



Commission for
Communications Regulation

Information Notice

**GSM Liberalisation Project: Publication of non-confidential submissions to ComReg
Consultation 12/127 on the Proposal to extend the duration of existing interim GSM 900 rights of use**

Document No:	13/04
Date:	15 January 2013

A.1 Non-confidential submissions to consultation 12/127.

1. Vodafone: Vodafone Response to ComReg Consultation and Draft Decision on Proposal to Extend the Duration of Existing Interim GSM 900 MHz Rights of Use (Dated 14 December 2012)
2. Telefonica: 900 MHz Interim Licence Extension Response to 12/127 (Dated 14 December 2012)
3. Hutchinson 3G Ireland Ltd: Submission Re ComReg 12/127 (Dated 14 December 2012)
4. eircom Group: Response to ComReg Consultation Paper - Proposal to Extend the Duration of Existing Interim GSM 900 MHz Rights of Use ComReg Document 12/127 (Dated 14 December 2012)

1. Vodafone: Vodafone Response to ComReg Consultation and Draft Decision on Proposal to Extend the Duration of Existing Interim GSM 900 MHz Rights of Use (Dated 14 December 2012)



Vodafone Response to ComReg Consultation and Draft Decision on Proposal to Extend the Duration of Existing Interim GSM 900 MHz Rights of Use

Introduction

Vodafone welcomes the publication of the consultation document on the proposed extension of the duration of the existing Interim GSM 900 MHz Licences. This is a key step in resolving the uncertainty around continuous availability of sufficient 900 MHz licensed spectrum to Vodafone and O2 during the time period required for completion of Transition activities to implement the outcome of the Main and Assignment Stages of the Multi-Band Spectrum Award (MBSA) Process.

The Negotiation Phase of the MBSA process has now concluded, with the location of Vodafone's new licensed frequencies in the 900 MHz band, and those of other licensees, being unchanged from those determined by the Assignment Round and published by ComReg on 15 November. As the location of the frequencies held under Vodafone's existing Interim 900 MHz rights of use are already within Blocks E and F assigned to us in the 900 MHz band in the Assignment Round we will not be required to undertake any significant Relocation activities. The timing of when Vodafone will be able to fully utilise all of our new liberalised rights of use in the band will however be determined by the time required for Telefonica O2 to vacate those frequencies within Block F that it presently utilises and complete the other Relocation activities necessary to migrate to the new frequencies allocated to it in the MBSA process.

Although the detail of the Relocation measures and the minimum feasible time for their implementation by Telefonica O2 have been provided as part of the Transition Project Proposal, they remain to be approved by ComReg. However on the basis of our discussions with the other Licensees in the process of developing the Transition Project Proposal, and our own assessment of the required Transition activities, Vodafone is strongly of the view that it is unlikely to be feasible for Telefonica O2 to complete the required steps to vacate the portion of the frequencies in Block F of the 900 MHz band which it currently occupies within the very limited time remaining to the current expiry of Telefonica O2's Interim 900 MHz Rights of Use on 31 January 2013.

We therefore strongly support ComReg's main proposal to extend the duration of the Interim 900 MHz Rights of Use held by both Vodafone and Telefonica O2 by the minimum period necessary to complete all required Transition activities. ComReg's Draft Regulatory Impact Assessment takes proper account of all the impacts of this measure for the various key stakeholders and clearly establishes that an extension of the duration of Interim 900 MHz Rights of Use is proportionate and objectively justified to achieve ComReg's statutory regulatory objectives in present circumstances.

Vodafone's views in relation to the detail of ComReg's Proposal and Draft Decision are set out in full in the subsequent sections of this consultation response.

Response to Consultation Questions

Q1. Do you agree with the proposals set out in this chapter? Please provide reasons, evidence and other relevant material in support of your view.

Yes. Vodafone is in general agreement with the proposals set out by ComReg in Chapter 2 of the present consultation.

Proposed Extension of Interim 900 MHz Rights of Use

The outcome of the Main Stage and Assignment Stages of the Multi-Band Spectrum Award process, and subsequent inter-operator discussions as part of the Transition Phase, have confirmed that Vodafone will not need to undertake any significant Relocation Activities on our own part to comply with the new spectrum rights of use allocations that have been determined. However the date from which Vodafone will be able to utilise the entirety of the spectrum frequencies assigned to us in Blocks E and F of the 900 MHz band is entirely dependent on the time required for Telefonica O2, as part of its required Relocation activities, to vacate the part of Block F that it presently occupies.

