



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Multi Band Spectrum Award - High Court grants stay on commencing the Auction

Information Notice

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An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation

1 Lárcheantar na nDugaí, Sráid na nGildeanna, BÁC 1, Éire, D01 E4X0.
One Dockland Central, Guild Street, Dublin 1, Ireland, D01 E4X0.
Teil | Tel +353 1 804 9600 Suíomh | Web www.comreg.ie

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1 Multi Band Spectrum Award - High Court grants stay on commencing the Auction

1.1 The Multi-Band Spectrum Award

1. On 18 December 2020, ComReg published its Decision D11/20¹ (“the MBSA2 Decision”) on its Multi-Band Spectrum Award (referred to herein as “MBSA2”) project for the long-term assignment of 470 MHz of spectrum rights of use in the 700 MHz, 2.1 GHz, 2.3 GHz, and 2.6 GHz band.
2. These spectrum bands are highly suitable for the deployment of mobile and wireless broadband (WBB) services, and the assignment of these spectrum rights represents a 46% increase in the harmonised spectrum assigned for the provision of WBB services in Ireland. This would significantly enable operators to offer new and improved services including advancements in 4G services and the widespread provision of 5G services.

1.2 Appeal of the MBSA2 Decision

3. On 14 January 2021, an appeal was lodged by Three Ireland (Hutchison) Limited and Three Ireland Services (Hutchison) Limited (collectively referred to as “Three”) against certain aspects of the MBSA2 Decision (the “Appeal”).
4. As outlined by ComReg in Information Notice Document 21/04R², Three’s appeal did not of itself stay the implementation of the MBSA2 Decision.

¹ See:

- ComReg Document No. [20/122](#), ComReg Decision D11/20; *Multi Band Spectrum Award - Response to Consultation and Decision - The 700 MHz Duplex, 2.1 GHz, 2.3 GHz and 2.6 GHz Bands*, published 18 December 2020;
- ComReg Document No. [20/122a](#); *Multi Band Spectrum Award - DotEcon Report Assessment of responses to consultation on Draft Decision*, published 18 December 2020;
- ComReg Document No. [20/122b](#); *Multi Band Spectrum Award - A Report by Plum Consulting London LLP*, published 18 December 2020; and
- ComReg Document No. [20/122s](#); *Multi Band Spectrum Award - Updated Versions of Non-confidential Submissions to Document 19/124, 20/32 and 20/56*, published 18 December 2020.

² ComReg Document [21/04R](#), “*Appeal by Three in relation to Multi Band Spectrum Award – The 700 MHz Duplex, 2.1 GHz, 2.3 GHz and 2.6 GHz Bands*” published 20 January 2021 and revised on 29 January 2021, available at www.comreg.ie.

5. ComReg defended the Decision in full and all parties to the Appeal sought an expedited hearing which was granted.
6. The Appeal was heard in the Commercial Court in June 2021 before Mr Justice O'Moore. Following that hearing, further written submissions were sought by Mr Justice O'Moore and these were submitted by the parties in October and November 2021. Mr. Justice O'Moore then reserved his judgment in respect of the Appeal and that judgment is currently awaited. ComReg cannot say when that might be delivered.

1.3 Implementation of the MBSA2 Decision and Three's Stay Application on commencing the Auction

7. As the Appeal did not prevent actions being taken to implement the MBSA2 Decision, ComReg progressed the MBSA2 in a timely manner with the aim of issuing licences in advance of the expiry of certain existing licences³ in the 2.1 GHz band on 15 October 2022.
 - On 16 April 2021, the Award Process formally commenced with the publication of the Information Memorandum (Document 21/40)⁴ ("IM").
 - On 28 May 2021, two sets of Wireless Telegraphy regulations associated with the MBSA2 were made with the consent of Eamon Ryan, Minister for the Environment, Climate and Communications. These are:
 - SI 264 of 2021⁵ (Wireless Telegraphy (Liberalised Use and Related Licences in the 700 MHz Duplex, 2.1 GHz, 2.3 GHz and 2.6 GHz Bands) Regulations 2021); and
 - S.I 265 of 2021⁶ (Wireless Telegraphy (Third Generation and GSM Licence (Amendment) and Interim Licensing) Regulations 2021).
 - In June 2021, a number of Interested Parties submitted the Phase 1 Application Documents to ComReg and subsequently became Applicants in the MBSA2.

³ Namely the 2.1 GHz Band licences of Three and Vodafone, noting that the 2.1 GHz Band licence of Meteor Mobile Communications (a subsidiary of Eircom Limited, trading as Eir) expires on 11 March 2027.

- On 27 May 2022, Applicants submitted the Phase 2 Applications Documents and deposits to ComReg, and shortly thereafter, on 31 May 2022, Applicants were informed by ComReg whether they had qualified as Bidders in the MBSA2. In this communication, ComReg also notified Bidders that a Main Stage⁷ (i.e., an Auction) would be required, and ComReg subsequently set the start date 11 July as the start date for the Main Stage.
- On 2 June 2022, Three applied to the Commercial Court for a stay on the commencement of the Main Stage of the MBSA2 Auction (the “Stay Application”) pending determination of the Appeal.
- On 17 June 2022, ComReg informed Bidders that the start date of the Main Stage would be deferred to 25 July 2022, in light of the hearing of the Stay Application, and in circumstances where the time available from 25 July 2022 to 15 October 2022 could accommodate the MBSA2 being run, and necessary steps being taken, in order to award licences in advance of that later date.

1.4 Judgment on the Stay Application

8. The Stay Application was heard in the Commercial Court on 7 and 8 July 2022 before Mr. Justice McDonald.
9. On 20 July 2022 Mr Justice McDonald delivered his oral judgment indicating his intention to grant a stay, subject to Three providing certain undertakings. The matter was back before the Court on 21 July 2022 and Mr Justice McDonald made an order granting a stay pending the delivery of judgment in the main proceedings by Mr Justice O’Moore. The Judge expressed the view that the stay is likely to remain in place for no more than ‘a few months’.
10. The effect of this judgment on the Stay Application is that the MBSA2 is now effectively suspended from progressing any further pending the delivery of the substantive judgement by Mr. Justice O’Moore, and, unless that is delivered very shortly, ComReg is unlikely be able to issue long-term licences in advance of licences expiring in October 2022.
11. Given its duties as both an economic regulator and Ireland’s radio spectrum manager and in order to mitigate consumer disruption that might arise, ComReg is now seeking views, see Document 22/63 published today, on the potential issue of

⁷ As set out in the IM, the function of the Main Stage is to determine how many Lots each Bidder will be awarded in each of the available Lot Categories, and the price to be paid by each Winning Bidder.

short-term rights of use in the 2.1 GHz band and other spectrum bands encompassed by the MBSA2 award.

12. In relation to the judgment on the Stay Application, ComReg is considering its position

13. ComReg is unable to comment any further at this time as to when it will be able to issue long-term spectrum rights of use in these important spectrum bands.