



Office of the Director of
**Telecommunications
Regulation**

Introduction of 3rd Generation Mobile Services in Ireland

Response to the Briefing Note and Request for Views issued on
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Foreword

I would like to thank all those who attended the 3G mobile workshop on 18th April and in particular those who responded to the briefing note issued at the workshop. The ODTR has received a total of 10 responses, which have provided a broad range of constructive comment on the proposed introduction of 3G mobile services in Ireland.

Having carefully considered the responses to the briefing paper, I am now in a position to put forward certain specific proposals for the 3G mobile licensing process.

The chosen competition format is described in this response. Having considered all the relevant information, I believe that the greatest benefit to the Irish telecommunications user can be achieved by means of a comparative selection process which concentrates on certain key requirements that will ensure speedy and widespread roll out of 3G networks and as a result, of innovative 3G services.

Having made this initial decision, I will now be issuing a consultation paper on a number of key issues that are outstanding including the number of licences, the relationship between 3G and existing 2G networks, numbering for 3G networks and a range of other important matters. The precise details of the licensing process and licence conditions will take account of the responses to that consultation.

I look forward to the continuation of the widespread debate and consultation on this very important issue for the Irish telecommunications market, and to the exciting new developments we can expect to see when 3G arrives.

Etain Doyle,
Director of Telecommunications Regulation

1. Introduction

3G mobile, sometimes referred to as UMTS (Universal Mobile Telecommunications System – the European technical standard) or IMT-2000 (International Mobile Telecommunications 2000 – the generic global term for 3G mobile standards) represents the next major step in the evolution of mobile communications. 3G mobile combines the benefits of the two fastest growing global markets, mobile telephony and the internet, creating major new opportunities for mobile commerce and multimedia.

The Director of Telecommunications Regulation (“the Director”) is responsible for the licensing of 3G mobile telephony operators in Ireland. The Director considers that the introduction of 3G mobile services in Ireland will be crucial to maintaining Ireland’s leading position in the European Information and Communications Market, thus ensuring the best in price choice and quality for Irish telecommunications users.

Given the fundamental importance of this issue, the Director is engaging in a wide ranging and comprehensive consultation process in which she is seeking views from all interested parties. This process started on 18th April 2000 with an open workshop on the issue of 3G licensing in Ireland. On that date the Director published a Briefing Note and Request for Views on the Introduction of 3G Mobile Services in Ireland (ODTR00/29 – 18th April 2000). In that note she sought preliminary views on a number of technical, market, economic and regulatory issues that may need to be addressed prior to the introduction of 3G services in Ireland. This paper constitutes the Director’s response to those views.

This paper does not constitute legal, commercial, or technical advice. The Director is not bound by it. The response is without prejudice to the legal position of the Director or her rights and duties under relevant legislation and does not form part of any formal tender process.

2. Structure of the paper

This paper is structured in a number of main sections as follows:

- section three describes the Director’s choice of competition format and the reasons for that choice;
- section four sets out the next steps in the 3G mobile licensing process;
- the Annex lists the respondents to the Briefing Note and summarises the views expressed.

3. 3G Licensing Competition Format

In arriving at a decision as to the most appropriate competition format for awarding of 3G mobile licences, the Director has considered a wide range of relevant information, including the arguments put forward in the responses to the briefing note. Particular attention has been paid to the relative merits of comparative selection and auction processes having regard to the objective to be achieved in issuing 3G mobile licences.

3.1 Objective of the Director

EU Decision 128/1999/EC¹ requires that Member States take all actions necessary in order to allow, in accordance with the EU Licensing Directive², the co-ordinated and progressive introduction of 3G services on their territory by 1st of January 2002 at the latest. The Director, as the relevant national regulatory authority, is charged with the implementation of a process by which 3G licences will be awarded.

By its nature, the frequency spectrum that will be used for 3G is limited and as a result the number of licensees that can operate efficiently in that spectrum is limited. Under the legislation³, where the Director proposes to limit the number of licences there are a number of issues that she must consider, including:

- the need to maximise benefits for users, and
- the need to facilitate the development of competition,

In developing the licensing process, in particular when considering the fee to be charged, the Director must also take into account⁴:

- the need to foster the development of innovative services, and
- the need to foster competition.

In addition, the design of the competition process must ensure that licences are awarded according to objective, transparent, non-discriminatory and proportionate selection criteria, and, once again, that due weight is given to the need to facilitate the development of competition and the need to maximise benefits for users⁵.