One of Vodafone's central objectives is to seek to ensure that the new liberalised spectrum rights of use awarded to us in the 900 MHz band as part of the recently concluded MBSA process can commence at the earliest possible date. The earlier Vodafone can utilise its full allocation of 900 MHz frequencies as determined by the MBSA process then the earlier we can provide greatly enhanced (in terms of both coverage and service quality) 3G mobile broadband services to our customers, with all the resulting positive economic and social impacts that this will have. Ideally Vodafone would wish to have access to its full 10 MHz allocation of 900 MHz frequencies no later than 1 February 2013, as originally envisaged in ComReg's Information Memorandum. However our discussions with the other Licensees to date as part of the development of the Transition Project Proposal have confirmed that it is very unlikely to be possible for them to complete their Relocation activities within the very limited time now remaining to the current expiration date of the existing Interim GSM 900 MHz Rights of Use held by Telefonica O2 and Vodafone on 31 January. This is consistent with Vodafone's own knowledge and expectations about feasible timelines for completion of Transition Activities as set out in a number of our previous submissions to ComReg during the MBSA consultation process, and with ComReg's own conclusions in the present consultation document.

Vodafone considers that ComReg's conclusion in paragraph 2.24 of the consultation document that Existing GSM Licensees should be able to complete their Relocation activities within a timeframe of approximately 5 months is reasonable. However allowing scope for some additional flexibility on the length of the Transition timeframe in practice is in our view appropriate and prudent. On the basis of the available information on the nature of required Relocation activities, we consider ComReg's proposal for a Primary Extension of up to 3 months duration to existing Interim 900 MHz Rights of Use to be objectively justified, necessary and proportionate. Vodafone is also in agreement with ComReg's proposal that up to two Additional Extensions to existing Interim 900 MHz Rights of Use, of up to two months duration each, can be granted upon application where the holder(s) of Interim 900 MHz Rights of Use can provide sufficient objective justification that this is necessary to complete Transition Activities. However we consider that any significant delay beyond the end of April 2013 in completing necessary Transition activities, by deferring the

introduction of enhanced 3G mobile broadband services, would be undesirable from the perspective of the interests of 900 MHz Licensees, their customers, and society as a whole. In the event that such a delay were to become unavoidable then all reasonable measures must be taken to minimise its extent as far as possible, subject to avoiding significant disruption to consumers.

The 1800 MHz Band

Vodafone is in broad agreement with both the high level description of the steps required to complete necessary Transitional activities, and the indicative timelines within which these can be achieved, as set out in the consultation document. In particular Vodafone concurs with ComReg's view as set out in paragraph 2.40 as it relates to Transition activities in the 1800 MHz band. As 1800 MHz Transition activities are likely to take a few months to complete, there is the clear potential for at least some 1800 MHz lots awarded in the MBSA process to have a commencement date later than 1 February 2013.

Vodafone is presently making every endeavour to expedite the Transition activities in the 1800 MHz band that are in our direct control, and will continue to constructively engage with both other Licensees and ComReg to the extent that our actions are related to, and dependent on, the Transition Activities of other Licensees. **[Redacted]**

Interim 1800 MHz Rights of Use

Vodafone considers that the issue of potentially granting Interim 1800 MHz Rights of Use should only arise in the case where Telefonica O2 specifically requests this. However in the case where a substantiated request is made Vodafone believes that it would clearly be optimal that assessment of, and a decision on, the request be made expeditiously rather than deferred to a date closer to the expiration of the GSM 1800 MHz licence. Early visibility of whether or not Interim GSM 1800 MHz Rights of Use are to be granted would put the Licensee in the best position to utilise one or more of the 'other mechanisms' outlined by ComReg in paragraph 2.46, if required. Full clarity at an early stage on this issue, by maximising regulatory certainty, would also be of benefit to other stakeholders (including other 1800 MHz Licensees and their customers).

Proposed Fees and Other Licence Conditions

In Vodafone's response to ComReg's consultation originally proposing the grant of 900 MHz Interim Rights of Use to Vodafone and O2 (ComReg document 11/11) we set out in detail the basis for our view that it was inappropriate and unjustified for ComReg to increase the level of annual spectrum fees for 900 MHz Interim Licences above those that applied to the original licences which expired in May 2011. Vodafone's position in relation to the appropriate spectrum fees for 900 MHz Interim Rights of Use has not changed from that set out in our response to ComReg document 11/11, and we do not propose to reiterate them in full here. However the arguments we raised against increasing annual spectrum fees to account for changes in the Consumer Price Index (CPI) in that response are equally valid in respect of ComReg's approach to the determination of spectrum fees proposed to be applied to an extension of the duration of Interim 900 MHz Rights of Use.

