



Commission for  
**Communications Regulation**

# **Interim 1800 MHz Rights of Use for the period 1 January 2015 to 12 July 2015**

**Consultation and Draft Decision**

**Reference:** ComReg 14/88

**Date:** 21/08/2014

**An Coimisiún um Rialáil Cumarsáide  
Commission for Communications Regulation**

Abbey Court Irish Life Centre Lower Abbey Street Dublin 1 Ireland

Telephone +353 1 804 9600 Fax +353 1 804 9680 Email [info@comreg.ie](mailto:info@comreg.ie) Web [www.comreg.ie](http://www.comreg.ie)

## **Disclaimer**

This consultation and draft decision paper is not a binding legal document and also does not contain legal, commercial, financial, technical or other advice. The Commission for Communications Regulation is not bound by it, nor does it necessarily set out the Commission's final or definitive position on particular matters. To the extent that there might be any inconsistency between the contents of this document and the due exercise by it of its functions and powers, and the carrying out by it of its duties and the achievement of relevant objectives under law, such contents are without prejudice to the legal position of the Commission for Communications Regulation. Inappropriate reliance ought not therefore to be placed on the contents of this document.

# Contents

<b>Section</b>	<b>Page</b>
<b>1 Introduction and Background</b> .....	<b>5</b>
1.1 Background .....	5
1.2 Interim Licensing in the 900 MHz band .....	8
1.3 Structure of this document .....	9
<b>2 Telefónica's submission</b> .....	<b>11</b>
2.1 Summary of Telefónica's submission .....	11
2.2 ComReg's preliminary assessment of Telefónica's submissions .....	14
<b>3 Draft Regulatory Impact Assessment (RIA)</b> .....	<b>17</b>
3.1 Identifying the policy issues and objectives .....	18
3.2 Identifying the regulatory options .....	19
3.3 Determining the impacts on stakeholders .....	19
3.4 Impacts on competition .....	25
3.5 Summary - the preferred option .....	27
<b>4 ComReg's Proposal</b> .....	<b>29</b>
4.1 Introduction .....	29
4.2 Interim 1800 MHz Licence conditions including fees .....	29
4.3 The proposed process for granting an Interim 1800 MHz licence .....	31
4.4 Objective justification, proportionality and non-discrimination .....	31
<b>5 Draft Decision</b> .....	<b>33</b>
<b>6 Next Steps</b> .....	<b>37</b>

# Annex

<b>Section</b>	<b>Page</b>
Annex 1: Glossary .....	38
Annex 2: List of Consultation Questions .....	43
Annex 3: Non-confidential Telefónica Submission .....	44

## Chapter 1

# 1 Introduction and Background

- 1.1 The Commission for Communications Regulation (ComReg) is the statutory body responsible for regulating the provision of electronic communications networks and services in Ireland and for ensuring the efficient management and use of the radio frequency spectrum, pursuant to its relevant functions, objectives, duties and powers which are set out in primary and secondary legislation.
- 1.2 This purpose of this consultation paper is to set out and consult upon ComReg's proposal to facilitate the granting of an interim wireless telegraphy licence to Telefónica O2 Ireland Limited (Telefónica), should Telefónica seek to apply for same, which would assign GSM spectrum rights of use in the 1800 MHz band (the "1800 MHz Interim Licence").
- 1.3 The specific purpose of the 1800 MHz Interim Licence would be to cover the period of approximately 6½ months where Telefónica would not hold spectrum rights of use in the 1800 MHz band. This 6½ month period lies between the expiry of Telefónica's current 15-year GSM 1800 MHz licence on 31 December 2014, and the commencement of its liberalised rights of use in the 1800 MHz band on 13 July 2015. The relevant background to the current circumstances is set out below.

## 1.1 Background

- 1.4 In September 1999, the two existing GSM licensees at that time, Eircell (now Vodafone Ireland Limited (Vodafone)) and Esat Digifone (now Telefónica), were each offered wireless telegraphy licences of 15-years duration, by which they would each obtain spectrum rights of use consisting of 2 x 14.4 MHz in the 1800 MHz band. The licence offer was subject to payment of the applicable spectrum access fees<sup>1</sup> and a number of licence conditions, including the provision of GSM 1800 MHz coverage to more than 33.3% of the population by the end of 2002. Eircell and Esat Digifone both accepted the offer and each was granted a 15-year GSM 1800 MHz licence, commencing on 1 January 2000 and expiring on 31 December 2014.<sup>2</sup>
- 1.5 In 2012, ComReg held a Multi-Band Spectrum Award (MBSA) process for the award of spectrum rights of use in the 800 MHz, 900 MHz and 1800 MHz

---

<sup>1</sup> Telefonica paid a spectrum access fee of IR£5.686 million and Vodafone paid IR£5.69 million.

<sup>2</sup> See ComReg Press Release PR070999a  
<http://www.comreg.ie/fileupload/publications/pres070999a.pdf>

spectrum bands (taking into account the fact that two of the three existing GSM licences in the 1800 MHz band will expire on 31 December 2014, while the third and final licence will expire on 12 June 2013). The MBSA process was designed to meet a number of objectives and it included features tailored to the specific situation in Ireland. This included the following:

- the use of two “Time Slices” for the award of spectrum rights of use, with Time Slice 1 running from 1 February 2013 to 12 July 2015 and Time Slice 2 running from 13 July 2015 to 12 July 2030.
- an early liberalisation option by which the existing GSM licensees (Vodafone, Telefónica and Meteor Mobile Communications Limited (Meteor)) could bid in such a manner as to liberalise some or all of their respective existing GSM spectrum rights of use in the 900 MHz and/or 1800 MHz bands in Time Slice 1.

1.6 It was recognised, at the time, that the creation of the two Time Slices and in particular the commencement date of Time Slice 2 could result in there being an interim period of approximately 6½ months between the expiry of the existing 15-year GSM 1800 MHz licences held by Vodafone and Telefónica, on 31 December 2014, and the commencement of any acquired liberalised 1800 MHz rights of use in Time Slice 2 (i.e. 13 July 2015). This situation could only affect Vodafone and Telefónica and not the third GSM 1800 MHz licensee, Meteor, as the expiry date of its licence was aligned with the commencement date of Time Slice 2 (being 13 July 2015). The possibility of such a gap emerging between existing GSM 1800 MHz rights of use and liberalised 1800 MHz rights in Time Slice 2 was commented upon by interested parties in their submissions to ComReg.<sup>3</sup> ComReg noted that this possibility would only occur in certain circumstances<sup>4</sup> and it stated that it would assess this possibility following the MBSA but in advance of the expiry of the affected licences.<sup>5</sup>

1.7 The MBSA was completed in late 2012<sup>6</sup> in such manner that there would be a period of approximately 6½ months between the expiry of Telefónica’s existing GSM 1800 MHz licence on 31 December 2014 and the commencement of its liberalised 1800 MHz rights of use in Time Slice 2 on 13 July 2015. During that

---

<sup>3</sup> See ComReg Documents 11/10, 11/102, 12/21, 12/49,

<sup>4</sup> The circumstances would be where Vodafone or Telefonica maintained their existing GSM 1800 MHz licence (in part of in full) in Time Slice 1, and obtained Liberalised Use 1800 MHz spectrum rights of use in Time Slice 2.

<sup>5</sup> See ComReg Documents 10/105 (Section 3.5), 11/60 (paragraph 4.129), 11/60A (Annex 6.5), 12/25 (section 4.6), 12/50 (section 6.4),

<sup>6</sup> See ComReg Document 12/123 <http://www.comreg.ie/fileupload/publications/ComReg12123.pdf>

period, Telefónica<sup>7</sup> would not hold spectrum rights of use in the 1800 MHz band. This is further outlined in Table 1 below.

**Table 1: Telefónica's existing spectrum rights of use in the 1800 MHz band**

Telefónica's 1800 MHz Licences	Licence Commencement date	Licence Expiry Date	Spectrum Licensed	Licence Details
GSM 1800	01/01/2000	31/12/2014	2 x 14.4 MHz	<a href="#">L2G1001</a>
Liberalised Use (1800 MHz only)	13/07/2015	01/10/2022	2 x 15 MHz	<a href="#">MLU1007</a>

1.8 Following the completion of the MBSA, a number of interested parties again commented upon the possibility of there being an Interim 1800 MHz Licence.<sup>8</sup> ComReg again stated that it would assess any substantiated and objectively justified request for an Interim 1800 MHz Licence having regard to its statutory functions, objectives and duties and that it expected that it would make a decision in advance of licence expiry.<sup>9</sup> Furthermore, in the consultation commenced in September 2013, on the granting of 1800 MHz spectrum rights of use which were as yet unassigned (ComReg Document 13/88), ComReg noted that it required clarity on certain facts and the outcomes of certain matters before it could assess the matter of granting an Interim 1800 MHz Licence for the period in question. ComReg noted the following, in particular:

- Telefónica, at that time, had not yet objectively demonstrated that it would require GSM spectrum rights of use in the 1800 MHz band, for the 6½ month period.
- The outcome of ComReg's 2013 consultation on the granting of unassigned 1800 MHz spectrum rights of use was still unknown.
- The decision of the European Commission in respect of the proposed acquisition of Telefónica by Hutchison Whampoa was, at that point in time, still unknown.

<sup>7</sup> In the MBSA competition, Vodafone availed of the early liberalisation option to liberalise its existing GSM 1800 MHz spectrum rights and obtain Liberalised Use 1800 MHz spectrum rights in Time Slice 1 with an expiry date of 12 July 2015.

On the other hand, Telefonica was unsuccessful in its bids to use the early liberalisation option to obtain Liberalised Use 1800 MHz spectrum rights in Time Slice 1, and it retained its GSM 1800 MHz licence with an expiry date of 31 December 2014.

<sup>8</sup> See ComReg Documents 13/04 (Telefonica, Vodafone), 13/57 (Telefonica),

<sup>9</sup> See ComReg Documents 13/05 (Section 2.3.2), 13/70 (Section 4.1) and 13/88 (Section 2.3)

1.9 ComReg now has clarity regarding the above facts and outcomes and is therefore now in a position to assess the issue of granting an Interim 1800 MHz licence to Telefónica.

## 1.2 Interim Licensing in the 900 MHz band

1.10 In addition to ensuring that any decision it makes is objective, justified, non-discriminatory and proportionate, ComReg also seeks to ensure that its decisions promote regulatory predictability by ensuring a consistent regulatory approach.

1.11 In this regard, ComReg has taken particular note of its regulatory approach to interim licensing in the 900 MHz band. That matter was originally consulted upon in Consultation Document 10/71 and in Response to Consultation and Draft Decision Document 11/11, with the final decision set out in Response to Consultation and Decision Document 11/29.<sup>10</sup>

1.12 In that consultation process, which was conducted in the context of the still ongoing MBSA, ComReg considered what would happen if it allowed the existing GSM 900 MHz licences held by Vodafone and Telefónica to expire on their then concurrent expiry dates in May 2011. ComReg discounted this as a viable regulatory option on the basis that a final decision had yet to be made regarding the approach to granting new liberalised licences in the 900 MHz band and, in the interests of safeguarding existing competition and eliminating probable serious disruption to consumer services for the time being, ComReg considered that the overall interests of consumers would be better served, on balance, by granting interim licences to Vodafone and Telefónica, on a GSM-only basis and for a limited period and until such time as ComReg's final decision on its broader spectrum release proposals was realised.

1.13 There was broad support amongst respondents to ComReg's proposal to grant the 900 MHz Interim Licences, including support from Vodafone and Telefónica (while noting that some supporting parties disagreed with specific aspects of the proposal). One respondent, Hutchison 3G Ireland Limited (H3GI), disagreed with the proposal. ComReg's final decision to grant the 900 MHz Interim Licences (D03/11) stated that the decision was made on foot of several rounds of consultation and having regard to facts including:

- *the imminent expiry (on 15 May, 2011) of licences held by Vodafone and O2 ... ("Current Licences");*
- *the fact that ComReg will not be in a position to finalise its decision-making in relation to its broader spectrum release proposals and related*

---

<sup>10</sup>Further, an extension to the interim 900 MHz licences was granted in 2013. See ComReg Documents 12/127 and 13/05.



