



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

# Multi Band Spectrum Award

## Phase 1 Questions and Answers

Information Notice

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**An Coimisiún um Rialáil Cumarsáide**  
**Commission for Communications Regulation**  
1 Lárcheantar na nDugaí, Sráid na nGildeanna, BÁC 1, Éire, D01 E4X0.  
One Dockland Central, Guild Street, Dublin 1, Ireland, D01 E4X0.  
Teil | Tel +353 1 804 9600 Suíomh | Web [www.comreg.ie](http://www.comreg.ie)

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## Chapter 1

# 1 Introduction

- 1.1 In Document 21/40<sup>1</sup>, and following consultation on its proposals in Document 20/32<sup>2</sup>, ComReg published its Information Memorandum (“IM”) setting out the processes and procedures for the Multi Band Spectrum Award.
- 1.2 These processes and procedures implement ComReg Decision D11/20 as detailed in Document 20/122<sup>3</sup>.
- 1.3 Table 17 of the IM provides an overview of the key milestones of the award process and the indicative timelines for same. One of the first key milestones was the delivery by ComReg of an online presentation providing as much clarity as possible on the Award Process and Auction Rules, noting that some Interested Parties may not have previously participated in similar processes.
- 1.4 On 7 May 2021, ComReg provided a series of presentations, making these available on its spectrum awards page<sup>4</sup>.
- 1.5 The next milestone, as set out in the IM, provided Interested Parties the opportunity to submit questions (“Phase 1 Questions”) in accordance with Section 3.3.1 of the IM and by the deadline of 16:30 hours on Friday 14 May 2021 (“Phase 1 Questions Deadline”).
- 1.6 This Information Notice relates to the publication of the Phase 1 Questions and ComReg’s final responses to same, where, in total, 17 questions were received by the Phase 1 Questions Deadline.
- 1.7 This Information Notice is structured as follows:
  - **Chapter 2:** lists the Phase 1 Questions submitted in accordance with Section 3.3.1 of the IM and sets out ComReg’s final answers to each; and
  - **Chapter 3:** sets out information on the next steps in the Award Process.
- 1.8 For the avoidance of doubt, the IM published on 16 April 2021, as clarified by (i) the answers set out in this document and (ii) any other amendments to or clarifications

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<sup>1</sup> ComReg Document 21/40 – Multi Band Spectrum Award, Information Memorandum and Draft Regulations - published 16 April 2021.

<sup>2</sup> ComReg Document 20/32 – Multi Band Spectrum Award, Draft Information Memorandum and Draft Regulations – published 13 May 2020.

<sup>3</sup> ComReg Document 20/122 – Response to Consultation and Decision on Multi Band Spectrum Award D11/20 - published 18 December 2020.

<sup>4</sup> ComReg’s Multi Band Spectrum Award Webpage: <https://www.comreg.ie/industry/radio-spectrum/spectrum-awards/proposed-multi-band-spectrum-award/>

of the IM formally communicated by ComReg to Interested Parties / Applicants / Bidders after the publication of this document, should be relied upon by Interested Parties / Applicants in preparing their Phase 1 Application Documentation / Phase 2 Application Documentation, respectively, and by Bidders in preparing for remaining elements of the Award Process.

- 1.9 For the meaning of capitalised terms used but not defined in this document, readers are referred to the IM.

## Chapter 2

# 2 Phase 1 Questions and Answers

- 2.1 This chapter sets out ComReg's final answers to the 17 Phase 1 Questions submitted by the Phase 1 Application Deadline.
- 2.2 As per paragraph 3.48 of the IM, ComReg is now publishing all Phase 1 Questions received, together with their associated final answers, on an anonymous basis.
- 2.3 Where a "Context" section is provided in advance of a question, the context was provided by the querist.
- 2.4 ComReg notes that the text of some of the context and questions submitted has been amended to:
  - align with the capitalisation of defined terms in the IM;
  - provide additional explanatory text where this is useful in adding to the context;
  - divide questions into sections where that facilitates clarity;
  - remove information otherwise likely to identify the querist; and/or
  - correct obvious typographical errors.
- 2.5 In doing so, ComReg has, however, aimed to make the minimum changes necessary to ensure that the essence of the question is maintained.

## 2.1 Question 1 – Licence commencement date

### 2.1.1 Context

- 2.6 Paragraph 2.23 of the IM states

*"2.23 Spectrum rights of use in the 700 MHz Duplex are being made available in one temporal period from 14 February 2022 (or such other date as may be specified by ComReg) to 13 February 2042".*

### 2.1.2 Question 1a

Please confirm if 'such other date as may be specified by ComReg' could be earlier than 14 February 2022.

### 2.1.3 Question 1b

- 2.7 If the answer to 3a is yes, please advise the circumstances in which ComReg may exercise such discretion, e.g. on the request of a Winning Bidder, and any implications for licence expiry date relative to other bands, or impact on spectrum usage fees.