Vodafone accepts that spectrum fees should be charged for an extension of the duration of Interim 900 MHz spectrum rights of use that are proportionate to the very limited period of the extension

required to complete Transition Activities. However while it would be impractical, in the context of ComReg's previous decision on 900 MHz Interim Rights of Use (ComReg document 11/29 and D03/11), for ComReg to now fully revise its methodology for the determination of annual spectrum fees for the proposed extension of Interim Rights of Use in line with Vodafone's previous recommendations, we consider that there should at a minimum be no CPI indexation of the annual spectrum fee to cover the period March 2011 to October 2012. Fees applying to extensions of the duration of existing 900 MHz Interim Rights of Use should therefore be no higher than €71,338 per duplex channel of 200 kHz on an annualised basis.

In respect of the licence conditions that should attach to any extension of the duration of existing Interim 900 MHz Rights of Use, Vodafone supports ComReg's proposal not to change the terms from those set out in ComReg document 11/29. It is difficult to conceive how changes to existing licence conditions that would be in effect for a period of only a few months could possibly be objectively justified. In any event there has been no material change in the competitive and market environment since March 2011 that would lead to the conclusion that Interim 900 MHz Rights of Use for provision of GSM services exclusively should vary from those that have governed the provision of GSM services since the award of the original 900 MHz GSM Licences.

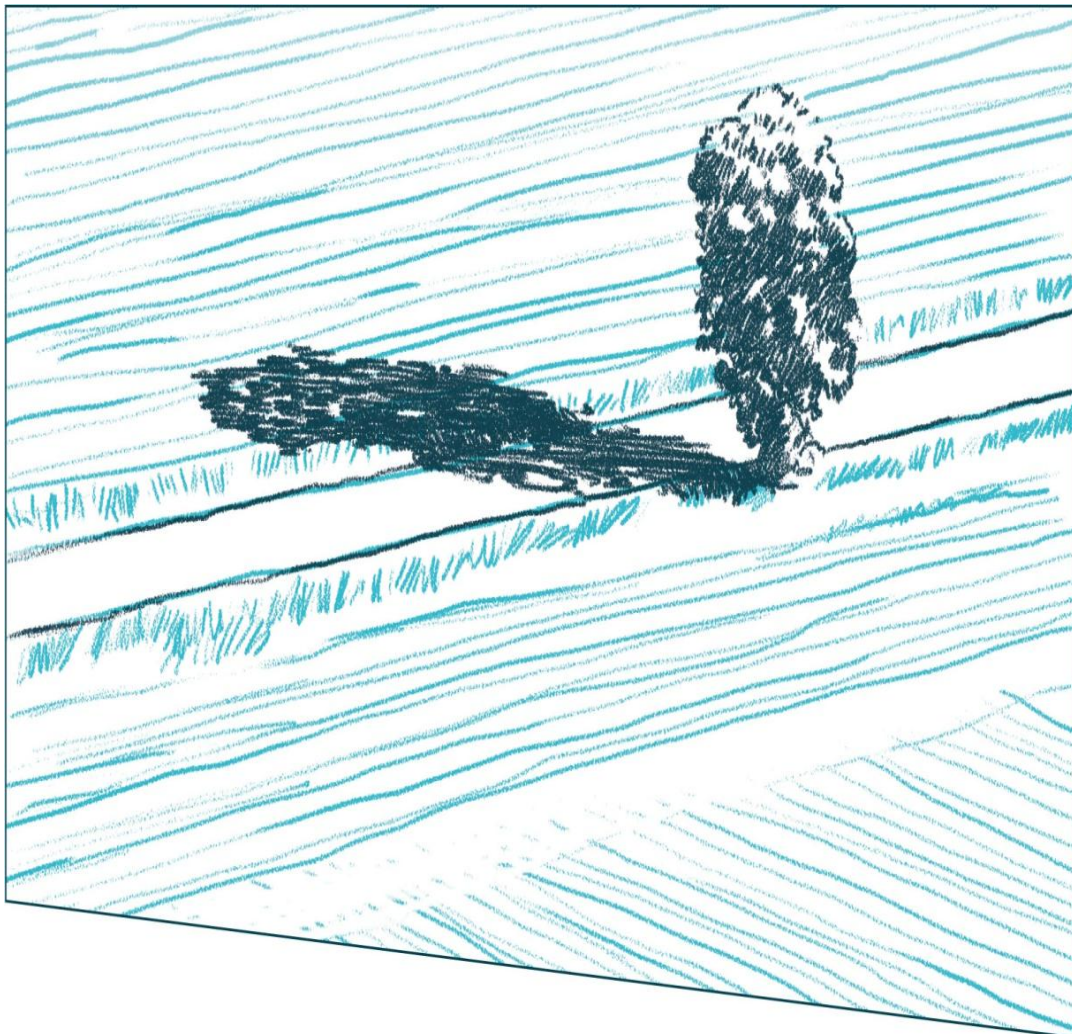
Vodafone considers that it is highly unlikely that other consultations and decisions issued by ComReg during the time period of the proposed Interim Licence extensions would require amendments to the licence conditions attached to the Existing Interim Rights for the factors outlined above. In particular the hypothetical scenario of a possible requirement for amendments to licence conditions arising from ComReg's upcoming consultation on electronic billing, cited by ComReg, is in Vodafone's view not feasible. As set out previously in our response to ComReg document 11/11, a proposal to amend billing related licence conditions to require prior agreement of the customer before the approach of delivery of bills on computer media or on-line would be unjustifiably discriminatory as it would apply only to the holder of 900 MHz Interim Rights of Use but not to other MNOs or MVNOs operating in the Irish market. This would clearly distort competition in the Irish communications sector and would therefore be contrary to ComReg's statutory regulatory objectives.

