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Rialáil Cumarsáide
Commission for
Communications Regulation

Spectrum leases in Ireland

Response to Consultation on the framework for spectrum leases in Ireland

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Chapter 1

1 Introduction

1.1 In June 2017, the Commission for Communications Regulation (“ComReg”) began a public consultation (“Consultation 17/47”) on its draft framework for spectrum leases (“Spectrum Lease Framework”) in Ireland.

1.2 Three parties responded to Consultation 17/47 (non-confidential versions of their responses are published by ComReg in Document 17/47s):

- eir Group (Eircom Ltd. and Meteor Mobile Communications Ltd.)(“eir”);
- Three Ireland Ltd (“Three”); and
- Vodafone Ireland Ltd. (“Vodafone”).

1.3 ComReg, having considered the submissions of the above respondents and all other relevant information, has decided upon the final form of the Spectrum Lease Framework. This response to consultation sets out the basis for ComReg’s decision, including its assessment of the respondents’ submissions. The finalised Spectrum Lease Framework¹ is published alongside this response to consultation.

1.4 This response to consultation is structured as follows:

- **Chapter 2:** considers issues related to matters discussed in chapter 2 and 3 of Consultation 17/47, namely:
 - Background information; and
 - Scope of proposed spectrum lease framework;
- **Chapter 3:** considers issues related to chapter 4 and 5 of Consultation 17/47 and other comments received, namely:
 - Proposed procedures for the Spectrum Lease Framework; and
 - Practical considerations with spectrum leases and transfers:
- **Chapter 4:** sets out the next steps; and

¹ ComReg’s Spectrum Lease Framework consists of Document 14/11 R the Framework for Spectrum Transfers and Leases and Spectrum Transfer and Lease Notification Form(s). To note, draft Regulations are subject to the Minister of the Department of Communications Climate Action and Environment (the “DCCA”) providing his consent to implement the finalised Spectrum Leasing Framework into law, and are attached at Annex 2.

- **Annex 1:** Final Regulatory Impact Assessment sets out the next steps.
- **Annex 2:** draft Wireless Telegraphy (Transfer of Spectrum Rights of Use) (Amendment) Regulations 2017.

Chapter 2

2 Background and scope of Spectrum Lease Framework

- 2.1 Chapter 2 of Consultation 17/47 set out the existing “Spectrum Transfer Framework”, established in 2014, and the proposed Spectrum Lease Framework.
- 2.2 In particular, Chapter 2 of Document 17/47 set out the statutory provisions and obligations relevant to spectrum transfers and leases (in these bands) in Ireland such as those set out in the Framework Regulations², the Authorisation Regulations³, the RSPP Decision⁴, the Wireless Telegraphy Act of 1926 (as amended)⁵ and the EU Decision on the 470 to 790 MHz band.

Framework Regulations (chapter 2 of Consultation 17/47)

- 2.3 The Framework Regulations transpose the Framework Directive⁶ into Irish law. Regulation 19 of the Framework Regulations sets out the obligations on ComReg in relation to the transfer or lease of individual rights of use.
- 2.4 Regulation 19 provides that:
- ComReg shall ensure that undertakings may transfer or lease rights of use for radio frequencies to other undertakings, in accordance with conditions attached to such rights of use and any procedures specified by ComReg, in the bands for which this is provided for in accordance with implementing measures adopted by the European Commission under Article 9b(3) of the Framework Directive;
 - ComReg may provide for undertakings to transfer or lease individual rights of use for radio frequencies in bands which are not identified by the European Commission under Article 9b(3) of the Framework Directive, in accordance with any procedures specified by ComReg;

² [S.I. No. 333/2011](#) - European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011.

³ [S.I. No. 335/2011](#) - European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011.

⁴ [Decision No. 243/2012/EU](#) of the European Parliament and of the Council of 14 March 2012 establishing a multiannual Radio Spectrum Policy Programme (the “RSPP Decision”)

⁵ Act No 45 of 1926. See relevant information on <http://www.irishstatutebook.ie>

⁶ The [Framework Directive 2002/21/EC](#) and the [Better Regulation Directive 2009/140/EC](#).

- ComReg shall ensure that the conditions attached to individual rights of use for radio frequencies shall continue to apply after the transfer or lease, unless ComReg specifies otherwise;
- An undertaking intending to transfer a right of use for a radio frequency shall first notify ComReg of its intention to do so, in accordance with the procedures specified by ComReg, and ComReg shall ensure that such notifications are made public; and
- Where the use of a radio frequency has been harmonised through the Radio Spectrum Decision some other EU measures, any transfer or lease of a right of use for that radio frequency shall comply with such harmonised use.

Authorisation Regulations

2.5 The Authorisation Regulations transpose the Authorisation Directive⁷ into Irish law and regulation 9 therein sets out provisions on rights of use for radio frequencies:

- When granting such rights of use, ComReg shall specify whether they may be transferred and, if so, under what conditions; and
- ComReg shall ensure that radio frequencies are efficiently and effectively used and that competition is not distorted by any transfer or accumulation of rights of use for radio frequencies. For this purpose, ComReg may take appropriate measures such as mandating the sale or the lease of rights of use for radio frequencies.

The RSPP Decision

2.6 Article 6(8) of the RSPP Decision requires Member States to allow undertakings to transfer or lease rights of use for radio frequencies in the following harmonised bands: 790-862 MHz, 880-915MHz, 925-960MHz, 1710-1785MHz, 1805-1880MHz, 1900-1980MHz, 2010-2025MHz, 2110-2170MHz, 2.5-2.69GHz and 3.4-3.8GHz (the “RSPP Bands”).

Wireless Telegraphy legislation

2.7 The Wireless Telegraphy Act 1926, as amended, requires any person who possesses or uses “apparatus for wireless telegraphy” to hold a valid licence, unless the particular apparatus has been designated as licence exempt.

⁷ The [Authorisation Directive 2002/20/EC](#) and the [Better Regulation Directive 2009/140/EC](#).

The EU Decision on the 470-790 MHz band

2.8 An EU Decision on the use of the 470 – 790 MHz frequency band came into effect in June 2017.⁸ Article 2 of the Decision obliges Member States to allow the transfer or leasing of rights of use for radio frequencies for electronic communications services in the 694-790 MHz frequency band (the “700 MHz band”):

- *“Upon the granting of the rights of use in the 700 MHz frequency band for terrestrial systems capable of providing wireless broadband electronic communications services, Member States shall allow the transfer or leasing of such rights in accordance with open and transparent procedures pursuant to the applicable Union law.”*

Scope of the proposed Spectrum Lease Framework (chapter 3 of Consultation 17/47)

2.9 Chapter 3 of Consultation 17/47 summarised the scope of the proposed Spectrum Lease Framework, including ComReg’s proposed definition of a spectrum lease (which distinguishes it from a spectrum transfer). Paragraph 3.7 and 3.8 of Consultation 17/47 set out the proposed scope of the Spectrum Lease Framework as follows:

- *“3.7 ComReg proposes a spectrum lease framework which would enable any undertaking (“the Lessor”) to assign a spectrum right of use to another undertaking (“the Lessee”) for a fixed period of time which shall not exceed the period of time for which the spectrum right of use was originally granted (as detailed in the Lessor’s licence) following which the leased spectrum right of use would revert to the Lessor.*

3.8 Therefore, in a spectrum transfer the transferred right of use does not revert to the Transferor but in a spectrum lease the transferred right of use does revert to the Transferor.”

2.10 Responses to matters the discussed in chapters 2 and 3 of Consultation 17/47 are set out and considered below.

2.1 Views of respondents

2.11 In relation to the specific spectrum bands that should fall within the scope of a Spectrum Lease Framework, Three submitted that ComReg should remain open to including spectrum bands other than the RSPB bands. Three submitted that this would “... be in the interest of providing flexibility that could increase spectrum

⁸ <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1496044962133&uri=CELEX:32017D0899>

*efficiency*⁹ and that “... it does not see why ComReg should limit the scope of the process at this time”¹⁰.