### 2.1.4 Answer

- 2.8 No. The text “*such other date as may be specified by ComReg*” does not include the possibility of issuing a MBSA2 Liberalised Use Licence earlier than 14 February 2022. Instead, it refers only to a situation where there is a delay to the commencement of licences beyond 14 February 2022, e.g. where the Award Process does not conclude before then.
- 2.9 However, should the Award Process conclude in advance of 14 February 2022, ComReg notes that a Winning Bidder could apply for a MBSA2 Preparatory Licence to make the necessary preparations in advance of the commencement date of its rights of use.

## 2.2 Question 2 – 2.1 GHz Reserve Prices

### 2.2.1 Context

- 2.10 The Reserve Prices for the 2.1 GHz Lots, 2.3 GHz Generic Frequency Lots, and 2.6 GHz (FDD and TDD) Generic Frequency Lots have been amended. We understand from the commentary in Section 3.1 of the DotEcon report (ComReg 21/39b) that the changes are largely driven by the increase in licence duration and a shortening of the Time Slice 1 period. We note that the Time Slice 1 prices have declined by 17.3% for the 2.3 GHz Generic Frequency Lots and 2.6 GHz Generic Frequency Lots and increased by 11.9% in Time Slice 2. This appears to be consistent with the commentary in that more of the minimum price will be recovered in Time Slice 2. However, the same or similar pattern of adjustment is not observed in respect of the 2.1 GHz Band. While the Time Slice 2 adjustment is 11.9% and consistent with the other capacity bands, we observe a 5.4% increase in the Time Slice 1 Reserve Prices relative to the indicative prices published with the Decision. This does not appear to be consistent but there is insufficient detail in the DotEcon report to consider the relative changes further.

### 2.2.2 Question 2

- 2.11 Please explain why the Time Slice 1 Reserve Price for 2.1 GHz Lots has increased. Please provide worked examples for the calculation of the Time Slice 1 and Time



Slice 2 Reserve Prices for the 2.1 GHz Lots, 2.3 GHz Generic Frequency Lots, and 2.6 GHz (FDD and TDD) Generic Frequency Lots.

### 2.2.3 Answer

- 2.12 The amendment to Reserve Prices (including 2.1 GHz Lots) arose from ComReg updating the commencement and expiry dates of the bands being made available in the award. The potential for this update arising in the IM was highlighted by ComReg in paragraph's 5.61 and 5.183 of Document 20/122.
- 2.13 The 700 MHz Duplex, 2.3 GHz and 2.6 GHz Bands have a common commencement date which was provisionally set at 1 December 2020. This date also represented "Time 0" in present value terms for all Lot Categories for the purpose of setting Reserve Prices and Spectrum Usage Fees (SUFs), including for those Lots with a later commencement date such as the 2.1 GHz Time Slice 1 Lots. The 2.1 GHz Band Licences commence on the 16 October 2022, some 684 days after the earlier commencement date of Licences for the other bands.
- 2.14 In the IM (Document 21/40) the expected commencement date of Licences for the 700 MHz Duplex, 2.3 GHz and 2.6 GHz Bands is set as 14 February 2022, although the overall Licence duration across Time Slice 1 and Time Slice 2 was maintained at 20-years (with the 700 MHz Lots and the 2.3 GHz and 2.6 GHz Time Slice 2 Lots running until February 2042). For the 2.3 GHz and 2.6 GHz Bands, this meant a reduction in the duration of Time Slice 1 and a corresponding increase in the duration of Time Slice 2, which therefore required a redistribution of the total minimum prices between the two Time Slices (hence the observed decrease in Reserve Prices for Time Slice 1 Lots and increase in Reserve Prices for Time Slice 2 Lots).
- 2.15 The 2.1 GHz Time Slice 1 Lots continue to commence on 16 October 2022, and end on 11 March 2027, so the Licence duration is unchanged for these Lots relative to the proposals in Document 20/122, while the 2.1 GHz Time Slice 2 Lots will end on 13 February 2042 and hence run for longer than previously proposed (as for the 2.3 GHz and 2.6 GHz Time Slice 2 Lots). Therefore the Reserve Price for 2.1 GHz Time Slice 2 Lots needed to increase to reflect the longer Licence term, but no such adjustment was required for the Time Slice 1 Lots as the duration in unchanged. However, because of the later commencement date of the 700 MHz, 2.3 GHz and 2.6 GHz (Time Slice 1) Lots, the time between that date and the commencement of 2.1 GHz Time Slice 1 Lots was reduced by 440 days. This has the effect of increasing the Reserve Price of the 2.1 GHz Time Slice 1 Lots because an adjustment is required to take account of time value of money arising from the shorter period between the commencement date of the bands.

