



Commission for  
**Communications Regulation**

# **Release of 1800 MHz spectrum rights of use**

## **Response to Consultation and Decision**

**Reference:** ComReg 13/102

**Decision:** D14/13

**Date:** 14 November 2013

**An Coimisiún um Rialáil Cumarsáide  
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## **Additional Information**

Document No: 13/102  
Decision: 14/13  
Date: 14 November 2013

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## Chapter 1

# 1 Introduction

- 1.1 The purpose of this document is to set out the Commission for Communications Regulation's (ComReg) response to consultation and decision on its proposal to release 1800 MHz spectrum rights of use, as consulted upon in Document 13/88.
- 1.2 Document 13/88 was published on 13 September 2013 and set out particulars concerning ComReg's proposals to assign the three lots of 1800 MHz spectrum that remained unsold in the Multi-band Spectrum Award (MBSA) for Time Slice 1 (the "Award Spectrum") via a competitive auction-based award process (the "Award Process"). Annex 2 of Document 13/88 set out the Draft Information Memorandum,<sup>1</sup> which contained proposed detailed rules and procedures for the Award Process.
- 1.3 Two interested parties submitted a response to Document 13/88, being:
  - Telefónica O2 Ireland ('Telefónica'); and
  - Vodafone Ireland Limited ('Vodafone').
- 1.4 ComReg has published these non-confidential responses in Document 13/101<sup>2</sup>.
- 1.5 Having considered the views expressed in these responses and other relevant material before it (including independent, expert advice from ComReg's economic and award design consultants, DotEcon, as set out in Document 13/103), this document sets out ComReg's response to consultation and decision on its proposed Award Process.
- 1.6 In preparing this document, ComReg has been guided by its statutory functions, objectives and duties relevant to the management of Ireland's radio frequency spectrum (which are outlined in **Annex 1**).
- 1.7 The remainder of this document is structured as follows:

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<sup>1</sup> Save in respect of chapter 3, capitalised terms used in this response to consultation and decision document and not otherwise defined bear the meaning ascribed to them in Document 13/88.

<sup>2</sup> ComReg Document 13/101- *Publication of non-confidential submissions to ComReg Document 13/88 – Consultation on the release of 1800 MHz spectrum rights of use* - published 14 November 2013.

- **Chapter 2:** sets out ComReg's final position on specifics of the Award Process, including Lot size, 1800 MHz Licence duration, 1800 MHz Licence conditions, spectrum fees, "transition" issues, auction rules, award format and any relevant, additional issues raised in responses to Document 13/88;
- **Chapter 3:** sets out ComReg's decisions on the Award Process;
- **Chapter 4:** identifies next steps in relation to this matter; and
- **Annex 1:** which summarises ComReg's statutory functions, objectives and duties relevant to the management of the radio frequency spectrum;

1.8 A number of other documents have been published alongside this document, namely:

- Document 13/101: Non-confidential submissions to ComReg Document 13/88;
- Document 13/103: DotEcon's Report; and
- Document 13/104: the Information Memorandum.

## Chapter 2

# 2 ComReg's final position on the specifics of the 1800 MHz Spectrum

- 2.1 This chapter sets out ComReg's final position on the specifics of the Award Process, as proposed in chapters 3 and 4 of Document 13/88 and as particularised in the Draft Information Memorandum set out in Annex 2 of Document 13/88.
- 2.2 In particular, this chapter addresses:
- specifics of the Award Spectrum, including the Lot Size and 1800 MHz Licence Duration;
  - 1800 MHz Licence Conditions;
  - spectrum fees;
  - transition Issues;
  - auction rules;
  - award format; and
  - additional issues raised.
- 2.3 In discussing each of the above matters, ComReg provides:
- a summary of its proposals as set out in Document 13/88;
  - a summary of respondents' views (if any) on its proposals;
  - a summary of DotEcon's assessment (if any) on respondents' views; and
  - its assessment and final position on each of the matters.

## 2.1 Specifics of Award Spectrum

### 2.1.1 Appropriate Lot Size for Award Spectrum

#### ComReg's position in Document 13/88

2.4 In Document 13/88 ComReg proposed that the Award Spectrum be released in three Lots of 2 × 5 MHz and noted that this approach:

- would be consistent with the approach taken in the MBSA and the existing rights of use in the 1800 MHz band; and
- provided greater flexibility for potential bidders in the proposed Award Process by offering more options by which to express their respective demand.

#### Views of Respondents

2.5 ComReg notes that both respondents supported this proposal. Specifically:

- Telefonica agrees that 2 × 5 MHz blocks is the “*logical lot size*”; and
- Vodafone submits that Lot sizes of 2 × 5 MHz “*offers flexibility in use of the blocks for GSM LTE or the transitions from one to the other*”.

#### ComReg's Assessment and Final Position

2.6 On the basis of the analysis and reasons provided by ComReg in Document 13/88 when setting out its proposal regarding the appropriate Lot size, and the views of the interested parties on its proposal, ComReg's final position is that the Award Spectrum will be released in three Lots of 2 × 5 MHz.

2.7 Details on the frequency assignments associated with these Lots are set out in Table 1 below.

Frequency Band	Lot Name <sup>3</sup>	Uplink / Downlink Frequency
1800 MHz	I	1750.0 - 1755.0 MHz / 1845.0 - 1850.0 MHz
1800 MHz	J	1755.0 - 1760.0 MHz / 1850.0 - 1855.0 MHz
1800 MHz	K	1760.0 - 1765.0 MHz / 1855.0 - 1860.0 MHz

**Table 1: Details on the 1800 MHz frequency assignments**

<sup>3</sup> ComReg will retain the nomenclature used in the MBSA pertaining to these Lots to enable the unique identification of these Lots within the 1800 MHz band.



## **2.1.2 Expiration of Existing Test and Trial Licence**

### **ComReg's position in Document 13/88**

- 2.8 In Document 13/88, ComReg noted that there was one Test and Trial Licence active in the spectrum encompassed by the Award Spectrum (being 200 kHz in Lot I), and that this licence is active until 31 January 2014.
- 2.9 Noting the proposed commencement date of 1 February 2014 for the Award Spectrum, ComReg set out its view that the Test and Trial Licence would not have a material effect on the use that could be made of Lot I if rights of use of that spectrum are assigned under the Award Process.

### **Views of Respondents**

- 2.10 No responses were received on this matter.

### **ComReg's Assessment and Final Position**

- 2.11 On the basis of the analysis and reasons provided by ComReg in Document 13/88, and noting that no views were received on this matter from respondents, ComReg remains of the view that the existence of this Test and Trial licence would not have have a material effect on the use that could be made of Lot I.

## **2.1.3 Duration of Award Spectrum and Corresponding 1800 MHz Licence**

### **ComReg's position in Document 13/88**

- 2.12 In Document 13/88, ComReg set out its proposal that:
- the 1800 MHz Licences would commence on 1 February 2014 and expire on 12 July 2015; and
  - in the event that the availability of the Award Spectrum to one or more Winning Bidders was delayed, refunds would be provided by ComReg to the affected Winning Bidder/s in accordance with the procedures set out in section 2.2.6 of the Draft Information Memorandum.

## Views of Respondents

2.13 Both respondents supported the implementation of the Award Process as quickly as possible in order to facilitate the use of 1800 MHz Licences from the earliest date. In that regard:

- Telefonica agreed with the proposed licence commencement date stating that *“ComReg should proceed as quickly as possible, however we agree that for practical reasons 1st February is probably the earliest date possible”*;
- Vodafone emphasised the importance of an early auction date stating 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.”* However, Vodafone did not indicate what it believed would amount to *“a sufficient interval of time”*. Vodafone did not provide any other comment directly related to the proposed licence commencement date; and
- neither respondent commented on the issue of refunds.

## DotEcon’s assessment

2.14 In addition, ComReg notes DotEcon’s view that it *“...would be beneficial to conclude the award well ahead of the start date of usage rights”* and its belief that it *“...may be preferable to frontload any efforts to accelerate the process and focus on an early publication of the Information Memorandum rather than on shortening the length of the award process”*.<sup>4</sup>

## ComReg’s Assessment and Final Position

2.15 First, ComReg agrees with respondents’ views and DotEcon’s assessment that:

- the Award Process should be run as quickly as possible in order to facilitate the earliest possible start date; and
- there is a link between the timing of the Award Process and the commencement date of any licence issued subsequently.

2.16 In relation to the timing of Award Process, ComReg is currently of the view (and leaving aside delays or unforeseen circumstances which might

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<sup>4</sup> ComReg Document 13/103, DotEcon Report – Assessment of responses to consultation 13/88, Timing of the Award Process.

arise) that it should be possible to conduct same at or around end December 2013. Readers are referred to Table 5 of the Information Memorandum (ComReg Document 13/104) in this regard.

- 2.17 ComReg notes Vodafone's comments at page 2 of its response that "*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*". However, ComReg also notes that the final results of the MBSA were not published until 5 December 2012 with a start date for Time Slice 1 of 1 February 2013. The lead time proposed for the Award Process is therefore similar to that under the MBSA. However, in light of the much smaller amounts of spectrum rights involved in the Award Process, relative to the MBSA, and that likely applicants in the Award Process would also possess equipment capable of operating using the Award Spectrum, ComReg does not expect the lead times required by Winning Bidders here to be as long. Finally, to the extent that lead times might be an issue for potential bidders, then ComReg notes that bidders can take this factor into account in their bidding strategies.
- 2.18 In light of the above and, given that both respondents have expressed a clear desire to have the Award Process completed as soon as possible, ComReg remains of the view that 1 February 2014 is an appropriate start date for 1800 MHz Licences.
- 2.19 In addition, should delays or unexpected events result in the availability of the Award Spectrum to one or more Winning Bidders being delayed beyond 1 February 2014, it is ComReg's final position that refunds would be provided to the affected Winning Bidder/s in accordance with the procedures set out in Section 2.2.6 of the Information Memorandum.
- 2.20 Finally, ComReg remains of the view that the date of expiry of 1800 MHz Licences will be 12 July 2015 on the basis that rights to use the Award Spectrum in Time Slice 2 were awarded in the MBSA process.