2.12 eir submitted views on the scope of the Spectrum Lease Framework (Consultation 17/47, Chapter 3):

- eir submitted that it was not clear that “*the proposed spectrum lease framework is sufficiently dynamic*”. In particular, eir submitted that advances in technology facilitate dynamic frequency sharing which enhances the efficient use of spectrum and eir, in this regard, asked ComReg to confirm that the Spectrum Lease Framework would cater for spectrum sharing.

2.2 ComReg’s assessment

Inclusion of bands other than RSPP bands

2.13 In relation to the bands proposed for inclusion within the scope of the Spectrum Lease Framework (i.e. the RSPP and 700 MHz bands), ComReg considers it is important to set out a framework to cover these bands, as:

- these bands are a scarce and essential input into the concentrated market for the provision of mobile services.¹¹ Therefore, a specific framework setting out how ComReg proposes to assess the potential competitive effects of spectrum lease and transfers in these bands is useful and important, as this provides clarity to interested parties on the procedures for assessing any such transactions in these bands¹²; and

⁹ Page 6 of Three’s submission.

¹⁰ *ibid*

¹¹ There are currently three licensed mobile network operators (MNOs) (eir, Three and Vodafone) supporting 5,900,909 mobile subscriptions in the 800 MHz, 900MHz, 1800 MHz and 2100 MHz radio bands. This includes mobile broadband subscriptions of 306,320, Machine to Machine (M2M) subscriptions of 746,803, and contributions from two MVNOs (Lyca and Tesco) hosted on Three’s network. – ComReg Key Data Report, Data as of Q2 2017, September 2017.

¹² A framework ensures that the competition assessment can be completed in an efficient manner as possible while not unduly delaying the release of spectrum rights of use to alternative users. The benefits of the proposed framework in these bands include:

- A specified timing for conducting the competition assessment (within an indicative timeline of 105 working days to carry out full investigations (see Regulation 7(1) of the draft Regulations);
- Guidance on how ComReg would assess whether or not the result of a transfer or lease in these particular bands could be to a distortion to competition;
- Specified categories of information to be provided as part of a complete notification; and

- the existing legal requirements require ComReg to specify leasing procedures in these bands, noting that ComReg is not restricted in applying this framework to other bands in the future.

2.14 Considering Three's suggestion that additional radio bands be considered for inclusion within the scope of the Spectrum Lease Framework, ComReg is of the view that it may not be appropriate or necessary to extend the proposed leasing framework to other bands at this time, as:

- the practical experience of the Spectrum Transfer Framework in Ireland to date, where no spectrum transfers have been notified, suggests that it is premature to consider expanding this framework to other bands;
- access to radio spectrum in other bands can often be facilitated by direct application to ComReg under an existing licensing mechanism, so secondary market mechanisms may be less needed. Generally there is more spectrum available in these bands, and this availability means that the potential for transactions in these other bands to create competitive distortions, and thus the need to specify a framework for assessing such transactions, is far reduced, as compared to transactions in the RSP and 700 MHz bands which are a scarce and essential input to a concentrated market;
- provisions are generally included in the Wireless Telegraphy ("WT") regulations applying to licences in these other bands to facilitate secondary market transactions where a licensee can seek the consent of ComReg, which cannot be unreasonably withheld, to assign the licence to another undertaking¹³;
- there is nothing preventing licensees in these other bands from submitting a leasing request to ComReg in the future as and when the need arises. Such requests would be assessed and processed in line with the statutory framework for spectrum management in Ireland¹⁴ at that time and the provisions of the Wireless Telegraphy licensing regulations relevant to the request.

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- A detailed procedure on how parties not subject to the lease may engage with an application (i.e. third parties wishing to make submissions about the transfer must do so within 10 working days from the Commencement Date, etc.).

¹³ In addition, in some WT Regulations other secondary market provisions are included. For example, under the Wireless Telegraphy (Third Party Business Radio Licence) Regulations 2005, the licence provides for the use of apparatus for wireless by a person (referred to as the "Secondary Licensee") with whom the Licensee (referred to as the "Primary Licensee") has entered into a contract with, in conformity with a Licence granted under these Regulations (See Regulation 2 therein <http://www.irishstatutebook.ie/eli/2005/si/646/made/en/print>).

¹⁴ See Annex 2 of Document 16/50 ComReg's Radio Spectrum Management Strategy Statement 2016-2018) for an overview of the current statutory framework for spectrum in Ireland.

2.15 Notwithstanding the above, ComReg is also of the view that it may be appropriate to periodically review the list of bands that fall within the scope of the Spectrum Transfer and Lease Framework.

Flexibility of proposed framework

2.16 In relation to eir's submission as to whether "*the proposed framework is sufficiently dynamic*", ComReg would observe that any application made under the Spectrum Lease Framework would require the upfront provision of certain information as specified in the Notification Form¹⁵. If the relevant information touching on any notified spectrum lease should change in some material manner mid-assessment then that would necessitate that the notification be withdrawn and a new notification submitted – i.e. there would be a fresh set of facts to consider and the time period in which to consider would have to start over.

2.17 The procedures under the Spectrum Lease Framework otherwise give undertakings wide flexibility in their leasing arrangements (leases could be for some amount of spectrum, or for a geographic area, or for combinations of both).

2.18 The finalised Spectrum Lease Framework does not address spectrum sharing. ComReg's current position on spectrum sharing and the forms of collaboration between operators is set out at Section 7.4 of its Radio Spectrum Management Strategy Statement 2016-2018.¹⁶

2.3 Radio bands and scope of Spectrum Lease Framework

2.19 ComReg's position on the bands that fall within the scope of the Spectrum Lease Framework is unchanged from Consultation 17/47. Those bands are set out in Schedule 1 to the Regulations and include the following bands:

- 694-790 MHz; 790-862 MHz; 880-915 MHz; 925-960 MHz; 1710-1785 MHz; 1805-1880 MHz; 1900-1980 MHz; 2010-2025 MHz; 2110-2170 MHz; 2500-2690 MHz; 3400-3800 MHz.

2.20 ComReg will periodically review the list of bands that fall within the scope of the Spectrum Transfer and Lease Framework.

¹⁵ The applicable Notification Form for spectrum transfers and leases is set out at Annex 1 in Document 14/11R, published alongside this Response to Consultation.

¹⁶ [Document 16/50](#) on ComReg's Radio Spectrum Management Strategy Statement 2016 – 2018.

Chapter 3

3 Spectrum Lease Framework procedures

Introduction

- 3.1 Chapter 4 of Consultation 17/47 set out ComReg's proposed procedures for the Spectrum Lease Framework. In Section 4.3, ComReg proposed to apply the existing procedures of the Spectrum Transfer Framework to spectrum leases. This means that before any spectrum lease may be put into effect it must first be notified to ComReg. ComReg would then assess whether the lease would be likely to distort competition and would determine if it may be put into effect, with or without conditions, or if it may not be put into effect. ComReg would make such determination at the end of one of the following two phases:
- a Phase 1 investigation taking up to 35 days; or
 - a Phase 2 "full investigation" with an indicative timeframe of up to 105 days.
- 3.2 Chapter 5 of Consultation 17/47 set out ComReg's proposals on the various legislative changes that would be required to give effect to the Spectrum Leasing Framework, such as amending existing regulations so that any required licences may be granted in particular bands.
- 3.3 Submissions on the matters discussed in chapter 4 and 5 of Consultation 17/47 are considered below.

3.1 Respondent's views on proposed procedures in Spectrum Lease Framework

- 3.4 All three respondents expressed support for ComReg's proposed procedures:
- eir had no objection to ComReg using essentially the same framework (i.e. the Spectrum Transfer Framework) for spectrum leases and stated that ComReg's proposal "...will augment the potential for a secondary market to develop in relation to spectrum."
 - Vodafone agreed with the general principle of having an *ex ante* competition assessment and agreed that this would allow for certainty in the implementation of spectrum leases; and

- Three agreed with ComReg as to the intended purpose of spectrum leasing and with many of ComReg's proposed licence conditions.