Objective Justification, Proportionality and Non-Discrimination

Vodafone has reviewed ComReg's assessment of the proposal and Draft Decision against the statutory requirement that these are objectively justified and proportionate. We agree that the proposal to grant Extensions to the Interim 900 MHz Rights of Use of Vodafone and Telefonica O2 is fully justified given the need to avoid the clear and substantial negative impact on consumer welfare and competition that would arise from even a short term absence of availability of 900 MHz spectrum frequencies to the Licensees. The proposal is also proportionate as the extension of the duration of Interim 900 MHz Rights of Use will be short term (a matter of a few months at most) and the minimum necessary to enable Telefonica O2, and in the context of a sequential Relocation process – Vodafone, to complete all Transition Activities required to give effect to the outcome of the recently concluded MBSA process.

Vodafone also believes that ComReg's proposal and Draft Decision is non-discriminatory as all entities that are in an equivalent factual and legal situation are treated equally by the decision, and no artificial or unfair advantage is being conferred on the Interim 900 MHz Licensees relative to their competitors.

2. Telefonica: 900 MHz Interim Licence Extension Response to 12/127 (Dated 14 December 2012)



**900MHz Interim Licence Extension
Response to 12/127
14th December 2012**

Telefonica

1. Introduction

At this stage, it would seem likely that some degree of “consultation fatigue” could have set in in relation to the spectrum auction. At least all those involved should be pleased that the auction itself is over, and that we are moving on to implementation and dealing with the consequences of the whole process. It’s been a long drawn out affair involving multiple consultations over several years, and most issues have already been written about extensively. Telefonica will not burden ComReg with over-elaboration at this stage and so we have attempted to avoid rambling responses and repeating quotations in this document. This should not be read as meaning that the issues are trivial or of minor consequence – they are not.

Two serious but succinct matters are under consideration here – (i) the continuation of 900MHz licences to allow for an orderly transition to new assignments, and (ii) resolution of a discontinuity of licence in the 1800MHz band that has resulted from ComReg’s decisions regarding the time-slice structure. These are practical matters that Telefonica would consider are part of the finishing-off of the auction and licensing process. Both are important, as a failure by ComReg to take appropriate action would result in disruption to communication services on a large scale; loss to consumers, operators, and the wider economy; and would be damaging to competition.

Both of these issues have been brought to ComReg’s attention throughout the many consultations preceding the auction, and also in direct correspondence. They have been analysed and consulted on already. The 900MHz interim licence expiry has arisen because the commencement of the MBSA was later than ComReg expected, and left insufficient time post-auction for operators to transition to new assignments. The 1800MHz licence gap has arisen as a result of the two time-slice structure adopted by ComReg, and in particular the choice of a date for commencement of time-slice 2 which leaves a gap. This was brought to ComReg’s attention prior to the auction, and ComReg’s reaction was that it might not emerge in practice. It has, and now it must be dealt with.

2. Interim Licence Extension

The majority of this consultation document is occupied with an examination of whether ComReg should extend the current Interim 900MHz licences, and for how long. Telefonica sees there is neither cause nor scope for debate on this matter – ComReg simply must extend the current Interim Licences to provide for transition to the new assignments that will apply following the MBSA licensing.

This is not a question that can be divorced from the suite of consultations leading up to the MBSA, or its execution. The principal of whether or not to grant GSM licence extensions has already been examined, consulted on, and decided on by ComReg in document 11/29 (D3/11). At that time, ComReg decided that it was necessary to extend the existing 900MHz GSM licences “for a limited period until such time as a final decision on ComReg’s broader spectrum release proposals could be made and realised” (emphasis added). ComReg’s own consultants have reported that a transition period of five months would be required for relocation activities post auction. This does not allow for the sequential nature of some of the relocation steps as is the case for

example where Telefonica must wait for Meteor's relocation to be complete before it can implement its own.

