



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

The potential issue of short-term rights in the 2.1 GHz band and possibly in other spectrum bands included in the Multi Band Spectrum Award

Information Notice

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1 Introduction

1. In January 2021, an appeal was lodged by Three¹ against certain aspects of ComReg’s Decision on the Multi Band Spectrum Award (ComReg Decision D11/20 (the “Decision”)) (the “Appeal”). The Appeal did not stay the Decision or prevent action to implement it, and ComReg thus proceeded to implement the Multi Band Spectrum Award (referred to herein as “MBSA2”) 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 bands, with the intention of completing same in a timely manner, and in advance of the expiry of certain existing licences in October 2022. A judgment on the Appeal is awaited.
2. On 21 July 2022, Mr. Justice McDonald of the High Court made an order granting Three its Stay Application², thereby suspending ComReg from commencing the Main Stage³ (i.e., Auction) of the MBSA2, pending the substantive judgement on the Appeal by Mr. Justice O’Moore.
3. Prior to the issuing of this judgment on the Stay Application, ComReg had advanced the implementation of the MBSA2 to the point where the Auction was to commence on 25 July 2022. This would have resulted in licences being issued in advance of expiry of certain existing licences⁴ in the 2.1 GHz band on 15 October 2022. The 2.1 GHz band is a critical spectrum band currently used for the provision of 4G services⁵ but has been liberalised for other technologies and services.
4. However, as noted above, the effect of the judgment granting Three’s Stay Application is that the MBSA2 is now suspended from progressing any further pending the delivery of the substantive judgment on the Appeal by Mr. Justice

¹ Namely, Three Ireland (Hutchison) Limited and Three Ireland Services (Hutchison) Limited (collectively referred to as “Three”)

² 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.

³ As set out in ComReg Document 21/40, the Information Memorandum (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.

⁴ 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.

⁵ In 2002, and 2007, ComReg issued 3G licences for spectrum rights in the 2.1 GHz band to each of the MNOs. These licences were issued for twenty years, after which the spectrum rights of use associated with these licences expire. ComReg Decision (D11/20) provided the opportunity for all three licensees (Three Vodafone and Eir) to obtain liberalised rights of use. In Q2 2021 and upon application being received by Vodafone and Three ComReg issued liberalised rights of use to allow the use of this band for both 4G and 5G services.

O'Moore. Therefore, ComReg is unable to issue long-term licences in advance of the expiration of these important 2.1 GHz licences.

5. Further, ComReg had aimed to ensure that new rights of use were made available by 15 October 2022 as this corresponds to the expiry of certain existing rights of use in the 2.1 GHz band. However, ComReg is now unable to provide any certainty to stakeholders as to when it will be in a position to issue long-term spectrum rights of use in these important spectrum bands (700 MHz, 2.1 GHz, 2.3 GHz and 2.6 GHz Bands), as this depends on when the substantive judgment of the Court will be issued. ComReg notes that Mr. Justice McDonald expressed the opinion in his oral judgment of 20 July 2022, that, in his view, the stay is likely to remain in place for no more than 'a few months'. However, ComReg cannot say when the substantive judgement on the Appeal might be delivered.
6. In opposing the Stay Application, ComReg, with the assistance of its external economic advisor Dr Maldoom⁶ emphasised the importance of proceeding with the Auction and awarding long term licences. Dr Maldoom and a report prepared by an independent witness, Professor Peter Clinch⁷, put the overall cost to the economy of a delay in the award of these long-term licences in the order of magnitude of €1 billion per annum. Therefore, even a 3-month delay could cost the Irish economy in the region of €250m.
7. 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 open to receiving views on the potential issue of short-term rights of use in the 2.1 GHz band, and possibly in other spectrum bands encompassed by the MBSA2 award.
8. Section 2 of this Information Notice outlines the accelerated consultation process envisaged in the event of the issue of short-term rights of use in the 2.1 GHz band or other spectrum bands encompassed by the MBSA2 award, along with an outline of the detailed information that would be required by **12:00 hours (Irish time) on Tuesday 2 August 2022** to help inform whether a short-term licensing framework may be necessary.

⁶ Doctor Dan Maldoom is a founding Partner of DotEcon Limited and expert economic advisor to ComReg.

⁷ Professor Peter Clinch is Chairman and Director of EnvEcon Decision Support Ltd., Dublin, Ireland and is Full Professor of Public Policy at University College Dublin where he formerly served as Vice-President for Innovation, Enterprise Development and Corporate Partnerships.