3.5 However the respondents also set out some issues as outlined below.

3.6 Three and Vodafone submit that ComReg's proposed procedures would create a burden on prospective leasing parties and could be a barrier to small spectrum leases:¹⁷

- Vodafone submitted: *"We would caution however that our experience of Competition Assessment has been that it is complex and this may make the burden involved may make the leasing of small quantities of spectrum, or the leasing of spectrum by small operators impractical [sic]"* and that *"...ComReg should work to ensure that the assessment is proportionate to the spectrum change being made as complexity may make leasing small quantities of spectrum by small operators impractical. [sic]"*
- Three submitted that *"the proposal put forward by ComReg may inhibit the emergence of some valid cases for leasing in practice"* (page 2 of Three's submission).

3.7 Three and eir made the following proposals:¹⁸

- Three submitted that ComReg should consider the possibility of a streamlined approvals process for some types of lease, so that some matters may be concluded quickly with low burden as follows:
 - *"...Three proposes that an additional case or subset of cases should be provided for, where applicants can quickly and easily receive confirmation that a lease will be approved. Three's proposal is that ComReg should*
 - *Provide a streamlined procedure for certain leasing*
 - *This should apply to lease which individually (or in total where there is a lease renewal) have a duration of less than 3 years*
 - *There should be an accelerated approvals process for these lease applications whereby public consultation is not required*
 - *ComReg should respond within 10 working days to confirm approval or refuse approval for stated reasons. Where ComReg*

¹⁷ It was claimed that the potential time ComReg could spend reviewing notifications (i.e. the speed of processing applications), the level of information requirements accompanying applications, and the level of the administration fee of €5,000 would be a barrier to leasing.

¹⁸ More generally, Vodafone submitted that ComReg should *"...work to ensure the assessment is proportionate to the spectrum change"*

has refused approval this should include an option for the applicant to continue using the normal process without having to restart the application clock.

- *There should be no application/administration fee under the streamlined process” (page 7 of Three’s submission)*
- Three gave¹⁹ the following examples in support of its above proposals:
 - *“...in Sweden PTS has exempted small scale leasing from the ex ante approval requirement” (page 5 of Three’s submission)*
 - *“In the USA, where there is long established experience of using market based mechanisms to assign spectrum rights leasing has been permitted since 2003, however in 2004 the FCC further amended their process to allow for immediate processing for certain types of spectrum leasing. These changes removed the public notice and comment period altogether for certain spectrum leasing arrangements in order to streamline the process” (page 5 of Three’s submission)*
 - *draft Article 51 of the draft EECC addresses spectrum transfer and leasing so that Member States shall “submit trading and leasing to the least onerous procedure possible” to which Three claims ComReg’s procedures would fall short of the draft EECC requirements” (page 6 of Three’s submission)²⁰*
- Finally, Three submitted on page 7 of its response that ComReg should conduct a RIA on its modified streamlined option (summarised above).
- eir submitted the following:
 - that there *“...is merit in establishing de minimus thresholds where the review could be undertaken on an ex post basis”;*
 - *“...For reasonably straightforward transactions, such as the leasing of spectrum at a small discrete number of locations we would hope that the*

¹⁹ As part of its submission Three agreed with ComReg’s review of spectrum transfers and leases in other EEA countries (based on the Cullen International documents attached at Annex to Consultation 17/47) and noting that the material *“...provides little insight into the success or otherwise of leasing arrangements.”* *“Most trades seem to have been for transfers rather than leases. (page 5 of Three’s submission)”*.

²⁰ At page 6 of its submission, Three set out that *“ComReg should take a forward-looking approach to any processes it adopts at this time so that in the cases where ComReg can do so they will be ‘ready compliant’ on adoption....Article 51 of the current draft includes a requirement that member states shall ‘submit trading and leasing to the least onerous procedure possible’. Three’s view is that the current process proposed by ComReg falls short of this requirement in particular for ‘small’ leases”*.

phase 1 determination could be completed in a shorter period than the target 35 days”;

- *“...As the framework is untested we believe that the administrative process should be reviewed for efficiency after a few requests / transactions have been processed”.*

3.2 ComReg’s assessment

3.8 ComReg notes that the three respondents broadly agree that the existing procedures of the Spectrum Transfer Framework should apply to spectrum leases though they also submit, in summary, that the review process should not be unduly burdensome and should be proportionate to the size of the proposed lease and should be streamlined and accelerated for certain leases (for example those with less than 3 years duration). ComReg has assessed these submissions under the following headings:

- Speed (that ComReg’s review could take too long);
- Perceived burden (that ComReg’s information requirements could be too burdensome);
- Cost (that €5,000 administration fee could be a barrier to leasing); and
- Points on streamlined process and *de minimus* thresholds.

Speed of ComReg’s assessment process

3.9 All three respondents focused on the longest possible time period for reviewing a notified spectrum lease. However, it is important to note that the potential 35-day duration of a Phase 1 investigation is not a target but an outermost time limit. ComReg is conscious that spectrum leases are commercial agreements and therefore it is generally best that such matters should be assessed as quickly as possible. ComReg will thus endeavour to ensure that all reviews are completed in as short a period of time as possible having regard to the relevant facts – i.e. if a Phase 1 investigation can be completed significantly in advance of the 35-day deadline then ComReg will strive to do so. However if ComReg, applying its best judgement and discretion, considers that it does require the entire 35 days or that it must proceed to a Phase 2 full investigation, then it will do so.

3.10 ComReg would also note that the speed of assessing any notified lease will also be affected by the amount of information submitted by the notifying parties. If a notification is complete and sufficiently detailed (including that it specifies why, in the notifying parties’ opinion, the proposed lease would not distort competition) then that should enable ComReg to conduct a speedy assessment. However, if there is

an information deficit then ComReg's assessment will almost certainly take longer than it otherwise would. The points below on perceived burden are also relevant in this regard.

Perceived burden

- 3.11 The main purpose of the Spectrum Lease Framework is to prohibit transfers or leases that, if they were to proceed, would be likely to result in a distortion to competition. Further, the RSP and 700 MHz bands are a scarce and essential input to the provision of mobile services and so are of particular interest to ComReg in managing the national spectrum resource. ComReg must therefore have all relevant information if it is to conduct a thorough *ex ante* reviews of proposed leases in the RSP and 700 MHz bands.
- 3.12 In relation to the procedures of the Spectrum Lease Framework being burdensome, the framework contains provisions that are designed to reduce the information requirement falling on notifying parties, in certain circumstances.²¹ For example, parties may request a "pre-notification meeting" with ComReg to discuss the information to include in the formal notification and ComReg, on foot of such a meeting, may indicate the type and amount of information that ought be provided. As noted above, and as a general rule, the better the quality and detail of the information provided at the outset, the quicker ComReg can carry out its assessment.
- 3.13 Vodafone submits that, in its experience, competition assessments (presumably of proposed mergers or acquisitions) can be complex and burdensome and that a similar level of assessment of proposed leases, particularly of smaller quantities of spectrum, could be unduly burdensome. ComReg however would note that certain spectrum transfers or leases, particularly those of larger scale, could have very significant impacts on competition if they were to proceed and, consequently, the *ex ante* reviews of such notified transfers or leases must be detailed and thorough. Inevitably this places some information burden on notifying parties. However ComReg will endeavour to apply its best judgement and discretion in an effort to minimise the burden having regard to the relevant facts. Any such administrative burden may also be mitigated by notifying parties through early provision of information to the process.

²¹ See footnote 1 of the Spectrum Lease Notification Form (see Annex 1 of Document 14/11R) in relation to the possibility of using pre-notification meetings to inform ComReg.

3.14 Further, based on its future experience in reviewing notified transfers or leases (there have been no notifications as yet), ComReg may review the framework including the information requirements thereunder.