All of the considerations that led to D3/11 still apply – between the time of finalisation of the new assignments (5th December 2012) and Interim Licence Expiry on 31st January 2013 there was insufficient time for existing licensees to transition from current assignments to new assignments. When the decision was taken to issue interim 900MHz licences, it was expected that the MBSA would be completed significantly earlier than it actually did, allowing sufficient time for an orderly transition to the new assignments. The delayed commencement and conclusion of the auction has created a situation where there is now insufficient time for a transition to new assignments before the Interim Licences expire.

This is not a new issue that that has just arisen for decision – the original decision to extend GSM licences was made in D3/33, and the failure to commence the auction sufficiently early within that Interim Licence period mean there is no decision to be made – the Interim Licences will need to be extended to provide for an orderly transition. While no one likes to hear “I told you so”, this has been brought to ComReg's attention on a number of occasions (including the suggestion that the original Interim Licence Extension allow for supplementary extensions), and the specific references can be provided if necessary. For these reasons, Telefonica does not believe that the Regulatory Impact Assessment in document 12/127 to be of great significance – essentially the decisions have already been taken, and we are now taking practical measures to allow for implementation.

There is no decision to be made here, ComReg must extend the Interim 900MHz Licences. The only question to be answered is: by how long?

3. Duration of Interim Licence Extension

Telefonica understands the reasoning behind ComReg's proposal (a primary extension of 3 months with a possibility of two further 2-month extensions) - to give a short but adequate time for relocation; to allow a contingency for practical delays which might emerge; and to also give an incentive for minimum delay. It is our view that the licence extension dates should be determined by reference to the Transition Plan. In Telefonica's case the preference would be to have a Primary Extension to the date when Lots C and D are vacated plus six weeks (the Deadline Date in Telefonica's letter of 12th December), and the two further extensions would then be available on application as contingencies.

The above would give Telefonica a set period for carrying out the activities that are within its control. In ComReg's proposal, any delay by Meteor in releasing lots C and D could use all of the time available to Telefonica during the primary extension, and perhaps also the two additional extension periods. Telefonica understands from industry discussions on this matter that at present the earliest date by which lots C and D can be available, and as a result the earliest date by which

Telefonica can begin implementation of its relocation lies between 16th April, and 16th June. Given that Telefonica requires between 3 and 6 weeks for implementation, this already means that even in the case of the earliest availability, the Primary extension would have expired before Telefonica could relocate to lots C and D. ComReg should change the approach it has taken in the Draft Decision and Statutory Instrument so that it has the flexibility to determine the appropriate Primary extension date.

4. Licence Conditions and Fees

Telefonica agrees with ComReg's proposal. The extended licences will be of short and limited duration, so the proposal is pragmatic.

5. 1800MHz Gap

The existence of a six-and-a-half month gap in the 1800MHz spectrum assigned to Telefonica has come about directly as a result of decisions made by ComReg on the structure and timing of licences to be issued following the MBSA and as a result of the auction outcome. It is incorrect for ComReg to state as it does in paragraph 2.45 that Telefonica "did not avail of the Early Liberalisation Option" when in fact Telefonica's three existing 1800MHz lots were not liberalised as a result of the overall auction outcome rather than an isolated decision taken by Telefonica.

Two factors have led to this six-and-a-half month gap – the decision to award licences in two time-slices, and the decision to commence time-slice 2 in July 2015 rather than January 2015. ComReg will be aware that Telefonica opposed the two-time-slice concept but also pointed out the problem of the six-month gap in 1800MHz. This gap could not have emerged if ComReg had chosen the end of Telefonica and Vodafone's 1800MHz licences as the division between time-slices rather than the end of Meteor's. This was an arbitrary decision which created the now materialised gap in licence continuity.

This licence discontinuity was brought to ComReg's attention by Telefonica prior to the auction. ComReg chose not to take any action to remediate the problem at that time, on the basis that the gap might not emerge in practice, depending on the outcome of the MBSA. The discontinuity is now confirmed and must be dealt with by ComReg sooner or later. Telefonica sees no advantage in delaying this decision but every merit in getting on with it now.

While Telefonica believes ComReg is required to provide for a licensing option to "fill the gap", we need to have ComReg's decision on this point as part of this consultation process. Telefonica now calls on ComReg to proceed with the process to make its decision on the 1800MHz gap by publishing its proposal in Q1 2013. There is no advantage in delaying this process and we do not see how developments in the market or in technology will in any way change the decision to be made. ComReg propose to deal with this issue significantly prior to Telefonica's licence expiry – that time is now. ComReg has a duty to act reasonably and proportionately. Delay now causes harm to o2. ComReg has given no justification for that delay.

6. Response to Question

Q. 1. Do you agree with the proposals set out in this chapter? Please provide reasons, evidence and other relevant material in support of your view.

