



Commission for
Communications Regulation

Proposed Multi Band Spectrum Award

Non-confidential Submissions to Document 20/78

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1 Eircom Limited and Meteor Mobile Communication Limited (trading as ‘eir’ and ‘open eir’), collectively referred to as ‘eir Group’ or ‘eir’

eir

Response to ComReg Consultation:

**Proposed Multi Band Spectrum Award -
Non-confidential Submissions to Document 20/56**

ComReg Document 20/78



9 September 2020

DOCUMENT CONTROL

Document name	eir response to ComReg 20/78
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The comments submitted in response to this consultation document are those of Eircom Limited and Meteor Mobile Communications Limited (trading as 'eir' and 'open eir'), collectively referred to as 'eir Group' or 'eir'.

eir's views on submissions to ComReg document 20/56

1. eir welcomes this opportunity to comment on the submissions ComReg received in response to ComReg 20/56. This submission is an expansion of our response to ComReg 20/56. Our response to ComReg 20/56 remains our primary response on the substantive matters. eir looks forward to ComReg's full consideration of the matters raised in our submission to ComReg 20/56.
2. eir has the following additional comments to make:
3. Three has proposed a further option, option 6, to apply spectrum caps that only count the spectrum in the award. eir does not agree that this is a reasonable proposal. Three states that "*ComReg has missed the most obvious and straightforward modification*" however this is simply not the case as ComReg's proposed spectrum caps have resulted from a detailed consultation process which considered all potential options.
4. All respondents share a common desire to ensure that the auction design is not overly complicated. As eir highlights in its response to ComReg 20/56 we believe that a number of approaches can be taken to promote a simpler award process. These include the proper consideration of alternative auction formats, in particular a Simple Clock Auction (SCA) based format, simplification by awarding the 700MHz in a separate process, and simplification by limiting time-slices to the 2.1GHz band. In our previous response we have also noted enhancements to the CCA format which could help to address its core deficiency in terms of pricing uncertainty. We look forward to these matters being progressed in ComReg's Auction Format Regulatory Impact Assessment.
5. eir notes the view of Three that alternative formats can be implemented in the Irish circumstances that would be preferable to the CCA currently proposed by ComReg. In that regard we agree with Three that a Hybrid SMRA or Enhanced SCA auction design are both candidates, however contrary to Three's view eir believes that an Enhanced SCA would be better than a Hybrid SMRA for the reasons below.
6. With regard to Three's views on a Hybrid SMRA we agree the revised spectrum packaging look reasonable. We note however that under Three's proposed rules bidders could be exposed to significant aggregation risk across the 2.3GHz band, given that standing high bids would be selected independently in each of the three lot categories.



7. eir also considers that the substitution risk that bidders might be exposed to is too high. The substitution risk may arise as a result of a bidder being unable to withdraw from standing high bids, preventing a bidder from making a clean switch into a different lot category if they hold a small number of standing high bids in the lot category they wish to switch out of (smaller than the number of lots they originally bid for), potentially leading to an inefficiently fragmented outcome.
8. If a Hybrid SMRA format is to be considered it would be imperative that bidders be informed of the exact level of excess (or aggregate) demand after each round, and not some rounded-up or otherwise disguised indicator of demand.
9. We agree with Three's proposal that all winning bidders should pay the same price per lot won in each category, however we believe this should be the amount of the highest losing bid rather than the amount of the lowest winning bid.
10. eir has consistently advocated the use of some form of Simple Clock Auction (SCA) for this multi-band award (with the potential for the 700MHz band to be awarded separately to further simplify matters). eir continues to believe that an appropriately designed Simple Clock Auction would be the best choice in this case.
11. The Enhanced SCA proposed by Three seems to us to have merit in this regard, although we have not had sufficient time to fully assess the implications of every last detail of the proposed rules to confirm that they are entirely satisfactory. eir looks forward to the opportunity to comment further on design proposals when ComReg makes available its draft Auction Format Regulatory Impact Assessment.
12. eir notes that Three's proposed time-sliced approach to the packaging of the 2.1GHz spectrum in this case would appear to address Vodafone's concern with regard to the potential for strategic bidding if the 2.1GHz spectrum were instead split into 'early' and 'late' licences (as proposed by Three in the Hybrid SMRA case), but without requiring the full complexity of a CCA – we have no objection to the 2.1GHz spectrum being time-sliced in the context of an Enhanced SCA.
13. Given that the proposed Enhanced SCA is not a true package auction format – since a bidder may win some but not all of their Exit Bids – we believe it may be appropriate to increase the size of the lots in some categories, in particular those that are currently proposed to be just 5MHz, so as to reduce the risk that a bidder wins an inefficiently small

amount of spectrum in a band – e.g. one option might be to use the same packaging as Three have proposed for a Hybrid SMRA in this case also, for all bands apart from the 2.1GHz band. An alternative option might be to allow each bidder to specify, for each such category, if they would prefer to win no lots at all rather than just one lot (i.e. to win a minimum of two lots) and to change the rules to ensure that this choice was honoured.