*on-going consultation process in respect of the Joint Spectrum Release and implement the outcome of this decision-making before the Current Licences expire on 15 May, 2011;*

- *the consequent need to facilitate the finalisation by ComReg of its decision-making in respect of the Joint Spectrum Release, with the stated benefits envisaged by ComReg that would flow from the spectrum-release contemplated, once finalised (and, in particular, the maximisation of benefits for users and the facilitation of the development of competition);*
- *the avoidance of undue effects on the sustainability of the businesses of industry operators during the time between May, 2011 and the commercial commencement date of new, liberalised-use licences in the relevant frequency bands;*
- *the desirability of providing for interim measures that can be put in place in that period, preserving the status quo in spectrum assignments, pending the outcome of the proposed spectrum-assignment process and the crystallisation thereof, thereafter;*
- *the likely disruption to consumers and competition if interim measures are not put in place to provide for the continuation of the provision of existing 900 MHz GSM services by Vodafone and O2 between the expiry of their Current Licences and the completion of the foregoing consultation process relating to the Joint Spectrum Release;* and
- *the desirability of providing as much regulatory certainty and predictability as possible in the circumstances.* [Emphasis added]

1.14 ComReg further stated, in its Response to Consultation and Decision Document 11/29, that its decision to grant Interim 900 MHz Licences should be viewed as a facilitating measure that was needed in the particular circumstances, which were then current, in order to maintain and safeguard existing competition and eliminate probable serious disruption to consumer services for the time being, until such time that ComReg could finalise its broader spectrum release decision-making, implement same, and make available liberalised spectrum in a manner that would not distort competition.

1.15 Although the MBSA auction is now complete, the proposed decision at that time and the related the factual circumstances are also directly connected to the MBSA process and its final outcome.

### **1.3 Structure of this document**

1.16 This document is structured as follows:

- **Chapter 2** – Summary of Telefónica’s submission and ComReg’s preliminary assessment and view on this submission;
- **Chapter 3** – Draft Regulatory Impact Assessment (RIA);
- **Chapter 4** – ComReg’s proposal and consideration against other relevant statutory obligations;
- **Chapter 5** – Draft decision;
- **Chapter 6** – Next Steps
- **Annex 1** – Glossary;
- **Annex 2** – List of Consultation Questions; and
- **Annex 3** – The non-confidential submission from Telefónica;

## Chapter 2

# 2 Telefónica's submission

## 2.1 Summary of Telefónica's submission

- 2.1 On 7 May 2014, 14 July 2014, and 18 July 2014, Telefónica submitted information to ComReg in support of its request that ComReg put in place a process to facilitate the granting of an Interim GSM 1800 MHz Licence, should Telefónica apply for same. The requested Interim GSM 1800 Licence would cover the period of approximately 6½ months between the expiry of Telefónica's current 15-year GSM 1800 MHz licence, on 31 December 2014, and the commencement of its liberalised 1800 MHz rights on 13 July 2015. Telefónica, in effect, is seeking to retain its existing spectrum rights of use for 2 x 14.4 MHz in Lots A, B and C of the 1800 MHz band for the period from 1 January 2015 to 12 July 2015 (193 calendar days). A summary of Telefónica's submission is set out below and Annex 2 sets out the non-confidential version of the information submitted by Telefónica.
- 2.2 Telefónica stated that it does not wish to be prescriptive as to the manner in which it could retain its existing spectrum rights of use in the 1800 MHz band in the period 1 January - 12 July 2015. Telefónica expressed the view that *"the method used to extend the O2 and Vodafone GSM 900MHz licences in 2011 would seem to be appropriate and acceptable."* Telefónica further observed that, as in that instance, this might require ComReg to make specific regulations under the Wireless Telegraphy Act 1926, similar to the *Wireless Telegraphy (Interim GSM Mobile Telephony Licence) Regulations 2011*<sup>11</sup>. Telefónica also submitted that an Interim 1800 MHz Licence should contain substantially similar conditions to its current GSM 1800 MHz licence.

### 2.1.1 Telefónica's current use of the 1800 MHz band

- 2.3 Telefónica provided details on its current use of spectrum and stated that its network currently integrates a number of different service types and radio spectrum bands in order to optimise the service provided to its customers. Telefónica stated that this includes use of its assigned spectrum in the following bands - 900 MHz GSM, 900 MHz UMTS, 1800 MHz GSM and 2100 MHz UMTS. Telefónica also noted that LTE on 800 MHz is not generally accessible on its network.

---

<sup>11</sup> S.I No. 189 of 2011, and S.I 19 of 2013.

- 2.4 Telefónica stated that it currently uses 1800 MHz spectrum to provide GSM services (capacity for voice callers, and basic data using EDGE) primarily in urban areas<sup>12</sup>. Telefónica also provided details of the extent of its current 1800 MHz usage, which information is confidential. [REDACTED]
- 2.5 Telefónica further stated that its current expansion of its UMTS 900 MHz coverage is reducing its GSM 900 MHz capacity and that this reduction is in part being met with the 1800 MHz band.
- 2.6 Telefónica provided details of the approximate percentage of customers on its network who use GSM-only handsets, which again is confidential. [REDACTED]
- 2.7 Telefónica also submitted that the planning, design, and roll-out of the various bands and services on its network factors in the use of 1800MHz spectrum, now and in future, and that it would not be possible for it to simply “fill in” the gap in service that result from its temporary inability to utilise spectrum in the 1800MHz band. Telefónica submitted that this would have a serious impact on the quality of service received by its GSM customers, in particular, but would also affect all of its customers. Telefónica submitted that:
- all of its 1.51m voice service customers would be lightly impacted at certain times<sup>13</sup>;
  - all [REDACTED] of its voice service customers within the current 1800 MHz coverage area would suffer at least moderate service degradation during busy hours<sup>14</sup>; and
  - its [REDACTED] customers who hold GSM-only handsets and who are within the 1800 MHz coverage area would be severely impacted during busy hours<sup>15</sup>.

<sup>12</sup> In its letter of 18 July 2014, Telefonica also explained that the Telefonica network also depends heavily on the current 1800 MHz band in areas close to the border with Northern Ireland.

<sup>13</sup> Telefónica explained that this would be as a result of attempts to make and receive calls from customers whose service is more severely impacted, and to some extent the effect of congestion on Telefonica’s network.

<sup>14</sup> Telefónica explained that this would include the customers whose traffic is currently carried on the 1800MHz band, but also customers within the relevant area whose traffic is also carried on the 3G network. This is a result of the “switching in” of additional traffic on the 3G network.

<sup>15</sup> Telefónica explained that the 3G service is not available to carry voice calls, and the only network service available is 900MHz GSM, which does not have sufficient capacity to absorb the additional traffic. This is particularly the case where Telefonica is in the process of rolling out 3G service in the 900MHz band, leaving only 2x5MHz of spectrum used for GSM capacity service.

2.8 Telefónica submitted that it would incur a significant loss resulting from the impact on the quality of service received by its customers, and that its ability to win new customers and retain existing customers would be damaged, and that this would have a consequential negative impact on market competition. Telefónica further submitted that it would incur significant costs in trying to mitigate the impact of the reduced quality of its service and that this investment would otherwise be unnecessary.


### 2.1.2 Telefónica's consideration of mitigation actions

2.9 Telefónica has considered a range of mitigation actions, as outlined below, on foot of which it submits that there is not a feasible strategy by which it may eliminate or substantially mitigate the impact of temporarily losing access to spectrum rights of use in the 1800 MHz band for the 6½ month period in question. The mitigation actions which Telefónica considered are as follows:

- Voice compression techniques: Telefónica submits that given the relative quantity of 1800 MHz spectrum which it uses to provide voice services, it would not be practical to compensate for the withdrawal of 1800 MHz spectrum by the use of voice compression on other bands;
- 3G carrier addition: Telefónica submits that while this could provide limited benefit and reduce the secondary congestion on its 3G network in some locations, it would not provide any benefit for its customers who have GSM-only handsets;
- Additional Radio Access Network (RAN) sites: Telefónica submits that this action would at best have a limited mitigation effect, given the time required to develop and commission new sites. In addition, Telefónica states that new sites developed for this purpose would not be part of its network development plan and would not be economically feasible in most cases; and
- National Roaming: Telefónica submits that this solution would not be feasible for the period of 6½ months, given the technical development that would be required, nor would it be feasible for other operators to boost capacity on their networks for such a short period.

### 2.1.3 The acquisition of Telefónica by Hutchison Whampoa

2.10 Telefónica submits that its acquisition by Hutchison Whampoa, as recently approved by the European Commission, would not mitigate the effects of it losing access to its GSM 1800 MHz rights for 6½ months on the basis that the two blocks of 1800 MHz spectrum assigned to H3GI are being used to roll-out H3GI's LTE service, primarily in urban areas. [REDACTED]



2.11 Telefónica further submits that it would not be feasible for it to re-engineer its GSM 1800 MHz network from the current three spectrum blocks to just two spectrum blocks in the remaining time period prior to the expiry of its current 15-year GSM 1800 MHz licence on 31 December 2014.

#### **2.1.4 Other relevant considerations**

2.12 Telefónica has also set out a number of other considerations which it considers relevant to its request, including the following:

- Telefónica submits that there is no viable alternative use for the 1800 MHz spectrum rights of use at issue, for the 6½ month period, such that if the spectrum is not retained by Telefónica then it could only remain fallow during that period. Telefónica submits that this would not be an efficient use of that spectrum;
- Telefónica submits that facilitating the granting of an Interim 1800 MHz Licence to it would not discriminate in favour of Telefónica or against any other licensee, as no other licensee is in the same position as Telefónica; and
- Telefónica submits that the granting an Interim 1800 MHz Licence would be an objectively justified, non-discriminatory and proportionate measure as it is the only way of adequately resolving the issue of the 6½ month gap.

## **2.2 ComReg's preliminary assessment of Telefónica's submissions**

2.13 In Consultation 13/88, commenced in September 2013, ComReg noted that the outcomes of certain matters, which were still unknown at that time, needed to be known before ComReg could reasonably assess the issue of granting any Interim GSM 1800 MHz Licence to Telefónica. The outcome of those matters is now known. Specifically, the outcome of Consultation 13/88 on the granting of unassigned 1800 MHz spectrum rights of use is known<sup>16</sup>, and the decision of

---

<sup>16</sup> See ComReg Document 14/01

the European Commission in respect of the proposed acquisition of Telefónica by Hutchison Whampoa is known.<sup>17</sup>

- 2.14 In addition, Telefónica has now submitted information to ComReg, as set out in Annex 2, by which it seeks to objectively demonstrate that it ought to be facilitated to obtain GSM spectrum rights of use in the 1800 MHz band for the interim 6½ month period in question. This includes Telefónica having identified and assessed the potential actions available to it, by which to mitigate the effects of it temporarily losing those spectrum rights of use. Telefónica has also set out what it considers to be the potential consequences of it not having use of 1800 MHz spectrum for the period in question.
- 2.15 Telefónica submits that there is no feasible strategy by which it could eliminate or substantially mitigate the impact of it temporarily losing its current spectrum rights of use in the 1800 MHz band.
- 2.16 Having carefully considered Telefónica's submissions and based on the information currently before it, ComReg's preliminary assessment of Telefónica's submission includes that:
- the temporary loss by Telefónica of its GSM 1800 MHz rights for 6½ months could result in mobile users experiencing a significant degradation in their quality of service (QoS). This would particularly affect Telefónica's customers (see section 2.1.1 above) including vulnerable users of this network, but it is likely that customers of other electronic communications networks (fixed and mobile) would also be affected, given that networks interconnect and customers on different networks communicate with one another;
  - a reduced QoS on Telefónica's network could result in an unnecessary distortion in market competition, by impeding Telefónica's ability to retain and win customers. ComReg further considers the potential impacts on competition in the context of the draft RIA;
  - Telefónica's assessment that there is no feasible strategy by which it could eliminate or substantially mitigate the impact of it temporarily losing its current GSM 1800 MHz rights appears objectively justified and reasonable. Further, ComReg considers that investments in its network

---

<sup>17</sup> On 28 May 2014 the EC approved under the EU Merger Regulations the proposed acquisition of Telefonica Ireland Limited by Hutchison 3G UK Holdings Limited (of which Hutchison 3G Ireland Limited is a wholly-owned indirect subsidiary). This approval is conditional upon a commitments package submitted by Hutchison 3G UK Holdings Limited. Further details can be obtained from the EC's web-site:

- Under EC Competition case number M.6992 [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_6992](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_6992); and
- EC Press Release: IP/14/607 [http://europa.eu/rapid/press-release\\_IP-14-607\\_en.htm](http://europa.eu/rapid/press-release_IP-14-607_en.htm)

which it otherwise would not have to make, for the specific purpose of mitigating the effects of its temporary loss of its spectrum rights of use in the 1800 MHz band, would not be likely to promote efficient infrastructure investment; and

- having the 1800 MHz spectrum currently used by Telefonica for GSM sitting fallow in the 6½ month period in the alternative would not be an efficient use of that spectrum in the circumstances.