In line with these provision, a primary objective of the Director is to ensure that good quality, innovative telecommunications services are available to all consumers at the lowest price possible consistent with the sustainability of a competitive market. To achieve this as speedily as possible, Ireland needs to maintain its position at the leading edge of telecommunications development. That in turn requires extensive network coverage provided as quickly as possible and the development of a competitive mobile telecommunications market.

¹ Decision No 128/1999/EC of the European Parliament and of the Council of 14 December 1998 on the co-ordinated introduction of a third-generation mobile and wireless communications system (UMTS) in the Community

² Directive 97/13/EC of the European Communities on the common framework for general authorizations and individual licences in the field of telecommunications services (the 'Licensing Directive')

³ By Regulation 10 (2)

⁴ Section 111(6)(d) of the Postal and Telecommunications Services Act, 1983, as amended by the Licensing Regulations.

⁵ By Regulation 10(3)

3.2 Consideration of the Competition Methods

The Director has considered in detail two particular methods for running a competitive process for the award of licences, i.e.:

- **Comparative selection** or “beauty contest” where there are measurable indicators set out against which applicants can be judged, and
- **Auction**, where the licence is awarded usually to the highest monetary bidder.

Comparative selection procedures have been used extensively throughout the EU for the award of mobile telephony licences and have been used in Ireland as the basis for awarding both the second and third mobile telephony licences. The advantages of this method are:

- There is considerable experience and expertise already available in this type of competition which will ensure a speedy and effective process;
- The competition can be designed to ensure that the important factors identified above, that is speedy roll-out and the extent of coverage, can be requested and marked on a comparative basis, thus encouraging applicants to excel in this crucial area;
- In considering the development of effective competition in the market, supply side considerations, such as the ability of 3G operators to roam on 2G networks and the entitlement of third parties to access mobile networks (MVNOs, resellers, etc) are very important. Through a comparative selection process there is an opportunity to request offers from bidders and, by marking these in a comparative fashion, to encourage the voluntary commitment to allow access.
- Performance Guarantees may also be invited from bidders and scored on a comparative basis to underpin commitments.

The Director notes the view that auctions can provide for a high level of transparency in the process of awarding of licences. She agrees that this is the case, but does not consider that the comparative selection process is inadequate in this regard. She intends to ensure that the greatest possible transparency consistent with the effectiveness of the process and protection of commercial secrets, is provided for in the competitive process.

The Director also acknowledges the concerns that have been raised, following the recent UK 3G auction, about the potential impact an auction procedure may have on prices. This is particularly important in the context of the Irish market. Given the small size of the Irish market and its population density, the per capita fixed cost of building telecommunications networks is likely to be higher than in other larger markets. If fees proportionate to those charged in the UK were realised in Ireland, this, together with high fixed costs, might reduce the feasibility of achieving the objective of low price to consumers.

It should be possible to establish suitable fees levels in line with the relevant

legislation (ensuring efficient and effective use of spectrum, giving due weight to the need to maximise benefits for users and the facilitation of the development of competition, etc.) at a later stage this year, when account can be taken of similar developments elsewhere in Europe.

3.3 Conclusion

In conclusion, it is the Director's view that a comparative selection competition (beauty contest) is the most appropriate allocation approach for 3G mobile licences.

The competition will focus on evaluation of bids in respect of key requirements such as coverage, roll-out, access (including wholesale offerings) and performance guarantees. A pre-qualification round will also be held to determine the financial, technical and business capabilities of applicants, including the ability to meet certain threshold criteria concerning geographic coverage and roll out to deliver the major effort required to develop 3G services effectively and to ensure that basic requirements for competition are met.

The Director favours the issue of 4 licences, including one reserved for a new entrant to the market, and further comment will be sought on this issue. In addition, with the objective of levelling the playing field between incumbent operators who may obtain licences and the newcomer, spectrum will be made available to the new entrant in that part of the 900 MHz band which is currently used for the declining analogue cellular services.

The detailed design of the competition will be carried out with the assistance of external specialists and a tender addressing this requirement will shortly be issued by this Office.

4. Next Steps

The Director will now be proceeding with a final consultation exercise on the introduction of 3G mobile services, with a view to the competition commencing in November 2000. Due to the complex issues involved, it will be necessary to extend the timetable for the award of licences by 2 to 3 months beyond the original deadline of February 2001 announced earlier this year.