14. In addition to addressing Vodafone's concern regarding strategic bidding, our principle reason for believing that this format would be superior to Three's proposed Hybrid SMRA format, in the case of the MBSA2 award in Ireland, is the reduction in both substitution and aggregation risks that we believe bidders would be subject to with this format, notwithstanding the proposed restrictions on demand reduction (which may be an impediment to both switching and aggregation in some circumstances).
15. Our earlier comments on the specific rules proposed by Three as regards information policy and pricing in the context of the Hybrid SMRA apply here also in respect of an Enhanced SCA.
16. As noted in our previous response there remains a lot of work to be done on auction design and eir looks forward to further engagement with ComReg on these important matters. The Auction Format RIA is a critical component of this.

2 Three Ireland (Hutchison) Limited

Multiband Spectrum Award - Modifications to Auction Format

**Comments on document 20/78 from
Three**

9th September 2020



Three.ie

1. General Comments

Three notes that in document 20/56 ComReg consulted on certain aspects of the award format to be used for the next multi-band spectrum award (MBSA 2) and we welcomed that consultation. ComReg has also helpfully published the non-confidential versions of all responses received in that consultation. We believe this is necessary and adds transparency to the decision-making process and we are pleased to provide some observations on the comments received. Three has already given its views on the award process in detail and will not repeat those views here, unless it is necessary to link-in to comments received from other respondents or to draw out some nuance. Our views as provided in response to document 20/56, 20/32, 19/124, and preceding consultations still stand.

The decisions ComReg is about to make are important ones, with implications for investment in wireless networks that will extend over a 20-year period. All respondents will not necessarily have the same views regarding the auction mechanism and rules, and some options will be to the benefit of some respondents more than others. While it might be simple and predictable for respondents to just pick the option that seems most favourable to their own interest, ComReg's decision must be objectively justified, proportionate and non-discriminatory. Where there is disagreement in the responses, ComReg must analyse beyond a simple "vote" of self-interest and seek substantiation of the reasons for each particular position adopted.

In general, the issues that remain on the auction mechanism seem to be with the use of time-slicing; the expiry of Lots in the 2.1GHz band; and the asymmetric cap which produces a discriminatory effect particularly in the 700MHz band. There is then also the overriding issue with the choice of auction mechanism. Overall, we note that there remains opposition to the proposed use of Time-Slicing from all respondents. We note that Eir (like Three) does not believe that the Combinatorial Clock Auction (CCA) mechanism proposed is appropriate for this award but instead favours an award based on a Simple Clock Auction (SCA). Three agrees with Eir on this point and has previously submitted a proposal for an award based on a SCA. Vodafone it seems only favours the use of a CCA if the "*complex set of lots emerging from the Time Slice structure*" remains. We also note the view from Imagine that CCA disadvantages smaller bidders but they are reluctant to change to a different format if that would add complexity and disadvantage smaller bidders. It would seem that the format which most suits respondents is one where Time Slices are eliminated and a Hybrid SMRA is used, or alternatively if Time Slices are retained then a SCA similar to that proposed by Three is used.

We note that neither the respondents nor ComReg have put forward any reasoned/considered factual argument for limiting Three's activity in the auction to less than the other MNOs, while both Vodafone and Eir objected to being limited to bidding on 2 lots of 700MHz spectrum as is currently the case for Three under ComReg's proposed rules. No analysis based on concrete evidence has emerged from ComReg or the other competitors to show why it is appropriate to limit Three in this way but not the other two mobile network operators. It has been portrayed that we are somehow trying to get some advantage in the auction, which is clearly not the case – we are only seeking a level playing field. We also reiterate that Three has not objected to ComReg's proposed spectrum caps on their own, it is the combination of the caps and the CCA auction mechanism which is our main objection.

