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Communications Regulation

Information Notice

Publication of non-confidential submissions to ComReg Document 13/88 – Consultation on the release of 1800 MHz spectrum rights of use

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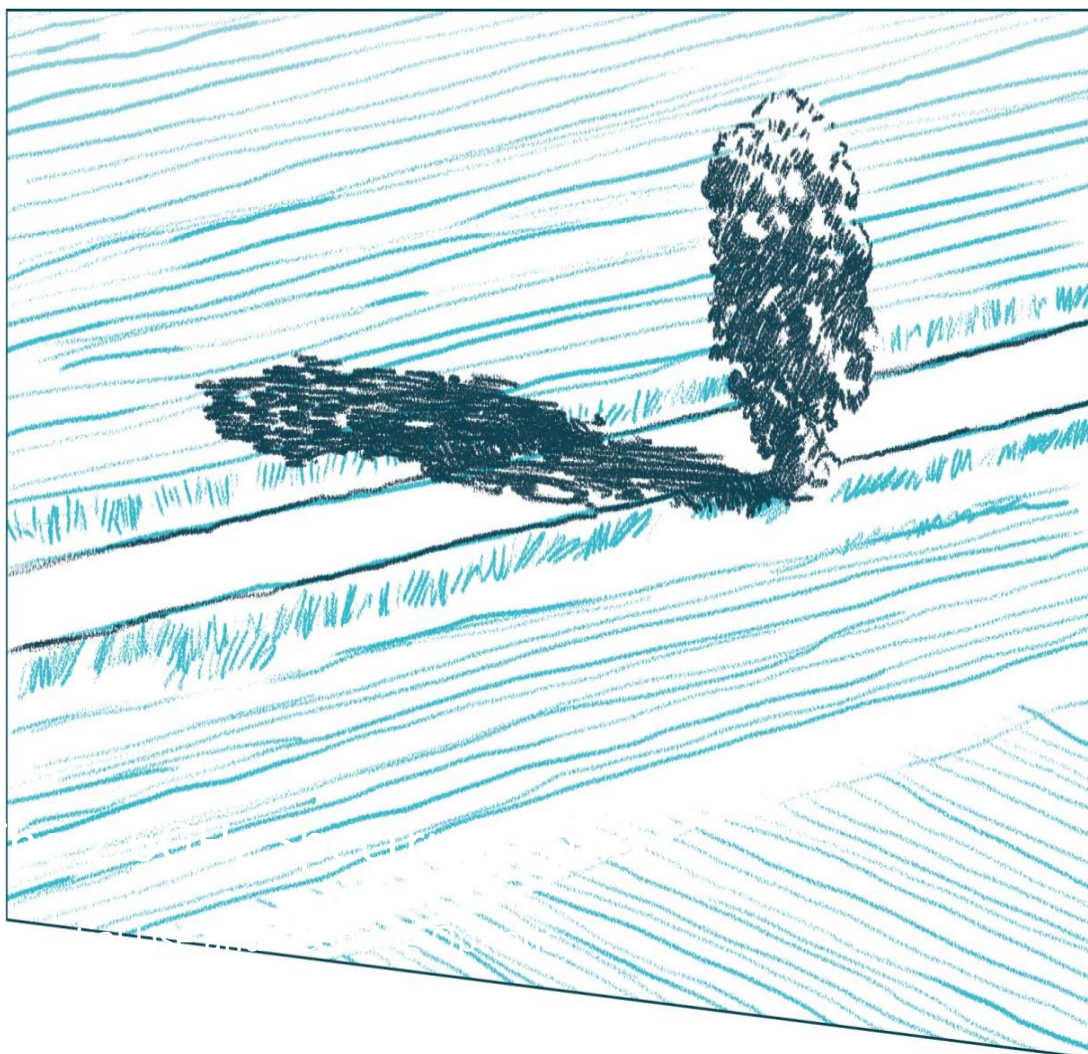
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A.1 Non-confidential submissions to consultation 13/88.

1. Telefónica Ireland Limited: submission entitled "1800 MHz Spectrum Release – Response to Document 13/88", dated 11 October 2013;
and
2. Vodafone Ireland Limited: submission entitled "Vodafone Response to ComReg Consultation on 1800 MHz Spectrum on the Release of 1800 MHz Rights of Use", dated 11 October 2013.

1. Telefónica Ireland Limited: submission entitled "1800 MHz Spectrum Release – Response to Document 13/88", dated 11 October 2013



1800MHz Spectrum Release
Response to Document 13/88
11th October 2013

Telefonica

Introduction / General Comments

Telefonica Ireland Ltd (Telefonica) is pleased to respond to ComReg consultation document 13/88. In general, Telefonica supports the proposal that ComReg should make the unassigned spectrum available to be licensed from the expiry of the first anniversary of the Multiband Spectrum Auction (MBSA). Telefonica agrees with ComReg's overall approach, and with a majority of the proposals in the consultation document. Some specific comments are provided in the section below.