**Q.1 Do you agree with ComReg’s preliminary assessment of Telefonica’s submissions? Please provide reasons, evidence and other relevant material in support of your view.**

2.17 Based on the above preliminary assessment, ComReg considers putting in place a process to facilitate the assignment of GSM 1800 MHz spectrum rights of use to Telefónica for the period 1 January 2015 to 12 July 2015 to be a viable regulatory option and the following chapter sets out ComReg’s assessment of that option and the alternative of not doing so in the context of a draft regulatory impact assessment.



## Chapter 3

# 3 Draft Regulatory Impact Assessment (RIA)

- 3.1 This chapter sets out ComReg’s draft RIA on its proposal for putting in place of a process that would allow Telefónica to apply for a GSM 1800 licence for the 6½ month period between 1 January 2015 and 12 July 2015 (“the GSM 1800 Interim Licence Proposal”). It has been prepared in accordance with ComReg’s RIA Guidelines (Document 07/56a<sup>18</sup>) (“ComReg’s RIA Guidelines”) and having regard to the RIA Guidelines issued by the Department of An Taoiseach in June 2009 (“the Department’s RIA Guidelines”), and relevant Policy Directions issued to ComReg by the then Minister for Communications, Marine and Natural Resources under Section 13 of the 2002 Act on 21 February 2003 (the “Policy Directions”).
- 3.2 ComReg’s RIA Guidelines set out, amongst other things, the circumstances in which ComReg considers that a RIA might be appropriate. In summary, ComReg will generally conduct a RIA in any process that might result in the imposition of a regulatory obligation (or the amendment of an existing regulatory obligation to a significant degree), or which might otherwise significantly impact on any relevant market or on any stakeholders or consumers.
- 3.3 In the interests of continuing to ensure openness and transparency, and given that the expiration of Telefónica’s GSM 1800 MHz Licence could significantly impact on the electronic communications sector and consumers in Ireland, this draft RIA on the GSM 1800 Interim Licence Proposal has been prepared. Alongside comments on the rest of this consultation document, ComReg invites interested parties to review this draft RIA and to submit any comments or information that they believe ComReg should consider, before making a final decision on this matter.
- 3.4 As set out in ComReg’s RIA Guidelines, there are five steps to this draft RIA. These steps are:
- Step 1: Identify the policy issue and identify the objectives;
  - Step 2: Identify and describe the regulatory options;
  - Step 3: Determine the impacts on stakeholders;

---

<sup>18</sup> ComReg 07/56a – Guidelines on ComReg’s approach to Regulatory Impact Assessment – August 2007.

- Step 4: Determine the impacts on competition; and
- Step 5: Assess the impacts and choose the best option.

### 3.1 Identifying the policy issues and objectives

3.5 As discussed in the background section above, prior to the MBSA process, there were three GSM licensees in the 1800 MHz band, namely Vodafone, Meteor and Telefónica. Vodafone and Telefónica held 15-year licences with the same expiry date of 31 December 2014. Meteor's licence commenced 6½ months later and so it expires on 12 July 2015.

3.6 In the MBSA process, ComReg sought to resolve a number of different objectives in a single award process. As part of this, ComReg decided to award spectrum rights of use in two Time Slices, with the commencement date of Time Slice 2 being 13 July 2015, (approximately 6½ months after the expiry date of Telefónica's and Vodafone's GSM 1800 MHz Licences).

3.7 While the MBSA process did include an early liberalisation option, whereby existing GSM Licensees could obtain Liberalised Use spectrum rights of use in Time Slice 1, Telefónica was unsuccessful in its bids in this regard, and this has resulted in the current situation where there is a 6½ month gap between Telefónica's current 15-year GSM 1800 MHz spectrum rights, which expires on 31 December 2014, and the commencement of its 1800 MHz liberalised rights of use in the 1800 MHz band which commences on 13 June 2015.

3.8 As discussed above, ComReg is of the preliminary view that Telefónica losing its 1800 MHz spectrum for this 6½ month gap could result in significant consumer disruption, particularly for Telefónica's customers but also for customers on other networks, and that it could cause an unnecessary and unjustified distortion in market competition in the market, and could result in unnecessary and inefficient investment by Telefónica. ComReg is therefore of the preliminary view that it would be appropriate to put in place a process to facilitate the assignment of GSM 1800 MHz spectrum rights to Telefónica for the 6½ month period, in order to address these foreseen negative consequences Telefónica losing its 1800 MHz spectrum for that period.

3.9 The options and relevant facts, as set out in this draft RIA, are assessed against ComReg's statutory functions, duties and objectives,<sup>19</sup> particularly in relation to:

- the promotion of competition<sup>20</sup>, which include:

---

<sup>19</sup> Set out at Annex 2.

<sup>20</sup> ComReg has a broad discretionary power in relation to achieving this general obligation.

- ensuring that there is no distortion or restriction of competition in the electronic communications sector;<sup>21</sup>
- promoting efficient investment and innovation in new and enhanced infrastructures;<sup>22</sup> and
- encouraging efficient use and ensuring the effective management of radio frequencies;<sup>23</sup>
- promoting the interests of users in the community;<sup>24</sup> and
- safeguarding competition to the benefit of consumers and promoting, where appropriate, infrastructure-based competition.<sup>25</sup>

3.10 The principal policy issues and objectives that ComReg considers to be relevant to this draft RIA are:

- whether a process be put in place to facilitate an assignment of interim GSM 1800 spectrum rights of use to Telefónica;
- eliminating the potential negative consumer disruption by ensuring the continued availability of GSM 1800 services on Telefónica's network; and
- the impact of ComReg's proposal on safeguarding competition.

## 3.2 Identifying the regulatory options

3.11 ComReg considers that the two regulatory options now available to it are:

- **Option 1:** Allow Telefónica's existing GSM 1800 MHz Licence to expire on 31 December 2014; or
- **Option 2:** Put in place a process to facilitate the assignment of GSM 1800 MHz spectrum rights of use to Telefónica for the period 1 January 2015 to 12 July 2015.

## 3.3 Determining the impacts on stakeholders

3.12 There are two broad stakeholder groups the impacts upon which are considered in the draft RIA, being:

---

<sup>21</sup> Section 12(2)(a)(ii) of the 2002 Act.

<sup>22</sup> Regulation 16(2)(d) of the Framework Regulations.

<sup>23</sup> Section 12(2)(a)(iv) of the 2002 Act.

<sup>24</sup> Section 12(1)(a)(iii) of the 2002 Act.

<sup>25</sup> Regulation 16(2)(c) of the Framework Regulations.

- mobile network operators and MVNOs including:
  - H3GI who recently acquired Telefónica;
  - Vodafone and Meteor, for whom the 6½ month gap does not arise; and
  - MVNOs reliant on the Telefónica network; and
- consumers.

### 3.3.1 Impacts on stakeholders

3.13 As noted in Chapter 2 above, the merger of Telefónica and H3GI has now been formally completed after being approved by the European Commission. Therefore for the purpose of this RIA, the interests of the applicant, Telefónica, and H3GI are aligned and will be considered together.

3.14 From the perspective of H3GI/Telefónica, Option 2 would allow for the continuation of current services to its customers and the retention of the status quo.

3.15 Under Option 1 and as described below (impact on consumers) a disruption to service would likely occur for all Telefónica customers, and significant disruption for certain subsets of that customer base. This could reduce Telefónica's ability to compete in the market and would lead to an increased likelihood of affected customers switching to alternative operators. The service disruption and likely loss of customers would likely see H3GI/Telefónica's market share fall over the period of the 6½ month gap, and Telefónica/H3GI may have to incur inefficient investment to mitigate these losses.

3.16 The service disruption is due to no GSM 1800 MHz service being available and a significant portion of the existing GSM customers all having to be accommodated on the 900 MHz network. Telefónica advised that while it could take certain measures<sup>26</sup> to mitigate against this service disruption and the likely resulting loss in market share, it did not believe that there was a feasible mitigation strategy available to eliminate or substantially reduce the impact of the loss of 1800 MHz spectrum for this period.

3.17 In considering the appropriate mitigation techniques H3GI/Telefónica would need to ensure that any technique sufficiently mitigated against service disruption and could be implemented in a timely and cost effective fashion. Given the nature of these mitigation techniques, it appears that the 6½ month period is not sufficiently long to justify such an investment, and any mitigation costs incurred are likely to be unnecessary and therefore inefficient. More

---

<sup>26</sup> These include Voice Compression techniques, 3G Carrier addition, Additional RAN Sites and National Roaming.

importantly, it is also not clear whether these measures could feasibly be implemented in a timely fashion prior to the expiry of Telefónica's GSM 1800 MHz licence.

3.18 H3GI currently has 2 x 10 MHz of spectrum in the 1800 MHz band that covers the period 1 January 2015 to 12 July 2015. However, ComReg notes that this spectrum is unlikely to be available to Telefónica for the provision of GSM 1800 services as H3GI has launched LTE services<sup>27</sup> using this spectrum [REDACTED]

[REDACTED] and reallocating this spectrum to GSM customers would compromise the commercial viability of H3GI's LTE service reducing its ability to compete for customers on the basis of its LTE service<sup>28</sup>. Consumers would also be delayed in reaping the benefit of improved competition for LTE services.

3.19 H3GI's LTE service has been launched in the more populated areas (these areas are likely to be the areas where Telefónica's GSM 1800 service is currently used) and H3GI plans to roll-out this LTE service to more places in the future<sup>29</sup>. This further reduces the feasibility of Telefónica being able to use H3GI's 1800 MHz spectrum in the 6½ month gap.

3.20 Therefore H3GI/Telefónica would prefer Option 2 since it eliminates consumer disruption by allowing Telefónica to continue to provide GSM 1800 MHz services and safeguard competition by avoiding inefficient investment while maintaining the status quo by allowing H3GI/Telefónica to continue to operate and develop its GSM, UMTS and LTE networks based upon its long-term 1800 MHz spectrum rights in Time Slice 2.

3.21 From the perspective of Vodafone and Meteor, both MNOs could potentially prefer Option 1 since any disruption to customers reliant on the Telefónica network could result in those customers becoming more likely to switch to Vodafone and Meteor than would normally be the case.

3.22 However in the past, ComReg notes that both Vodafone and Meteor supported interim licence proposals in relation to either the 1800 MHz band or the 900 MHz band

3.23 In relation to the 1800 MHz band, ComReg notes Vodafone's previous comments expressing support for the granting of Interim 1800 MHz Licences, where among other things Vodafone stated :

---

<sup>27</sup> [http://press.three.ie/press\\_releases/three-ireland-to-launch-comprehensive-4g-offers/](http://press.three.ie/press_releases/three-ireland-to-launch-comprehensive-4g-offers/)

<sup>28</sup> LTE was launched on the H3GI network over three months after the commercial LTE launches of Meteor (26 September 2013) and Vodafone (14 October 2013).

<sup>29</sup> <http://www.three.ie/explore/4G/>

- *“Even if it were the case that the 2 ½ year period of notice of this temporary loss of 1800 MHz access were adequate to enable licensees to undertake effective mitigation measures, which has not been established by ComReg, requiring operators to incur potentially significant costs in dealing with a temporary discontinuity in access to 1800 MHz spectrum arising from a flaw in the structure of ComReg’s proposed auction approach cannot be regarded as efficient or consistent with ComReg’s statutory objectives. Moreover the opportunity cost of granting Interim 1800 MHz licences, where required, is extremely low to non-existent as it would assign rights of use for spectrum that would not otherwise be in use for the relevant 6½ month period. Indeed by permitting continued use of spectrum for delivery of communications services of high social and economic value that would otherwise remain unutilised for the period the granting of Interim 1800 MHz licences would fulfil the statutory regulatory objectives of maximising the efficient use of spectrum and promoting the interests of end users.”<sup>30</sup>*
- *“We maintain our view that a firm advance commitment from ComReg to grant Interim 1800 MHz Licences in relevant circumstances (where one or more of the existing licensees were not to acquire sufficient 1800 MHz spectrum in the second proposed time slice, but insufficient or no 1800 MHz spectrum in the proposed first time slice) is appropriate and necessary and would in large measure address the uncertainty and possible risk to quality of service for a period that otherwise arises under ComReg’s current spectrum auction proposals.”<sup>31</sup>*
- *“Its purpose is not to remedy a problem that may never arise, but to make prudent provision should a 1800 MHz spectrum availability gap of 6.5 months transpire that would pose risks both for service provision to customers, the efficient use of spectrum and efficient investment.”<sup>32</sup>*

3.24 ComReg notes that the ‘relevant circumstances’ referred to by Vodafone have come to pass in the MBSA and the 6½ month gap will now occur causing likely disruption to consumers. Option 2 seeks to address the uncertainty and ameliorate the risks to consumers, the efficient use of spectrum and efficient investment referred to by Vodafone.