Cost to notifying undertakings

3.15 For the reasons set out in chapter 4 and in the draft RIA of Consultation 17/47, ComReg proposed adopting the same procedures for reviewing notified transfers and leases in the RSP and 700 MHz bands, applying the same €5,000 administration fee to both.²² ComReg considers that having the same fee for both is appropriate as the procedures are essentially the same, and the same substantive test (whether the transfer / lease is likely to distort competition) would be applied.

3.16 The level of the fee would not, in ComReg's view, be a barrier to leases being notified. It is a once-off fee and its amount is small relative to the value of the spectrum bands as may be notified (as demonstrated by recent awards of rights of use in several of those bands including 800 MHz, 900 MHz, 1800 MHz, and 3.6 GHz).²³ ComReg thus considers that the fee is unlikely to be a barrier to any lease being notified, given the likely value of the transaction to the parties concerned (i.e. the proposed Lessor and Lessee).

Points on streamlining and *de minimis* threshold stage

3.17 In light of the above, ComReg considers that the procedures under the Spectrum Lease Framework are sufficiently flexible to address respondents' views regarding the speed, burden and cost of reviews of notified leases. ComReg considers that the Spectrum Lease Framework will provide for substantially the same beneficial outcome as sought by eir and Three, specifically that the length of certain reviews can be shortened if the facts permit it.²⁴ In addition, ComReg considers that its procedures are the least burdensome possible, given the purpose of the Spectrum Lease Framework, and that any burden can be further reduced in individual cases if appropriate.

3.18 In relation to setting a *de minimis* threshold, ComReg notes the following:

²² Regulation 4 (2) of the Wireless Telegraphy (Transfer of Spectrum Rights of Use) Regulations 2014

²³ <https://www.comreg.ie/industry/radio-spectrum/spectrum-awards/multi-band-spectrum-award-2012/>
<https://www.comreg.ie/industry/radio-spectrum/spectrum-awards/3-6ghz-band-spectrum-award/>

²⁴ ComReg would also note that in drafting the Spectrum Lease Framework it also had regard to the draft European Electronic Communication Code (mentioned by Three at page 3 and 4 of its submission) and ComReg considers that the Spectrum Lease Framework would be consistent with that draft code currently.

- The RSP and 700 MHz spectrum bands are a scarce and essential input to the provision of electronic communications services in a concentrated market and therefore such bands may not be suited to a *de minimus* stage as all potential transactions in those bands are likely to be of interest to ComReg given its statutory remit in managing the national spectrum resource and its obligation to prevent the result of a transfer of lease being a distortion to competition.
- A *de minimus* stage would require a decision by ComReg as to appropriate criteria and these could be somewhat subjective.²⁵

3.19 In relation to Three's proposal and its potential benefits for streamlining leases or renewal of leases of less than 3 years, ComReg considers that such streamlining raises a number of issues.

- In relation to Three's proposal for an accelerated approvals process where public consultation is not required, ComReg observes that public consultations are an important source of information to ComReg that might not be available or disclosed by parties to a lease/transfer, noting that ComReg must apply objective, transparent, and non-discriminatory principles when managing spectrum and must seek to ensure its efficient management and use.
- In relation to Three's proposal for an option for notifying parties to seek ComReg to use the proposed assessment process without restarting the clock in the event ComReg refused a streamlined application, ComReg observes that, in appropriate cases, ComReg may review and approve a notified lease/transfer in less than 35 days.
- In relation to Three's proposal regarding the application fee, and as discussed above in 'Cost to notifying undertakings', ComReg does not consider the level of the fee to be a potential barrier to leasing.

3.20 Additionally, Three has not objectively justified setting 3 years as a threshold criterion²⁶. ComReg observes that the length of a lease of itself is not enough to

²⁵ For example, a de-minimus threshold would require a benchmark below which ComReg could ignore or reduce the extent of its assessment of a lease or transfer and would be indifferent to changes in the level of risk.

²⁶ ComReg notes that Three recognises the subjective nature when setting potential streamlined criteria as follows "... We believe 3 years is the appropriate cut-off, however, it might be that this is slightly more or less" [emphasis added] (page 7 of Three's submission).

guard against a distortion to competition as much damage could arise within short time periods, and that this would depend on the specifics of the lease.

- 3.21 Three also submits that its streamlining proposal should apply to the renewal of leases. ComReg, however, considers that such a provision could create an incentive for undertakings to use a streamlined framework or *de minimus* threshold so as to avoid a full investigation - for example, by renewing leases multiple times that are below the threshold.
- 3.22 ComReg must manage spectrum in accordance with its regulatory principles²⁷ and ComReg, in that regard, considers that there is no justified basis for setting threshold criteria for the streamlining of certain spectrum leases, whether based on the duration or value of such leases or on some other criteria. Instead ComReg will use its best judgment and discretion in each individual case against an overall objective to ensure that reviews of notified leases are no longer than they need to be.
- 3.23 In relation to Three's view that ComReg should conduct a RIA²⁸ on streamlining and eir's proposal that ComReg establish *de minimus* thresholds conducting some reviews *ex post* ComReg's assessment and response is as follows:
- 3.24 Firstly, ComReg has conducted a RIA which considers two high level options (*ex-ante* and *ex-post* assessment of leases) and, based on the information before it, including its assessment of the likely impacts on stakeholders and competition, concludes that the preferred option would be an *ex ante* framework that would apply the same procedures as currently used in the Spectrum Transfer Framework. Three's proposal concerns an 'accelerated approvals process' which would also be *ex-ante* (as Three notes that approval of a lease would still be required by ComReg). It is therefore clear to ComReg that Three appears to support the *ex-ante* assessment of spectrum leases, which was the subject of a RIA.
- 3.25 Three's proposal, however, concerns the practical implementation of the *ex-ante* approvals process whereas the pertinent policy issue at hand in the RIA is whether or not the process should be *ex-ante* or *ex-post* – i.e. not the detail of how that approach is practically implemented. ComReg has considered respondents submissions on the practical implementation of the proposal above and finds no reason to support views that the process should be further streamlined, should be less burdensome, or available at lower cost. In relation, to Three's specific proposal

²⁷ In pursuit of its statutory objectives in managing the radio spectrum ComReg must apply objective, transparent, non-discriminatory and proportionate regulatory principles.

²⁸ ComReg's draft RIA compared two definitive and objective options being an *ex-poste* and *ex-ante* approach to the competition assessment. This RIA was conducted in accordance with ComReg's guidelines on RIA assessment.

on how an ex-ante approach should be implemented, ComReg has set out above its substantive reasons why such an accelerated approvals process would be inappropriate. Consequently, and having regard to ComReg's RIA Guidelines (Document 07/65a and paragraph 2.3 therein²⁹), ComReg does not consider Three's proposal is a valid regulatory option to be considered within the RIA for leasing, and ComReg's final RIA is set out in Annex 1.0.

3.26 ComReg does not see merit in eir's proposal that ComReg conduct an ex post review of certain spectrum leases. ComReg is of the view that all secondary market transactions involving spectrum in the RSPP and 700 MHz bands are likely to be of high interest to ComReg, given its statutory remit and legal obligations, noting that this spectrum is a scarce and essential resources to the concentrated market for the provision of mobile services. The Spectrum Lease Framework is tailored to assess the competitive effects of notified leases in an appropriate timescale whilst preventing the result of a lease being a distortion to competition in these key radio bands.³⁰

Review of Spectrum Lease Framework in the future

3.27 ComReg considers eir's point, in relation to reviewing the process for efficiencies after some transactions have been assessed, to be a reasonable suggestion and that it could, in time, revisit the Spectrum Transfer and Lease Framework with the benefit of its experience in administering the framework and process of leases or transfers, and having regard to the activities and experiences of other NRAs.³¹

²⁹ Paragraph 2.3 of Document 07/65a states that "...ComReg's starting point for any RIA is to identify the issue to be addressed and define the policy objective. ComReg will then identify the available options to address that issue..."