The detail of Telefonica's response is provided in the sections above – we agree that an Interim Licence extension is required, warranted and should be granted. Telefonica agrees with ComReg's proposal regarding Licence Conditions and Fees. We believe a slight modification is needed regarding the timing of licence extensions – to synchronise with the Transition Plan.

In Paragraph 4.23, ComReg specifically proposes that application for licence extension must be submitted six-weeks in advance. This is not practical. Telefonica is proposing to implement its relocation within six-weeks. If something goes wrong that brings about a requirement for a further extension, then this might not be known until shortly before the primary licence extension expires. We need ComReg to be able to react quickly in this case, otherwise it will be necessary to apply for further extensions in advance of the transition, just-in-case. The process proposed by ComReg is over-complicated – where a further licence extension is required, ComReg must assess the facts, make a decision, and publish afterwards if necessary.

7. Specific Comments on the Draft Decision

Please note that the licensee is Telefonica Ireland Ltd., rather than Telefonica O2 Ireland Ltd. Relocation Activities appears to be a defined term (capitalised), however the definition is not included. The Decision and Statutory Instrument will need to be amended slightly to allow for changes to the timing of licence extension to coincide with the Transition Plan.

3. Hutchinson 3G Ireland Ltd: Submission Re ComReg 12/127 (Dated 14 December 2012)

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Ms Sinead Devey
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14 December 2012

Dear Sinead

SUBMISSION RE COMREG 12/127

I refer to: (i) ComReg Doc. No. 12/25, “Multi-band Spectrum Release – Release of the 800 MHz, 900 MHz and 1800 MHz Radio Spectrum Bands, Response to Consultation and Decision” (the “Decision”); (ii) ComReg Doc. No. 12/52, “Multi-band Spectrum Release Information Memorandum” (the “Information Memorandum”); (iii) ComReg Doc. No. 12/127, “Proposal to Extend the Duration of Existing Interim GSM 900 MHz Rights of Use – Consultation and Draft Decision” (the “Consultation”); and (iv) my letter to Dr Samuel Ritchie, of ComReg dated 12 December 2012 in relation to the transition project plan. Hutchison 3G Ireland Limited (“H3GI”) responds as follows.

H3GI does not agree with ComReg’s proposal, namely: (i) a discretion on ComReg’s part to grant a **primary extension** of sufficient duration to enable each of the Interim Licensees to complete their respective Relocation activities in accordance with the timeframes and milestones that will be set out in the Transition Project Plan; and (ii) a discretion on ComReg’s part to grant up to **two additional extensions** of up to 2 months’ duration each further to receipt of written applications from one or both Interim Licensee(s) and where demonstrated to be objectively justified, non-discriminatory and proportionate by such Interim Licensees to the satisfaction of ComReg. ComReg’s proposal amounts to a complete u-turn and a failure on its part to promptly complete the MBSA process. In its original decision to grant the interim 900 MHz GSM licences, ComReg emphasised the finality of their duration. As ComReg is aware, H3GI believes that the 900 MHz transition activities can be completed by 1 February 2013. ComReg has failed to properly inform itself and prepare for transitional activities, including the creation of sufficient incentives for prompt completion. Finally, ComReg has failed to act transparently.¹

Without prejudice to the above:

1. At paragraph 1.5 of the Consultation, ComReg states:

“... , it now appears unlikely that the relevant Transition activities in the 900 MHz band (specifically Relocation activities) can be completed before 1 February 2013. On this basis, an extension to the duration of one or both Interim Licensee’s Interim 900 MHz Rights is likely to be required to facilitate the timely and efficient implementation of these

¹ Letter from Matheson, Solicitors to Dr Samuel Ritchie, of ComReg dated 13 November 2012.

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Transition activities, while avoiding the potential for significant competition and consumer concerns to arise.”

As stated above, H3GI believes that the 900 MHz transition activities can be completed by 1 February 2013. In addition, H3GI takes issue with ComReg's assertion that its proposal will *“facilitate the timely and efficient implementation of these Transition activities, while avoiding the potential for significant competition and consumer concerns to arise”*. ComReg has indicated that the extension to 30 April 2013 could be to a date later than that date.² ComReg has no proof that an extension as proposed will facilitate efficient implementation of the transition activities. ComReg does not have any finalised transition plan and would appear to be relying on incomplete information. Finally, ComReg has failed to conduct a detailed competition analysis.

2. At paragraphs 2.36 - 2.39 of the Consultation, ComReg states:

“Noting that the Transition Project Plan remains to be finalised, and the achievement of the Transition activities and milestones set out in the Transition Project Plan remains to be completed, given the results of the Main Stage and the provisional spectrum assignments from the Assignment Round, ComReg can make the following observations in relation to the expected commencement date of Lots in the 800 MHz, 900 MHz and 1800 MHz bands.