In the event that ComReg proceeds to auction the three lots as proposed, then it is important to finish the process quickly. The maximum licence period is already very short, and any further delay would limit the usefulness of the licence(s). If ComReg decide not to proceed with the auction, or if there are still unassigned lots remaining afterwards, then ComReg should make the lots available, on application, without requiring an upfront fee – only the usage fee should apply on a pro-rata basis. This may facilitate operators to manage short-term issues that arise in the transition from old to new licences, and from time slice 1 to time slice 2.

Comments on Specific Details

There are a number of detailed aspects of the proposal that Telefonica agrees with, and which require little explanation either because the reasoning is obvious, or because there are few choices available. These include:

- Decision not to conduct a Regulatory Impact Assessment – we can accept that there are few choices available, that the spectrum will be available to all-comers on an equal basis, should not prejudice any individual rights, and that it is preferable to proceed directly without further delay. For these reasons a RIA is not necessary in this case.
- 1800MHz Licence Conditions – Telefonica supports ComReg's proposal. The conditions proposed are similar to those that apply to existing licences in the same band at the same time, modified only as required given the short duration.
- Block Size – Telefonica agrees that 2x5MHz blocks is the logical lot size.
- Licence commencement – ComReg should proceed as quickly as possible, however we agree that for practical reasons 1st February is probably the earliest date possible.
- The auction type and process proposed, including the use of a single round, sealed bid, frequency specific auction with second-price rule and combinatorial package bidding – Telefonica agrees that it is appropriate in this case.

Telefonica disagrees with the proposed pricing. ComReg proposes to set the price by reference to last year's MBSA, with an adjustment for CPI and a pro-rata adjustment for licence duration. The licence fee was structurally divided into an up-front element, and an annual usage fee, each representing approximately 50% of the overall expected licence price. While this structure was appropriate when dealing with licences of long duration, where long-term strategic decisions are taken and investments made, it is not relevant for licences of such short duration as are being assigned in this case. Telefonica believes ComReg should simply have a once-off up-front payment as determined by the auction. The minimum should be set no higher than necessary to deter frivolous bidders, which would be an order of magnitude smaller than the minimum proposed.

1800MHz Spectrum Release

Telefonica did not agree with the minimum price that was chosen for the MBSA, and ComReg has never shown that such high minimum price was necessary. That all packages sold were sold above the minimum price in the MBSA provides no relevant information on 1800MHz alone as it impossible to state what portion of the valuation was attributed to the different lots within the packages bought. In practice, the three lots were not sold in the MBSA, which can only indicate that the minimum price was too high and choked-off demand. Given the short duration of the licences on offer this time, valuations will likely be less than was the case for the MBSA.

While ComReg considers that there are links between the proposed auction and the MBSA, Telefonica does not agree that this requires the same minimum price to be used, just as it does not require spectrum caps to be carried forward. There is no basis for Dotecon's proposition that setting the minimum price too low would increase the likelihood that it would not be used. On the contrary, if the minimum price is too high and genuinely interested buyers are prevented from bidding, then the spectrum will be unlicensed and unused as a result of setting the minimum price too high.

In the event that some or all of the spectrum remains un assigned following the auction, then ComReg should adopt a position that makes it available for use in a straightforward manner. This could be licensed on request, or first come first served, or some simple quick method to make it available for use. In this case ComReg should not have a minimum price, but simply charge the usage fee, adjusted on a pro-rata basis for the licence duration.

Finally, ComReg should ensure that when drafting the Regulations to provide for licensing that maximum flexibility is retained to issue licences and amend licences with the agreement of licensees. This will give flexibility if needed for short-term assignments and amendments during transition periods.

2. Vodafone Ireland Limited: submission entitled "Vodafone Response to ComReg Consultation on 1800 MHz Spectrum on the Release of 1800 MHz Rights of Use", dated 11 October 2013



**Vodafone Response to ComReg Consultation on 1800 MHz Spectrum on
the Release of 1800 MHz Rights of Use**

Introduction

Vodafone takes the opportunity to respond to ComReg's consultation on proposals to hold a spectrum award process for the currently unallocated spectrum rights of use in respect of the 1800 MHz band for Time Slice 1 (the period to July 2015).

Due to resource conflicts caused by mandatory regulatory workstreams Vodafone had requested a one week extension to the return date for consultation responses, ComReg has not acceded to this request. In light of this Vodafone has had less time to reflect on the consultation issues than it would have required to provide a fully considered response. In particular we note the attachment of a Draft Information Memorandum to the Consultation.

Given the time restraints we have not carried out a comprehensive review of the Draft Information Memorandum. However it appears that the process detailed largely follows the mechanisms followed in the MBSA. This is welcome as it will simplify the implementation of the Auction process. We reserve the right to submit further comments and observations on the issues canvassed.