#### **2.1.4 Non-exclusive basis**

##### **ComReg's position in Document 13/88**

- 2.21 In Document 13/88, ComReg proposed that the Award Spectrum would be awarded on a non-exclusive basis and noted that this would be consistent with its approach to spectrum licensing generally and, in

particular, with existing Liberalised Use Licences issued on foot of the MBSA process<sup>5</sup>.

### **Views of Respondents**

2.22 No responses were received on this matter.

### **ComReg's Assessment and Final Position**

2.23 On the basis of the analysis and reasons provided by ComReg in Document 13/88, and noting that no views were received on this issue from interested parties, ComReg's final position is that the Award Spectrum will be granted on a non-exclusive basis.

## **2.2 1800 MHz Licence Conditions**

2.24 ComReg set out its proposed licence conditions for 1800 MHz licences in section 3.3 of Document 13/88. ComReg's proposals can generally be divided into two categories, those being:

- similar to, or the same as, licence conditions in existing Liberalised Use Licences; and
- different to licence conditions in the existing Liberalised Use Licences.

### **2.2.1 1800 MHz Licence conditions that are similar to, or the same as, those in the existing Liberalised Use Licences**

#### **ComReg's position in Document 13/88**

2.25 In section 3.3 of Document 13/88, ComReg proposed a number of licence conditions for 1800 MHz which were similar to or the same as those set out in the existing Liberalised Use licences.<sup>6</sup> These proposals related to the:

- Quality of Service ("QoS") and associated compliance reporting conditions;

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<sup>5</sup> In particular see section 5.8.1 of ComReg Document 12/25 and section 2.2.1 of ComReg Document 12/50.

<sup>6</sup> The licence conditions attaching to Liberalised Use Licences are set out in ComReg Document 12/25 and SI 251 of 2012.

- compliance with rules to prevent spectrum hoarding that ComReg may specify in the future where such rules apply to Licences issued pursuant to the Award Process;
- assignment of rights and obligations of an 1800 MHz Licence;
- technical conditions (including conditions to be attached to terminal stations); and
- provision of updated information for Part 2 and Part 3 of the 1800 MHz Licence.

### **Respondents' Views**

2.26 One respondent, Telefonica, supported ComReg's proposal and stated that the *"conditions proposed are similar to those that apply to existing licences in the same band at the same time"*.

### **ComReg's Assessment and Final Position**

2.27 On the basis of the analysis and reasons provided by ComReg in Document 13/88 when setting out its proposal regarding this category of 1800 MHz Licence conditions, and the views of interested parties on same, ComReg's final position is that it will include licence conditions in 1800 MHz Licences as set out in section 3.3 of Document 13/88 and summarised above.

## **2.2.2 Licence conditions different to those in the existing Liberalised Use licences**

### **ComReg's position in Document 13/88**

2.28 In light of the circumstances associated with the Award Process and, in particular, the relative short duration of the 1800 MHz Licences, Document 13/88 set out ComReg's preliminary view that 1800 MHz Licences should not include the following two licence conditions which are in existing Liberalised Use Licences:

- obligations relating to coverage and rollout; and
- an obligation to notify ComReg 6 months in advance of the cessation of use of a Terrestrial system.

### **Respondents' Views**

- 2.29 Vodafone agreed with ComReg's proposal regarding coverage and roll out stating that *"...it is not useful to attach any coverage obligations to this licence period"*.
- 2.30 Telefonica also supported ComReg's proposed approach.
- 2.31 Neither respondent expressed a view in relation to the omission of an obligation to notify ComReg 6 months in advance of the cessation of the use of a Terrestrial System.

### **ComReg's Assessment and Final Position**

- 2.32 On the basis of the analysis and reasons provided by ComReg in Document 13/88 when setting out its proposal regarding this category of 1800 MHz Licence conditions, and the views of interested parties on same, ComReg's final position is that it will not include the following two licence conditions in 1800 MHz Licences:
- coverage and rollout obligation; and
  - obligation to notify ComReg 6 months in advance of the cessation of use of a Terrestrial system.

## **2.3 Spectrum Fees**

### **2.3.1 ComReg's position in Document 13/88**

- 2.33 In section 3.4 of Document 13/88, ComReg set out its proposals on the spectrum fees to be attached to 1800 MHz Licences.
- 2.34 In that regard, ComReg:
- First, set out information on the spectrum fees that were set for the MBSA process, including noting that:
    - a minimum price was set in the MBSA; and
    - that minimum price was apportioned on a 50/50 basis between an upfront reserve fee and an ongoing annual SUF;
  - then considered the issue of spectrum fees for the Award Process and, in particular:
    - whether to include a Minimum Price;
    - the level of the Minimum Price; and

- the structure of fees for an 1800 MHz Licence.

- 2.35 In relation to the issue of setting a minimum price, ComReg noted that, as the Award Spectrum comprised of spectrum rights which were included in the MBSA process, there are obvious links between the two processes. ComReg therefore expressed the view that the Award Spectrum should not be granted in a process that offers more favourable terms than the terms under which equivalent rights of use were granted under the MBSA process. In light of this and the other factors discussed in section 3.4.3 of Document 13/88, ComReg proposed to set a minimum price and to use the same minimum price methodology as used in the MBSA process, with the exception that the minimum price should be adjusted for licence duration and inflation (the “Minimum Price”).
- 2.36 In relation to the structure of the fees for the Award Spectrum, ComReg proposed that the Minimum Price be apportioned on a 50/50 basis between a reserve price (the “Reserve Price”) and annual spectrum usage fees (SUFs) using the methodology employed in the MBSA process. Having firstly adjusted the MBSA fees for inflation and the licence duration, ComReg’s proposed spectrum fees for 1 Lot of 1800 MHz spectrum as set out in Table 2 below.

Spectrum Rights	Reserve Price	SUF (12 months)
1 Lot of 1800 MHz	€0.797m + CPI adjustment <sup>7</sup>	€0.54m + CPI adjustment <sup>8</sup>

**Table 2: Proposed Reserve Price and SUF for the Award Spectrum**

### 2.3.2 Respondent’s Views

2.37 Both Vodafone and Telefónica provided views on ComReg’s proposals.

2.38 In relation to the setting of a minimum price and the level at which this might be set:

- Vodafone stated that it *“agrees with the principle that this new process should not grant spectrum on more favourable terms than*

<sup>7</sup> The proposed Reserve Price was €0.797m in June 2013 prices and would be readjusted to October 2013 prices once CPI data became available.

<sup>8</sup> In line with the MBSA process, the CPI adjustment to the first SUF would use 1 February 2013 (i.e. the commencement date of the Liberalised Use Licences) as the starting date for the calculation of the CPI. The second SUF payable would be further adjusted for CPI and adjusted on a pro rata daily basis to reflect the fact that it will apply to a period of less than one year.

*the equivalent under the recent MBSA. Given the short time window we believe that there is less likelihood of frivolous bidding causing an inefficient outcome.”; whereas*

- Telefónica did not agree with the proposed level of the minimum Price and stated, amongst other things, that “[t]he minimum should be set no higher than necessary to deter frivolous bidders, which would be an order of magnitude smaller than the minimum proposed.” However, Telefónica did not further specify what they would consider to be an appropriate level for the Minimum Price.

2.39 In addition, Telefónica submitted that:

- the fact that the Award Spectrum remained unassigned in the MBSA process does not support the proposal to apply the same minimum price methodology in the Award Process<sup>9</sup>;
- “[t]here is no basis for DotEcon’s proposition that setting the 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.”; and
- it disagreed with the proposed structure of the Minimum Price into an upfront SAF and annual SUF apportioned on a 50/50 basis and, in this regard, stated that “...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. Telefónica believes ComReg should simply have a once-off up-front payment as determined by the auction.”

### **2.3.3 DotEcon’s assessment**

2.40 DotEcon’s assessment of respondents’ views on this issue is set out in Document 13/103.

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<sup>9</sup> In particular, Telefónica stated: “That all packages sold were sold above the minimum price in the MBSA provides no relevant information on 1800 MHz alone as it is 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”



2.41 In relation to the responses relating to the proposed structure of the Minimum Price, DotEcon notes that:

- using a different fee structure would be inconsistent with offering the spectrum available on the similar terms as in the MBSA; and
- requiring the full minimum fee as a single upfront payment may put some bidders at a disadvantage.

2.42 In the absence of what it considers to be a compelling reason to take a different approach, DotEcon considers *“that adopting the same fee structure as in the MBSA is preferable in order to meet ComReg’s objectives”*.<sup>10</sup>

2.43 In relation to the respondents views on the level of the Minimum Price, DotEcon notes that:

- *“Telefónica’s interpretation of the outcome of the MBSA cannot be verified”*<sup>11</sup>;
- *“Overall, there is no evidence that minimum prices in the MBSA were set too high and that lower prices would be necessary to ensure an efficient use of the spectrum available in the current award”*<sup>12</sup>; and
- *“Deviating from the approach used for setting minimum prices in the MBSA also risks raising concerns about regulatory uncertainty. There could be undesirable long-term consequences from setting minimum prices significantly below the level used in the MBSA if this encourages parties to defer bidding for rights of use of spectrum in the hope of obtaining similar unsold rights of use of spectrum cheaper later”*<sup>13</sup>.

### 2.3.4 ComReg’s Assessment and Final Position

2.44 From the views of the respondents ComReg is of the view that the primary issue to be considered is ComReg’s proposal to set the spectrum fees on similar terms to those set in the MBSA process.