2. Observations on Submissions Received

Comments from Eir

While Three does not agree with all of the positions adopted by Eir in relation to the proposed award, we note that they have engaged seriously in the process and for the most part have provided reasoned proposals and analysis. We find that we agree in principle with Eir on a number of points.

Eir has stated that “*the most appropriate auction format in the circumstances is a Simple Clock auction (SCA)*”. Three agrees that an enhanced SCA with appropriate rules is a suitable format for this award. We have previously provided our reasoning for supporting this format in the circumstances (response to 20/56, Option 3) and have provided an example of how it might be applied. This proposal seems to be consistent with Eir’s preferred format and Three supports it.

Eir has also proposed an alternative solution whereby there are no Time-Slices but two lot categories in the 2.1GHz band. Again, this is similar to Option 2 as proposed by Three in response to document 20/56. For the avoidance of doubt, we support the removal of Time-Slicing regardless of the award format, but the elimination of time slicing and use of two lot categories in the 2.1GHz band means the Hybrid SMRA is a suitable format for the award. We note that one of ComReg’s main stated reasons for keeping Time-Slicing is protection of Eir, however with Eir rejecting that reasoning and considerable opposition from all respondents there would seem to be little reason for maintaining Time-slicing at all.

Eir has also made a third suggestion that in order to remove the issue created by ComReg’s proposal for the 700MHz band that it should be separated out and awarded in a stand-alone process using an auction format other than CCA. Three agrees that this would be preferable to proceeding with the current CCA proposal which has unresolved and critical shortcomings. We believe this could be achieved as a separate stage within the overall award, or as a separate process altogether. The former would be preferable though as it would not delay award of the other bands by any significant amount of time which is a point of concern for Imagine.

In the event that ComReg decided to stick with a CCA regardless, Eir has a further proposal to modify the bidding process. The modifications proposed by Eir do not address the concerns that Three has expressed in relation to the CCA but address a separate matter regarding budget-limited bidders. Without prejudice to Three’s own objection to the CCA as proposed, we have considered Eir’s proposed amendments. We do not see merit in the amendment, as we believe the concern raised by Eir would already be addressed by ComReg’s proposal to provide discount information in each round. On this basis we do not consider it to be sensible to adopt completely new and untested bid rules.

While disagreeing with Three’s proposed option 5(a) and 5(b) Eir objected on the basis that this might mean (if Three won two lots of 700MHz) Three’s opportunity cost might be determined by one other bidder plus reserve. This is exactly the case for Eir under ComReg’s proposal and Eir does not see an issue with that. Three is only seeking equal treatment.

Comments from Imagine

We note that Imagine has reiterated its opposition to Time-Slicing as proposed by ComReg. They also express the view that a CCA could be a suitable auction mechanism, but also express concern that an auction similar to that used for the 3.5GHz award “*does significantly disadvantage smaller operators*”. In their response, Imagine go on to say that they would not be in favour of any change that:

- increases the complexity of the auction
- has a disproportionate effect on smaller operators
- gives advantage to larger MNO or results in higher prices to smaller bidders

This suggests that the two preferred options proposed by Three in response to document 20/56 (Option 2b and Option 3) would meet Imagine’s requirements. We also note that Imagine has expressed no opposition to the modification to the rules for a CCA auction (if that were used) as described by Three as Options 5(a), 5(b), 5(c) or 6.

Comments from Vodafone

We note that Vodafone has sought to mischaracterise Three’s objection to the award proposed by ComReg as Three somehow seeking to gain or retain an advantage in the award process. This is a recurring position throughout Vodafone’s response and is simply incorrect. We are only seeking to eliminate the bias against Three that emerges from the proposed use of a CCA with asymmetric bidding caps.

It is perhaps not surprising that Vodafone would opt to retain the advantage conferred on it by ComReg’s proposals as they stand - we have pointed out throughout the consultation process that the CCA format benefits larger market players over smaller bidders and that in this case Vodafone would be the main beneficiary. The proposed use of a CCA with a cap that allows Vodafone to express a value for 3 lots of 700MHz but limits Three to expressing a value for only 2 lots bestows a direct advantage on Vodafone relative to Three, as pricing will be determined by opportunity cost. As a result, it is not surprising that Vodafone would seek to retain that advantage. In assessing the responses, we trust ComReg to look beyond any self-serving preferences and to seek objective substantiation of any points raised or positions adopted.