---

<sup>30</sup> Vodafone response to ComReg Document 10/105 as published in ComReg Document 11/10.

<sup>31</sup> Vodafone response ComReg11/60 - Vodafone response to the ComReg Draft Decision on Release of the 800 MHz, 900 MHz and 1800 MHz Radio Spectrum Bands

<sup>32</sup> Vodafone letter to ComReg “Commission for Communications Regulation (“ComReg”) Response to Consultation and Decision on Multi-band Spectrum Release (ComReg document D04/12). (letter dated 19 April 2012)



3.25 In relation to an analogous matter, namely the proposal to extend the duration of existing interim GSM 900 MHz rights of use<sup>33</sup>, ComReg notes the comments of both Vodafone<sup>34</sup> and Meteor which stated that:

- *“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.”*<sup>35</sup>

3.26 Therefore given their previous comments on Interim Licences, Vodafone and Meteor may also have a preference for Option 2 in order to allow for the efficient use of spectrum and prevent a negative impact on consumer welfare and competition. Furthermore, voice-call customers are unlikely to be able to recognise the source of network disruption when a connection between other operators and H3GI/Telefónica occurs. As such, the customers of other operators could also experience consumer disruption arising out of the expiry of Telefónica’s GSM 1800 Licence.<sup>36</sup> Therefore, Meteor and Vodafone may also consider Option 2 to be beneficial for this reason.

3.27 From the perspective of the MVNOs reliant on the Telefónica network (Tesco Mobile Ireland (TMI) and Lycamobile), these MVNOs are unlikely to favour Option 1, as this would mean that H3GI/Telefónica may no longer have sufficient 1800 MHz spectrum to provide GSM services in the 1800 MHz band during the 6½ month period. Amongst other things, this could result in potential significant disruption to customer services provided using these rights of use. TMI and Lycamobile would therefore presumably favour Option 2 as it prevents significant disruption to their host networks and ensures the continuity of wholesale GSM 1800 MHz services.

---

<sup>33</sup> See section 1.2 of this document for background information on the Interim 900 MHz process.

<sup>34</sup> Vodafone in the same process noted in a letter of 14 December 2012 that the proposal to grant extensions to GSM 900 :

*“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...”*

*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.”*

<sup>35</sup> Eircom response to ComReg Document 12/127, 14 December 2012.

<sup>36</sup> This highlighted by the fact that for Vodafone and Meteor a sizeable amount [REDACTED] of off network mobile minutes are made to Telefonica customers.

### 3.3.2 Impacts on consumers

3.28 Consumers continue to place a high value on existing GSM services (voice and SMS text) and ComReg notes that mobile originating voice minutes accounted for 69% of all voice minutes in Q1 2014. In addition, the total number of SMS messages sent by mobile users in Ireland was around 2.02 billion in Q1 2014.<sup>37</sup>

3.29 In the present context there are likely to be a number of key preferences for consumers when assessing the preferable regulatory option. In particular, consumers are likely to prefer the option that:

- avoids significant disruption to existing services;
- avoids the need to unnecessarily switch operators; and
- promotes competition so as to maximise the long term benefits in terms of choice, price and quality.

3.30 Telefónica in its submission for a process to be put in place to eliminate the 6½ month gap in its 1800 MHz spectrum rights stated that *“the direct consequence of Licence expiry would be significant disruption to the service received by its customers”*. Telefónica claimed that this disruption would affect all its 1.51 million voice service customers.<sup>38</sup>

3.31 The severity of this disruption faced by consumers depends on a number of factors including the available coverage band in use and handset compatibility. Telefónica submitted that:

- All [REDACTED] of Telefónica’s voice service customers who are within the current 1800 MHz coverage area would suffer moderate service degradation during peak hours; and
- The customers most affected would be those [REDACTED] customers who hold GSM only handsets in the 1800 MHz coverage area. These customers would be severely impacted during peak hours because their handsets are incompatible with 3G and are therefore unable to carry 3G

---

<sup>37</sup> Document 14/61, 20 June 2014

<sup>38</sup> Telefonica noted that the disruption would manifest itself in a number of ways with:

- *“dropped calls and call set up failure during busy hours and in some cases loss of service”*
- *“an impact on text and MMS messaging with delays experienced during busy hours” and*
- *“degradation to data and mobile broadband services, as 3G network capacity would be used for voice”*



voice calls. Furthermore, as GSM 1800 is generally used to provide additional capacity, it is likely that Telefónica's GSM 900 network does not have sufficient capacity to absorb the additional traffic resulting in severe disruption.

- 3.32 ComReg is of the view that Telefónica's analysis in respect of the network disruption and impact on consumers is reasonable and significant consumer disruption including disruption to vulnerable users would likely arise under Option 1.
- 3.33 The significant consumer disruption that is likely to be caused by the loss of the Telefónica GSM 1800 MHz service for the 6½ month period under Option 1 would likely result in increased proportion of consumers wanting to switch networks than would otherwise have been the case. Some of this switching is likely to be unnecessary.
- 3.34 Therefore, consumers are highly unlikely to prefer Option 1 because of the likely significant negative impacts to voice, SMS and data services. These negative impacts affect H3GI/Telefónica, TMI and Lycamobile consumers directly given the reduced network performance. However, customers of other operators would also be negatively affected by the disruption when communicating or connecting with users reliant on the H3GI/Telefónica network. As such, all consumers of electronic communications services (both mobile and fixed) are likely to suffer varying levels of negative impact.
- 3.35 By the same token, consumers are likely to prefer Option 2 because it would avoid these negative effects.

### **3.4 Impacts on competition**

- 3.36 Option 1 would result in significant distortions to existing competition if Telefónica was unable to adequately service its existing retail and wholesale customers for the 6½ month period from 1 January 2015 to 12 July 2015.
- 3.37 Importantly, Option 1 would change the status quo and nature of competition in at least four ways.
1. H3GI/Telefónica's customers (and customers reliant on the H3GI/Telefónica network) would be likely to experience increased disruption and therefore would have an increased propensity to switch than would be the case under the current state of competition.
  2. Telefónica's ability to attract new customers would be considerably reduced compared to the current state of competition, reducing the competitive constraint imposed by it.

3. Other operators (including MVNOs not on the H3GI/Telefónica network) would be able to offer superior GSM 1800 MHz services during the 6½ month time period compared to H3GI/Telefónica.
  4. Wholesale competition would be reduced as potential new entrants would be unlikely to view H3GI/Telefónica as offering a comparable wholesale service over the 6½ month time period.
- 3.38 Importantly, these impacts on competition would only arise due to the absence of GSM 1800 spectrum rights for Telefónica for the 6½ month period and are unrelated to the factors that normally bring about such changes in competition such as lower prices, choice, quality and innovation.
- 3.39 The absence of GSM 1800 spectrum rights for Telefónica for the 6½ month period would artificially alter the nature of competition in a way that is unrelated to the underlying efficiency of competitors. The normal focus of competition is to attract marginal customers with a higher price elasticity of demand. The expiry of Telefónica's GSM 1800 MHz licence would expose H3GI/Telefónica less elastic customers to switching. This is particularly marked given that this issue would be resolved on the commencement of Telefónica's Liberalised Use 1800 MHz spectrum rights on 13 July 2015. As such, under Option 1 a short term 1800 MHz spectrum rights continuity issue could result in a long term impact on competition in the market for mobile services.
- 3.40 The pre-pay segment remains the largest mobile segment accounting for 56%<sup>39</sup> of all subscribers and the impact on competition in this segment would be considerably larger, particularly in the short run, because the extent of switching is likely to be higher than that of post-pay.
- 3.41 This has important consequences for Telefónica's wholesale customers, TMI and Lycamobile, who compete almost exclusively in the pre-pay market and have a pre-pay market share of over nearly 10%. For example, it has taken TMI over 6 years to build up a 6% market share, and much of the market gains won through competition would potentially be lost over a short period of time due to consequences outside its control.
- 3.42 While post-pay customers have fixed term contracts that disincentivise the switching of network during this period, a substantial proportion of the post-pay customer base is likely to come up for renewal during the 6½ month period. Furthermore, even post-pay customers whose contract expire after 12 July 2015 would likely have an increased tendency to switch given the likely consumer disruption experience of the previous 6½ months. As such, H3GI/Telefónica could continue to lose customers even after the commencement of its Liberalised Use 1800 MHz spectrum rights of use.

---

<sup>39</sup> Document 14/61, 20 June 2014

- 3.43 In addition, Option 1 might not promote efficient infrastructure investment by potentially requiring H3GI/Telefónica to incur unnecessary investment expenditure in an attempt to ameliorate the consumer service disruptions. The mitigation strategies considered by Telefónica include additional RAN sites which even if achievable over a short period would be inefficient because such sites in most cases would not be required on commencement of Telefónica's Liberalised Use 1800 MHz spectrum rights of use. In this regard, Telefónica notes that *"New sites developed for this purpose would not be part of O2's current network development plan, so would not be economically feasible in most cases"*
- 3.44 Consumers would be best served through efficient investments aimed at improving current network services and expediting access to new mobile services such as LTE.
- 3.45 Option 2, on the other hand, would maintain the status quo and not confer any additional competitive advantage on Telefónica. It would leave all operators in the same position as they are now and the extent to which competition would be impacted would depend on the normal interaction between operators and consumers in the market for mobile services.
- 3.46 Under Option 2, the significant distortions to existing competition likely from the expiry of Telefónica's GSM 1800 Licence would be avoided, by maintaining and safeguarding competition for the minimum period necessary to facilitate Telefónica in the 6½ month period between the expiry of its GSM 1800 Licence and the commencement of its Liberalised Use 180 MHz spectrum rights of use.
- 3.47 Finally, Option 2 would accord with ComReg's statutory objective of encouraging the efficient use and ensuring the effective management of spectrum by making available rights of use which could be used to provide services to consumers. Under Option 1 customers would suffer considerable harm due to significant disruption to existing services while rights to use for spectrum capable of alleviating that harm would remain unused.

### **3.5 Summary - the preferred option**

- 3.48 For the reasons identified above, ComReg considers that, on balance, Option 2 would be the more appropriate regulatory option to adopt in the context of the RIA analytical framework.
- 3.49 In further support of Option 2, ComReg observes that:
- Given that the facts and circumstances informing ComReg's Interim 900 MHz decisions and those presently arising are sufficiently comparable, Option 2 would better promote regulatory predictability by ensuring a consistent regulatory approach;

- Option 2 would not give rise to any selective advantage because it can be seen as forming part of a general system of licensing mobile network operators which has been in place since 1996 and which will continue in the future; and
- Option 2 would be proportionate insofar as it would only provide for GSM rights of use and, further, would only be for the minimum period necessary required to bridge the 6½ month gap.

**Q.2 Do you agree with ComReg's views and analysis set out in its draft Regulatory Impact Assessment? Please provide reasons, evidence and other relevant material in support of your view.**

3.50 The remaining chapters of this document set out and seek views on further details of ComReg's proposal.

## Chapter 4

# 4 ComReg's Proposal

## 4.1 Introduction

- 4.1 As noted in Chapter 2 and in the draft RIA in Chapter 3, ComReg's proposes to put in place a process to facilitate the granting of an Interim GSM 1800 MHz Licence to Telefónica, should Telefónica apply for same, covering the period of approximately 6½ months between the expiry of Telefónica's current GSM 1800 MHz licence, on 31 December 2014, and the commencement of its Liberalised Use 1800 MHz spectrum rights of use on 13 July 2015.
- 4.2 ComReg considers that this approach should maintain the status quo in the provision of GSM 1800 MHz services, in the relatively short 6½ month period in question, and that it would also be consistent with ComReg's 2011 and 2013 decisions to facilitate the granting of an Interim GSM 900 MHz Licence to Vodafone and Telefónica (Documents 11/29 and 13/05).
- 4.3 This chapter sets out ComReg's proposals and preliminary views regarding the conditions which would attach to such an Interim GSM 1800 MHz Licence.