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<sup>10</sup> ComReg Document 13/103, DotEcon Report – Assessment of responses to consultation 13/88, Fee Structure.

<sup>11</sup> Ibid, Level of Minimum Fees.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

2.45 On the one hand, ComReg notes Vodafone's support for its proposal and its view that *"this new process should not grant spectrum on more favourable terms than the equivalent under the recent MBSA"*. ComReg also notes Telefónica's disagreement with this proposal and its supporting reasons including that:

- the three unsold lots in the MBSA can only indicate that the minimum price was too high and choked-off demand;
- the minimum price should be set no higher than necessary to deter frivolous bidders, which would be an order of magnitude smaller than the minimum proposed; and
- there should be a single upfront payment as determined by the auction instead of a upfront fee and an ongoing SUF.

2.46 ComReg sets out its analysis of these views below.

#### **The Minimum Price in the MBSA choked-off demand and resulted in unsold Lots**

2.47 In assessing Telefónica's arguments on this issue, ComReg firstly notes that this matter was considered in DotEcon's previous report (Document 13/89), and again in DotEcon's latest report (Document 13/103).

2.48 In these reports DotEcon set out its view that *"[t]here may be a number of reasons why some lots remained unsold [in the MBSA process], especially given that this was a combinatorial auction in which bids were made for packages of lots"*<sup>14</sup> and that it is not therefore appropriate to conclude that the Minimum Price was set too high.

2.49 In its latest report (Document 13/103) DotEcon confirm its previous analysis and state that *"Telefónica's interpretation of the outcome of the MBSA cannot be verified"*<sup>15</sup>. In that regard, DotEcon note that:

*"The fact that these lots remained unsold simply indicates that none of the bidders submitted a bid for a package that included these lots along with their winning package, and does not provide any information about the level of demand at reserve prices."*<sup>16</sup>

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<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

- 2.50 ComReg agrees with DotEcon's assessment and, in particular, observes that the combinatorial bidding for packages of Lots in the MBSA process means that there may be a number of reasons why particular Lots remained unsold. For example, lots might have been unsold as a consequence of the options available when selecting compatible winning bids from different bidders, rather than a result of reserve prices being set too high and choking off demand.
- 2.51 In light of the above, ComReg agrees with DotEcon's assessment that it would be unsafe to assert that rights to the Award Spectrum were not sold in the MBSA process solely due to the minimum prices set in that process.

**The minimum price should be set to a level an order of magnitude smaller than the minimum price proposed**

- 2.52 In relation to Telefonica's suggestion that the minimum price be lowered to a level that would deter frivolous bidders (which it asserts to be an order of magnitude lower than the minimum price proposed by ComReg), ComReg notes that this issue was generally considered in section 3.4.3 of Document 13/88 and paragraph 53 of Document 13/89.
- 2.53 In that regard, ComReg noted in Document 13/88 that, as in the MBSA, it was not possible to accurately or precisely test the level of overall demand for the Award Spectrum in advance of the proposed release in order to determine whether there is a risk of choking off demand in the process by using a particular methodology for setting the Minimum Price. ComReg then set out a number of factors relevant to the consideration of said risk. Furthermore, ComReg also noted that as the Award Spectrum comprises spectrum rights which were included in the MBSA process and that there are therefore some links between the two processes, it was minded to avoid the risk of discriminating between winning bidders across the two processes. In addition, it was noted that lowering the Minimum Price for the Award Spectrum, relative to the minimum prices used in the MBSA:
- could set bad incentives for bidders in future award processes, as bidders could strategically reduce demand in the first process with the expectation that spectrum rights will go unsold and be made available at a lower price on a later date; and
  - would be less likely to ensure the optimal use of the Award Spectrum in the event that these rights were granted at such a lesser Minimum Price.

2.54 However, Telefónica does not address any of these issues in its response.

2.55 ComReg also notes that this issue has been further considered by DotEcon in its latest report where DotEcon maintains its previous views and states that:

*“Deviating from the approach used for setting minimum prices in the MBSA also risks raising concerns about regulatory uncertainty. There could be undesirable long-term consequences from setting minimum prices significantly below the level used in the MBSA if this encourages parties to defer bidding for rights of use of spectrum in the hope of obtaining similar unsold rights of use spectrum cheaper later.”*<sup>17</sup>

2.56 In light of the above, and noting ComReg’s previous comments about the risk of choking off demand (and factors identified which would mitigate against such a risk), ComReg does not believe that any cogent material has been put before it to indicate that the consequences of such a risk materialising would outweigh the consequences of discriminating between winning bidders across the two processes and, therefore, does not propose to lower the Minimum Price below that proposed in Document 13/88.

### **Splitting the minimum price into an upfront fee and an ongoing SUF**

2.57 Telefónica suggests that there should be a single upfront payment, as determined by the proposed auction, instead of an upfront fee and an ongoing SUF. However, as noted at paragraph 3.49 of Document 13/88, this fee structure is aimed at incentivising Licensees to make optimal use of the spectrum from the earliest point in time and throughout the term of the 1800 MHz Licence. Telefónica does not explain in its response why it believes that this objective is no longer relevant.

2.58 ComReg also notes and agrees with DotEcon’s updated assessment set out in Document 13/103, where DotEcon also notes that *“...in the absence of any compelling reason to take a different approach, we consider that adopting the same fee structure as in the MBSA is preferable in order to meet ComReg’s objectives.”*<sup>18</sup>

2.59 In light of the above, ComReg is of the view that it would not be appropriate to implement Telefonica’s suggested approach.

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<sup>17</sup> Ibid.

<sup>18</sup> Ibid, Fee Structure.

### Calculation of the Reserve Price and Ongoing SUF

2.60 Having considered Telefonica's arguments as discussed above, ComReg is of the view that its Minimum Price proposals set out in section 3.4 of Document 13/88 remain appropriate.

2.61 Given the above, ComReg's final position is that:

- it is appropriate to set a minimum price for the Award Spectrum using the same minimum price methodology as used in the MBSA process;
- the Minimum Price will be adjusted for the shortened licence duration and inflation; and
- the Minimum Price is to be apportioned on a 50/50 basis between an upfront Reserve Price and an annual SUF.

2.62 In the MBSA process the minimum price for one Lot of 1800 MHz spectrum for a 15 year licence was €10 million. Table 3 below sets out the reserve prices and SUFs for 1800 MHz spectrum that were applied in the MBSA process for Time Slice 1 and Time Slice 2.

Spectrum	MBSA TS1 Reserve price	MBSA TS2 Reserve price	MBSA Annual SUF
1800 MHz	€1.27m	€4.13m	€0.54m +CPI

**Table 3: Upfront Payments and SUFs for 1800 MHz spectrum in the MBSA**

2.63 To calculate the reserve price for the Award Process, it is necessary to make the following adjustments for inflation and the shortened licence duration:

- ComReg has applied a real discount rate of 8% consistent with the methodology used in the MBSA process to adjust the Net Present Value (NPV) for an 1800 MHz Licence with duration of 1.5 years (February 2014 to July 2015). This yields a Reserve Price of €0.791 million per Lot expressed in 2012 prices; and
- To account for the different start date of Liberalised Use Licences and any 1800 MHz Licences that may be issued, the NPV also needs to be adjusted for inflation. According to the Central Statistics Office, prices rose by 0.4% between June 2012 and October 2013. Therefore, after an adjustment for inflation, the Reserve Price per Lot would be **€0.794 million** in June 2013 prices.

- 2.64 In relation to the SUF, the annual SUF in the MBSA process was set in relation to a 1 year period and included a mechanism to account for inflation. Therefore no additional changes are required in lieu of a shortened licence duration and different start date associated with this award process. The SUF for one Lot of 1800 MHz spectrum is **€0.54 million plus CPI.**
- 2.65 The SUFs due will be calculated in advance of the commencement of the licence and on the commencement of the second SUF period. In line with the MBSA process, the CPI adjustment to the first SUF will use 1 February 2013 (i.e. the commencement date of the Liberalised Use Licences) as the starting date for the calculation of the CPI. The second SUF payable will be further adjusted for CPI and adjusted on a pro rata daily basis to reflect the fact that it will apply to a period of less than one year.
- 2.66 Table 4 below sets out the final Reserve Price and SUF for one Lot of 1800 MHz spectrum in the Award Process.

Spectrum Rights	Reserve Price	SUF (12 months)
1 Lot of 1800 MHz	€0.794m	€0.54m + CPI adjustment

**Table 4: Reserve Price and SUF for the Award Spectrum**

## 2.4 Transition Issues

### 2.4.1 ComReg's position in Document 13/88

- 2.67 Section 3.5 of Document 13/88 set out ComReg's considerations of the transitional issues that may arise in relation the Award Spectrum and its proposals to include specific transition-related provisions in the Information Memorandum.

### 2.4.2 Respondents' Views

- 2.68 With the exception of Vodafone's suggestion for reduced spectrum fees to take account of transition issues and Telefónica's suggestion for greater flexibility in the regulations (both of which are addressed later in this chapter in the context of "additional issues"), no views were submitted by respondents to Document 13/88 directly relating to this issue.

### 2.4.3 ComReg's Assessment and Final Position

2.69 On the basis of the analysis and reasons provided by ComReg in Document 13/88, and noting that no specific views were received on this matter from interested parties, ComReg remains of the view that it is appropriate to include Transition-related provisions, similar to those included in the MBSA process, in the Award Process including:

- ComReg reserving the right to adopt a Transition Project Plan for transition activities in the 1800 MHz band between Time Slice 1 and Time Slice 2, and to make such a plan binding on all Winning Bidders of the Award Spectrum; and
- making it a condition of participation in the Award Process that, where an 1800 MHz Licensee fails to vacate the Award Spectrum by 12 July 2015, it will agree to pay liquidated damages to ComReg as particularised in the Information Memorandum.