In the 800 MHz band all Blocks are currently unused. ComReg would therefore expect the commencement date for these Lots to be 1 February 2013, or earlier should advanced commencement be sought.

In the 900 MHz band in Time Slice 1:

- *Meteor has a provisional assignment for Blocks A and B. As these Blocks are currently unused and given ComReg's assumption that these Blocks would not be required for Transition purposes by any Existing GSM Licensee other than Meteor, ComReg would expect the commencement date for these Lots to be linked to the completion date of Meteor's Transition to Blocks A and B;*
- *Telefónica O2 has a provisional assignment for Blocks C and D. As these Blocks are currently occupied by Meteor, it appears that Meteor would first have to vacate these Blocks in order that Telefónica O2 could then relocate to them. On this assumption, ComReg would expect the commencement date for these Lots to be linked to the completion date of Telefónica O2's Transition to Blocks C and D, which in turn would appear to be dependent upon prior vacation of these Blocks by Meteor;*
- *Vodafone has a provisional assignment for Blocks E and F. Block E is currently occupied by Vodafone and Block F is currently occupied by both Vodafone and Telefónica O2. Noting that Vodafone may potentially have to carry out Transition activities to comply with the technical conditions set out in the Annex to EC Decision 2009/766/EC as amended and that Telefónica O2 would be required to vacate Block F, it*

² At paragraphs 4.13 – 4.18 of the Consultation.

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appears that the expected commencement date for these Lots is linked to potential Transition activity of Vodafone and the prior vacation of Block F by Telefónica O2; and

- *H3GI has a provisional assignment for Block G. As this Block is currently occupied by Telefónica O2, it appears to ComReg that Telefónica O2 would first have to vacate this Block in order for it to be made available to H3GI under its Liberalised Use Licence. ComReg would therefore expect the commencement date for this Lot to be linked to the required Transition activity of Telefónica O2 to vacate Block G.*

In the 1800 MHz band in the Time Slice 1:

- *Telefónica O2 has a provisional assignment for Blocks A, B and C. As these Blocks are currently unused and given ComReg's assumption that these Blocks would not be required for Transition purposes by any Existing GSM Licensee other than Telefónica O2, ComReg would expect the commencement date for these Lots to be linked to the completion date of Telefónica O2's Transition activities to relocate to Blocks A, B and C;*

- *H3GI has a provisional assignment for Blocks D and E. As these Blocks are currently unused and given ComReg's assumption that these Blocks would not be required for Transition purposes by any Existing GSM Licensee, ComReg would expect the commencement date for these Lots to be 1 February 2013, or earlier should advanced commencement be sought;*

- *Vodafone has a provisional assignment for Blocks F, G and H. As these Blocks (and Block I) are currently occupied by Vodafone and given ComReg's assumption that these Blocks would not be required for Transition purposes by any Existing GSM Licensee other than Vodafone, ComReg would expect the commencement date for these Lots to be linked to the completion date of Vodafone's Transition activities to relocate to Blocks F, G, and H;*

- *Meteor has a provisional assignment for Blocks L, M, N and O. Block L is currently occupied by both Telefónica O2 and Meteor, Blocks M and N are currently occupied by Meteor and Block O is currently unused. While it is still unclear whether Meteor will have to carry out Transition activities in the 1800 MHz band, it appears to ComReg that the expected commencement date for these Lots is linked to the potential Transition activity of Meteor and the required Transition activity of Telefónica O2 to vacate Block L."*

In relation to the 900 and 1800 MHz bands and with the exception of Meteor's liberalised use licence in the 900 MHz band, H3GI does not believe that one operator's liberalised use licence should commence before another's – they should commence once the transitional activities in each band have been completed. This process was not consulted upon as part of the MBSA process, is not the basis upon which interested parties participated in the award process and fails to promote competition in accordance with ComReg's statutory obligation under section 12 of the Communications Regulation Act, 2002, as amended. In relation to the 800 MHz band, H3GI does not believe that an operator's liberalised use licence should be granted unless they accepted and have

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complied with the auction rules and in particular, the auction rules in respect of transitional activities.³

3. At paragraph 3.14 of the Consultation, ComReg states:

“From the perspective of H3GI, as a new entrant to the 900 MHz band, it would likely prefer the option which would result in the earliest commencement date for its 900 MHz Lot. As such, H3GI is likely to favour Option 1 as this would involve Interim Licences expiring on 31 January 2013, therefore theoretically enabling the commencement of its 900 MHz Lot on 1 February 2013. Notwithstanding that likely preference, ComReg notes that H3GI has a roaming agreement with Vodafone for the provision of voice and text (i.e. GSM) services and it might therefore see some merit in Option 2 insofar as this option might avoid any disruptions to H3GI’s services.”

