



Commission for
Communications Regulation

Information Notice

**Publication of a non-confidential submission
received in response to ComReg Document
13/57 – Submissions to ComReg Consultation
13/43 on Hutchison 3G Ireland Limited’s
request for an amendment to its Liberalised Use
Licence**

Document No:	13/64r
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An Coimisiún um Rialáil Cumarsáide

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A.1 Non-confidential version of submission by Hutchison 3G Ireland Ltd in response to Document 13/57.

1. Hutchinson 3G Ireland Ltd: submission entitled "COMREG DOC. NO. 13/57", dated 26 June (redacted).

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26 June 2013

~~CONTAINS CONFIDENTIAL INFORMATION~~

Dear Dr Ritchie

COMREG DOC. NO. 13/57

I refer to ComReg Doc. No. 13/57, *"Information Notice – Publication of non-confidential submissions to ComReg Document 13/43 – Consultation on Hutchison 3G Ireland Limited's request for an amendment to its Liberalised Use Licence"* (the "Published Correspondence"). In the Published Correspondence, Vodafone Ireland Limited ("Vodafone"), Telefonica (O2) Ireland Limited ("O2") and Meteor Mobile Communications Limited ("Meteor") make various assertions. Hutchison 3G Ireland Limited ("Three") responds as follows:

1. Meteor states *"It [the MBSA] was never intended to ensure or indeed capable of ensuring the optimum outcome for each party participating in the process"*. Three has never asserted that it was. Three believes that in the unique circumstances of its application, ComReg should grant its request for an amendment of its liberalised use licence.
2. Meteor further states: *"It is our belief, which appears to be confirmed by the material appended to the consultation, that H3G did not submit any bids in the Assignment Round. H3G therefore expressed indifference between the assignment options. It now seems that H3G did have some preference between the assignment options and H3G appears to have decided to conceal its preferences in its approach to the Assignment round"*. [REDACTED]
[REDACTED] Three wholeheartedly rejects any suggestion that it has deliberately tried to manipulate ComReg's MBSA process.
3. Meteor states: *"During the negotiation phase, ... H3G's participation in the Negotiation Phase was lukewarm at best and certainly did not appear to represent a departure from a position of indifference"*. Three rejects the assertion that its participation in the negotiation phase was *"lukewarm at best"* and *"indifferent"*. It initiated the negotiations phase and sought to agree the subject matter of its application, to no avail.
4. O2 states: *"In Decision D4/12, ComReg stated that there would be a moratorium on further assignments in the bands included in the MBSA of at least one year: "unsold lots will not be allocated for a period after the Award Process of an appropriate period of at*

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least 1 year". *Telefonica considers this moratorium to be an important factor that would have influenced bidder behaviour during the auction, and ComReg should be cautious about modifying that rule".* With all due respect, Three is not looking for the unsold 1800 MHz lots in Time Slice 1 to be allocated to it in addition to its current lots. Rather, it has asked ComReg to remove the Contiguity Rule and amend its licence in accordance with its licence amendment request.

5. O2 further states: *"The rules regarding contiguity between time slices were known to H3GI just as they were to all other bidders. ... It appears as though H3GI did not bid according to its preferences during the assignment round, and now wishes to change the outcome".* The fact that the rules regarding contiguity were known to Three, as they were to other bidders, does not alter the merits of its application. As previously stated: *"The rationale for the contiguity rule for unsold lots no longer exists and there are benefits (In terms of ComReg's statutory objectives) to be gained from granting application(s) for amendment of winning bidders' assignments".* As stated above, Three rejects the assertion that it did not bid according to its preferences during the assignment round.
6. O2 states: *"ComReg should be cautious about amending the outcome of the MBSA, particularly in circumstances such as this, where a bidder failed to take the opportunities presented during the MBSA process, but now wishes to change the outcome".* Three does not believe that this is a situation in which it has failed to take the opportunities presented during the MBSA process.
7. O2 states: *"Telefonica believes it would be possible to amend H3G's licence with effect from the first anniversary of the completion of the Award Process (February 2014), but not before then as to do so would amount to a change to the rules under which all other assignments were made in the MBSA".* As Three is not looking for the unsold 1800 MHz lots in Time Slice 1 to be allocated to it in addition to its current lots, it would appear that O2 does not have any further objections to Three's licence amendment request.
8. Vodafone states: *"Vodafone does not believe that Regulation 7 (3) of the Wireless Telegraphy (WT) Regulations (S.I. 251 of 2012) cited by H3GI is currently applicable to spectrum in the sub-1Ghz and 1800 MHz bands given that a competitive award process including frequencies in the 1800 MHz band has only very recently concluded, and particularly given the inclusion of features in that award process, such as the Assignment Round and Negotiation Stage, that were specifically designed to obtain the most efficient configuration of spectrum frequency locations among the Licensees in each of the bands in an objective and non-discriminatory manner".* Three rejects the assertion that its application is not permitted by regulation 7 (3) of the Wireless Telegraphy (Liberalised Use and Preparatory Licences in the 800 MHz, 900 MHz and 1800 MHz Bands) Regulations, 2012 (the "Regulations"). Regulation 7 (3) does not refer to any temporal limitation eg a period of time after an auction during which a licensee cannot apply to ComReg for an amendment of its licence and naturally applies to an auction including the referenced features.
9. Vodafone further states: *"As the MBSA process was the specific mechanism adopted by ComReg to achieve its statutory regulatory objectives such as the efficient allocation and*