## 2.5 Auction Rules - General

### 2.5.1 Summary of ComReg's position in Document 13/88

2.70 Chapter 4.1 of Document 13/88 discussed a number of general matters associated with the Award Process including amongst other things, the requirement for any competition-based spectrum caps.

2.71 ComReg set out its view that such caps did not appear to be required for the Award Process because an unrestricted process would, in this instance, be unlikely to lead to an extreme outcome which could harm competition and consumer welfare noting, amongst things, the current distribution of 1800 MHz rights of use and the relatively small quantum and short duration of the 1800 MHz Licences.

### 2.5.2 Respondents' Views

2.72 Vodafone did not agree with ComReg's view, stating that *"[t]he 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"*; and proposed the following:

*"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 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”.*

### 2.5.3 DotEcon’s assessment

- 2.73 DotEcon, in its latest report, noted that “[T]he use of spectrum caps is justified when the allocation of spectrum in the award affects the structure of the downstream market and, in particular, the intensity of downstream competition.”<sup>19</sup>
- 2.74 In that regard, DotEcon noted that “[t]his was clearly the situation in the MBSA where spectrum caps were used to avoid the possibility of asymmetric outcomes.”<sup>20</sup>
- 2.75 In relation to the Award Process, however, DotEcon considers that “the outcome of the current award, where only three 2x5MHz lots of short duration are offered, cannot have a material impact on the structure of the downstream market. Therefore, the use of a spectrum caps in this award would constitute an unnecessary restriction on the possible outcomes that cannot be justified by any concerns about downstream competition”.<sup>21</sup>

### 2.5.4 ComReg’s Assessment and Final Position

- 2.76 ComReg notes that one respondent, Vodafone, disagreed with ComReg’s proposal not to apply competition-based spectrum caps and proposed the inclusion of a cap which would effectively re-instate the competition-based spectrum cap applied in the MBSA process.
- 2.77 As explained in Document 13/88, the MBSA competition-based spectrum caps were not intended to apply beyond the date of completion of that process or to necessarily reflect ComReg’s views on the acceptable<sup>22</sup> distribution of mobile spectrum amongst MNOs over time because, amongst other things, these caps were specifically devised in light of the facts and circumstances relevant to the MBSA process.

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<sup>19</sup> Ibid, Spectrum Caps.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> The reference to ‘acceptable’ here is made in light of the various *ex ante* statutory powers available to ComReg which can be used to ensure that there is no restriction or distortion of competition caused by spectrum holdings.



- 2.78 ComReg again notes that some of the factual circumstances surrounding the Award Process are different to those in the MBSA process and, in particular, the relatively small quantum and short duration of the Award Spectrum.
- 2.79 These differences are noted by DotEcon in its latest report such that *“the use of a spectrum caps in this award would constitute an unnecessary restriction on the possible outcomes that cannot be justified by any concerns about downstream competition”*<sup>23</sup>.
- 2.80 ComReg agrees with DotEcon’s analysis and is of the view that, in the context of the present factual matrix and without the application of a competition-based spectrum cap, the potential outcomes of the Award Process would be unlikely to lead to an extreme situation that could materially harm competition in the downstream market.
- 2.81 In light of the above and noting ComReg’s previous analysis set out in section 4.1.2 of Document 13/88, ComReg’s final position is that it will not impose a competition-based spectrum cap for the Award Process.

## **2.6 The Auction Rules - Award Format**

### **2.6.1 Summary of ComReg’s position in Document 13/88**

- 2.82 Section 4.2 of Document 13/88 set out ComReg’s considerations and proposals relating to the setting of an appropriate award format for the Award Process. In summary, ComReg proposed:
- a single sealed-bid approach;
  - a frequency-specific approach;
  - that combinatorial bidding should be permitted; and
  - the use of a second-price rule.

### **2.6.2 Respondents Views**

- 2.83 Telefonica and Vodafone provided comments relevant to these proposals.
- 2.84 Telefonica supported ComReg’s proposals and stated that:

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<sup>23</sup> ComReg Document 13/103, DotEcon Report – Assessment of responses to consultation 13/88, Spectrum Caps.

- *“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”.*

2.85 Vodafone also supported ComReg’s proposals and in particular it stated that:

- *“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”;* and
- *“Given that that a second price rule was used for MBSA it would appear suitable for the auction of this spectrum also”.*

### **2.6.3 ComReg’s Assessment and Final Position**

2.86 On the basis of the analysis and reasons provided by ComReg in Document 13/88, and the views of interested parties on its proposals, ComReg’s final position is that it will implement its award format proposals as set out in section 4.2 of Document 13/88.

2.87 Specifically, the award format for the Award Process will:

- be based on a single sealed-bid approach;
- be based on frequency-specific approach;
- permit combinatorial bidding; and
- use an opportunity cost rule.

## **2.7 Additional Issues Raised**

2.88 A number of additional issues were raised by the respondents to Document 13/88. These are addressed below.

### **2.7.1 Unsold spectrum following the Award Process**

#### **Respondents’ Views**

2.89 Telefónica suggested that ComReg should consider making the Award Spectrum available in an alternative process in the event that some or all of the Award Spectrum remained unsold. It stated that:

- *“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”*; and
- *“in the event that some or all of the spectrum remains unassigned following the auction, then ComReg should adopt a position that makes it available on request, or first come first served basis, or some simple quick method to make it available for use”*.

### **DotEcon’s Assessment**

2.90 DotEcon considered Telefonica’s submissions and, in summary, concludes that *“offering the lots in this award under the provision that any unsold lots in Time Slice 1 will not be offered at a later stage provides the correct incentives for bidders to bid truthfully in the auction.”*<sup>24</sup>

2.91 Factors informing DotEcon’s view include that:

- *“Telefónica’s proposal could materially distort bidding incentives, by creating an incentive to suppress demand in the auction process in the hope of acquiring unsold lots cheaper afterwards. This would seriously undermine the integrity of the proposed award process, not least as it could lead to spectrum being awarded on discriminatory terms (where some users pay the minimum fee and others do not);*<sup>25</sup>  
and
- *“given the proximity of the start date of Time Slice 2, there is very little scope for demand to evolve further after this award and before the start date of H3GI’s licence in Time Slice 2. Consequently, any benefits from releasing spectrum that might be unassigned in this award at a later date would necessarily be small, and would need to be offset against the possible inefficiencies that could result from distorting bidding incentives in this award, and any issues that could arise from offering licences on different terms.”*<sup>26</sup>

### **ComReg’s Assessment and Final Position**

2.92 ComReg notes and agrees with DotEcon’s assessment as outlined above.

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<sup>24</sup> Ibid, Unsold lots following the Award Process.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

- 2.93 Noting the potential for Telefonica's proposal to materially distort the incentives of bidders in the Award Process and to award spectrum on discriminatory terms, ComReg does not consider it appropriate to adopt this proposal.
- 2.94 Moreover, and in the interests of providing the appropriate incentives for bidders in the Award Process, ComReg considers that any unsold spectrum rights in the Award Process should not be made available through an alternative mechanism for a reasonable time period following the award. In that regard, and noting that in the MBSA process any unsold lots would not be allocated for a period of at least a year, ComReg considers that it would be appropriate to set the same time period for the Award Process. Accordingly, ComReg's position is that any Lots not awarded in the Award Process will not be assigned<sup>27</sup> for a period of at least 1 year from the date of ComReg's announcement of the results of the Award Process.

## 2.7.2 Flexibility of Regulations

### Respondents' Views

- 2.95 Telefonica submitted that *"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"*.

### DotEcon's assessment

- 2.96 In Document 13/103, DotEcon sets out its assessment of Telefonica's suggestion and states that *"ComReg should be clear as possible about the terms of the licence in the Information Memorandum given the short duration of these licences and the limited possibility of unforeseen circumstances arising"*<sup>28</sup>.

### ComReg's Assessment and Final Position

- 2.97 In Document 13/88 ComReg stated that *"the new regulations and the 1800 MHz Licences issued thereunder will substantially reflect the Liberalised Use Licence Regulations and Liberalised Use Licences*

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<sup>27</sup> This does not apply to the assigning of any such rights via a Preparatory Licence, a Test Licence, a Trial Licence or a Temporary Business Radio Licence.

<sup>28</sup> ComReg Document 13/103, DotEcon Report – Assessment of responses to consultation 13/88, Transition Issues.

*respectively*". ComReg is of the view that this is the appropriate approach to take to the drafting of the new 1800 MHz Licence regulations because, amongst other things, this reduces the possibility for discriminatory treatment between licence holders in the band.

- 2.98 In addition, ComReg notes that providing any greater flexibility in the 1800 MHz Licence regulations would be of limited benefit given that it would only apply to three 2 × 5 MHz blocks of 1800 MHz spectrum and not the entire band. For instance, any such flexibility might not assist the transition process as other licence holders in the 1800 MHz bands (i.e. a Liberalised Use Licence holder or a GSM 1800 MHz Licence holder) might not have the same flexibility.
- 2.99 Given the above, ComReg remains of the view that the new 1800 MHz regulations should substantially reflect the Liberalised Use Licence Regulations.

### **2.7.3 Reduced Spectrum Fees to account for Transition issues**

#### **Respondents' Views**

2.100 Vodafone stated that:

- *"[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"*;
- it believed that this represented a *"discriminatory feature"* in the proposed Award Process;
- it believed that *"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"*; and
- in light of the above, for operators other than H3GI, *"the SUF should be charged for a two month lesser period to account for the difference in usable duration"*.