³⁰ There are currently three licensed mobile network operators in Ireland supporting 5,900,909 mobile subscriptions in the 800 MHz, 900MHz, 1800 MHz and 21000 MHz radio bands. This includes mobile broadband subscriptions of 306,320 and M2M subscriptions of 746,803 – ComReg Key Data Report, Data as of Q2 2017, September 2017.

³¹ Three submitted that the PTS (Sweden) and FCC (US) operate streamlined approaches. While ComReg has investigated these further in the preparation of this document, ComReg remains of the view that presently there is little by way of guidance from the international context. The framework for spectrum transfers or leases in different countries can vary substantially to that used in Ireland (e.g. spectrum transfers and leases can have different meanings in different jurisdictions) and further the frameworks in these countries can also vary depending on the bands being considered. Such factors reduces the direct applicability of the international context to Ireland.

3.3 ComReg's position on procedures in Spectrum Lease Framework

3.28 In light of the above assessment, ComReg will maintain the procedures as set out in in Consultation 17/47 and as summarised in this document, namely:

- Before any spectrum lease may be put into effect it must first be notified to ComReg (under Regulation 4 of the draft Wireless Telegraphy (Transfer of Spectrum Rights of Use) (Amendment) Regulations when they are prescribed into law). ComReg would then assess whether the lease would be likely to distort competition (under Regulation 5 of the Regulations) and would determine if it may be put into effect, with or without conditions, or if it may not be put into effect. ComReg would make such determination at the end of one of the following two phases:
 - a Phase 1 investigation taking up to 35 days (under Regulation 6 of the Regulations); or
 - a Phase 2 "full investigation" with an indicative timeframe of up to 105 days (under Regulation 7 of the Regulations).

3.4 Practical considerations with spectrum leases and transfers, and other comments received

3.29 In chapter 5 of Consultation 17/47 ComReg set out its views on a number of spectrum leasing matters including on the accumulation of spectrum rights of use, ensuring that all applicably licence conditions would will continue to apply after spectrum had been leased, and proposals to implement the Spectrum Lease Framework by amending the Wireless Telegraphy ("WT") regulations.

Views of respondents on chapter 5 of Consultation 17/47³²

3.30 Two respondents, eir and Three, submitted views on the issue of ensuring that licence conditions would continue to apply after a spectrum lease:

- Three stated: *"We agree with many of the specific proposals put forward by ComReg regarding licence conditions and responsibilities..."* (page 2 of Three's submission);
- eir stated: *"We note ComReg's discussion in Section 5.2 regarding the continuation of licence conditions and that whether licence conditions apply to*

³² No views were submitted in relation to ComReg's views on accumulation of spectrum usage rights, and as a result ComReg's position on this matter is as set out at Chapter 5.1 of Consultation 17/47.

the lessor, the lessee, or both may need to be approached on a case by case basis. In the case where a licence condition applies to both parties, ComReg should clarify how it would approach enforcing a breach of licence obligation. We assume that ComReg would focus its activity on the licensee in breach and we request ComReg to confirm this”.

3.31 eir, on the necessary legislative amendment to create the Spectrum Lease Framework, submitted as follows:

- *“Regulation 3(6) appears to establish the licence expiry date as a finite date. It is conceivable that a leasing arrangement could be entered into on the basis that the spectrum may be leased until the lessor has use for the spectrum itself. The duration of the lease would therefore be subject to a notice period to be served by the lessor. Regulation 3(6) should be amended as ‘A leased right of use shall remain in effect until the date the lease licence is due to expire as specified in the lease licence unless amended by, or until it is withdrawn by the Commission or withdrawn up request of the lessor or lessee in accordance with the terms of the lease. ...”*
- *“The section title prior to Regulation 8(9) should refer to the 3.6 GHz band.”*

Other comments

1.) Timing of consultation

3.32 eir submitted that ComReg may not have the Spectrum Lease Framework in place by 31 July 2017 and that there may be imminent demand to lease of spectrum rights of use in the 3.6 GHz band. eir stated: *“As continuity of existing service provision may be relevant in this timeframe we would welcome confirmation from ComReg that it will administer retrospective approval approach for any spectrum leasing arrangements entered into in the 3.6 GHz band in the July / August window when current the current FWALA licences expire.*

3.33 Three considered the timing of the consultation to be appropriate, with several relevant bands already in use and the 3.6 GHz award process about to move into transition phase.

2.) “Market mechanisms – Horses for Courses”

3.34 Three submits that *“Assignment by Regulator”, “Spectrum Transfer”* and *“Spectrum Lease”* are market mechanisms with attributes. For each market mechanism Three submits a list of six attributes as follows:

- Term (which Three considers would be the effective duration of the spectrum rights granted via one of the market mechanisms);
 - Speed of assignment;
 - Burden to obtain;
 - Investment required;
 - Implications for original licence conditions; and
 - Impact on competition.
- 3.35 For example, Three submits that auctions are *"Long term"* and *"Very slow to complete"* whereas transfers are *"Medium term, Can be slow, Can involve a high burden, Can have an impact on competition"*, and leases are *"Short term, Should be quick to complete, Should be low burden to obtain... Unlikely to impact competition"*.

3.5 ComReg's assessment and position on practical considerations on spectrum leases and transfers, and its response to other comments received

Licence conditions

- 3.36 On the points made by Three and eir in relation to ensuring that licence conditions continue to apply after a lease, ComReg notes that Three agreed with ComReg's position as set out in Chapter 5.2 of Consultation 17/47. Further, eir is correct in its assumption that ComReg will focus on the licensee where there has been a breach of a licence condition. As a result, ComReg's proposal on ensuring that licence conditions shall continue to apply after a lease have been completed – as set out in paragraphs 5.4 – 5.11 of Consultation 17/47 – is unchanged.

Legislative proposals to implement the Spectrum Lease Framework and the effective duration of a spectrum lease

- 3.37 In relation to eir's view that Regulation 3(6) of draft Wireless Telegraphy (Transfer of Spectrum Rights of Use) (Amendment) Regulations, as set out in Consultation 17/47 that the effective duration of a spectrum lease should be redefined so as to provide for a notice period served by a lessor or lessee, ComReg considers that negotiated commercial terms between undertakings would enable a lessor to terminate its lease before the expiry of a Spectrum Lease Licence. The return of

that Spectrum Lease Licence is solely a matter for the lessee who holds same.³³ ComReg therefore does not see any requirement to amend the text Regulation 3(6).

3.38 In relation to eir's point that Regulation 9(8) should also refer to the 3.6 GHz radio band, ComReg agrees and will correct the reference in the final Regulations accordingly.

Other comments received and ComReg's responses

1.) Response to timing of consultation

3.39 In relation to the comments about the timing of the Consultation, ComReg would first point out that Regulations 4 – 9 inclusive of the Wireless Telegraphy (3.6 GHz Band Licences) Regulations 2016 (the "3.6 GHz Band Regulations") provide for ComReg to grant and issue a Spectrum Lease Licence in the 3.6 GHz radio band, and these Regulations were signed into law on 21 October 2016.

3.40 ComReg would thus note that there is no administrative impediment to undertakings seeking to lease spectrum in the 3.6 GHz band, even if the Spectrum Lease Framework would not yet be in effect, and parties interested in notifying ComReg about potential transfers and leases may contact ComReg in this regard.

2.) Response to "Market Mechanisms – Horses for Courses"

3.41 ComReg's response to Three's views on market mechanisms, and each of the six attributes identified by Three, is set out below.

Term

3.42 Three sets out that an Assignment by Regulator is "*Long term*", a Spectrum Transfer is "*Medium term*", and a Spectrum Lease is "*Short term*".

3.43 In ComReg's view the duration of spectrum rights granted to an undertaking in an auction, transfer or lease cannot be classified into distinct time period categories, as this depends on the circumstances of the lease, transfer or award process at hand.