use of spectrum, and the promotion of efficient investment, it is entirely unjustified and unacceptable for H3GI to now seek to invoke the WT Regulations to seek to circumvent the MBSA framework and outcome, within mere months of its conclusion". Three rejects the assertion that it is seeking to circumvent the MBSA framework and outcome, and re-asserts that the circumstances of its application warrant the grant to it of its licence amendment. Vodafone has completely failed to address these circumstances.

10. Vodafone states: *"Only ComReg has sufficient information to determine whether H3GI's bidding behaviour during the MBSA process was in fact consistent with full expression of its value differences between frequency locations in the 1800 MHz band. If ComReg assesses that H3GI's bidding strategy in the Assignment Round of the MBSA process was not consistent ... Even if H3GI's bidding behaviour in the Assignment Round was fully consistent ..."* As ComReg is aware, Three's bidding behaviour during the MBSA process was in fact consistent with full expression of its value differences.
11. Vodafone states: *"..., we also believe that it is essential, in the interests of promoting regulatory predictability, that ComReg abide by its decision in paragraph 4.15 of Decision D04/12 that unsold lots from the MBSA process not be allocated for a reasonable period, that in any event would not be less than one year. As lots I, J and K in Time Slice 1 were unsold in that process, any change in their current status cannot be permitted until December of this year at the very earliest. Moreover Vodafone would submit that objective consideration of current circumstances indicates that a reasonable period before any allocation of these lots could be considered should significantly exceed the 1 year minimum period specified by ComReg in its Decision".* As stated above, Three is not looking for the unsold 1800 MHz lots in Time Slice 1 to be allocated to it. As a result, the grant of its amendment request does not contravene paragraph 4.15 of Decision D04/12. With respect, paragraph 4.15 of Decision D04/12 does not prevent any change in the current status of lots I, J and K in Time Slice 1.
12. Vodafone states: *"... it is entirely feasible that H3GI may have come to the conclusion at the time of the MBSA process that the option to make an application under the WT Regulations to amend its liberalised licence was a superior means of potentially obtaining its desired frequency location for its 1800 MHz spectrum allocation outside of the MBSA process, and without the requirement to pay any Additional Price. This may have led H3GI either not to participate in the Assignment Round, or to bid in a manner that did not maximise its chances of obtaining Blocks I and J, or J and K as an outcome of the MBSA process".* Three wholeheartedly rejects any suggestion that it has deliberately tried to manipulate ComReg's MBSA process and this is clear from the confidential bidding history available to ComReg.
13. Vodafone states: *"Vodafone considers that acceptance by ComReg of H3GI's Liberalised Licence amendment request would irretrievably compromise the outcome of the very recently concluded MBSA process (particularly the outcome of the Assignment Round of that process). This would be the case as H3GI's requested licence amendment would contravene the decisions made by ComReg in the MBSA Decision and MBSA Information Memorandum in respect of key issues (including the treatment of unallocated lots from the MBSA process, and the minimum time period before allocation of these unallocated lots could again be considered), on which Bidders had*

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subsequently relied in calculating their valuations of spectrum lots and deciding on their bidding strategy during the MBSA process. H3GI appears to have omitted to consider this necessary consequence of an acceptance by ComReg of its licence amendment request in its correspondence with ComReg to date". For the reasons set out above and in its licence amendment request, Three does not agree with these assertions. Three is not looking for the unsold 1800 MHz lots in Time Slice 1 to be allocated to it and believes that the circumstances of its application warrant the grant to it of its licence amendment.

14. *Vodafone states: "If ComReg were to grant H3GI's application to amend its 1800 MHz Licence then this would clearly have a serious detrimental impact on the effectiveness of any future competitive award processes for the allocation of spectrum, particularly those in which an Assignment Round would appear optimal with respect to ComReg's statutory regulatory objectives. Indeed, granting H3GI's current application would greatly reduce, and in some cases even eliminate, the incentives of bidders to participate effectively in any Assignment Round of future competitive award processes. This would compromise ComReg's objective of ensuring efficient use of spectrum over the longer term". Three rejects this assertion. Each situation must be judged on its merits and Vodafone has failed to present any compelling reasons why ComReg should not grant Three's application for an amendment to its licence in the current circumstances.*
15. Vodafone raises the prospect of multiple licence amendment requests. The current circumstances do not involve multiple licence amendment requests. In any event, it would be for ComReg to resolve such requests in line with its statutory functions. This point has been addressed in previous correspondence.

For the reasons set out above and in its licence amendment request, Three believes that ComReg should amend its licence by substituting blocks I and J, or J and K for blocks D and E in the 1800 MHz band and Time Slice 1.

We look forward to a positive decision in this regard.

Yours sincerely

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Chief Technical Officer

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