#### **DotEcon's assessment**

2.101 In Document 13/103, DotEcon sets out its assessment of Vodafone's suggestion and, overall, DotEcon are of the view that *"Vodafone's proposal has little merit"*. Amongst other things, DotEcon considers that:

- *“Attempting to mitigate any possible value differences between H3GI and any other operator through discriminatory fees are effectively arbitrary administrative decisions and it is not certain that this would necessarily lead to more efficient allocation of the spectrum.”*<sup>29</sup>; and
- *“other factors that may affect the value that different operators may attribute to the spectrum, might include, existing customer base, network topology or synergy values from complementary spectrum already held by an operator (which can be expected to be greater for those operators who hold usage rights on contiguous frequencies.) Trying to in some manner correct for such differences across operators would not be efficient, impartial or reflective of actual opportunity costs. Therefore, focussing only of this aspect of the value difference and implementing Vodafone’s proposal would be difficult to justify.”*<sup>30</sup>

### **ComReg’s Assessment and Final Position**

2.102 Having considered Vodafone’s views and DotEcon’s assessment of same, ComReg does not consider that its proposals are discriminatory in nature or justify the nature of intervention proposed by Vodafone. Factors informing ComReg’s conclusion in this regard include that:

- Vodafone’s principal reason for proposing this approach is 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”*. However, in ComReg’s view, a differentiation in value for certain spectrum holdings across different potential bidders (which, ComReg notes, also clearly existed in the MBSA) would not justify discriminating against a single interested party, H3GI. This would effectively amount to penalising H3GI for successfully bidding for blocks I, J and K in Time Slice 2 in the MBSA and, arguably, make those blocks available to other potential bidders on more favourable terms than the terms under which those blocks were made available to H3GI for Time Slice 1 in the MBSA.
- the nature and costs associated with transition is one of many factors that may affect the specific value that individual bidders may place on the Award Spectrum. For instance other factors include, the other spectrum rights held by potential bidders, the size of a bidder’s

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<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

customer base and the likely level of utilisation of the Award Spectrum, the ability to obtain financial resources at a reasonable cost, etc. Indeed, ComReg and DotEcon noted in the consultation documents that Vodafone and Meteor may place a higher valuation on the Award Spectrum relative to Telefonica due to the location of Award Spectrum (i.e it would be contiguous with the former operator's existing 1800 MHz rights of use). Moreover, it is certainly arguable that existing operators may place greater value on the Award Spectrum relative to prospective new entrants;

- given this, ComReg does not consider it reasonable, practicable or indeed possible for it to accurately quantify the different valuations that existing operators and potential new entrants may place on spectrum rights (given, amongst other things, the substantial information asymmetry that would be faced by ComReg in such an exercise), and then to accurately determine and implement an objectively justified and proportionate mechanism to take these different valuations into account. In that regard, ComReg observes that Vodafone has not provided any empirical basis or other compelling material to support its proposal of a 2 month reduction in SUFs;
- moreover, it does not seem appropriate to ComReg, in the context of non-discrimination, to seek to address only one factor that could give rise to a valuation difference between potential bidders;
- furthermore, ComReg notes that Vodafone's submissions do not address the issue of how its proposal would better result in the optimal use of the Award Spectrum by H3GI and/or other operators; and
- potential bidders, including Vodafone, can take transition issues and costs into consideration in their bidding strategy.

## **2.8 Information Memorandum**

### **Summary of ComReg's position in Document 13/88**

2.103 Annex 2 of Document 13/88 set out ComReg's Draft Information Memorandum.

### **Respondents' views**

2.104 ComReg notes Vodafone's submission that:

- *“Given the time constraints, 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 will be 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”.*

### **ComReg’s assessment and final position**

- 2.105 ComReg notes Vodafone’s submissions and observes that it will have an opportunity to submit questions on the Information Memorandum in accordance with the Question and Answer process identified in same.
- 2.106 ComReg also advises that it has further reviewed the Draft Information Memorandum and has made a number of changes to same which are reflected in the Information Memorandum published alongside this document in Document 13/104 and which interested parties should review.



## Chapter 3

# 3 Decision

3.1 This chapter sets out ComReg's decisions based on ComReg's final position as presented in the preceding chapters.

### 1. DEFINITIONS AND INTERPRETATION

In this Decision, save where the context otherwise admits or requires:

**"1800 MHz band"** means the frequency range 1710 – 1785 MHz paired with 1805 – 1880 MHz;

**"Award Spectrum"** means the frequency range 1750 to 1765 MHz paired with 1845 to 1860 MHz;

**"Apparatus"** means apparatus for wireless telegraphy, as defined in section 2 of the Wireless Telegraphy Act 1926, for terrestrial systems capable of providing Electronic Communications Services in the 1800 MHz band;

**"Authorisation Regulations"** means the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations, 2011 (S.I. No. 335 of 2011);

**"Communications Regulation Act 2002"** means the Communications Regulation Act, 2002, (No. 20 of 2002), as amended;

**"ComReg"** means the Commission for Communications Regulation, established under section 6 of the Communications Regulation Act, 2002;

**"Electronic Communications Service"** has the meaning assigned to it in the Framework Regulations;

**"Framework Regulations"** means the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011);

**"Information Memorandum"** means the information memorandum which was published by ComReg on 14 November 2013 under ComReg Document Number 13/104;

**"1800 MHz Licence"** means a licence to keep and have possession of Apparatus in a specified place in the State granted under section 5 of the

Wireless Telegraphy Act 1926 in accordance with and subject to the matters prescribed in the 1800 MHz Licence Regulations in relation to such a licence;

**“1800 MHz Licence Regulations”** means regulations prescribing relevant matters in relation to 1800 MHz Licences in line with ComReg Document 13/102, made by ComReg under section 6 of the Wireless Telegraphy Act 1926 with the consent of the Minister for Communications, Energy and Natural Resources, pursuant to section 37 of the Communications Regulation Act 2002;

**“Lot”** means a 2 × 5 MHz block of the Award Spectrum;

**“Minister”** means the Minister for Communications, Energy and Natural Resources;

**“Qualified Bidder”** means an applicant who, following consideration of its application by ComReg, has been informed, in accordance with the requirements of the Information Memorandum that its application is compliant and that it is entitled to participate in the competitive selection procedure described herein.

**“Winning Bidder”** means a Qualified Bidder that wins at least one Lot in the competitive selection procedure described herein; and

**“Wireless Telegraphy Act 1926”** means the Wireless Telegraphy Act, 1926 (No. 45 of 1926), as amended.

## 2. DECISION-MAKING CONSIDERATIONS

2.1 In arriving at its decisions in this document, ComReg has had regard to:

(i) the contents of, and the circumstances, materials and reasoning referred to in, as well as the materials provided by respondents in connection with, the below-listed ComReg documents:

- a. 12/25;
- b. 12/52;
- c. 13/88;
- d. 13/102.

(ii) the consultant’s reports commissioned, and the advice obtained, by ComReg in relation to the subject-matter of the documents and materials listed above;

(iii) the powers, functions, objectives and duties of ComReg, including, without limitation those under and by virtue of:

- a. the Communications Regulation Act 2002, and, in particular, sections 10, 12 and 13 thereof;
- b. the applicable Policy Directions made by the Minister under Section 13 of the Communications Regulation Act 2002;
- c. the Framework Regulations, and, in particular, Regulations 13, 16 and 17 thereof;
- d. the Authorisation Regulations, and, in particular, Regulations 9, 10, 11, 12, 15, 16, 17, 18(1)(c) and 19 thereof;
- e. Decision 2009/766/EC of 16 October, 2009, on the harmonisation of the 900 MHz and 1,800 MHz frequency bands for terrestrial systems capable of providing pan-European electronic communications services in the Community, as amended; and
- g. Sections 5 and 6 of the Wireless Telegraphy Act, 1926,

and, noting that it has:

- a. given all interested parties the opportunity to express their views and make their submissions in accordance with Regulation 11 of the Authorisation Regulations and Regulation 12 of the Framework Regulations; and
- b. evaluated the matters to be decided, in accordance with its obligations generally,

as set out in the various chapters of ComReg Document 13/102 and their supporting annexes, ComReg has decided as follows:

### **3. DECISIONS**

- 3.1 subject to obtaining the consent of the Minister to the making by it of the 1800 MHz Licence Regulations, to make those regulations under section 6 of the Wireless Telegraphy Act 1926, prescribing relevant matters in relation to 1800 MHz Licences, including prescribing the form of the licences concerned, their duration and the conditions and restrictions subject to which they are granted, as described in Document 13/102;
- 3.2 under section 5 of the Wireless Telegraphy Act 1926, and pursuant to the 1800 MHz Licence Regulations as made following the obtaining of

ministerial consent thereto, to make available a limited number of individual rights of use for radio frequencies, by way of 1800 MHz Licences, in respect of the Award Spectrum;

- 3.3 to select those parties who will be eligible to be granted an 1800 MHz Licence (that is to say, Winning Bidders) by means of a competitive selection procedure which is more particularly described in Document 13/102 and which will be further particularised in the Information Memorandum (Document 13/104);
- 3.4 to incorporate in the competitive selection procedure, as further particularised in the Information Memorandum, including, inter alia, the following elements:
- 3.4.1 A number of stages including an application stage, a qualification stage, an assessment stage and a notification and grant stage.
- 3.4.2 Rights of use of the Award Spectrum being granted from 1 February 2014 (or such other date as may be specified by ComReg) to 12 July 2015 (or such other date as may be specified by ComReg) and all such rights of use of spectrum granted expiring absolutely on 12 July 2015.
- 3.4.3 Bidders will be required to submit a sealed bid as part of their application form.
- 3.4.4 If there is excess demand for one or more packages, or multiple bids by a single bidder, the winner and price determination rules will be run:
- the Bidding rules, and winner and price determination will be subject to detailed rules set out in the Information Memorandum. Winning bids will be determined by selecting at most one bid from amongst the entirety of bids made by each Qualified Bidder in order to maximise the total value of winning bids subject to not allocating more Lots than are available; and
  - a price calculation methodology as set out in the Information Memorandum, will then be applied to calculate the payable by Winning Bidders on the basis of the opportunity cost of awarding Lots to each Winning Bidder and group of Winning Bidders.