As ComReg is aware, H3GI believes that the 900 MHz transition activities can be completed by 1 February 2013 and has explicitly stated this on a number of occasions. As a result, it is disingenuous and unhelpful for ComReg to state that H3GI might see some merit in extending the interim 900 MHz GSM licences of Vodafone/O2.

4. At paragraph 3.26 of the Consultation, ComReg states:

“Under Option 2, the potential advantage is that the significant distortions to existing competition would be avoided, by maintaining and safeguarding competition for the minimum period necessary to facilitate the Existing GSM Licensees’ respective Relocation Activities in the 900 MHz band. Whilst it is recognised that Option 2 would likely delay commencement of Lots in the 900 MHz band (and thereby competition in advanced services using spectrum rights in this band), there are several reasons why such delays would be unlikely to affect competition in the long run including that:

- the potential delay would be only for the minimum period necessary to facilitate the Existing GSM Licensees’ respective Relocation Activities (noting that the proposed durations are very short relative to the duration of liberalised rights of use); and*
- advanced services could be provided from 1 February 2013 via liberalised rights of use in other spectrum bands released in the MBSA process (i.e. 800 MHz and 1800 MHz);”*

Firstly, ComReg makes no reference to the competition issues previously raised by H3GI and its independent economic consultants Value Partners in respect of the interim 900 MHz GSM licences and extenuated by ComReg’s proposal. Secondly, ComReg has no certainty that *“the potential delay would be only for the minimum period necessary to facilitate the Existing GSM Licensees’ respective Relocation Activities”*.

5. Throughout the Consultation, ComReg refers to *“unforeseen circumstances”*. H3GI submits that this should be qualified by reference to reasonableness i.e. *“reasonably unforeseen circumstances”*. Otherwise, existing 900 MHz GSM licensees could unfairly avoid their obligations.

³ Paragraphs 3.152 and 3.153 of the Information Memorandum.

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6. At paragraph 4.11 of the Consultation, ComReg states:

"The announcement of Main Stage and Assignment Round results to Winning Bidders took place on 14 November 2012. Accordingly, ComReg is consulting the proposal of on a Primary Extension of up to 3 months' duration in reliance on the following assumptions:

...

- *the above 5 month period would consist of a planning phase of approximately four months, and an implementation phase of approximately 1 month,"*

As the MBSA consultation process has been going on for in excess of four years, relocation was a credible scenario from the outset of this process and it is reasonable to expect that the existing GSM licensees have planned for this scenario well in advance of the auction outcome, why does ComReg believe that relocation activities still require four months of planning?

7. At paragraph 4.38 of the Consultation, ComReg states:

"... In the event that the Transition Project Plan is not settled at the time ComReg issues its response to consultation and decision on potential extensions to Interim Licences, the duration of a Primary Extension will be determined by reference to all materials before ComReg at that time,"

Given the duration of the MBSA consultation process, the relatively straightforward nature of the transition activities and ComReg's statutory powers, H3GI does not believe that it is reasonable and/or legitimate for ComReg to fail to settle a transition project plan in advance of any decision regarding the interim 900 MHz GSM licences.

H3GI reserves its rights in respect of this matter.

Yours sincerely


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4. eircom Group: Response to ComReg Consultation Paper - Proposal to Extend the Duration of Existing Interim GSM 900 MHz Rights of Use ComReg Document 12/127 (Dated 14 December 2012)



eircom Group response to ComReg 12/127

eircom Group

Response to ComReg Consultation Paper:

Proposal to Extend the Duration of Existing Interim GSM 900 MHz Rights of Use

ComReg Document 12/127

14 December 2012



eircom Group response to ComReg 12/127

Response to Consultation

The comments submitted to this consultation are those of Meteor Mobile Communications Ltd. (MMC) and eircom Ltd (eircom) collectively referred to as eircom Group.

eircom Group has reviewed ComReg's proposal to extend the duration of existing interim GSM 900MHz Rights of Use. We note ComReg's rationale for the proposal. The MBSA process managed by ComReg was late and as a consequence there is insufficient time to ensure that transition activities in the 900MHz band are completed in advance of 1st February 2013. We agree that it is appropriate that the interim licences of Vodafone and O2 be extended by short durations to ensure continuity of service for their customers.

ComReg proposes that the licences may be extended by a Primary Extension of no more than three months upon request of the licensee. In the event that transition activities will not be completed ComReg proposes that two further sequential extensions of no more than two months each may be granted upon request of the licensee. We believe this approach is appropriate. The proposal allows for the interim licences to be extended by a maximum period of seven months. We believe this is sufficient time for transition activities to be completed in the 900MHz band.

We have no objection to ComReg's proposal to continue to apply the established spectrum fees for interim licences updated for CPI.