2 Next Steps

2.1 Prospective Consultation Process

9. Given the limited time between now and the expiry of rights of use in the 2.1 GHz band, ComReg envisages that an accelerated consultation process is necessary to consider the potential issue of short-term spectrum rights.
10. In this regard, ComReg envisages that:
 - a consultation, draft decision and draft regulations would be issued mid to late-August 2022;
 - a brief but appropriate period following publication of the consultation document would be required to allow for the submission of views by interested parties; and
 - a response to consultation, final decision, and final draft regulations would be issued by mid-September 2022.
11. This approach, subject to views provided as outlined at paragraph 8 above and in keeping with section 2.2 below, would afford ComReg some limited time to (i) seek the consent of the Minister to the making of regulations, (ii) to allow the submission of licence applications and fees by interested parties, and (iii) to issue licences (where appropriate).

2.2 Information Requirements

12. ComReg is inviting views from interested parties on each of the items listed in the paragraph below with a view to determining whether a short-term licensing framework is considered necessary and, if so, how it should be designed. Any views submitted by interested parties should also set out clear reasoning and provide sufficient supporting information.
13. The items upon which ComReg requests information include:
 - i. Justification for the short-term temporary licensing of the 2.1 GHz band and, if appropriate, other spectrum bands, noting that this should include information on:
 - the potential for consumer disruption and the location of same, should short term spectrum rights not be provided for;

- the potential to use this spectrum band over the duration of any short-term licensing framework;
 - the number and location of existing sites, transmitters and apparatus licensed in the spectrum band;
 - the percentage of total network voice and data traffic currently carried by the spectrum band; and
 - the potential to reconfigure existing networks, should short term spectrum rights not be provided in the spectrum band.
- ii. the duration of any licensing framework noting that this should be for the minimum time-period necessary and without prejudice to the long-term assignment of spectrum rights in these bands;
 - iii. the quantity of spectrum, if any, to be assigned in the spectrum band, noting that in the 2.1 GHz Band Three has opted to not request an Interim A licence for the full 2 x 15 MHz available, obtaining a licence for 2 x 5 MHz and the authorisation method, noting that growth in data has returned to normal and expected data growth, and consequently, capacity constraints previously due to COVID-19 are likely to have abated;
 - iv. the geographic scope of any licensing framework;
 - v. spectrum fees, noting that Mr. Justice McDonald in his oral judgement stated that such fees should be commensurate with to the commercial value of the radio spectrum which is a point with which ComReg agrees and which aligns with the regulatory framework;
 - vi. the licence conditions, noting that the main purpose of the licensing framework is to mitigate consumer disruption by maintaining the existing levels of services for a short period of time beyond October 2022. For example, it may be appropriate to consider licensing conditions that would only cover existing apparatus at the standing sites listed in the existing licences; and
 - vii. technical licence conditions to ensure co-existence with other existing Electronic Communications Services.
14. Given the accelerated consultation process necessary for this process, ComReg invites submissions from interested parties no later than **12:00 hours (Irish time) on Tuesday 2 August 2022.**

15. Responses must be submitted in written form (e-mail) to the following recipient, clearly marked — Submissions to ComReg 22/63:

Mr. Patrick Bolton
Commission for Communications Regulation
One Dockland Central
Guild Street
Dublin 1
D01 E4X0
Ireland

Email: marketframeworkconsult@comreg.ie

2.3 Confidentiality of submissions to this Information Notice

16. In responding to this information notice, ComReg requests that electronic submissions be submitted in an unprotected format so that a non-confidential version (see below) of each submission can be readily included in any public consultation that ComReg might issue.
17. As outlined above, ComReg appreciates that some of the information submitted may be considered confidential. In order to promote openness and transparency, ComReg will publish all submissions received, as well as all substantive correspondence on matters relating to short term rights of use, subject to the provisions of ComReg's guidelines on the treatment of confidential information (Document 05/24).
18. In this regard, any respondents should make their submissions in accordance with the instructions set out below. When making a submission which contains confidential information, respondents must choose one of the following options:
 - a. Preferably, submit both a non-confidential version and a confidential version of the submission. The confidential version must have all confidential information clearly marked and highlighted in accordance with the instruction set out below and separately include the reasons as to why the respondent considers any particular material to be confidential. The separate non-confidential version must have redacted all items that were marked and highlighted in the confidential version.

OR

- b. Submit only a confidential version and the reasons as to why the respondent considers any particular material to be confidential, and ComReg will perform the required redaction to create a non-confidential version for publication. With this option, respondents must ensure that confidential information has been marked and highlighted in accordance with the instructions set out below. Where confidential information has not been marked as per our instructions below, then ComReg will not create the non-confidential redacted version and the respondent will have to provide the redacted non-confidential version in accordance with option A above.
19. For ComReg to perform the redactions under Option B above, respondents must mark and highlight all confidential information in their submission as follows:

- I. Confidential information contained within a paragraph must be highlighted with a chosen colour,
 - II. Square brackets must be included around the confidential text (one at the start and one at the end of the relevant highlighted confidential information); and
 - III. A Scissors symbol (Symbol code: Wingdings 2:38) must be included inside each of the square brackets.
20. For example, “Redtelecom has a market share of [✂ 25% ✂].”