- 3.4.8 No spectrum caps will apply in the competitive selection procedure.
- 3.4.9 Minimum prices to be determined in accordance with the methodology set out in the Information Memorandum, where the final minimum price will be set out in the Information Memorandum, taking account of any additional relevant data at that time.
- 3.4.10 Reimbursement by ComReg of upfront fees and spectrum usage fees (as described in the Information Memorandum) to any Winning Bidder in the event that an 1800 MHz Licence commences later than 1 February 2014, in accordance with the methodology set out in the Information Memorandum.
- 3.5 upon application properly being made to it by Winning Bidders within the terms of the 1800 MHz Licence Regulations as made following the obtaining of Ministerial consent, and on payment of the fees prescribed thereby, to grant 1800 MHz Licences to Winning Bidders, under section 5 of the Wireless Telegraphy Act 1926, for the period, and subject to the conditions and restrictions (including conditions as to revocation), prescribed in the 1800 MHz Licence Regulations, including, as appropriate, the conditions and restrictions described in Document 13/102 and set out in more detail in the Information Memorandum.
- 3.6 to retain its discretion regarding how it might treat any unsold Lots depending on the factual circumstances arising from the award process, save for its decision that unsold spectrum will not be allocated for a reasonable period following after the process, and , in any event, will not be allocated for a period of at 1 year from the date of ComReg's announcement of the results of the competitive selection procedure.

#### **4. STATUTORY POWERS NOT AFFECTED**

4.1. Nothing in this document shall operate to limit ComReg in the exercise of discretions or powers, or the performance of functions or duties, or the attainment of objectives under any laws applicable to ComReg from time to time.

**GERRY FAHY**

**COMMISSIONER**

**THE COMMISSION FOR COMMUNICATIONS REGULATION**

**THE FOURTEENTH DAY OF NOVEMBER 2013**

## Chapter 4

# 4 Next Steps

- 4.1 ComReg has published an Information Memorandum setting out the rules and procedures associated with the Award Process decided upon in the Decision herein.
- 4.2 Subject to obtaining the required ministerial consent, ComReg will then make regulations under the Wireless Telegraphy Acts prescribing relevant matters in relation to licences to be granted to eligible persons following the Award Process.
- 4.3 The indicative timetable for the Award Process is presented in Table 5 of the Information Memorandum in ComReg Document 13/104.

# Annex 1: Legal Framework and Statutory Objectives

- A 1.1 The Communications Regulation Acts 2002-2011<sup>31</sup> (the “2002 Act”), the Common Regulatory Framework (including the Framework and Authorisation Directives<sup>32</sup> as transposed into Irish law by the corresponding Framework and Authorisation Regulations<sup>33</sup>), and the Wireless Telegraphy Acts<sup>34</sup> set out, amongst other things, powers, functions, duties and objectives of ComReg that are relevant to this response to consultation and draft decision.
- A 1.2 Apart from licensing and making regulations in relation to licences, ComReg’s functions include the management of Ireland’s radio frequency spectrum in accordance with ministerial Policy Directions under Section 13 of the 2002 Act, having regard to its objectives under Section 12 of the 2002 Act, Regulation 16 of the Framework Regulations and the provisions of Article 8a of the Framework Directive. ComReg is to carry out its functions effectively, and in a manner serving to ensure that the allocation and assignment of radio frequencies is based on objective, transparent, non-discriminatory and proportionate criteria.
- A 1.3 This annex is intended as a general guide as to ComReg’s role in this area, and not as a definitive or exhaustive legal exposition of

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<sup>31</sup> The Communications Regulation Act 2002, the Communications Regulation (Amendment) Act 2007, the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010 and the Communications Regulation (Postal Services) Act 2011.

<sup>32</sup> Directive No. 2002/21/EC of the European Parliament and of the Council of 7 March 2002 (as amended by Regulation (EC) No. 717/2007 of 27 June 2007, Regulation (EC) No. 544/2009 of 18 June 2009 and Directive 2009/140/EC of the European Parliament and Council of 25 November 2009) (the “Framework Directive”) and Directive No. 2002/20/EC of the European Parliament and of the Council of 7 March 2002 (as amended by Directive 2009/140/EC) (the “Authorisation Directive”)

<sup>33</sup> The European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011) and the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011 (S.I. No. 335 of 2011) respectively.

<sup>34</sup> The Wireless Telegraphy Acts, 1926 and 1956, the Broadcasting Authority Acts, 1960 to 1971, in so far as they amend those Acts, the Wireless Telegraphy Act 1972, Sections 2, 9, 10, 11, 12, 14, 15, 16, 17 and 19 of the Broadcasting and Wireless Telegraphy Act 1988 and Sections 181 (1) to (7) and (9) and Section 182 of the Broadcasting Act 2009.



that role. Further, this annex restricts itself to consideration of those powers, functions, duties and objectives of ComReg that appear most relevant to the matters at hand and generally excludes those not considered relevant (for example, in relation to premium rate services or market analysis). For the avoidance of doubt, however, the inclusion of particular material in this Annex does not necessarily mean that ComReg considers same to be of specific relevance to the matters at hand.

A 1.4 All references in this annex to enactments are to the enactment as amended at the date hereof, unless the context otherwise requires.

## **A1.1 Primary Objectives and Regulatory Principles under the 2002 Act and Common Regulatory Framework**

A 1.5 ComReg's primary objectives in carrying out its statutory functions in the context of electronic communications are to:

- promote competition<sup>35</sup>;
- contribute to the development of the internal market<sup>36</sup>;
- promote the interests of users within the Community<sup>37</sup>;
- ensure the efficient management and use of the radio frequency spectrum in Ireland in accordance with a direction under Section 13 of the 2002 Act<sup>38</sup>; and
- unless otherwise provided for in Regulation 17 of the Framework Regulations, take the utmost account of the desirability of technological neutrality in complying with the

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<sup>35</sup> Section 12 (1)(a)(i) of the 2002 Act.

<sup>36</sup> Section 12 (1)(a)(ii) of the 2002 Act.

<sup>37</sup> Section 12(1)(a)(iii) of the 2002 Act.

<sup>38</sup> Section 12(1)(b) of the 2002 Act. Whilst this objective would appear to be a separate and distinct objective in the 2002 Act, it is noted that, for the purposes of ComReg's activities in relation to ECS and ECN, Article 8 of the Framework Directive identifies "*encouraging efficient use and ensuring the effective management of radio frequencies (and numbering resources)*" as a sub-objective of the broader objective of the promotion of competition.

requirements of the Specific Regulations<sup>39</sup> in particular those designed to ensure effective competition<sup>40</sup>.

### **A1.1.1 Promotion of Competition**

A 1.6 Section 12(2)(a) of the 2002 Act requires ComReg to take all reasonable measures which are aimed at the promotion of competition, including:

- ensuring that users, including disabled users, derive maximum benefit in terms of choice, price and quality;
- ensuring that there is no distortion or restriction of competition in the electronic communications sector; and
- encouraging efficient use and ensuring the effective management of radio frequencies and numbering resources.

A 1.7 In so far as the promotion of competition is concerned, Regulation 16(1)(b) of the Framework Regulations also requires ComReg to:

- ensure that elderly users and users with special social needs derive maximum benefit in terms of choice, price and quality, and
- ensure that, in the transmission of content, there is no distortion or restriction of competition in the electronic communications sector.

A 1.8 Regulation 9(11) of the Authorisation Regulations also provides that ComReg must ensure that radio frequencies are efficiently and effectively used having regard to Section 12(2)(a) of the 2002 Act and Regulations 16(1) and 17(1) of the Framework Regulations. Regulation 9(11) further provides that ComReg must ensure that competition is not distorted by any transfer or accumulation of rights of use for radio frequencies, and, for this

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<sup>39</sup> The 'Specific Regulations' comprise collectively the Framework Regulations, the Authorisation Regulations, the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011 (S.I. No. 334 of 2011), the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011 (S.I. 337 of 2011) and the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (S.I. No. 336 of 2011).

<sup>40</sup> Regulation 16(1)(a) of the Framework Regulations.

purpose, ComReg may take appropriate measures such as mandating the sale or the lease of rights of use for radio frequencies.

### **A1.1.2 Contributing to the Development of the Internal Market**

A 1.9 Section 12(2)(b) of the 2002 Act requires ComReg to take all reasonable measures which are aimed at contributing to the development of the internal market, including:

- removing remaining obstacles to the provision of electronic communications networks, electronic communications services and associated facilities at Community level;
- encouraging the establishment and development of trans-European networks and the interoperability of transnational services and end-to-end connectivity; and
- co-operating with electronic communications national regulatory authorities in other Member States of the Community and with the Commission of the Community in a transparent manner to ensure the development of consistent regulatory practice and the consistent application of Community law in this field.

A 1.10 In so far as contributing to the development of the internal market is concerned, Regulation 16(1)(c) of the Framework Regulations also requires ComReg to co-operate with the Body of European Regulators for Electronic Communications (BEREC) in a transparent manner to ensure the development of consistent regulatory practice and the consistent application of EU law in the field of electronic communications.

### **A1.1.3 Promotion of Interests of Users**

A 1.11 Section 12(2)(c) of the 2002 Act requires ComReg, when exercising its functions in relation to the provision of electronic communications networks and services, to take all reasonable measures which are aimed at the promotion of the interests of users within the Community, including:

- ensuring that all users have access to a universal service;

- ensuring a high level of protection for consumers in their dealings with suppliers, in particular by ensuring the availability of simple and inexpensive dispute resolution procedures carried out by a body that is independent of the parties involved;
- contributing to ensuring a high level of protection of personal data and privacy;
- promoting the provision of clear information, in particular requiring transparency of tariffs and conditions for using publicly available electronic communications services;
- encouraging access to the internet at reasonable cost to users;
- addressing the needs of specific social groups, in particular disabled users; and
- ensuring that the integrity and security of public communications networks are maintained.