As an example, Vodafone has stated of Three that “*instead of removing discrimination they seek to copper fasten Three’s very significant spectrum advantages gained through the O2/Three merger process*”. This is simply incorrect. Three is only seeking to be able to participate in the auction on an equal basis. We note that Vodafone has referred back to the acquisition of O2 Ireland by the Three Group and we would reiterate that the acquisition was examined and approved by the European Commission, including consideration of the spectrum holdings on a competition law basis. We also note that subsequent to the acquisition Vodafone sought through the High Court to force ComReg to carry out a review and to take

some action in relation to spectrum holdings among mobile operators¹. ComReg rightly rejected this action by Vodafone and stated at the time that Vodafone had not provided, nor was ComReg aware of, any facts that demonstrate that Three had or would be likely to use the spectrum controlled by it inefficiently or ineffectively, “*or in any way that would require intervention by ComReg using its radio spectrum management powers*”. ComReg’s view at the time was that there was no significant disparity in spectrum holdings and that Vodafone was essentially attempting to re-open matters that had already been considered by the European Commission. Ultimately Vodafone’s case was without merit and was withdrawn, however, there are signs that Vodafone’s attitude towards the current auction is still driven by the same mistaken beliefs and that Vodafone is again trying to revisit the issue.

In relation to the question of which award format is most suitable, Vodafone has stated that a CCA mechanism is required if “*the complex set of lots emerging from the Time Slice structure*” is retained, and further that “*an SMRA could be run if the time slices are removed*”. This position would seem to be aligned with the general view that the Time-Slicing should be removed, in which case then Option 2(b) is a preferred format, with Option 3 also being suitable.

In its response, Vodafone states that “*Redesigning the auction to allow Three to maintain a spectrum advantage at low cost would clearly be discriminatory*”. This statement contains multiple misconceptions. ComReg has already stated its position that there is no significant disparity in spectrum holdings at this time. Vodafone has misunderstood Three’s response as we are not seeking to maintain any advantage at low cost – Three is simply seeking to have its price in the auction determined on an equal basis to its two main competitors, and this would not be discriminatory. We are seeking to eliminate discrimination in the proposal that currently favours Vodafone (and Eir) and we note Vodafone’s recognition of this discriminatory effect (see below).

Vodafone also refers back to the 2012 multiband auction and the use of spectrum caps. In that regard, we notice that there are significant differences between the manner in which caps applied in that award and those now proposed by ComReg. In 2012, Time-Slices were chosen to coincide with the expiry of existing licences that were counted within the caps. This meant that a spectrum holding could not count against a spectrum cap beyond its expiry. This is not the case under ComReg’s current proposal as this would require additional Time-Slices, most importantly in 2030 when the current sub-1GHz licences expire. We note that TS1 in the 2012 had a duration of 2.5 years whereas TS2 was 6 times longer at 15 years. Throughout all of TS2, which is the majority of the licence duration, the caps had the same effect on all bidders – only counting spectrum available in the award itself.

It is completely erroneous for Vodafone to suggest that the rules adopted by ComReg in 2012 somehow disqualify Three from seeking equal treatment in the current award. We note the acceptance by Vodafone that ComReg’s current proposal does in fact confer an advantage on Vodafone within the award process “*Now that positions are reversed, and Three are starting with more spectrum, they cannot reasonably complain that a possible outcome of the planned award could be that they will pay more*”.

¹ 2014/595JR

While Vodafone has rejected options 5(a), 5(b) and 5(c) we believe they have erred in their analysis. In proposing these modifications, Three is not seeking to gain an advantage over other bidders in the award but merely equal treatment. We welcome the recognition by Vodafone that ComReg's current proposal may be contrary to ComReg's non-discrimination obligations "*Just as it would be entirely inappropriate for Comreg to and [sic] introduce specific rules to guarantee a number of blocks of 700Mhz spectrum to Vodafone only it is against the non-discriminatory principles of section 12 of the Act of 2002 to introduce rules that preserve Three's spectrum advantage*". Vodafone seems to have interpreted the effect of caps in the sub-1GHz band as guaranteeing that other bidders will win a minimum amount of spectrum, and that it would somehow be discriminatory for the same to apply to Three.

We note that Vodafone's position in relation to spectrum caps in the current consultation contrasts with that adopted by its sister company in the UK. Despite already having access to over 42% of sub-1GHz spectrum before the 700MHz award in the UK, Vodafone argued that there is no justification for a sub-1GHz spectrum cap on bidders in the upcoming UK spectrum auction. This leads us to conclude that Vodafone is content to maintain the advantage conferred on it in the award as currently proposed by ComReg rather than to objectively consider the matter.