- 2.16 In effect, the higher Reserve Price of the 2.1 GHz Time Slice 1 Lots in Document 21/40 arises because the number of days between the commencement of rights of use in 700 MHz Duplex, 2.3 GHz and 2.6 GHz Bands (i.e. Time 0) and the 2.1 GHz Time Slice 1 Lots is shorter when compared with what was proposed earlier in the consultation process. This approach is consistent with the approach used by ComReg to set all Minimum Prices in the Award Process.
- 2.17 To provide greater clarity, ComReg is making available an excel spreadsheet showing the calculation of Reserve Prices for Lots in the 700 Duplex, 2.1 GHz, 2.3 GHz and 2.6 GHz Bands and this has been made available as Document MBSA2(21)046 on ComReg Multi Band Spectrum award webpage for download<sup>5</sup>.

## 2.3 Question 3 – Reserve Prices in the 2.3 GHz Band

### 2.3.1 Context

- 2.18 ComReg appears to have failed to update the Reserve Prices for the A2.3 Lots. The previous indicative price for the A2.3U<sup>6</sup> Lots was equal to the price of the B2.3 Lots. Following the changes to the B2.3 Lots Reserve Prices, the Time-Slice 1 Reserve Price of the A2.3 Lots is higher than that of the B2.3 Lots, but then in Time Slice 2 it is the other way round.

### 2.3.2 Question 3

- 2.19 Considering the context above, will the Reserve Price for the A2.3 Lots Reserve Price be adjusted in advance of the Phase 1 Application Date?

### 2.3.3 Answer

- 2.20 No, the A2.3 Reserve Price will not be adjusted in advance of the Phase 1 Application Date.
- 2.21 In Section 5.7 of Document 20/122, and in order to reflect the lower in-block EIRP limit of the A2.3 Lots (45 dBm / 5 MHz), compared with the B2.3 Lots (68 dBm/5MHz), ComReg determined that the Reserve Price of the A2.3 Lot would be fixed at €197,000 for Time Slice 1 and €285,000 for Time Slice 2. Absent these changes, the Reserve Prices would have been €327,000 in Time Slice 1 and €638,000 in Time Slice 2 in line with the price per MHz per capita applied for setting Reserve Prices for the B2.3 Lots.

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<sup>5</sup> <https://www.comreg.ie/industry/radio-spectrum/spectrum-awards/proposed-multi-band-spectrum-award/>

<sup>6</sup> Explanatory note: the 2.3 GHz Band Fixed Frequency Lot Upper was given the Lot Category identifier “A2.3U” in Document 20/32 (“Draft IM”) to distinguish it from the 2.3 GHz Band Fixed Frequency Lot Lower “A2.3L”, however “A2.3L” is no longer required due to the switch off of the Galway part of Eir’s Rurtel network, see Section 5.2.3 of Document 20/122.

2.22 The B2.3 Lots (with a Lot size of 5 MHz compared to the A2.3 Lot of 10 MHz) also had Reserve Prices of €197,000 and €285,000 for Time Slice 1 and Time Slice 2 respectively (at time of publication of Document 20/122) based on an estimated market price resulting from the output of a benchmarking exercise (in the same way as for the 700 MHz, 2.3 GHz and 2.6 GHz frequency-generic Lots) and assuming an in-block EIRP limit of 68 dBm/5MHz. It was therefore appropriate to amend the Reserve Prices associated with B2.3 Lots in line with the updated commencement date of 14 February 2022 and end date of 13 February 2042 (compared to 1 December 2021 and 30 November 2041, as used in Document 20/122) to reflect the expected shifts in the relative market prices for Time Slice 1 and Time Slice 2 Lots associated with the resulting changes to the durations of the two Time Slices.

2.23 Interested Parties are reminded that the proposed minimum prices for this Award are set conservatively and below the likely market value of the spectrum.

## 2.4 Question 4 – Approach to measuring coverage for an Existing MNO obtaining 2 x 5 MHz in the 700 MHz Duplex.

### 2.4.1 Context

2.24 In Footnote 40 of the IM "ComReg notes that for the purpose of assessing compliance with the obligation where an Existing MNO was to obtain 2 x 5 MHz in the 700 MHz Duplex (i.e. where the obligation is to provide 20 Mbit/s SUTP), ComReg will deploy the same methodology for the 30 Mbit/s case, (i.e. assume a 2 x 10 MHz carrier is deployed)". We understand this to mean the same ATL<sup>7</sup> will be used to predict the coverage however instead of using a Neg 103 dBm value as for the 30Mbit/s 10MHz case some other value should be used for the purpose of calculating the coverage of a 20Mbit/s service.

### 2.4.2 Question 4:

2.25 Please confirm the value to be used.

### 2.4.3 Answer

2.26 As captured above, footnote 40 of Document 21/40 states:

*"ComReg notes that for the purpose of assessing compliance with the obligation where an Existing MNO was to obtain 2 x 5 MHz in the 700 MHz Duplex (i.e. where the obligation is to provide 20 Mbit/s SUTP), ComReg*

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<sup>7</sup> ATL is a file type that is used with a network planning tool called ATOL.