## 4.2 Interim 1800 MHz Licence conditions including fees

- 4.4 ComReg proposes that an Interim 1800 MHz Licence should contain the same conditions as Telefónica's current GSM 1800 MHz Licence which expires on 31 December 2014, with the exception that the existing fees would be updated to present day prices, as discussed below.
- 4.5 Consistent with the approach taken when ComReg set the licence fees for the Interim 900 MHz Licences, ComReg proposes that it would set the fees for the Interim 1800 MHz Licence by reference to the fees for Telefónica's current GSM 1800 MHz licence, as prescribed by regulation 8 of the Wireless Telegraphy (GSM Mobile Telephony Licence) Regulations, 1999 and 2003 ("the Regulations")<sup>40</sup>, appropriately updated to present day prices.
- 4.6 In this regard, ComReg observes that Telefónica paid a once-off spectrum access fee (SAF) of IR£5.686 million for its current 15-year GSM 1800 MHz Licence and it also pays yearly spectrum usage fees (SUFs)<sup>41</sup> of €1,371,312.00 for 2 x 14.4 MHz of 1800 MHz spectrum.

---

<sup>40</sup> S.I. 442/1999 and S.I. 339/2003

<sup>41</sup> The level of the SUFs for 1800 MHz has remained unchanged over the lifetime of the GSM 1800 MHz licences. (See S.I. 442/1999 and S.I. 339/2003)

4.7 To update these fees to present day prices ComReg considers that the most appropriate means would be to apply the Consumer Price Index (CPI) published by the Central Statistics Office (CSO), with the indexation period starting from the commencement date of the GSM 1800 MHz licence on 1 January 2000. This would be consistent with the approach taken in granting of the Interim GSM 900 MHz Licences and it would also be in line with ComReg’s strategy statement for managing the radio spectrum<sup>42</sup>. ComReg further proposes that the licence fees for an Interim 1800 MHz Licence would be calculated on a pro rata daily basis, based on the Interim 1800 MHz Licence being in effect for 193 calendar days.

4.8 Table 2 below illustrates a calculation of the proposed SUF for 2 x 14.4 MHz of 1800 MHz spectrum for the period 1 January 2015 to 12 July 2015, based upon an overall CPI change of 39.10% between the 1 January 2000 and July 2014.<sup>43</sup>

**Table 2: Calculation of the Interim 1800 MHz Licence fee for 2 x 14.4 MHz of spectrum based on a CPI change of 39.10% (July 2014 data).**

Relevant considerations 2 x 14.4 MHz of 1800 MHz spectrum	Historical SAF and SUFs	Update to present day terms
SAF for 15 Years	IR£5.686m €7,219,730.71	
SAF for 1 Year	€481,315.38	€669,509.69
SUFs for 1 year	€1,371,312.00	€1,907,494.99
<b>Total (SAF + SUFs) for 1 year</b>		<b>€2,577,004.68</b>
<b>Total (SAF +SUFs) for 193 days</b>		<b>€1,362,635.35</b>
<b>The proposed Interim 1800 MHz Licence Fee<sup>44</sup></b>		

<sup>42</sup> In this regard, section 7.1.1 of ComReg’s Spectrum Strategy Statement (Document 11/89) states: “It will be increasing important for such fees to be updated on an annual basis to account for the general rate of inflation”.

<sup>43</sup> The overall CPI change is based on the latest CSO data available (July 2014) and uses November 1996 as the base year. See <http://www.cso.ie/en/statistics/prices/consumerpriceindex/> (base mid November 1996=100).

Prior to any decision that ComReg may take in relation to the Interim 1800 MHz Licence proposal, ComReg intends to update the CPI indexation to take account of the latest CPI data from the CSO.

<sup>44</sup> Ibid footnote 43

### **4.3 The proposed process for granting an Interim 1800 MHz licence**

4.9 ComReg proposes that if it should decide to facilitate the granting of an Interim GSM 1800 MHz Licence to Telefónica then it would adopt the same approach as when it granted the Interim 900 MHz licences. This would require ComReg to make specific regulations under the Wireless Telegraphy Act 1926, which would also require the approval of the Minister for Communications, Energy and Natural Resources. Accordingly the proposed Interim 1800 MHz Licence would be issued pursuant to a new statutory instrument<sup>45</sup> taking account of ComReg's specific proposals, such as on licence fees to be paid.

### **4.4 Objective justification, proportionality and non-discrimination**

4.10 ComReg is of the preliminary view that a decision to facilitate the granting of an Interim GSM 1800 MHz Licence to Telefónica would be an objectively justified, proportionate and non-discriminatory regulatory measure, having regard to ComReg's relevant functions, objectives, duties and powers as set out in primary and secondary legislation, and which include the following:

- Section 12(3) of the Communications Regulation Act, 2002 requires ComReg, in carrying out its functions, to seek to ensure that measures taken by it are proportionate having regard to its objectives, as also set out in Section 12 of the 2002 Act;
- Regulation 15 of the Authorisation Regulations 2011 empowers ComReg to amend the rights, conditions and procedures concerning rights of use for radio frequencies, in objectively justified cases and when done in a proportionate manner; and
- Regulation 19 of the Authorisation Regulations 2011 empowers ComReg to impose fees for licences which reflect the need to ensure the optimal use of the radio frequency spectrum. Such fees must be objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose and take into account ComReg's statutory objectives set out in Section 12 of the 2002 Act and in Regulation 16 of the Framework Regulations 2011.

4.11 ComReg considers that its proposal in relation to the conditions which would attach to an Interim GSM 1800 MHz Licence, and in particular as regards the

---

<sup>45</sup> By way of further background, in drafting any new statutory instrument for this matter, ComReg will be guided by the provisions of the Interim 900 MHz Regulations (S.I 189 of 2011 and S.I 19 of 2013).



proposed licence fees, would be objectively justified and proportionate as ComReg would not be varying the conditions which attach to Telefónica's current GSM 1800MHz Licence (except to update the applicable fees). ComReg also notes that this approach would be consistent with that taken in relation to the Interim GSM 900 MHz licences fees and ComReg view on fees as stated in its strategy statement for managing the radio spectrum.

4.12 ComReg must also seek to ensure that its regulatory measures do not discriminate between undertakings in equivalent or similar circumstances, unless the specific discrimination has been identified and objectively justified based on the prevailing facts. In this matter, ComReg's is of the preliminary view that a decision to facilitate the granting of an Interim GSM 1800 MHz Licence to Telefónica would not be discriminatory.

4.13 This is based on the fact that the particular circumstances are unique to Telefónica and no other licensees are in the same or similar position. Further, and as noted above, ComReg has adopted the same overall approach in the past in similar (though not identical) circumstances, when it granted Interim GSM 900 MHz Licences to Vodafone and Telefónica. Finally, the granting of the Interim GSM 1800 MHz Licence would not result in any relaxing of Telefónica's obligations in respect of its current use of 1800 MHz spectrum, in that the conditions attaching to its current licence, including the conditions as to fees, would be repeated and updated.

**Q.3 Do you agree with ComReg's Interim 1800 MHz licence proposals as set out in chapter 4? Please provide reasons, evidence and other relevant material in support of your view.**



## Chapter 5

# 5 Draft Decision

5.1 This chapter sets out ComReg's proposed decisions based on the positions arrived at in the preceding chapters. A draft proposed decision instrument is set out below.

### 1. DEFINITIONS AND INTERPRETATION

In this Decision, save where the context otherwise admits or requires:

**“Access Regulations”** means the European Communities (Electronic Communications Networks and Services) (Access) Regulations, 2003 (S.I. No. 305 of 2003) as amended by the European Communities (Electronic Communications Networks and Services) (Access) (Amendment) Regulations 2007 (S.I. No. 373 of 2007);

**“Authorisation Regulations”** means the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations, 2003 (S.I. No. 306 of 2003) as amended by the European Communities (Electronic Communications Networks and Services) (Authorisation) (Amendment) Regulations 2007 (S.I. No. 372 of 2007);

**“Communications Regulation Act 2002”** means the Communications Regulation Act, 2002, (No. 20 of 2002), as amended by the Communications Regulation (Amendment) Act, 2007 (No. 22 of 2007) and the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010;

**“ComReg”** means the Commission for Communications Regulation, established under section 6 of the Communications Regulation Act, 2002;

**“Fees”** means interim 1800 MHz licence spectrum fees of €1,362,635.35<sup>46</sup> for 2 x 14.4 MHz of 1800 MHz spectrum for the Interim Licence Term;

**“Framework Regulations”** means the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003, (S.I. No. 307 of 2003) as amended by the European Communities (Electronic Communications Networks and Services) (Framework) (Amendment) Regulations 2007 (S.I. No. 271 of 2007);

**“GSM”** means an electronic communications network that complies with the GSM standards as published by ETSI, in particular but not limited to EN 301 502 and EN 301 511;

---

<sup>46</sup> Ibid footnote 43

**“GSM Mobile Telephony Service”** means a mobile telephony service corresponding to GSM standards;

**“Interim Licences”** means the licences described in Regulation 3 of the Interim Licence Regulations;

**“Interim Licence Regulations”** means the Wireless Telegraphy (Interim GSM 1800 MHz Mobile Telephony Licence) Regulations as broadly discussed in Chapter 4 of Document 14/88.

**“Interim Licence Term”** means the period from 1 January 2015 to 12 July 2015;

**“Liberalised Use Licence”** mean a licence granted under S.I 251 of 2012.

**“Minister”** means the Minister for Communications, Energy and Natural Resources;

**“Telefónica”** means Telefónica O2 Ireland Limited;

**“RIA”** means Regulatory Impact Assessment; and

**“Wireless Telegraphy Act 1926”** means the Wireless Telegraphy Act 1926, as amended.

## 2. DECISION-MAKING CONSIDERATIONS

2.1 ComReg has made this Decision having regard to:

- (i) the contents of, and the materials referred to in, as well as the materials provided by respondents in response to, and in connection with, ComReg documents which shall, where appropriate, be construed with this Decision:
  - a. 10/71;
  - b. 10/105;
  - c. 11/11,
  - d. 11/29 and D03/11;
  - e. 11/60;
  - f. 12/25 and D04/12;
  - g. 12/50;
  - h. 12/127;
  - i. 13/05 and D02/13;
  - j. 13/88;
  - k. 14/01; and
  - l. 14/88.

including, but without limitation, those relating, *inter alia*, to:

- the imminent expiry (on 31 December 2014) of a GSM 1800 MHz licence held by Telefónica under section 5 of the Wireless Telegraphy Act 1926, pursuant to the Wireless Telegraphy (GSM and TACS Mobile Telephony Licence) Regulations, 1999 (S.I. 442 of 1999) as amended by the

Wireless Telegraphy (GSM Mobile Telephony Licence)(Amendment) Regulations 2003 (S.I. 339 of 2003), permitting Telefónica to keep, and have possession of, install, maintain, work and use in a specified place in the State apparatus for wireless telegraphy for the provision of GSM services in the 1800 MHz band;

- the fact that 1800 MHz spectrum rights of use in Telefónica's Liberalised Use Licence commence on 13 July 2015 and there is a 193 calendar day gap in Telefónica's 1800 MHz spectrum rights of use;
  - the need to avoid potential undue effects on the sustainability of the business of operators and distortions of competition from 1 January 2015 for duration of the Interim Licence Term;
  - the need to avoid potential significant disruption to existing GSM 1800 MHz services from 1 January 2015 for the duration of the Interim Licence Term;
  - the desirability of providing for interim measures for the Interim Licence Term preserving the status quo in spectrum assignments, and
  - the desirability of providing as much regulatory certainty and predictability as possible in the circumstances;
- (ii) the consultants' reports commissioned, and the advice obtained, by ComReg in relation to (i) above;
- (iii) the powers, functions, objectives and duties of ComReg, including, without limitation those under and by virtue of:
- a. the Communications Regulation Act 2002, and, in particular, sections 10, 12 and 13 thereof;
  - b. the Framework Regulations, and, in particular, Regulations 16 and 17 thereof;
  - c. the Authorisation Regulations, and, in particular, Regulations 9, 10, 11, 12, 15 and 19 thereof;
  - d. Sections 5 and 6 of the Wireless Telegraphy Act, 1926;
  - e. the applicable Policy Directions made by the Minister under Section 13 of the Communications Regulation Act 2002;

and noting that it has given all interested parties the opportunity to express their views and make their submissions, as well as having evaluated the matters to be decided, in accordance with its obligations pursuant to, *inter alia*:

- (i) Regulation 12 of the Framework Regulations; and
- (ii) ComReg's Guidelines on its approach to Regulatory Impact Assessment (ComReg Document 07/56a) and the RIA Guidelines issued by the Department of An Taoiseach in June, 2009.