³³ In any case ComReg would point out that if a lease agreement is terminated prior to the date of expiry of the Lease Licence, that there is nothing in the Lessor's licence preventing it from exercising its original spectrum rights under its licence. As an aside, interested parties are also reminded that in the event of a Lessor's licence being terminated or returned to ComReg, a lessee's licence may also be withdrawn and terminated by ComReg (as per draft Regulation 3(6) in the proposed Wireless Telegraphy (Transfer of Rights of Use)(Amendment) Regulations 2017)).

- 3.44 For example, ComReg notes a lease may be short or long term, a transfer may occur at the start of a licence or any point thereafter and so could also be short or long term, and the duration of rights of use awarded in auction are so determined under specific considerations to the award at hand.
- 3.45 Furthermore, ComReg notes that a lease may replicate the effects on competition of a transfer and as such any differences between these transactions is not solely dependent on the term.
- 3.46 Similarly, a transfer or lease could have similar impacts on competition compared to an auction, if any such transfer or lease was concluded soon after the primary award.
- 3.47 In light of the above, ComReg observes that the *term* of a spectrum right of use is context specific and is not an attribute that has pre-defined characteristics depending on the specific market mechanism as suggested by Three.

Speed of assignment

- 3.48 Three submits that the Assignment by Regulator (e.g. via an auction) is “*Very slow to complete*”. Three also submits that Spectrum Transfer “*Can be slow to compete*” and that Spectrum Lease “*Should be quick to complete*”.
- 3.49 ComReg notes that the length of time to complete a spectrum lease or a transfer is likely to vary depending on the circumstances of the lease or transfer. While certain leases or transfers are likely to be completed expeditiously, leases or transfers which have the potential to distort competition, could take a longer time to complete. In this regard, ComReg observes that the time period to assess a transfer or lease might be similar where the circumstances are similar.
- 3.50 In relation to Three’s point that the assignment of spectrum by a regulator (e.g. via an auction) is “*Very slow to complete*”, ComReg observes that the time to complete an auction is wholly dependent on the particular circumstances at hand. For example, some auctions can be completed relatively expeditiously (e.g. single sealed bid, auctions with specialised software, etc). Needless to say, it is the process of designing an appropriate award process that may require preparation time.
- 3.51 ComReg is therefore of the view that the speed of assignment is context specific and is not an attribute that has pre-defined characteristics depending on the specific market mechanism as suggested by Three.

Burden to obtain, and investment required

- 3.52 Three submits that Assignment by Regulator is “*High burden to obtain*” and “*Large investment required*”. Three submits that Spectrum Transfer “*Can involve a high burden to obtain*” and “*Lower investment than auction*”. Three submits that Spectrum Lease “*Should be low burden to obtain*” and “*Lower investment than auction/transfer*”.
- 3.53 ComReg notes that the investment required (to obtain spectrum rights) may be larger under an auction format, as spectrum rights are for the full licence duration, and could be for more than one radio band.
- 3.54 In ComReg’s view, however, the scale of any investment required for spectrum rights depends on a wide variety of other factors (be it the users’ business case, type and amount of spectrum, level of return on investment sought, availability of infrastructure, level of harmonisation, etc.). As a result, ComReg would not consider the *investment required* to be an attribute of market mechanisms.
- 3.55 For example, in an auction the final price for spectrum should reflect the value attached to it by a winning bidder at that time. Similarly, the value users attach to spectrum on the secondary market would also depend on the set of circumstances prevailing in the market at that time, which could be higher or lower than the initial spectrum valuation.
- 3.56 In relation to Three’s point that the burden to obtain spectrum rights is less or more depending on the market mechanism, ComReg notes that a competition assessment may involve consideration of a wide variety of different and sometimes complex facts and circumstances depending on the market dynamics at a particular time. So while there could be far more information requirements associated with certain secondary market transactions than others, what is important to note is that ComReg would adopt an appropriate approach to ensure that competition is not distorted. As a result, *burden* (please see Section 3.2 and paragraph 3.11 above for ComReg’s consideration of perceived burden in the proposed Spectrum Lease Framework) would depend on circumstances at hand.
- 3.57 As a result, in ComReg’s view, ComReg considers that burden and investment required are context specific and do not have pre-defined characteristics depending on the specific market mechanism as suggested by Three.

Implications for original licence conditions

- 3.58 Three submits that an original licence award would set the original licence conditions. Three also submits that in a Spectrum Transfer licence conditions transfer and, in a spectrum lease the licence conditions do not transfer.
- 3.59 ComReg would agree with Three's view that an original licence award would set the original licence conditions. ComReg would also agree with Three that in a spectrum transfer the licence conditions transfer.
- 3.60 In relation to spectrum leases, ComReg observes that the treatment of licence conditions is context specific and cannot be defined as *not transferable* as Three suggests. In addition ComReg notes that Three elsewhere in its submission agrees with ComReg's view, thus supporting the context specific nature of this potential attribute.³⁴

Impact on competition

- 3.61 Three submits that an Assignment by the Regulator "*Can have significant impact on competition*". Three also submits that Spectrum Transfer "*Can have impact on competition [sic]*" and that a Spectrum Lease would be "*Unlikely to impact competition*".
- 3.62 Given the characteristics of this market (see section 2.1 above), and as ComReg cannot predict what lease applications might arise in the future, it is important that ComReg is open to considering the potential impact on competition of each potential market mechanism on its own merit. ComReg notes that short-term leases could have the potential to distort competition and damage a market as could long term leases or outright transfers.
- 3.63 Three provides no objective justification for its views in relation to the potential impact on competition under each market mechanism. In contrast, ComReg has set out a framework for the competition assessment of notified transfers and leases within the statutory framework for spectrum in Ireland. The framework is tailored to prevent the result of a transfer or lease being a distortion to competition and allows for each transaction to be considered on its own merit. As such, in ComReg's view, it is not possible to generalise the impact on competition in the way Three submits, as the impact on competition of any transaction may only become apparent following investigation.

³⁴ Three states at page 1 of its submission that "*We agree with many of the specific proposals put forward by ComReg regarding licence conditions and responsibilities*"

Summary

- 3.64 In summary, ComReg has considered Three's views on *Market Mechanisms – Horses for Courses*, but would caution that the extent to which Three generalises the attributes of market mechanisms. In addition, in ComReg's view, Three's views on *Market Mechanisms – Horses for Courses* does not add any particular insight in relation to the proposed Spectrum Lease Framework.
- 3.65 In light of the above, ComReg will therefore continue to consider each potential market mechanism on its own merit and in line with its statutory functions, objectives and duties.

Chapter 4

4 Next steps

3.66 Requests for spectrum leases by undertakings in the RSPP and 700 MHz bands may be submitted to ComReg in accordance with the procedures specified in this document.

3.67 Though the draft Regulations are subject to the Minister of the Department of Communications Climate Action and Environment (the “DCCAÉ”) providing his consent to implement the finalised Spectrum Leasing Framework into law, ComReg would point out that there is no impediment to leasing applications being submitted in advance of the completion of that process, and that its competition assessment may proceed in accordance with ComReg’s statutory functions objectives and duties in relation to spectrum.

3.68 The following document entitled “*Procedures and Guidelines, and Notification Forms*” (Document 14/11) is revised and published alongside this Response to Consultation as follows:

- Spectrum Transfer and Lease Framework in Ireland “*Procedures and Guidelines, and Notification Form(s)*”, (“Document 14/11R”).