*will deploy **the same methodology for the 30 Mbit/s case, (i.e. assume a 2 × 10 MHz carrier is deployed).***” (emphasis added)

2.27 Footnote 40 is located at paragraph 2.36 (i) of Document 21/40 which states:

*“an RSRP base level of -103 dBm will be used as a proxy for 30 Mbit/s SUTP (Single User Throughput)<sup>40</sup> using a 10 MHz downlink carrier. Where capacity increasing techniques are used (such as carrier aggregation and or deploying additional bandwidth), a lower RSRP value can be used as follows: ...”* (emphasis added)

2.28 For the avoidance of doubt, for the purpose of assessing compliance with the obligation where an Existing MNO was to obtain 2 × 5 MHz in the 700 MHz Duplex (i.e. where the obligation is to provide 20 Mbit/s SUTP), ComReg will use an RSRP base level of -103 dBm.

2.29 This approach is consistent with the general approach proposed in ComReg’s draft decision. See, in particular, paragraphs 7.113 -7.115 of Document 19/124 (extracted below). Note that in Document 20/122, ComReg, in considering the submissions received, updated the base RSRP level for a 10 MHz downlink carrier from neg 95 dBm to neg103 dBm.

*“7.113 In a scenario where an existing licensee obtains rights of use for one 2x5MHz lot in the 700 MHz Duplex, ComReg proposed, in Document 19/59R, that the 30 Mbit/s SUTP obligation be reduced to 20 Mbit/s SUTP, while maintaining the same percentage figures for the different obligations. This was informed by the Oxera Report, in particular Figure A2.5, which illustrates that where the bandwidth available reduces, the throughput available at cell edge also reduces.*

*7.114 Considering this, and for **the purposes of measuring and monitoring the coverage obligation, ComReg proposes to apply the same methodology as for the 30 Mbit/s obligation (i.e. -95 dBm [now -103dBm] for a single carrier of 5 MHz and a reduction by 5dB for each additional carrier), noting that the throughput achievable will be in keeping with the 20 Mbit/s obligation due to the reduced available bandwidth.***

*7.115 ComReg notes that this will have a number of benefits, in particular:*

*it remains consistent with ComReg’s intention to establish an obligation that aims to incentivise operators to deploy new sites where appropriate, upgrade sites with additional spectrum, make use of*

*improvements in technology such as new standards including carrier aggregation and carrier sharing or extension techniques; and*

*it provides a uniform methodology for assessing compliance with the coverage obligation where three band carrier aggregation is used.”  
(emphasis added)*

## 2.5 Question 5 - Extension rights for the Primary Bid Rounds

### 2.5.1 Context

2.30 Paragraph 4.97 of the IM states:

*"The Extension will end 30 minutes after the scheduled end of the Round, or once all Bidders who are using Extensions have successfully submitted Bids, whichever occurs earlier."*

### 2.5.2 Question 5

2.31 Please confirm that each Bidder may exercise at most one Extension right in a Round, and that in the event that more than one Bidder exercises an extension right in the same Round, the Primary Bid Round will only be extended by 30 minutes and not multiples of same. Please also confirm that in the event of multiple extension requests each requesting Bidder will be decremented an Extension right.

### 2.5.3 Answer

2.32 ComReg notes that the purpose of the Extension rights are primarily to account for technical issues that may arise for a Bidder during the Round and is not designed to provide additional time under normal circumstances for the selection of bids. Under normal circumstances, the notice of the scheduling of the Round and the Round duration is intended to provide sufficient time for Bids to be checked and submitted through the EAS.

2.33 In any event, ComReg confirms that:

- a Bidder has two Extension rights in the Primary Bid Rounds;
- Bidders can only use one Extension right per Round; and
- the maximum extension possible to a Primary Bid Round is 30 minutes, irrespective of how many Bidders have used one of their respective Extension rights in that Round.

## 2.6 Question 6 - End of the Primary Bid Rounds

### 2.6.1 Context

2.34 Paragraph 4.119 states

*"The Primary Bid Rounds will end following a Round in which there was no excess demand for lots in any lot Category."*

### 2.6.2 Question 6

2.35 Please confirm that the Primary Bid Rounds will end following the first Round in which there was no excess demand for Lots in any Lot Category.

### 2.6.3 Answer

2.36 ComReg confirms that the Primary Bid Rounds will end following the first Primary Bid Round in which there was no excess demand for Lots in any Lot Category.

## 2.7 Question 7 – Deposit call following completion of the Main Stage

### 2.7.1 Context

2.37 Paragraph 4.154 of the IM, second bullet, states that ComReg may *"re-run the Winner and Price Determination algorithm voiding some Bids submitted during the Award Process by that Bidder(s), without excluding the Bidder(s) from the Award Process"*.