ANNEX

List of Respondents to the Briefing Note and Request for Views

The following organisations and individuals submitted responses to the questions raised in the briefing note:

- Eircell
- Esat Digifone
- Forfas (Policy & Advisory Board for Industrial Development)
- Irish Multichannel
- John Gallen (personal response)
- Meteor Communications
- MCI Worldcom
- Michael J Barrett (personal response)

A further two confidential responses were received from Mr P Cunningham and Crown Castle.

Summary of Responses

There follows a summary of the responses to the questions raised in the briefing note, along with a statement of the Director's position, having considered the responses received and other relevant factors.

Question 1. Do you have a view on the role of content and service providers in the delivery of 3G services?
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There was broad agreement on the importance of content and service provision to the development of the 3G market, but respondents differed in their views on how this might best be achieved. Some respondents felt that relations between network operators and content / service providers should be based on standard commercial terms, or that it might be desirable to have a licence condition requiring 3G operators to allow reasonable requests for network access, but with exact terms and conditions left to commercial negotiation. One respondent suggested that relations between operators and service providers should be left to commercial negotiation, except in

the case of possible abuse of market power.

Others thought that licensees should be required to demonstrate a commitment to involve Irish content and service providers in the development of services, or that the regulator should be able to impose access obligations on operators with significant market power. The role of virtual mobile network operators was acknowledged by several respondents but there was not felt to be a need for regulatory provisions in this area.

Bearing in mind the range of views expressed on this issue, and the acknowledgement by all respondents of the important role of content and service providers, the Director proposes to address this matter further in the forthcoming consultation document.

Question 2. Should roaming, availability of additional spectrum to new market entrants, or other measures be considered when introducing 3G mobile services in Ireland?

The majority of respondents were in favour of measures to support new entrants, some noting that these would be essential, although the two incumbent operators were of the view that existing commercial arrangements should be adequate. Measures specifically suggested included the granting of national roaming rights during the initial roll out period and the availability of additional 3G spectrum to match the 2G spectrum currently held by incumbent operators.

In view of the importance attached to this issue by several of the respondents and the diverse range of views expressed, the Director proposes to consult more widely on the type of measures that might be appropriate to facilitate effective competition between incumbent and new entrant mobile operators.

Question 3. How many 3G mobile licences should be made available in Ireland?

With the exception of the two incumbent operators, there was a general preference for at least four licences. Some respondents suggested there may be scope for more than four in the future

Taking account of the availability of spectrum, the current number of mobile licences in Ireland, her objective to facilitate competition in the provision of 3G mobile services, and the responses to the briefing note, the Director has decided to make at least four 3G mobile licences available. Specific proposals will be presented and views sought in the forthcoming consultation document.

Question 4. Do you have a view on the type of selection procedure that should be used for the introduction of 3G mobile services in Ireland?

A range of views were expressed, with three respondents favouring auctions, four

expressing support for comparative selection, and one respondent proposing a combination of the two methods. The importance of transparency and openness in the selection process was emphasised. Some concerns were raised, particularly by the incumbent operators, that auctions may lead to excessive bidding.

The Director has considered a number of factors, including the responses to the workshop briefing note, and experiences in Ireland and elsewhere in licence competitions, in deciding upon a comparative selection process for the selection procedure. The reasons underlying this decision are presented in section 3 above.

Question 5. What should be the duration of 3G licences?

There was a broad consensus among respondents that the licence duration should not be less than 15 years, with a general preference for 20 – 25 years in order to enable operators to recover the substantial investments which would be required in building networks and developing new services.

In view of the importance of this issue in terms of both the investment by operators in networks and the implications for long term use of the radio spectrum the Director will seek further views on duration of 3G mobile licences in the forthcoming consultation document.

Question 6. Do you have views on mast sharing?

There was broad agreement among respondents on the importance of mast sharing, although doubts were expressed about whether this could be enforced in practice. Some respondents were of the view that the Director should have powers to mandate sharing under certain circumstances, for example where state owned assets are involved or where one of the parties was considered to have significant market power.

In view of the broadly supportive consensus, the Director will consider potential options for the encouragement of mast sharing as part of the forthcoming consultation.

Question 7. Do you have any further views on the introduction of 3G mobile services in Ireland that are not addressed elsewhere in this document?

The following additional points were raised by respondents:

- A mechanism for interconnection charging for broadband and packet networks may need to be developed.
- Rights of existing transmission licence holders (e.g. broadcasters, cable, MMDS, DTT) may need to be considered if 3G devices are capable of receiving broadcast material.
- Provision for number portability between 2G and 3G must be made.