3.69 Relevant undertakings interested in notifying their intention to lease or transfer spectrum rights of use in the bands set out in Schedule 1 of the applicable Regulations, should contact

Spectrum Licensing Manager

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Annex 1: The Final RIA on the procedures for the competition assessment of notified spectrum leases

Introduction

- A 1.1 This Annex sets out ComReg's Regulatory Impact Assessment (RIA) on the procedures for the competition assessment of spectrum leases, and draws upon the final RIA for spectrum transfers as set out in Annex 2 of ComReg Document 14/10³⁵ (the "Transfer RIA").
- A 1.2 Spectrum leases and transfers are related but distinct mechanisms.
- Spectrum leases and transfers are related in so far as both mechanisms can increase the efficient use of spectrum by allowing another party rights to the spectrum rights of use.
 - Spectrum leases and transfers are distinct from each other in that:
 - a spectrum transfer is the assignment by a licensee (the "Transferor") of some or all of a right of use granted under a licence to another party (the "Transferee"). A spectrum transfer is permanent in that the transferred right of use *does not* revert to the Transferor; and
 - the assignment by a licensee (the "Lessor") of some or all of a spectrum right of use held under licence to another undertaking (the "Lessee") for a set period of time shall expire prior to the expiry of the leased right of use as specified in the Lessor's licence, after which the leased right of use shall revert to the Lessor.
- A 1.3 This RIA has been drafted having regard to relevant information such as:
- the responses submitted to Document 12/76;

³⁵ ComReg Document 14/10 put in place a framework to consider proposals for the full or partial transfer of spectrum rights of use within the RSPB bands. Annex 2 of Document 14/10 sets out ComReg's RIA on the procedure for assessing the potential effects of spectrum trades on competition. The RIA contained in Document 14/10 did not specifically consider spectrum leases.

- the responses received to ComReg's consultation on the radio spectrum management strategy for 2016 to 2018 (Document 15/131) in relation spectrum leases³⁶; and
- responses submitted to Document 17/47 and ComReg's positions set out in the associated Response to Consultation (i.e. this Document).

RIA Framework

A 1.4 In general terms, a RIA is an analysis of the likely effect of a proposed new regulation or regulatory change, and, indeed, of whether regulation is necessary at all. A RIA should help identify the most effective and least burdensome regulatory option and should seek to establish whether a proposed regulation or regulatory change is likely to achieve the desired objectives, having considered relevant alternatives and the impacts on stakeholders. In conducting a RIA, the aim is to ensure that all proposed measures are appropriate, effective, proportionate and justified.

Structure of a RIA

A 1.5 As set out in ComReg's RIA Guidelines,³⁷ there are five steps in a RIA. These are:

Step 1: Identify the policy issues and identify the objectives.

Step 2: Identify and describe the regulatory options.

Step 3: Determine the impacts on stakeholders.

Step 4: Determine the impact on competition.

Step 5: Assess the impacts and choose the best option.

A 1.6 In the following sections ComReg identifies the relevant stakeholder groups, specific policy issues to be addressed and relevant objectives (i.e. Step 1 of the RIA process). This is followed by the identification of two fundamental policy issues.

A 1.7 ComReg then considers these two policy issues in separate RIAs, in accordance with the four remaining steps of ComReg's RIA process.

³⁶ A summary of the views submitted and ComReg's response to same is set out in Section 3.3.5 of ComReg's response to consultation document (Document 16/49).

³⁷ See Document 07/56a - Guidelines on ComReg's approach to Regulatory Impact Assessment - August 2007.

Identification of stakeholders

- A 1.8 The focus of Step 3 is to assess the impact of the proposed regulatory options available to ComReg on stakeholders. A precursor to the subsequent steps in the RIA, therefore, is to identify the relevant stakeholders. Stakeholders consist of two main groups:
- consumers; and
 - industry stakeholders.
- A 1.9 There are a number of key industry stakeholders in relation to the matters considered in this chapter: These are:
- potential Lessors, including;
 - existing License holders in the RSPP Bands; and
 - potential future Licence holders in the 700 MHz and RSPP bands;
 - potential Lessees, including;
 - potential new entrants; and
 - existing incumbent operators.
- A 1.10 The focus of Step 4 is to assess the impact on competition of the proposed regulatory options available to ComReg. In that regard, ComReg notes that it has various statutory, objectives, regulatory principles and duties which are relevant to the issue of competition.
- A 1.11 Of themselves, the various RIA guidelines and the RIA Policy Direction provide little guidance on how much weight should be given to the positions and views of each stakeholder group (Step 3), or the impact on competition (Step 4). Accordingly, ComReg has been guided by its statutory objectives which it is obliged to pursue when exercising its functions. ComReg's statutory objectives in managing the radio frequency spectrum, as set out in Annex 1 to Document 16/50 include:
- the promotion of competition;
 - contributing to the development of the internal market; and
 - to promote the interest of users within the Community.
- A 1.12 In this document, ComReg has adopted the following structure in relation to Step 3 and Step 4 – the impact on industry stakeholders is considered first, followed by the impact on competition, followed by the impact on consumers. The order of this assessment does not reflect any assessment of the relative importance of these issues but rather reflects a logical progression. For

example, a measure which safeguards and promotes competition should also, in turn, impact positively on consumers. In that regard, the assessment of the impact on consumers draws substantially upon the assessment carried out in respect of the impact on competition.

Identify the policy issues & identify the objectives (Step 1)

Policy Issues

- A 1.13 Under Regulation 19(1) of the Framework Regulations, ComReg is required to ensure that undertakings may transfer or lease their spectrum rights of use, subject to various other provisions including Regulation 9(11) of the Authorisation Regulations which requires ComReg to ensure that radio frequencies are efficiently and effectively used. Regulation 9(11) of the Authorisation Regulations also empowers ComReg to take appropriate measures such as mandating the sale or the lease of rights of use for radio frequencies.
- A 1.14 In setting out a procedure for assessing the competition impacts of spectrum leasing which reflects its relevant statutory functions, duties and objectives, ComReg does not wish to adversely affect the extent to which leases or transfers (noting that transfers are a related mechanism to leases) would otherwise take place. ComReg also does not wish to reduce incentives to engage in leases which would be neutral in terms of any effects on competition, or which may result in more efficient uses of spectrum to the benefit of consumers without having any distortive effect upon competition.
- A 1.15 ComReg is therefore of the view that the primary policy issue to be addressed is the procedures for how to assess the potential effects of spectrum leases on competition.

Objectives

- A 1.16 ComReg's statutory functions, objectives and duties in relation to radio spectrum are set out in Annex 1 of to Document 16/50. In particular, one of its core statutory objectives under section 12 of the 2002 Act of promoting competition by, among other things:
- Ensuring that users derive maximum benefit in terms of choice, price and quality;
 - Encouraging efficient use and ensuring effective management of radio frequencies;
 - Ensuring that there is no distortion or restriction of competition in the electronic communications sector;

- Contributing to the development of the internal market; and
- Promoting the interest of EU citizens.

Identify and describe the regulatory options (Step 2)

A 1.17 An important consideration in the choice of procedures for the competition assessment of spectrum leases is the potential for Type 1 or Type 2 errors. These errors are described as follows:

- A Type 1 error would arise where the assessment process resulted in a lease being blocked, where that lease would not have a distortive effect on competition.
- A Type 2 error would arise where the assessment process allowed a lease to proceed, where that lease would have a distortive effect on competition.

A 1.18 If the goal is to minimise Type 1 errors, the process should be designed so that all leases are allowed in principle, with specific leases contested only where it is very clear that the trade would result in a distortion to competition.

A 1.19 If the goal is to minimise Type 2 errors, all leases would be blocked in principle and only allowed to proceed in cases where it is very clear that the lease would not result in a distortion to competition.

A 1.20 The competition impacts of spectrum leasing could be assessed by relying solely on an *ex-post* review (i.e. minimise Type 1 errors) or by introducing an *ex-ante* (minimise Type 2 errors) framework.

A 1.21 Therefore the two options under consideration are as follows:

Option 1 – An *ex-post* competition assessment under Section 4 and/or 5 of the Competition Act 2002.

A 1.22 Under Option 1 all proposed spectrum leases notified to ComReg pursuant to Regulation 19 of the Framework Regulations could be implemented without the need for prior approval from ComReg. Regulatory intervention could arise after the lease has been implemented if there is a suspected breach of sections 4 and/or 5 of the Competition Act 2002³⁸ - i.e. unlawful arrangements between undertakings and/or an abuse of dominance.

