
Your ref:  
Our ref:  
M

#### Vodafone Ireland Limited

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

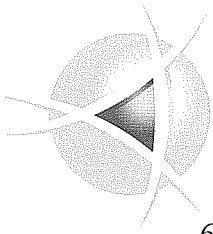
Registered Office: MountainView, Leopardstown, Dublin 18. Registered in Ireland No. 326967  
Directors: Jeroen Hoencamp (NL), Thomas Reisten (DE), Paul Ryan

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Paul Ryan', with a long horizontal flourish extending to the right.

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.

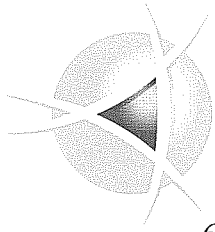
ComReg particularly welcomes your clarification on behalf of Vodafone to the effect that the reference in your earlier correspondence to an ‘irreparably compromised’ Spectrum Auction process and NGA Consultation process was not intended to suggest that Vodafone actually considered those ComReg processes 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