**3. DECISION**

- 3.1 ComReg hereby decides that, subject to, and upon obtaining, the consent of the Minister to the making of Interim Licence Regulations, ComReg will make such regulations under section 6(1) of the Wireless Telegraphy Act 1926, prescribing relevant matters in regard to Interim Licences.
- 3.2 ComReg hereby decides that, upon application properly being made to it by Telefónica within the terms of the Interim Licence Regulations, and on payment of the Interim Licence Fees prescribed thereby, it will grant an Interim Licence to Telefónica.

**4. STATUTORY POWERS NOT AFFECTED**

- 4.1. Nothing in this Decision shall operate to limit ComReg in its discretionary decision-making or the exercise, performance, carrying out or achievement of statutory powers, functions, objectives or duties conferred on it under any primary or secondary legislation from time to time.

**5. EFFECTIVE DATE**

- 5.1 This Decision is effective from the date of publication and shall remain in force until further notice by ComReg.

**KEVIN O'BRIEN**

**CHAIRPERSON**

**THE COMMISSION FOR COMMUNICATIONS REGULATION**

**THE DD DAY OF MM 2014**

## Chapter 6

# 6 Next Steps

6.1 The consultation period will run for period of four weeks until 2pm on 18 September 2014, during which time ComReg welcomes written comments on any of the issues raised.

6.2 Responses must be submitted in written form (post or email) to the following recipient, clearly marked "Submissions to ComReg 14/88":

Ms. Sinéad Devey  
Commission for Communications Regulation  
Irish Life Centre  
Abbey Street  
Freepost  
Dublin 1  
Ireland  
Phone: +353-1-8049600  
Email: [marketframeworkconsult@comreg.ie](mailto:marketframeworkconsult@comreg.ie)

6.3 In order to promote further openness and transparency ComReg will publish all respondents' submissions received and all substantive correspondence on matters relating to this document, subject to the provisions of ComReg's guidelines on the treatment of confidential information<sup>47</sup>.

6.4 We would request that electronic submissions be submitted in an unprotected format so that they can be included in the ComReg submissions document for electronic publication.

6.5 ComReg appreciates that respondents may wish to provide confidential information if their comments are to be meaningful. As it is ComReg's policy to make all responses available on its website and for inspection generally, respondents are again requested to clearly to identify confidential material, and to place confidential material in a separate annex to their response, also providing supporting reasoning as to why such material is confidential in that annex.

---

<sup>47</sup> Document 05/24 - Response to Consultation - Guidelines on the treatment of confidential information - March 2005.

# Annex 1: Glossary

## A1.1 Definitions

- A 1.1 The definitions in this glossary shall apply to this Consultation and draft decision Document as a whole save that they shall not apply to the draft decision set out in chapter 5.
- A 1.2 Where a term in this glossary is defined by reference to a definition in a section or paragraph and an explanation of that term is provided in this glossary, the latter explanation is for convenience only and reference should be made to the appropriate part of the document for the definitive meaning of that term in its appropriate context.
- A 1.3 Any reference to any provision of any legislation shall include any modification re-enactment or extension thereof.
- A 1.4 The headings contained in this Consultation and draft decision Document are inserted for convenience of reference only and shall not in any way form part of or affect or be taken into account in the construction or interpretation of any provision of this Consultation and draft decision Document or the Annexes or Schedules hereto.
- A 1.5 Capitalised terms used in this Consultation and draft decision Document and not otherwise defined shall, unless the context otherwise requires or admits, bear the meaning ascribed to them in the Information Memorandum.
- A 1.6 The singular shall include the plural and the plural shall include the singular.
- A 1.7 Terms defined in this Consultation and draft decision Document shall, unless the context otherwise requires or admits, have the meaning set out below and cognate terms shall be construed accordingly:

3G Licence	A Licence issued under the Wireless Telegraphy (Third Generation and GSM Licence) Regulations, 2002 and 2003 (S.I. 345 of 2002 and S.I. No. 340 of 2003) for 3G services in the 2100 MHz band.
800MHz band	The frequency range 791 – 821 MHz paired with 832 – 862 MHz
900MHz band	The frequency range 880 – 915 MHz paired with 925 – 960 MHz

1800MHz band	The frequency range 1710 – 1785 MHz paired with 1805 – 1880 MHz
2100 MHz Band	1920 – 1980 MHz paired with 2110 – 2170 MHz, and 1900 – 1920 MHz
CPI	Consumer Price Index published by the Central Statistics Office.
GSM 900 MHz Licence	A Licence issued under the Wireless Telegraphy (GSM Mobile Telephony Licence) (Amendment) Regulations 2003 (S.I. 339 of 2003) for GSM use in the 900 MHz band.
GSM 1800 MHz Licence	A Licence issued under the Wireless Telegraphy (GSM Mobile Telephony Licence) (Amendment) Regulations 2003 (S.I. 339 of 2003) for GSM use in the 1800 MHz band.
GSM Licence	A GSM900 MHz Licence or a GSM1800 MHz Licence or an Interim GSM900 MHz Licence as the case may be an Existing GSM Licensee shall be construed accordingly.
Indexation	The adjustment of prices for inflation. The index of inflation that ComReg proposed to use is the Consumer Price Index (CPI) as published by the Central Statistics Office (CSO).
Liberalised Use Licence (or a Liberalised Licence)	A Licence issued under Schedule 1 of the Statutory Instrument 251 of 2012 which entitles the holder to use certain specific radio frequencies, subject to the terms and conditions set out therein.
Multi-Band Spectrum Award (MBSA)	The award spectrum in the 800 MHz, 900 MHz and 1800 MHz bands in accordance with the substantive decisions set out in Document 12/25 and the processes and procedures set out in the Information Memorandum (Document 12/52) as amended.
Spectrum Usage Fees (SUFs)	The annual Spectrum Fees associated with a Licence which a Winning Bidder / Licensee is required to pay over the duration of the Licence.

Time Slice	A time period for which licences are being allocated within the MBSA Process.
Time Slice 1	A time period from 1 February 2013 to 12 July 2015 (as may be amended by ComReg).
Time Slice 2	A time period from 13 July 2015 – 12 July 2030 (as may be amended by ComReg).

## A1.2 European and Governmental Bodies, Regulatory and Standardisation Organisations

ComReg	Commission for Communications Regulation
DCENR	Department of Communications, Energy and Natural Resources
EC	European Commission
EU	European Union

## A1.3 Primary and Secondary Legislation

SI	Statutory Instrument
2002 Act	The Communications Regulation Act 2002 (No. 20 of 2002), as amended <sup>48</sup>
Act of 1926	The Wireless Telegraphy Act 1926 (No. 45 of 1926) as amended
Authorisation Regulations	European Communities (Electronic Communication Networks and Services) (Authorisation) Regulations 2011 ( <a href="#">S.I. No 335 of 2011</a> )

<sup>48</sup> Includes the Communications Regulation (Amendment) Act 2007 and the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010.



Framework Directive	Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, as amended
Framework Regulations	European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 ( <a href="#">S.I. No 333 of 2011</a> )
The Minister	Minister for Communications, Energy and Natural Resources
Specific Regulations	Specific Regulations has the same meaning as set out in Regulation 2 of Framework Regulations 2011 (S.I. No. 333 of 2011)

## A1.4 Glossary of Technical Terms

3G	Third Generation Mobile System (e.g. UMTS)
2G	Second generation mobile services (e.g. GSM)
CPI	Consumer Price Index
CSO	Central Statistics Office
ECN	Electronic Communications Network as defined under the Framework Regulations
Meteor	Meteor Mobile Communications or Meteor
GHz	Gigahertz (1,000,000,000 Hertz)
GSM	Global System for Mobile Communications
Hertz or Hz	Unit of Frequency
H3GI	Hutchison 3G Ireland

kHz	Kilo Hertz (1,000 Hertz)
LTE	Long Term Evolution of 3G
MHz	Megahertz (1,000,000 Hertz)
MNO	Mobile Network Operator
MVNO	Mobile Virtual Network Operator (a licensed mobile operator with no spectrum assignment and with or without network infrastructure)
QoS	Quality of Service
RIA	Regulatory Impact Assessment
SUF	Spectrum Usage Fee
Telefónica	Telefónica O2 Communications (Ireland) Ltd
UMTS	Universal Mobile Telecommunications System.
Vodafone	Vodafone Ireland Limited

## **Annex 2: List of Consultation Questions**

- |            |   |
|------------|---|
| <b>Q.1</b> | <b>Do you agree with ComReg’s preliminary assessment of Telefonica’s submissions? Please provide reasons, evidence and other relevant material in support of your view</b>                    |
| <b>Q.2</b> | <b>Do you agree with ComReg’s views and analysis set out in its draft Regulatory Impact Assessment? Please provide reasons, evidence and other relevant material in support of your view.</b> |
| <b>Q.3</b> | <b>Do you agree with ComReg’s Interim 1800 MHz licence proposals as set out in chapter 4? Please provide reasons, evidence and other relevant material in support of your view.</b>           |

## **Annex 3: Non-confidential Telefónica Submission**

A 3.1 This annex sets out the non-confidential submissions (dated 7 May 2014, 14 July 2014 and 18 July 2014) provided by Telefónica to ComReg in support of its request that ComReg provide a process to eliminate Telefónica's 1800 MHz GSM licence gap.

7<sup>th</sup> May 2014

Mr. Kevin Kennedy  
Commission for Communication Regulation  
Abbey Court, Irish Life Centre  
Lower Abbey Street  
Dublin 1

### **1800MHz GSM Licence Gap**

Dear Mr. Kennedy

As you will be aware, Telefonica Ireland Ltd (O2) is currently licenced to use 2 x 14.4MHz of radio spectrum in the 1800MHz band for GSM services. That licence is due to expire on 31<sup>st</sup> December 2014. Telefonica also holds a Liberalised Use licence that was issued subsequent to ComReg's Multiband Spectrum Auction in 2012. That licence will permit the use of 3 Lots or 2 x 15MHz of spectrum in the same part of the 1800MHz band from 13<sup>th</sup> July 2015, leaving a gap in licence continuity of approximately 6.5 months.