A 1.12 In so far as promotion of the interests of users within the EU is concerned, Regulation 16(1)(d) of the Framework Regulations also requires ComReg to:

- address the needs of specific social groups, in particular, elderly users and users with special social needs, and
- promote the ability of end-users to access and distribute information or use applications and services of their choice.

#### **A1.1.4 Regulatory Principles**

A 1.13 In pursuit of its objectives under Regulation 16(1) of the Framework Regulations and Section 12 of the 2002 Act, ComReg must apply objective, transparent, non-discriminatory and proportionate regulatory principles by, amongst other things:

- promoting regulatory predictability by ensuring a consistent regulatory approach over appropriate review periods;

- ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks and services;
- safeguarding competition to the benefit of consumers and promoting, where appropriate, infrastructure-based competition;
- promoting efficient investment and innovation in new and enhanced infrastructures, including by ensuring that any access obligation takes appropriate account of the risk incurred by the investing undertakings and by permitting various cooperative arrangements between investors and parties seeking access to diversify the risk of investment, while ensuring that competition in the market and the principle of non-discrimination are preserved;
- taking due account of the variety of conditions relating to competition and consumers that exist in the various geographic areas within the State; and
- imposing ex-ante regulatory obligations only where there is no effective and sustainable competition and relaxing or lifting such obligations as soon as that condition is fulfilled.

### **A1.1.5 BEREC**

A 1.14 Under Regulation 16(1)(3) of the Framework Regulations, ComReg must:

- having regard to its objectives under Section 12 of the 2002 Act and its functions under the Specific Regulations, actively support the goals of BEREC of promoting greater regulatory co-ordination and coherence; and
- take the utmost account of opinions and common positions adopted by BEREC when adopting decisions for the national market.

### **A1.1.6 Other Obligations Under the 2002 Act**

A 1.15 In carrying out its functions, ComReg is required amongst other things, to:

- seek to ensure that any measures taken by it are proportionate having regard to the objectives set out in Section 12 of the 2002 Act;<sup>41</sup>
- have regard to international developments with regard to electronic communications networks and electronic communications services, associated facilities, postal services, the radio frequency spectrum and numbering<sup>42</sup>; and
- take the utmost account of the desirability that the exercise of its functions aimed at achieving its radio frequency management objectives does not result in discrimination in favour of or against particular types of technology for the provision of ECS.<sup>43</sup>

### **A1.1.7 Policy Directions<sup>44</sup>**

A 1.16 Section 12(4) of the 2002 Act provides that, in carrying out its functions, ComReg must have appropriate regard to policy statements, published by or on behalf of the Government or a Minister of the Government and notified to the Commission, in relation to the economic and social development of the State. Section 13(1) of the 2002 Act requires ComReg to comply with any policy direction given to ComReg by the Minister for Communications, Energy and Natural Resources (“the Minister”) as he or she considers appropriate, in the interests of the proper and effective regulation of the electronic communications market, the management of the radio frequency spectrum in the State and the formulation of policy applicable to such proper and effective regulation and management, to be followed by ComReg in the exercise of its functions. Section 10(1)(b) of the 2002 Act also requires ComReg, in managing the radio frequency spectrum, to do so in accordance with a direction of the Minister under Section 13 of the 2002 Act, while Section 12(1)(b) requires ComReg to ensure the efficient management and use of the radio frequency spectrum in accordance with a direction under Section 13.

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<sup>41</sup> Section 12(3) of the 2002 Act.

<sup>42</sup> Section 12(5) of the 2002 Act.

<sup>43</sup> Section 12(6) of the 2002 Act .

<sup>44</sup> ComReg also notes, and takes due account of, the Spectrum Policy Statement issued by the DCENR in September 2010.

A 1.17 The Policy Directions which are most relevant in this regard include the following:

### **Policy Direction No.3 on Broadband Electronic Communication Networks**

A 1.18 ComReg shall in the exercise of its functions, take into account the national objective regarding broadband rollout, viz, the Government wishes to ensure the widespread availability of open-access, affordable, always-on broadband infrastructure and services for businesses and citizens on a balanced regional basis within three years, on the basis of utilisation of a range of existing and emerging technologies and broadband speeds appropriate to specific categories of service and customers.

A 1.19 ComReg is conscious that the three year objective described in this policy direction has now expired making this direction less relevant currently.

### **Policy Direction No.4 on Industry Sustainability**

A 1.20 ComReg shall ensure that in making regulatory decisions in relation to the electronic communications market, it takes account of the state of the industry and in particular the industry's position in the business cycle and the impact of such decisions on the sustainability of the business of undertakings affected.

### **Policy Direction No.5 on Regulation only where Necessary**

A 1.21 Where ComReg has discretion as to whether to impose regulatory obligations, it shall, before deciding to impose such regulatory obligations on undertakings, examine whether the objectives of such regulatory obligations would be better achieved by forbearance from imposition of such obligations and reliance instead on market forces.

### **Policy Direction No.6 on Regulatory Impact Assessment**

A 1.22 ComReg, before deciding to impose regulatory obligations on undertakings in the market for electronic communications or for the purposes of the management and use of the radio frequency spectrum or for the purposes of the regulation of the postal sector, shall conduct a Regulatory Impact Assessment in accordance with European and International best practice and otherwise in

accordance with measures that may be adopted under the Government's Better Regulation programme.

### **Policy Direction No.7 on Consistency with other Member States**

A 1.23 ComReg shall ensure that, where market circumstances are equivalent, the regulatory obligations imposed on undertakings in the electronic communications market in Ireland should be equivalent to those imposed on undertakings in equivalent positions in other Member States of the European Community.

### **Policy Direction No.11 on the Management of the Radio Frequency Spectrum**

A 1.24 ComReg shall ensure that, in its management of the radio frequency spectrum, it takes account of the interests of all users of the radio frequency spectrum.

### **General Policy Direction No.1 on Competition (2004)**

A 1.25 ComReg shall focus on the promotion of competition as a key objective. Where necessary, ComReg shall implement remedies which counteract or remove barriers to market entry and shall support entry by new players to the market and entry into new sectors by existing players. ComReg shall have a particular focus on:

- market share of new entrants;
- ensuring that the applicable margin attributable to a product at the wholesale level is sufficient to promote and sustain competition;
- price level to the end user;
- competition in the fixed and mobile markets;
- the potential of alternative technology delivery platforms to support competition.



## **A1.2 Other Relevant Obligations under the Framework and Authorisation Regulations**

### **A1.2.1 Framework Regulations**

A 1.26 Regulation 17 of the Framework Regulations governs the management of radio frequencies for electronic communications services. Regulation 17(1) requires that ComReg, subject to any directions issued by the Minister pursuant to Section 13 of the 2002 Act and having regard to its objectives under Section 12 of the 2002 Act and Regulation 16 of the Framework Regulations and the provisions of Article 8a of the Framework Directive, ensure:

- the effective management of radio frequencies for electronic communications services
- that spectrum allocation used for electronic communications services and issuing of general authorisations or individual rights of use for such radio frequencies are based on objective, transparent, non-discriminatory and proportionate criteria, and
- ensure that harmonisation of the use of radio frequency spectrum across the EU is promoted, consistent with the need to ensure its effective and efficient use and in pursuit of benefits for the consumer such as economies of scale and interoperability of services, having regard to all decisions and measures adopted by the European Commission in accordance with Decision No. 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the EU.

A 1.27 Regulation 17(2) provides that, unless otherwise provided in Regulation 17(3), ComReg must ensure that all types of technology used for electronic communications services may be used in the radio frequency bands that are declared available for electronic communications services in the Radio Frequency Plan published under section 35 of the 2002 Act in accordance with EU law.

A 1.28 Regulation 17(3) provides that, notwithstanding Regulation 17(2), ComReg may, through licence conditions or otherwise, provide for

proportionate and non-discriminatory restrictions to the types of radio network or wireless access technology used for electronic communications services where this is necessary to—

- avoid harmful interference,
- protect public health against electromagnetic fields,
- ensure technical quality of service,
- ensure maximisation of radio frequency sharing,
- safeguard the efficient use of spectrum, or
- ensure the fulfilment of a general interest objective as defined by or on behalf of the Government or a Minister of the Government in accordance with Regulation 17(6).

A 1.29 Regulation 17(4) requires that, unless otherwise provided in Regulation 17(5), ComReg must ensure that all types of electronic communications services may be provided in the radio frequency bands, declared available for electronic communications services in the Radio Frequency Plan published under section 35 of the Act of 2002 in accordance with EU law.

A 1.30 Regulation 17(5) provides that, notwithstanding Regulation 17(4), ComReg may provide for proportionate and non-discriminatory restrictions to the types of electronic communications services to be provided, including where necessary, to fulfil a requirement under the International Telecommunication Union Radio Regulations.

A 1.31 Regulation 17(6) requires that measures that require an electronic communications service to be provided in a specific band available for electronic communications services must be justified in order to ensure the fulfilment of a general interest objective as defined by or on behalf of the Government or a Minister of the Government in conformity with EU law such as, but not limited to—

- safety of life,
- the promotion of social, regional or territorial cohesion,
- the avoidance of inefficient use of radio frequencies, or

- the promotion of cultural and linguistic diversity and media pluralism, for example, by the provision of radio and television broadcasting services.

A 1.32 Regulation 17(7) provides that ComReg may only prohibit the provision of any other electronic communications service in a specific radio spectrum frequency band where such a prohibition is justified by the need to protect safety of life services. ComReg may, on an exceptional basis, extend such a measure in order to fulfil other general interest objectives as defined by or on behalf of the Government or a Minister of the Government.