### 2.7.2 Question 7

2.38 Please confirm that, in the circumstances stated, ComReg may re-run the winner and price determination algorithm voiding some bids (e.g. some supplementary bids) whilst not voiding other bids (e.g. primary bids for the same packages), but that ComReg will not amend any bid (e.g. will not reduce the amount of any bid).

### 2.7.3 Answer

2.39 Paragraph 4.154 of the IM states:

*"4.154 In the event that ComReg issues a Deposit Call following the completion of the Main Stage of the Auction, but before the results of the Main Stage have been announced to Bidders, **and one or more Bidders do not provide their required funds by the deadline set by ComReg**, ComReg may at its sole discretion:*

- *exclude the Bidder(s) from the Award Process and re-run the Winner and Price Determination algorithm (described below) voiding all Bids submitted during the Award Process by that excluded Bidder(s); or*
- ***re-run the Winner and Price Determination algorithm voiding some Bids submitted during the Award Process by that Bidder(s), without excluding the Bidder(s) from the Award Process.” (emphasis added)***

2.40 Paragraph 3.194 states:

*“3.194 All Bids in the Main Stage are for Packages of Lots (i.e. a package of one or more Lots). **A Bid for a Package of Lots will not be subdivided by the Auctioneer, so a Bidder will only win an entire Package of Lots it has bid for, or nothing.** As a result, Bidders do not face risks associated with winning some, but not all, of the Lots within a Package of Lots for which they have bid.” (emphasis added)*

2.41 As noted in Document 21/39 (Paragraph 2.125), in the event of a breach of the Auction Rules, which does not result in the exclusion of a Bidder, ComReg will retain discretion to void some but not all Bids made by that Bidder. However, ComReg notes that the discretion is not limited to the examples given in the question (i.e. voiding Supplementary Bids but keeping Primary Bids for the same packages) as it may be appropriate to also void Supplementary and Primary Bids depending on the case. Notwithstanding, in the circumstances stated, ComReg confirms that it would not amend the Bid Amount for a Package of Lots.

## 2.8 Question 8 - Online presentation

### 2.8.1 Context

2.42 ComReg required individuals to be registered to view the online presentation (as required under paragraph 3.30) and then made available the links to the presentations on its public website.

### 2.8.2 Question 8

2.43 Why did ComReg require the identities of individuals to be disclosed unnecessarily? What purpose is ComReg putting the registration information to?

### 2.8.3 Answer

2.44 In allowing for the registration of Interested Parties for the Online Presentation, ComReg was taking an extra step to ensure that all Interested Parties that wished to access the Online Presentations were made aware of the locations of same and



were notified through a dedicated award notification at the earliest point in time that the presentations were made available.

2.45 ComReg notes that this approach is consistent with previous award processes where Interested Parties have registered to participate in the Presentation / Workshops whether their participation has been in person or online. ComReg confirms that the registration information is intended solely for these purposes.

## 2.9 Question 9 - Phase 1 Questions

### 2.9.1 Context

2.46 ComReg has required, per paragraph 3.46 of the IM that these *"Phase 1 Questions must be submitted in written, hardcopy format only and cannot be submitted in any electronic format."*

### 2.9.2 Question 9

2.47 Please explain why this requirement was considered appropriate at such a preliminary stage in the process against the backdrop of a national public health emergency where unnecessary travel is to be discouraged.

### 2.9.3 Answer

2.48 ComReg notes that the questions that an intending Applicant may wish to ask could contain confidential information, including sensitive information relating to it and factors that may relate to its bid strategy etc. Therefore, for the questions and answers phase to be meaningful, ComReg has taken extra measures in this and indeed in previous award processes, to ensure that the content of the questions is closely managed. ComReg does not consider that normal email is secure enough to achieve this objective. In any event, ComReg did provide for delivery of questions via courier and this option was availed of by some querists.

## 2.10 Question 10 - Application Form

### 2.10.1 Question 10

2.49 Are Bidders limited to a maximum of 2 Authorised Agents? Ideally, we would nominate 3 individuals for resilience. If this is permitted, how should we add them to the Application Form?



## 2.10.2 Answer

- 2.50 ComReg only requires one Authorised Agent to bind the Applicant but allows Applicants to nominate a second Authorised Agent should they wish. However, ComReg will now also permit Applicants to nominate a third Authorised Agent should they wish.
- 2.51 To facilitate this enhancement, ComReg has updated the Application Form, published as 21/40aR on its website. However, ComReg would remind Applicants that it is their responsibility to ensure that they are fully aware of the requirements of and implications under the Application Form and the IM with regards to the nomination of more than one Authorised Agent.

## 2.11 Question 11 - Applicant Telephone

### 2.11.1 Question 11

- 2.52 Can ComReg confirm that the most appropriate contact number for the award should be used here rather than the company contact number?