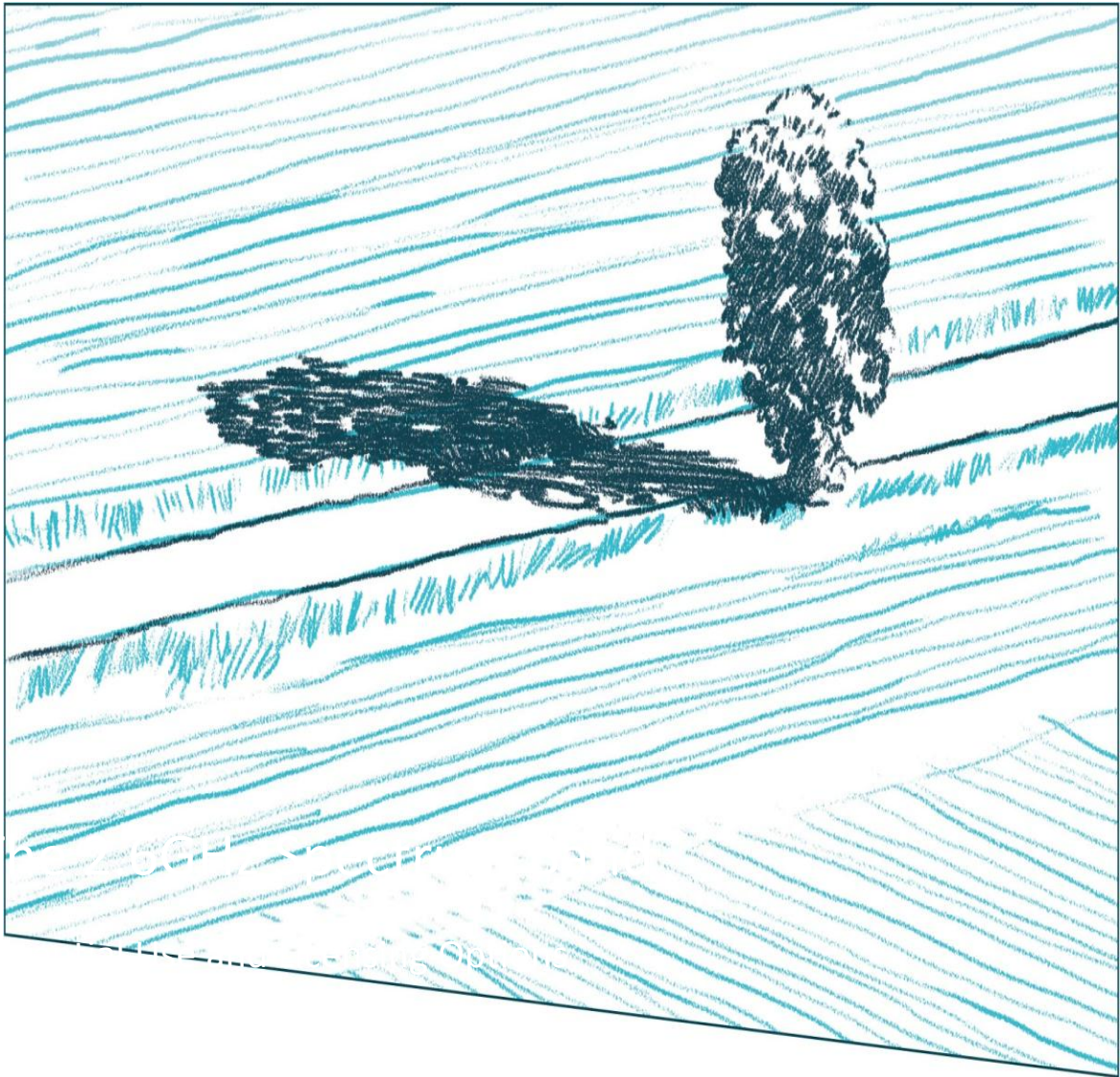
O2 hereby requests ComReg to take whatever steps are necessary to eliminate this gap in licence continuity. This might be achieved by either extending the existing GSM licence, issuing an interim licence, or some other appropriate means. The attached document provides information supporting this request.

Yours Sincerely



---

Tom Hickey



**Request to ComReg for a Process to  
Eliminate O2's 1800MHz GSM Licence Gap**

**7<sup>th</sup> May 2014**

*Telefonica*

---

## 1. Background

Telefonica Ireland Limited (O2) currently holds a GSM licence issued in accordance with SI 340 of 2003<sup>1</sup> to use spectrum in the 1800 MHz band for GSM services. The licence was originally issued for a 15 year period from 1<sup>st</sup> January 2000, and is due to expire on 31<sup>st</sup> December 2014.

The 1800MHz band has been logically divided into 15 Lots, and following ComReg's Multi-band Spectrum Award (MBSA) process in 2012, O2 relocated the position of its GSM equipment in the 1800MHz band so that it operates within Lots A, B, and C. O2 also holds a Liberalised Use Licence to use the spectrum in Lots A, B, and C; however this Liberalised Use Licence does not commence until 13<sup>th</sup> July 2013, leaving a gap in licence continuity of approximately 6.5 months.

ComReg carried out an extensive and detailed consultation process in advance of the MBSA. Those consultations considered a broad range of relevant issues, including: the expiry of 900MHz licences in 2011 and 2015; expiry of 1800MHz licences in January and July 2015; the allocation of spectrum in the 800MHz band for mobile for the first time; re-allocation of spectrum in the 900MHz and 1800MHz bands after expiry of GSM licences; and the grant of Liberalised Use Licences.

At the conclusion of the above consultations, ComReg issued its decision, and executed the MBSA. This process provided a mechanism for bidders to enter a competitive process and win rights to apply for Liberalised Use Licences. The MBSA provided for the grant of licences in two different time periods: Time Slice 1 (1/2/2012 to 12/7/2015), and Time Slice 2 (13/7/2015 to 12/7/2030). It also provided a mechanism whereby operators holding GSM licences could bid to convert those licences to Liberalised Use Licences in Time Slice 1. The mechanism did not, however provide a means by which O2 could obtain a GSM only licence or extend its existing GSM licence so as to avoid the gap or discontinuity from January to July 2015, other than by liberalisation of the existing licence throughout Time Slice 1. O2 highlighted this as a possible risk arising out of the MBSA before the award process commenced, and also sought reassurances subsequent to the process that a means would be put in place to allow O2 to obtain a licence so as to allow continued operation of its GSM 1800MHz network until the commencement of its Liberalised Use Licence in July 2015.

## 2. Request from O2

O2 now formally requests ComReg to provide a means by which it can be granted a GSM licence to operate the currently allocated 2 x 14.4 MHz of spectrum licenced to it in Lots A, B, and C of the 1800MHz band in the period from 1/1/2015 to 12/7/2015. O2 also requests that ComReg provide clarity on the process that might be used to achieve this in the short term as the date for expiry of the current GSM licence is now relatively close, and there is a need to eliminate the uncertainty.

---

<sup>1</sup> The Wireless Telegraphy (Third Generation and GSM Mobile Telephony Licence) (Amendment) Regulations, 2003

O2 does not wish to be prescriptive in relation to the means by which the required licence can be issued, however, in principle, the method used to extend the O2 and Vodafone GSM 900MHz licences in 2011 would seem to be appropriate and acceptable. It is understood that this might require the making of Regulations under the Wireless Telegraphy Act, similar to the Wireless Telegraphy (Interim GSM Mobile Telephony Licence) Regulations 2011<sup>2</sup>. Given the short term nature of the licence, O2 believes it is appropriate to either extend or renew the existing licence under its current terms, or to issue a new licence with substantially similar terms.

### **3. Current Use of the Spectrum**

O2's network currently integrates a number of different service types and radio bands to optimise the service delivered to customers - 900MHz GSM, 900MHz UMTS, 1800MHz GSM, and 2100MHz UMTS. LTE on 800MHz is not generally accessible yet. O2 currently uses the 1800MHz band to provide a GSM service primarily in urban areas. [ *Confidential section removed* ]. The 1800MHz layer is used to provide capacity for voice callers, and basic data using edge. [ *Confidential section removed* ].

O2 is currently in the process of expanding its UMTS 900MHz coverage. Though this is primarily focused in areas where 2100MHz coverage is weaker, it nevertheless entails the compression of 900MHz spectrum used for GSM down to 2x5MHz with a consequent reduction in GSM capacity. This GSM capacity reduction is in part being met through the use of 1800MHz spectrum. [ *Confidential section removed* ].

The planning, design, and roll-out of the various bands and services in O2's network has been on the basis of use of 1800MHz both now and in the future. This affects aspects such as site selection; on-site equipment like radio base stations, aerials and combiners; but also the planning of capacity for services provided in other bands. It would not be possible to simply "fill-in" the gap in service that would be created by the absence of 1800MHz service. Such a network re-design and implementation could not be achieved in a matter of months, and would not adequately replace the service currently provided by the 1800MHz band.

Given the above considerations, O2 could not simply discontinue use of the 1800MHz band for a period of 6.5 months. Such action would have a serious impact on the quality of service received by O2's GSM customers in particular, but would affect all customers.

### **4. Consequences of No Licence**

If O2 was required to cease use of the 1800MHz band, the direct consequence would be significant disruption to the service received by its customers. As stated above, approximately [ *Confidential section removed* ]. The effect of this change would manifest itself as congestion on O2's network with dropped calls and call set-up failure during busy hours, and in some cases loss of service. The most severely impacted would be the customers whose traffic is currently carried on the 1800MHz band; however there would be a wider impact on all voice and data customers. There would be an impact on text and

---

<sup>2</sup> S.I. No. 189 of 2011



MMS messaging with delays experienced during busy hours, in addition there would be degradation to data and mobile broadband services, as 3G network capacity would be used for voice service.

All of O2's 1.51m voice service customers would be lightly impacted at certain times, and would notice some degradation to their service. This would be as a result of attempts to make and receive calls from customers whose service is more severely impacted, and to some extent the effect of congestion on O2's network.

All [ *Confidential section removed* ] of O2's voice service customers who are within the current 1800MHz coverage area would suffer at least moderate service degradation during busy hours. This would include the customers whose traffic is currently carried on the 1800MHz band, but also customers within the relevant area whose traffic is also carried on the 3G network. This is a result of the "switching in" of additional traffic on the 3G network.

For those customers who hold GSM only handsets and are within the 1800 MHz coverage area, service would be severely impacted during busy hours. For these [ *Confidential section removed* ] customers, the 3G service is not available to carry voice calls, and the only network service available is 900MHz GSM, which does not have sufficient capacity to absorb the additional traffic. This is particularly the case where O2 is in the process of rolling out 3G service in the 900MHz band, leaving only 2x5MHz of spectrum used for GSM capacity service.

There are some actions that O2 could take in order to try to mitigate the impact on its service, including:

#### Voice Compression Techniques

Compression methods are available to allow the voice-call capacity per MHz of spectrum to be increased. These methods can be effective in extending the voice carrying capacity of a network in many circumstances; however this is within limits, and extensive use of compression brings a corresponding reduction in call quality. Given the relative quantity of 1800MHz spectrum in use by O2 to provide voice service, it would not be practically possible to compensate for its withdrawal by use of voice compression on other bands.

#### 3G carrier addition

O2 could add additional carriers at 2100MHz in order to boost the voice carrying capacity of its networks. O2 already uses all three 3G carriers in its busiest locations, so this solution is not an option there. In other locations, the coverage provided by 2100MHz would not match that of 1800MHz so again the benefit is limited. While this mitigation activity could reduce the impact of secondary congestion on its 3G network in some locations, it would not provide any benefit for those customers who have GSM only handsets.

#### Additional RAN Sites

The addition of more radio access sites for 900MHz GSM could boost the GSM capacity of O2's network, however given the time required for development and

commissioning of new sites this option would have at best a limited effect to mitigate the impact. New sites developed for this purpose would not be part of O2's current network development plan, so would not be economically feasible in most cases.

#### National Roaming

O2 could request a national roaming solution from Vodafone or Meteor in order to provide additional GSM capacity to O2. Given that technical development would be required to enable this, O2 does not believe this solution would be feasible for a period of just 6.5 months. Neither would it be feasible for other operators to boost capacity on their networks for such a short period.

O2 does not believe there is a feasible mitigation strategy available to it to eliminate or substantially reduce the impact of loss of 1800MHz for the gap period. There would be a significant loss to O2 resulting from the poor customer experience, and its ability to win and retain customers would be damaged with consequent impact on competition. In addition O2 would incur substantial cost to try to mitigate the impact of the reduced service quality for the duration of the licence gap.

### **5. ComReg's Ability to Act**

ComReg's functions and objectives relevant to this matter are set-out in several instruments including the Wireless Telegraphy Act<sup>3</sup>, the Communications Regulation Act<sup>4</sup>, and the framework package of regulations<sup>5</sup>.

Wireless Telegraphy Licences are issued under Section 5 of that Act, and in accordance with Regulations made under Section 6. ComReg has the competence to make Regulations under section 6, albeit subject to the consent of the Minister. The authorisation Regulations<sup>6</sup> provide in Regulation 15 a general ability for ComReg to amend rights and procedures concerning rights of use for radio frequencies, provided that any such amendment may only be made in objectively justified cases and in a proportionate manner.

In 2011 ComReg obtained approval from the Minister and made the Interim GSM Regulations<sup>7</sup>. These Regulations provided for ComReg to continue or extend the original O2 and Vodafone 900MHz GSM licences for a limited duration after the original expiry date, so as to provide continuity of service until liberalised use licences commenced. O2 is of the view that comparable considerations apply at this time, and that it is possible for ComReg to either make similar regulations or to amend the existing Interim GSM Regulations.

---

<sup>3</sup> Wireless Telegraphy Act 1926 (45 of 1926), (as amended)

<sup>4</sup> Communications Regulation Act 2002 (20 of 2002), (as amended)

<sup>5</sup> SIs 333,334,335,336,337 of 2011, the Framework Package

<sup>6</sup> EUROPEAN COMMUNITIES (ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES) (AUTHORISATION) REGULATIONS 2011, (SI 335 of 2011)

<sup>7</sup> WIRELESS TELEGRAPHY (INTERIM GSM MOBILE TELEPHONY LICENCE) REGULATIONS 2011, (SI 189 of 2011)

## 6. Requirement to Act

There are many compelling reasons why ComReg must act to provide a mechanism whereby O2 can obtain licence continuity in the 1800MHz band. In the first place, the gap has emerged as a result of the structure of the MBSA.