A 1.33 Regulation 17(8) provides that ComReg must, in accordance with Regulation 18, regularly review the necessity of the restrictions referred to in Regulations 17(3) and 17(5) and must make the results of such reviews publicly available.

A 1.34 Regulation 17(9) provides that Regulations 17(2) to (7) only apply to spectrum allocated to be used for electronic communications services, general authorisations issued and individual rights of use for radio frequencies granted after the 1 July 2011. Spectrum allocations, general authorisations and individual rights of use which already existed on the 1 July 2011 Framework Regulations are subject to Regulation 18.

A 1.35 Regulation 17(10) provides that ComReg may, having regard to its objectives under Section 12 of the 2002 Act and Regulation 16 and its functions under the Specific Regulations, lay down rules in order to prevent spectrum hoarding, in particular by setting out strict deadlines for the effective exploitation of the rights of use by the holder of rights and by withdrawing the rights of use in cases of non-compliance with the deadlines. Any rules laid down under this Regulation must be applied in a proportionate, non-discriminatory and transparent manner.

A 1.36 Regulation 17(11) requires ComReg to, in the fulfilment of its obligations under that Regulation, respect relevant international agreements, including the ITU Radio Regulations and any public policy considerations brought to its attention by the Minister.

## **A1.2.2 Authorisation Regulations**

### **Decision to limit rights of use for radio frequencies**

A 1.37 Regulation 9(2) of the Authorisation Regulations provides that ComReg may grant individual rights of use for radio frequencies by way of a licence where it considers that one or more of the following criteria are applicable:

- it is necessary to avoid harmful interference,
- it is necessary to ensure technical quality of service,
- it is necessary to safeguard the efficient use of spectrum, or
- it is necessary to fulfil other objectives of general interest as defined by or on behalf of the Government or a Minister of the Government in conformity with EU law.

A 1.38 Regulation 9(10) of the Authorisation Regulations provides that ComReg must not limit the number of rights of use for radio frequencies to be granted except where this is necessary to ensure the efficient use of radio frequencies in accordance with Regulation 11.

A 1.39 Regulation 9(7) also provides that:

- where individual rights of use for radio frequencies are granted for a period of 10 years or more and such rights may not be transferred or leased between undertakings in accordance with Regulation 19 of the Framework Regulations, ComReg must ensure that criteria set out in Regulation 9(2) apply for the duration of the rights of use, in particular upon a justified request from the holder of the right.
- where ComReg determines that the criteria referred to in Regulation 9(2) are no longer applicable to a right of use for radio frequencies, ComReg must, after a reasonable period and having notified the holder of the individual rights of use, change the individual rights of use into a general authorisation or must ensure that the individual rights of use are made transferable or leasable between undertakings in accordance with Regulation 19 of the Framework Regulations.

## **Publication of procedures**

A 1.40 Regulation 9(4)(a) of the Authorisation Regulations requires that ComReg, having regard to the provisions of Regulation 17 of the Framework Regulations, establish open, objective, transparent, non-discriminatory and proportionate procedures for the granting of rights of use for radio frequencies and cause any such procedures to be made publicly available.

## **Duration of rights of use for radio frequencies**

A 1.41 Regulation 9(6) of the Authorisation Regulations provides that rights of use for radio frequencies must be in force for such period as ComReg considers appropriate having regard to the network or service concerned in view of the objective pursued taking due account of the need to allow for an appropriate period for investment amortisation.

## **Conditions attached to rights of use for radio frequencies**

A 1.42 Regulation 9(5) of the Authorisation Regulations provides that, when granting rights of use for radio frequencies, ComReg must, having regard to the provisions of Regulations 17 and 19 of the Framework Regulations, specify whether such rights may be transferred by the holder of the rights and under what conditions such a transfer may take place.

A 1.43 Regulation 10(1) of the Authorisation Regulations provides that, notwithstanding Section 5 of the 1926 Act, but subject to any regulations under Section 6 of the 1926 Act, ComReg may only attach those conditions listed in Part B of the Schedule to the Authorisation Regulations. Part B lists the following conditions which may be attached to licences:

- Obligation to provide a service or to use a type of technology for which the rights of use for the frequency has been granted including, where appropriate, coverage and quality requirements.
- Effective and efficient use of frequencies in conformity with the Framework Directive and Framework Regulations.
- Technical and operational conditions necessary for the avoidance of harmful interference and for the limitation of

exposure of the general public to electromagnetic fields, where such conditions are different from those included in the general authorisation.

- Maximum duration in conformity with Regulation 9, subject to any changes in the national frequency plan.
- Transfer of rights at the initiative of the rights holder and conditions of such transfer in conformity with the Framework Directive.
- Usage fees in accordance with Regulation 19.
- Any commitments which the undertaking obtaining the usage right has made in the course of a competitive or comparative selection procedure.
- Obligations under relevant international agreements relating to the use of frequencies.
- Obligations specific to an experimental use of radio frequencies.

A 1.44 Regulation 10(2) also requires that any attachment of conditions under Regulation 10(1) to rights of use for radio frequencies must be non-discriminatory, proportionate and transparent and in accordance with Regulation 17 of the Framework Regulations.

### **Procedures for limiting the number of rights of use to be granted for radio frequencies**

A 1.45 Regulation 11(1) of the Authorisation Regulations provides that, where ComReg considers that the number of rights of use to be granted for radio frequencies should be limited it must, without prejudice to Sections 13 and 37 of the 2002 Act:

- give due weight to the need to maximise benefits for users and to facilitate the development of competition, and
- give all interested parties, including users and consumers, the opportunity to express their views in accordance with Regulation 12 of the Framework Regulations.

A 1.46 Regulation 11(2) of the Authorisation Regulations requires that, when granting the limited number of rights of use for radio frequencies it has decided upon, ComReg does so “...on the basis of selection criteria which are objective, transparent, non-discriminatory and proportionate and which give due weight to the achievement of the objectives set out in Section 12 of the 2002 Act and Regulations 16 and 17 of the Framework Regulations.”

A 1.47 Regulation 11(4) provides that where it decides to use competitive or comparative selection procedures, ComReg must, inter alia, ensure that such procedures are fair, reasonable, open and transparent to all interested parties.

### **Fees for spectrum rights of use/licences**

A 1.48 Regulation 19 of the Authorisation Regulations permits ComReg to impose fees for a licence which reflect the need to ensure the optimal use of the radio frequency spectrum.

A 1.49 ComReg is required to ensure that any such fees are objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose and take into account the objectives of ComReg as set out in Section 12 of the 2002 Act and Regulation 16 of the Framework Regulations.

### **Amendment of rights and obligations**

A 1.50 Regulation 15 of the Authorisation Regulations permits ComReg to amend rights and conditions concerning licences, provided that any such amendments may only be made in objectively justified cases and in a proportionate manner, following the process set down in Regulation 15(4).

## **A1.3 Other Relevant Provisions**

### **Wireless Telegraphy Acts**

A 1.51 Under Section 5 of the Wireless Telegraphy Acts, ComReg may, subject to those Acts, and on payment of the prescribed fees (if any), grant to persons licences to keep and have possession of apparatus for wireless telegraphy in any specified place in the State.

A 1.52 Such licences are to be in such form, continue in force for such period and be subject to such conditions and restrictions (including

conditions as to suspension and revocation) as might be prescribed in regard to them by regulations made by ComReg under Section 6.

A 1.53 Section 5(3) also provides that, where it appears appropriate to ComReg, it may, in the interests of the efficient and orderly use of wireless telegraphy, limit the number of licences for any particular class or classes of apparatus for wireless telegraphy granted under Section 5.

A 1.54 Section 6 provides that ComReg may make regulations prescribing in relation to all licences granted by it under section 5, or any particular class or classes of such licences, all or any of the matters following that is to say:

- the form of such licences,
- the period during which such licences continue in force,
- the manner in which, the terms on which, and the period or periods for which such licences may be renewed,
- the circumstances in which or the terms under which such licences are granted,
- the circumstances and manner in which such licences may be suspended or revoked by ComReg,
- the terms and conditions to be observed by the holders of such licences and subject to which such licences are deemed to be granted,
- the fees to be paid on the application, grant or renewal of such licences or classes of such licences, subject to such exceptions as ComReg may prescribe, and the time and manner at and in which such fees are to be paid, and
- matters which such licences do not entitle or authorise the holder to do.

A 1.55 Section 6(2) provides that ComReg may make regulations authorising and providing for the granting of licences under section 5 subject to special terms, conditions, and restrictions to persons



who satisfy it that they require the licences solely for the purpose of conducting experiments in wireless telegraphy.

### **Commission Decision 2009/766/EC on Harmonisation of the 900 MHz and 1800 MHz bands**

A 1.56 ComReg must comply with the provisions of the above Commission Decision which is aimed at harmonising the technical conditions for the availability and efficient use of the 900 MHz band, in accordance with Directive 87/372/EEC, and of the 1800 MHz band for terrestrial systems capable of providing electronic communications services. This decision was recently amended by Commission Decision 2011/251/EU.

### **Article 4 of Directive 2002/77/EC (Competition Directive)**

A 1.57 Article 4 of the Competition Directive provides that:

*“Without prejudice to specific criteria and procedures adopted by Member States to grant rights of use of radio frequencies to providers of radio or television broadcast content services with a view to pursuing general interest objectives in conformity with Community law:*

- *Member States shall not grant exclusive or special rights of use of radio frequencies for the provision of electronic communications services.*
- *The assignment of radio frequencies for electronic communication services shall be based on objective, transparent, non-discriminatory and proportionate criteria.”*

### **Radio Spectrum Policy Programme**

A 1.58 On 15 February 2012, the European Parliament adopted the five-year Radio Spectrum Policy Programme (RSPP).