### 2.11.2 Answer

- 2.53 The Phase 1 Application Form contains a field listed as “*Telephone number for Applicant*”, which is the business company telephone number for the Applicant. In addition, there are fields for the contact numbers of each of the Authorised Agents and all relevant telephone numbers should be provided.
- 2.54 In circumstances where telephone contact is required with the Applicant in relation to the Award Process, ComReg will seek to make contact with the Authorised Agents starting at Authorised Agent 1 in the first instance. If contact cannot be made with Authorised Agent 1 then ComReg will seek to make contact with Authorised Agent 2 and so on. The company business telephone would only be used in the event of multiple repeated failed attempts to contact the Authorised Agents.
- 2.55 Should an Applicant wish that ComReg make initial contact with a different person (other than Authorised Agent 1) for administrative purposes related to the Award Process, the Applicant can indicate this in a cover letter provided at the time of its Phase 1 Application Documentation and signed by an Authorised Agent. The cover letter should clearly identify the alternative person to be contacted for administrative purposes related to the Award Process, the position in the organisation and the relevant telephone number(s) to make contact. In this case (i.e. for administrative purposes related to the Award Process), ComReg will seek

to make contact in the first instance with this person before making contact with the Authorised Agents.

2.56 ComReg notes, however, that the point of contact for administrative purposes does not replace the role of the Authorised Agent<sup>8</sup> and this role must still be fulfilled by an Authorised Agent.

## 2.12 Question 12 - Phase 1 Application Form Checklist

### 2.12.1 Question 12

2.57 Is there an error in the checklist - the first item seems to be duplicated?

### 2.12.2 Answer

2.58 This is an unintended duplication. ComReg has corrected this in the updated Application Form published alongside this publication as Document 21/40aR.

## 2.13 Question 13 - Phase 1 Application Form Checklist

### 2.13.1 Question 13

2.59 Is there an error in the first bullet? "as specified in paragraph 3.57 and, if applicable, of the Information Memorandum?"

### 2.13.2 Answer

2.60 This is a typographical error. As part of the update to the Phase 1 Application Form this has been amended. The text now reads; "*as specified in paragraph 3.57 of the Information Memorandum*".

## 2.14 Question 14 - Refund Calculation

### 2.14.1 Question 14

2.61 Can ComReg provide a worked example of the refund calculation that would apply in the circumstances outlined under section 2.3.7 of the Information Memorandum?

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<sup>8</sup> As noted on the Application form which includes " *Authorised Agents must be authorised to bind the Bidder and to take all decisions or communicate all decisions connected with the Auction on the Bidder's behalf including, but not limited to, the authority to submit Bids (including the Initial Bid Form) in respect of any of the Lots available in the Award Process and to commit to payment of the necessary amount if the Bidder is granted a Licence as a result of the outcome of the Award Process*".

## 2.14.2 Answer

- 2.62 Section 2.3.7 of the IM contains details on ComReg's approach to the refund or adjustment of Licence fees payable by Winning Bidders due to the delayed commencement of Lots.
- 2.63 The approach used to account for the relevant part of the Spectrum Access Fee ("SAF") is similar to, and consistent with, the methodology used to estimate the price of the 2.1 GHz Time Slice 1 Lots for the purpose of calculating any applicable Liberalisation Fee for Eir. This approach was previously consulted upon and set out in ComReg's Decision (Section 4.5 Document 20/122) and is further particularised in Annex 14 of the IM.
- 2.64 However, noting that ComReg has updated its methodology to include a discounted pro-rata approach in the IM, ComReg provides a simplified example (in excel spreadsheet MBSA2(21)047 available on the Multi Band Spectrum Award webpage for download<sup>9</sup>) resulting from delayed commencement of a 700 MHz Duplex block to demonstrate how that aspect of any refund process would operate.

## 2.15 Question 15 - Deposit Top-Up

### 2.15.1 Question 15

- 2.65 In light of current restrictions caused by Covid-19 which can cause delay to authorisations, can ComReg confirm that it will in practice allow at least 5 working days for any deposit top-ups to be completed?

### 2.15.2 Answer

- 2.66 ComReg notes, for example, paragraph 3.76 and 4.104 of the IM which, in summary, specify that ComReg will specify a time of "**not less than 3 working days**" (emphasis added) by which the required funds must have been received by ComReg.
- 2.67 ComReg will specify at the time of a Deposit Call the period of time Bidders will have to ensure funds are received in ComReg's Nominated Bank Account, taking into account the rules and procedures set out in the IM and other relevant factors which may include the public health situation at that time.
- 2.68 ComReg also recalls paragraphs 1.11 and 3.4 of the IM which make it clear that, in exercising any discretion envisaged under the IM, it will do so "*acting reasonably and in accordance with its statutory functions, objectives and duties*".