While it is acknowledged that ComReg had a number of different objectives that it sought to resolve through the single award process, nevertheless it was the selection of two Time Slices and the commencement date for Time Slice 2 that created the possibility of the current licence gap. Prior to the commencement of the MBSA, three different licences were due to expire: Vodafone and O2 1800MHz GSM licences on 31<sup>st</sup> December 2014; and Meteor's 900MHz and 1800MHz GSM licence on 12<sup>th</sup> July 2015. ComReg chose to commence Time Slice 2 to coincide with the expiry of Meteor's GSM licence rather than the expiry of Vodafone and O2's 1800MHz licence, which meant there was no option to continue operation under a GSM licence until commencement of Liberalised Use licences in Time Slice 2.

It was possible to bid to obtain a Liberalised Use 1800MHz licence in Time Slice 1, however only by converting the remaining term of the GSM licence. It was not possible to obtain a licence to provide continuity from the expiry of O2's existing GSM 1800MHz licence to the commencement of Time Slice 2. This scenario was examined by ComReg when considering whether to include 1800MHz spectrum in the MBSA, and at that time ComReg did not rule out the granting of interim licences in the 1800MHz band<sup>8</sup>. In the MBSA, O2 placed bids to obtain access to Liberalised Use 1800MHz spectrum in Time Slice 1, nevertheless the 6.5 month gap emerged from the process.

O2 highlighted its concerns to ComReg that the MBSA structure could create a licence gap in advance of the MBSA, and in response, ComReg committed to considering this issue if such a licence gap actually emerged<sup>9</sup>. Subsequent to the MBSA process, O2 has also highlighted the requirement for an interim licence or licence extension to ComReg on several occasions, and ComReg again committed to consider the matter closer to the actual licence expiry<sup>10</sup>.

There are three unassigned blocks of spectrum in the 1800MHz band (I, J, and K) which will remain unassigned for the remainder of Time Slice 1. ComReg recently offered these lots for award on a Liberalised Use Basis through a public process in accordance with document 13/104. ComReg did not receive any valid applications for use of these lots, demonstrating that there is no un-met demand for 1800MHz Liberalised Use spectrum in time Slice 1.

It is the opinion of O2 that there is no viable alternative use for Lots A, B, and C from January 2015 to July 2015. That Lots I, J, and K remain unassigned following ComReg's recent application process proves that there is no viable use for a short-term Liberalised Use licence in the 1800MHz band in Time Slice 1. It is not feasible for a new operator to use the three lots for such a short duration. Only the other three licensed network operators currently possess network equipment capable of operating in the 1800MHz band, and they

<sup>8</sup> ComReg Document 10/105 (section 3.5)

<sup>9</sup> ComReg Documents 12/50 (section 6.4), 12/25 (section 4.6), and 11/60 (Paragraph 4.129)

<sup>10</sup> ComReg Documents 13/05 (section 2.3.2), 13/70 (section 4), 13/88 (section 2.3)

would need to make modifications to their network equipment in order to operate in Lots A, B, and C. Given that Lots I, J, and K remain unassigned, O2 believes there is no feasible case whereby any other operator could utilise Lots A, B, and C during the O2 licence gap in preference to I, J, and K, - so if the spectrum is not licensed to O2 for GSM use, then it will remain fallow during the gap period. If it is licensed to O2 then its use will avoid consumer disruption, competition impairment, and loss to O2, all of which are efficient use of spectrum.

ComReg is required to ensure the efficient management and use of the radio frequency spectrum in Ireland in accordance Regulation 23(1) of the Framework Regulations, and with a direction under section 13 of the 2002 Act. Policy Direction 11<sup>11</sup> requires that *“The Commission shall ensure that, in its management of the radio frequency spectrum, it takes account of the interests of all users of the radio frequency spectrum”*. The mitigation strategies available to O2 would have limited effect to eliminate the impact on customers, and in addition would require significant investment by O2 which would be otherwise unnecessary. The spectrum is available, O2 has a network ready and available to use that spectrum, and given that there is no feasible alternative demand for the spectrum, any procedure other than licensing of the lots to O2 would not only constitute inefficient use of spectrum, but also would cause inefficient investment by O2. Given that the most efficient use can be made of the radio spectrum by the grant to O2 of a GSM licence to continue operation of its GSM service, and that this action will also minimise disruption to end users, O2 believes that ComReg is compelled to put in place an appropriate process to facilitate the grant of this licence.

Regulation 23(1) also requires ComReg to ensure that the allocation and assignment of radio frequencies is based on an objective, transparent, non-discriminatory and proportionate decision-making process. ComReg has published several consultation documents prior to the MBSA award in 2012, also prior to the 1800MHz application process under document 13/104, and additionally in the documents leading to ComReg’s decision regarding H3G’s 1800MHz licence in document 13/70. Both ComReg’s and O2’s opinion regarding the 1800MHz gap have been published in those documents and interested parties have had ample opportunity to comment on them. Nevertheless, ComReg might decide that some further consultation is required prior to making its final decision on this matter. If that is the case, then O2 would point out that the items under consideration are narrow in scope, and can be adequately considered in a consultation of short duration. Given that even a short consultation could require 6 weeks to deliver a decision (which is significant in the current circumstances) there is a need to progress the matter now.

The grant of a GSM licence extension or of an interim licence is objectively justified in this case. Given the circumstances that have brought about the current requirement; that it could not have been avoided by O2; that O2 is the only viable user for the spectrum in the gap period; the disruption to subscribers if O2 was required to withdraw its GSM 1800MHz service for a 6.5 month period and the impact that would have on competition; and the loss

---

<sup>11</sup> Directions by the Minister for Communications Marine and Natural Resources to the Commission for Communications Regulation under s. 13 of the Communications Regulation Act 2002, 21<sup>st</sup> February 2003

to O2 itself; the provision of a process by which O2 can obtain a licence covering the gap period is objectively justified.

Provision of a mechanism or process by which a licence can be issued does not discriminate in favour of, or against any party. No other licensee has found itself in the same position. The requirement has, in part, arisen as a result of the unique outcome of MBSA process. The only relevant situation which is comparable arose in 2011, when the Vodafone and O2 900MHz GSM licences expired. In that case interim licences were issued to provide for continuity of service.

The provision of a process whereby O2 can be issued with a licence extension or interim licence is proportionate, as it is the only action which can adequately resolve the licence gap. The requirements placed on O2 to obtain such a licence, and the conditions that would apply to the licence would also need to be proportionate in order to satisfy this requirement.

## **7. Timing**

ComReg has most recently expressed its position in document 13/88 which was issued in advance of a proposed award of three lots of spectrum in the 1800MHz band where it states that:

*“ . . . . ComReg is currently of the view that it is not a position to reasonably assess this issue until after the conclusion of the proposed Award Process and the outcome of the merger control assessment of the proposed acquisition of Telefónica Ireland by Hutchison Whampoa. Notwithstanding this, ComReg expects to be in a position to make a decision on this matter significantly in advance of licence expiry”*

The proposed Award Process referred to above has now concluded. In addition, the merger control assessment of the proposed acquisition of O2 by Hutchison Whampoa is in the concluding stages and the outcome is expected to be known shortly.

O2's reliance on its 1800MHz licence has been explained above in section 3. It would not be possible to avoid the disruption to customers that would be caused if O2 was to find itself without use of the 1800MHz band in January 2015, however if the decision was known early, at least steps could be taken to try to mitigate some of the harm.

There remains less than 8 months to the date when O2's current licence is due to expire. We are now at the point where O2 needs to have clarity on this matter. Network re-configuration takes several months to plan and implement, and the closer we get to expiry, the less effectively would O2 be able to mitigate the harm. O2 requires ComReg to provide the process and timelines by which the issue can be clarified. ComReg has previously stated that it would “ . . . continue to review the situation and, if necessary, will issue a consultation on proposals aimed at addressing material issues arising from this temporal gap in sufficient time prior to Telefónica's 1800 MHz licence expiry”. O2 is of the view that the time to address this matter has now arrived.

In relation to the proposed acquisition of Telefónica Ireland by Hutchison Whampoa, O2 is of the view that at this time the conclusion of that matter will not affect the requirement for ComReg to issue an interim licence or licence extension. If the acquisition does not proceed, then O2 will need to obtain a licence to “close the gap”. If the acquisition does proceed, then a licence will still be required to close the gap, as it is required for GSM service in blocks A, B, and C. Given that Three Ireland and O2 operate separate networks, and based on public information that Three has launched LTE services using its two blocks (D & E), it is not believed that any 1800MHz spectrum held by Three Ireland could provide a substitute solution.

### **Other Considerations**

O2 carried out a re-engineering process in early 2013 in order to change position within the 1800MHz band and provide continuity of assignments from Time Slice 1 to Time Slice 2. If O2 does not hold a licence that provides continuity through the two Time Slices, then it will have been a pointless exercise carrying out the relocation at that time, and the cost associated with carrying out the relocation at that time will have been avoidable.

Given the limited scope of choices available to ComReg, and the detailed consultation and correspondence that has already been exchanged on the matter, O2 believes there would be no point in carrying out a separate Regulatory Impact Assessment. It would not provide any clarity.

### **Modification of this Application**

O2 reserves the right to supplement or amend this request as required in future.

14<sup>th</sup> July 2014

Mr. Kevin Kennedy  
Commission for Communication Regulation  
Abbey Court, Irish Life Centre  
Lower Abbey Street  
Dublin 1

### 1800MHz GSM Licence Gap

Dear Mr. Kennedy

I refer to my letter of 7<sup>th</sup> May regarding the gap in continuity in the 1800MHz licence of Telefonica Ireland Ltd. You will be aware that Telefonica Ireland is to be acquired by Hutchison Whampoa; that the merger control process has been completed; and that acquisition is to be executed in the coming days.

While ComReg is considering how to address the O2 licence gap, it can be anticipated that a question might be asked as to whether the 1800MHz spectrum currently allocated to Three Ireland could be used by the O2 network during the gap period. This matter has been considered, and I can confirm that it is not a possible solution for a number of reasons:

- O2 currently uses the three assigned lots of 1800MHz spectrum for the provision of GSM service, primarily in urban areas.
- Three Ireland has launched its 4G service using its two assigned 1800MHz lots, again primarily in urban areas, so this spectrum is not available in the areas where O2 has the greatest requirement.
- In addition it would not be possible for O2 to re-engineer its GSM 1800MHz network from the current three lots to just two lots of 1800MHz within the time remaining.

We look forward to hearing from ComReg on the next step in this process. The date for expiry of the original O2 licence is now relatively close, and we need to obtain certainty as to the continued use of the current spectrum as a matter of priority.

Yours Sincerely



---

Tom Hickey

18<sup>th</sup> July 2014

Mr. Kevin Kennedy  
Commission for Communications Regulation  
Abbey Court, Irish Life Centre  
Lower Abbey Street  
Dublin 1

### 1800MHz GSM Licence Gap

Dear Mr. Kennedy

I write further to previous correspondence regarding the gap in licence continuity for the 1800MHz spectrum assigned to Telefonica Ireland Limited. Following the completion of the acquisition of Telefonica Ireland by Hutchison Whampoa and further analysis completed, I can provide further information regarding two items: Three's current use of 1800MHz, and actual usable capacity in the border area.

In my letter of 14<sup>th</sup> July, I outlined that the Telefonica Ireland network uses 1800MHz for GSM service primarily in urban areas, and that Three Ireland was in the process of rolling out its LTE service using 1800MHz, again primarily in urban areas.

Confidential Text Removed

As previously stated, this confirms that the 1800MHz spectrum assigned to Three Ireland is not available for use to help mitigate the network and customer disruption that would occur if Telefonica Ireland was required to cease use of 1800MHz during the licence gap.

Outside of the main urban centres, the Telefonica network also depends heavily on the current 1800MHz band to provide coverage in areas close to the border with Northern Ireland. The ComReg/Ofcom MoU on spectrum sharing sets out an arrangement for sharing of the spectrum between networks on both sides of the border so as to avoid interference. The practical effect of this sharing arrangement is that only 4.8MHz of Telefonica Ireland's 900MHz spectrum, and only 5.6MHz of Telefonica Ireland's 1800MHz spectrum is available to use for GSM service in the border area. Any reduction to the 1800MHz spectrum in use during the licence gap would have the consequence of reducing coverage and capacity for Telefonica's GSM service with the resulting loss of service for customers.

Yours Sincerely



---

Tom Hickey