General Comments

Our view is that the value of this spectrum can be maximised and the greatest customer benefit achieved by setting early dates for the necessary consultation and auction process. This will allow the necessary technical planning to occur in advance of the proposed start date of 1st February 2014.

Comments on Specific Consultation Issues

2.8 The period of 1 year following the end of the process is approaching. Accordingly, ComReg now proposes to make available those lots unassigned in the MBSA process at the earliest possible opportunity

2.9 ... as noted by DotEcon in its report, the maximum duration of the unassigned rights is already relatively short and the underlying value of use will erode as the duration of these rights shorten, which, in ComReg's view, supports the earliest possible release of these unassigned rights of use.

Vodafone agrees strongly with this statement. Effective use of these blocks of spectrum will require a period of technical planning, as well as normal equipment ordering times, together with the installation and commissioning of equipment on sites. The Auction date must then be set at the earliest possible date to ensure effective use of the spectrum.

In relation to **Section 3** Vodafone agrees with the general thrust of ComReg's arguments in relation to the specifics of the Award Spectrum, specifically section 3.7 on block size, as this offers flexibility in use of the blocks for GSM LTE or the transitions from one to the other.

3.15 In that light, ComReg proposes that the commencement date of licences for the Award Spectrum would be 1 February 2014 because, amongst other things, this date: would appear to allow sufficient time to hold a competition and issue 1800 MHz licences subsequently,

We reiterate our previous comment that a sufficient interval of time is required between the completion of the auction and the date when it is expected to begin use of the spectrum.

3.17 As Blocks I, J and K are, in accordance with the results of the MBSA process, assigned to H3GI in Time Slice 2, any spectrum rights of use awarded as a 16 Letters to All Bidders, "End of the Assignment Stage and Auction", dated 5 December 2012, published as part of ComReg Documents 13/29a-f. result of the proposed Award Process (and corresponding 1800 MHz Licences) will expire on 12 July 2015.

Vodafone notes the award made in the MBSA process and that blocks I, J and K are assigned to H3GI from 13 July 2015. This raises an issue that there is a differentiation in the value of these blocks I, J and K between H3GI and other potential bidders in Time Slice 1. A bidder other than H3GI will have to transition out of these blocks in less than 18 months time thus losing the value of the spectrum during the transition time at the end of the time period. These other operators also have to bear the transition costs. In a long term assignment (such as Time Slice 2) these cost overheads would not be significant. However in this case transition times are significant relative to the short time these blocks will be available. Unlike the main award process there is no opportunity for any bidder other than H3GI to mitigate this effect by aligning allocations in Time Slice 1 and Time Slice 2

In order to meet ComReg's imperative to design award processes that are non-discriminatory, Vodafone suggests that the calculation of SUFs be amended to remove this discriminatory feature. It is our view that for operators who have to transition away from blocks I, J, and K at the end of TS1 the SUF should be charged for a two month lesser period to account for the difference in usable duration.

3.28 Accordingly, it would not, in ComReg's preliminary view, be objectively justified or proportionate to attach any type of coverage obligation to 1800 MHz Licences.

Vodafone agrees that it is not useful to attach any coverage obligation to this licence period.

3.42 Further, the inclusion of the Minimum Price should, amongst other things, deter frivolous bidders, disincentivise and guard against uncompetitive and inefficient auction outcomes and encourage the optimal use of spectrum in the event that there is no excess demand in the proposed Award Process. Moreover, ComReg considers it appropriate that the Award Spectrum is not granted in a process that offers more favourable terms than equivalent rights of use granted under the recent MBSA process.

Vodafone agrees with the principle that this new process should not grant spectrum on more favourable terms than the equivalent under the recent MBSA. Given the short time window we believe that there is less likelihood of frivolous bidding causing an inefficient auction outcome.

The competition concerns that underpinned the imposition of a spectrum cap in the main award process are equally relevant in this award, which cannot be viewed in isolation from the results of the main award process. To address these competition concerns and to prevent the inefficient use of the spectrum we believe that equity requires the implementation of a spectrum cap of 6 by 5MHz blocks of 1800 spectrum during Time Slice 1. In

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practice this is equivalent to the cap which applied during the MBSA process to operators who secured 2 blocks of 800 and 2 blocks of 900 spectrum in Time Slice 1.

4.32 On balance, and having considered the views expressed by DotEcon, ComReg's preliminary view is that a single sealed-bid approach is appropriate for the proposed Award Process.

In the interests of having an auction process simple enough to ensure a timely outcome, ComReg's proposal for a single sealed bid is an appropriate choice.

4.37 Having considered the views expressed by DotEcon in relation to the appropriate pricing mechanism for the proposed Award Process, ComReg is of the view that the use of a second price rule would be the most appropriate approach.

Given that that a second price rule was used for MBSA it would appear suitable for the auction of this spectrum also.

Summary

As we have indicated in our answers above we believe that the consumer gain in the allocation of this spectrum is maximised by an early auction process and where relevant Vodafone will engage to facilitate this.