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<sup>9</sup> <https://www.comreg.ie/industry/radio-spectrum/spectrum-awards/proposed-multi-band-spectrum-award/>

## 2.16 Question 16 – Phase 2 Application Deadline

### 2.16.1 Context

2.69 The IM sets the deadline for submission of completed Phase 2 Application Documentation as 6 August 2021 (Table 17). This is approximately 2 months after the scheduled hearing date of the Appeal<sup>10</sup>. The outcome of the Appeal has direct relevance to the Award Process. It is assumed that a judgment will have been made in respect of the Appeal prior to 6 August 2021.

### 2.16.2 Question 16a

2.70 Please confirm that the Phase 2 Application deadline will be amended if the judgment has not been made before 6 August 2021.

### 2.16.3 Question 16b

2.71 Please confirm that the Phase 2 Application deadline will be postponed if any uncertainty remains regarding the Award Process design as a consequence of the outcome of the Appeal judgment.

### 2.16.4 Answer

#### 2.16.4.1 Answer Question 16a

2.72 ComReg is of the view that it is of critical importance to the socio-economic development of the State and the common good for the next few years that the spectrum to be awarded in the Award Process is made available to operators, on a basis that enables those operators to make long term investment decisions, as quickly as is reasonably possible.

2.73 Accordingly, ComReg sought to have the appeal heard as quickly as possible.

2.74 In light of the short timetable set by the Court, ComReg adopted a pragmatic approach delaying the process slightly.

2.75 However, ComReg notes that Three's appeal does not of itself affect the taking effect of the Decision or prevent action being taken to implement it. Moreover,

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<sup>10</sup> The appeal of Decision D11/20 lodged by Three Ireland (Hutchison) Limited and Three Ireland Services (Hutchison) Limited, which is listed for a five day hearing before the High Court commencing 2 June 2021.

neither Three, nor any Notice Party has applied to court to seek a stay of the Decision pending the appeal.<sup>11</sup>

2.76 If the Court delivers a decision<sup>12</sup> by 6 August that permits the Award Process to proceed without material amendment, ComReg intends to proceed on the timetable set out in Document 21/40.

2.77 If a decision has not been delivered, or it becomes clear that a decision will not be delivered, on the appeal by 6 August 2021, ComReg will exercise its discretion as to how to proceed in light of, amongst other things, the anticipated delay in delivering a decision, legal advice, the live issues in the appeal at the end of the hearing and the attitude of the Court.

#### 2.16.4.2 Answer Question 16b

2.78 ComReg will consider any decision of the Court when it is available and exercise its discretion at that time. In this regard ComReg notes the following relevant extracts of the IM.

2.79 In footnote 94 to Table 17 of the IM, ComReg states that the Indicative Timeline is:

*“Subject to change, which may include changes that might be required following publication of any judgement on the appeal of Decision D11/20”.*

2.80 Paragraph 3.147 of the IM states:

*“ComReg will only accept Phase 2 Application Documentation submitted before 17:30 hours (Irish time) on the Phase 2 Application Date<sup>16</sup>. This applies where documents are submitted electronically with electronic [sic] signature and/or in hardcopy.”*

2.81 Footnote 116 of Paragraph 3.147 of the IM states:

*“Interested Parties are reminded that these dates are subject to the outcome of an appeal of Decision D11/20.”*

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<sup>11</sup> For the avoidance of doubt, ComReg fully reserves its rights to contest any application for a stay.

<sup>12</sup> This includes where the Court renders a decision but indicates that a reasoned judgment will be delivered at a later date.

## 2.17 Question 17 – Deposits

### 2.17.1 Context

2.82 Paragraph 3.73 of the IM states:

*"3.73 An Applicant must submit a monetary Deposit with its Phase 2 Application Documentation. The required amount of the Deposit shall at least correspond to the sum of the Reserve Prices of Lots requested by the Applicant in its Initial Bid Form."*

2.83 It is noted in paragraph 3.75 of the IM that:

*"3.75 ComReg currently intends to use all monies received from each Applicant/Bidder to purchase NTMA Exchequer Notes. Interest, if earned, will be paid by ComReg on funds held by it during the Award Process and Applicants will receive any interest accrued, if earned, less any financial fees and related taxation if applicable."*

2.84 Footnote 107 of the IM adds that:

*"The current rate of interest on NTMA Exchequer Notes is zero percent.*

*However, the rate of interest associated with the NTMA Exchequer Notes may be negative. In such circumstances, ComReg reserves the rights to calculate the refund paid to the Winning Bidder by subtracting the amount of negative interest accrued over the period a Deposit has been held by ComReg."*

2.85 The risk of a negative interest rate reflects the current uncertainty in the global financial markets. It is likely that such a deposit could be substantial and could be held for a number of months. We note the NTMA treasury bills issued in April had a negative yield. Applicants have no control how long their money will be held on deposit. The timeline is dictated by the pace of the ComReg process. It is not reasonable that Applicants should be unnecessarily exposed to costs outside of their control.

2.86 This cost to participate in the Award Process may deter some potential Applicants. This is also particularly relevant as the weighted cost of capital determined by ComReg for the mobile sector is 5.85%. Therefore, the opportunity cost of making such deposits which may generate a negative yield and the unspecified duration of having capital freedom for alternative use of such funds is disproportionate relative to the issue ComReg is trying to address. There may be less costly financial instruments available to Applicants such as bank guarantees which provide ComReg with the required certainty regarding a guaranteed deposit whilst

giving the Applicant the option to manage the cost of their exposure to the financial markets. The use of alternatives such as a bank guarantee could also be more efficient from ComReg's perspective as there would be no administrative burden where top ups may be required to maintain the value of a cash deposit in the event of negative NTMA interest rates.

### 2.17.2 Question 17

2.87 Please confirm that Applicants can have the option to guarantee their Deposit using other binding instruments such as a bank guarantee.

### 2.17.3 Answer

2.88 The procedure for satisfying a Deposit is set out in the IM (e.g. Section 3.3.4) and identifies the deposit as a **monetary amount** that must be transferred only **to the bank account** nominated by ComReg after which ComReg currently intends to use all monies received from each Applicant/Bidder to purchase NTMA Exchequer Notes.

2.89 For the avoidance of doubt, this does not include using financial instruments or bank guarantees. This is consistent with ComReg's approach in the last five spectrum awards whereby Applicants/Bidders were required to submit monetary amounts to fulfil any Deposit requirements. In doing so, ComReg considered such matters in response to previous draft Information Memoranda (for example see 3.6 GHz Award). In that regard, ComReg's consultation on the draft IM for this award (i.e. Document 20/32) would have been the appropriate time to suggest changes to the proposed rules and procedures relating to deposits. No comments or suggestions were received in relation to this matter in that consultation.

2.90 Notwithstanding, and for the purpose of clarity, ComReg notes the following.

2.91 Other binding instruments such as bank guarantees are not costless and would be subject to associated fees and charges. Interested Parties should also be aware that the procedures for deposits set out in the IM provides for the possibility of multiple deposit calls at different stages of the Auction. In such cases, and depending on instruments used and amounts involved, the repeated issuance or extension of such instruments could potentially expose Bidders to additional fees or charges over the course of the Award Process.

2.92 In any event, Exchequer Notes of short-term maturity are readily convertible and are subject to an insignificant risk of changes in value and represent an appropriate method of retaining a Bidders/Applicants Deposits. ComReg would also refer Interested Parties to the revised application process set out in the IM which provides that the deadline for receipt of Deposits are 16 weeks from the publication

of the IM, compared to 8 weeks as proposed in the Drat IM, which already reduces the time that Deposits would be held by ComReg.



## Chapter 3

# 3 Next Steps

- 3.1 In accordance with the timelines set out at Table 17 of the IM, the deadline for receipt of Phase 1 Application Documentation is 17:30 hours (Irish time) on Friday 18 June 2021 (Phase 1 Application Date). Interested parties are referred to Section 3.3.7 of the IM which sets out the Application Procedure.
- 3.2 In particular, paragraph 3.134-3.136 notes that ComReg will only accept Phase 1 Application Documentation submitted between **09.00 hours and 17.30 hours** (Irish time) on any of the following Working Days:
- **Monday 14 June 2021;**
  - **Tuesday 15 June 2021**
  - **Wednesday 16 June 2021;**
  - **Thursday 17 June 2021; and**
  - **Friday 18 June 2021.**
- 3.3 Interested Parties must make appointments with ComReg to submit their Phase 1 Application Documentation. To make an appointment for submission of Phase 1 Application Documentation, an Interested Party must contact **Mr Joseph Coughlan or Mr. Patrick Bolton** by telephone between **10:00 to 13:00 and 14:00 to 16:00 hours (Irish time)** on Working Days between **Wednesday 2 June 2021 and Thursday 17 June 2021** inclusive. The number for telephoning Mr. Coughlan or Mr. Bolton is: **+353 (0)1 804 9761**.
- 3.4 As set out in paragraph 3.50 - 3.51 of the IM, Applicants are given a further opportunity to ask questions (Phase 2 Questions) by **16:30 hours (Irish time) on Friday 16 July 2021**.
- 3.5 ComReg would also highlight Section 3.3.5 of the IM with regard to confidential information and Bidder behaviour which sets out the rules (in addition to those rules under Irish and EU competition law which continue to apply regardless of this Award Process) that govern the behaviour of Applicants from the time of submission of their Phase 1 Application Documentation until the public announcement on the outcome of the Award Process by ComReg.
- 3.6 Notwithstanding the above, ComReg notes the obligations of Interested Parties in Section 5.2.5 of the IM in relation to errors.