A 1.23 An *ex-post* procedure, therefore could be considered as a 'do nothing' option, in that it would not involve a new framework per se, but rather would involve relying on existing legislative provisions for the assessment of the competition

³⁸ [Competition Act 2002](#) (no 14 of 2002) as amended

impacts of spectrum leases. This approach would reduce or eliminate the potential for Type 1 errors but could increase the likelihood of Type 2 errors.

Option 2 – An *ex-ante* competition assessment using the procedures specified in the Spectrum Transfer Framework.

A 1.24 Under an *ex-ante* framework all proposed spectrum leases notified to ComReg pursuant to Regulation 19 of the Framework Regulations, would be subject to prior assessment by ComReg, before it could be implemented, and ComReg could either allow or disallow any notified lease, or it could allow such a lease subject to one or both parties accepting certain conditions. This approach would reduce or eliminate Type 2 errors but it could give rise to Type 1 errors. A lease which is approved under such an *ex-ante* framework would still be subject to the provisions of the Competition Act 2002.

Impact on stakeholders (step 3)

A 1.25 A lease that is subject to an *ex-post* investigation under Option 1 could create a number of difficulties for stakeholders which any stakeholder would likely prefer to avoid. These include:

- Competition cases tend to be lengthy, and can take in the region of **at least two years** to reach the full trial of the action.³⁹
- A business can be fined up to €5 million or 10% of its annual business turnover, whichever is greater, if convicted on indictment;
- The possibility of third party damages actions⁴⁰ in the future as a result of behaviour brought about from a lease;
- The potential unwinding of the spectrum lease is likely to be highly disruptive and could potentially be very costly for businesses involved;⁴¹
- The risk of reputational damage connected with an infringement; and
- The uncertainty as to future viability of services dependant on the lease.

³⁹ European Commission, Ireland Report, John Meade, p17.

⁴⁰ Follow-on actions are facilitated by a provision in the Competition (Amendment) Act 2012 whereby a finding by an Irish court of a breach of sections 4 or 5 of the Competition Act, or Articles 101 or 102 TFEU, will be regarded as already adjudicated and unnecessary to be considered again in any subsequent civil proceedings.

⁴¹ Secondly, implementation of a trade may involve significant sunk costs on the part of the trading parties. If, on the basis of *ex-post* intervention, the trading parties were required to comply with a court decision to terminate a trade and reverse its effects, this could involve significant additional costs and administrative burdens on the trading parties to unwind the transaction

- A 1.26 Therefore, a key factor in assessing a stakeholders preferred option concerns the likelihood of an *ex-post* intervention by ComReg.
- A 1.27 Under an *ex-post* investigation under the Competition Act 2002, with a Court having final decision in the matter, the burden of proof lies with ComReg to establish that:
- a lease constituted or formed part of an agreement(s) between undertakings, decisions by associations of undertakings and/or a concerted practice which had as their object or effect the prevention, restriction or distortion of competition in trade in a market or markets for electronic communications; and/or
 - an abuse⁴² by one or more undertakings of a dominant position in trade for electronic communications services in the State or in any part of the State had occurred.
- A 1.28 As a result, *ex-post* enforcement of spectrum leases would likely be difficult to enforce. A spectrum lease would likely involve only one aspect of many interrelated factors required to assess whether there has been a breach of section 4 and or section 5 of the Competition Act 2002. Furthermore, since a spectrum lease is only an intermediate input in providing services to end users, it would be difficult, in certain cases, to assess whether any *ex-post* market outcomes resulted from the effect of the lease or other reasons related to the behaviour of others thus limiting ComReg's ability to intervene *ex-post*. As a result, an operator or operators that may seek to benefit from engaging in a lease that could raise competition concerns would likely prefer Option 1 over Option 2.
- A 1.29 Therefore, where the likelihood of *ex-post* intervention is not high stakeholders may prefer Option 1 for a number of reasons, including that it would:
- reduce the administrative burden and compliance costs for the notifying parties at the outset of any trade;
 - likely lead to faster implementation of the lease as an *ex-ante* regulatory approval process would not be required to put the lease into effect;
 - provide additional certainty to new entrants that their entry would not be restricted or delayed from regulatory approval; and

⁴² For example, the lease may:

- (a) be used to inform whether an undertaking had a dominant position where an abuse of that dominant position is alleged; or
- (b) be part of the action subject to the abuse of a dominant position.

- allow operators to benefit from anti-competitive actions where implemented.

A 1.30 Alternatively, provided the process for granting approval to a lease was appropriate and did not unduly delay the process of leasing spectrum rights of use stakeholders may prefer Option 2.

A 1.31 If stakeholders consider that the likelihood of an *ex-post* intervention is high or if there is sufficient uncertainty between either the Lessor or the Lessee about the competitive nature of the trade, stakeholders may prefer option 2 for a number of reasons including that:

- it provides assurance that if a lease is cleared *ex-ante* that it will not be subject to a future *ex-post* enforcement action on the specifics of the lease;
- the lease will be assessed within a fixed timetable. There is no timetable for *ex-post* enforcements which could continue indefinitely; and
- it ensures that spectrum leases are assessed on the same basis as spectrum transfers.

A 1.32 As noted by Eircom in its response to Document 12/76 in reference to the transfer framework:

“We believe that this can be achieved with an ex-ante regime that is consistent with the broader competition framework and a process that works to conclude assessments in a prompt manner. In this context, we agree that it is prudent to initially adopt an ex-ante framework for all proposed spectrum trades.”
[Emphasis added]

A 1.33 ComReg’s proposal is that the distortion to competition assessment would take the form of a two phase assessment and this should provide the notifying parties with a reasonable level of certainty in terms of timelines.

- Phase 1 assessments would take place within **35 working days** after the Commencement Date and would have mandatory timelines within which ComReg must comply with (see for example Regulation 6(1) of the Spectrum Transfer Regulations for the spectrum transfer procedure).
- In Phase 2 assessments ComReg would be required, in so far as practicable, to keep within the indicative timeline of **105 working days** for carrying out full investigations (see for example Regulation 7(1) of the Spectrum Transfer Regulations for the spectrum transfer procedure)⁴³

⁴³ In Document 14/10 ComReg observed that it would like keep the issue of indicative timelines under review in light of the experience gained and lessons learned once the Spectrum Transfer Framework is

- A 1.34 In addition Eircom in its response to Document 15/131 observe the value in ensuring that spectrum leases are assessed on the same basis as spectrum transfers. Eir notes that *“we believe that an over-arching objective should be to ensure that the leasing framework is established in accordance with the same principles and operates with the same checks and balances consistently with the already established trading framework. As ComReg notes in the footnote it will be important “to ensure that potential transfer/leasing parties do not have incentives to “game” the respective review processes.” [Emphasis added]*
- A 1.35 All three respondents to Consultation 17/47 expressed support for ComReg’s proposed procedures⁴⁴:
- eir had no objection to ComReg using essentially the same framework (i.e. the Spectrum Transfer Framework) for spectrum leases and stated that ComReg's proposal *“...will augment the potential for a secondary market to develop in relation to spectrum.”*
 - Vodafone agreed with the general principle of having an ex ante competition assessment and agreed that this would allow for certainty in the implementation of spectrum leases; and
 - Three agreed with ComReg as to the intended purpose of spectrum leasing and with many of ComReg's proposed licence conditions.
- A 1.36 Therefore, while certain stakeholders may prefer Option 1, ComReg is of the view that, on balance, stakeholders are likely to prefer Option 2.

Impact on competition (Step 4)

- A 1.37 Given that the spectrum transfer regime is currently governed by an *ex-ante* framework, an *ex-post* regime for leasing would likely have a negative impact on competition. In particular, it could lead to certain interested parties reverting to the leasing framework at the expense of spectrum transfers. This would prevent the *ex-ante* assessment of some spectrum trades, which could have a negative impact on competition due to the likely increase in Type 2 errors.
- A 1.38 More generally, spectrum leases could create a more efficient assignment of spectrum and improve competition by creating new entry and improving service provision of smaller incumbents. Insofar as the lease has a positive

up and running. However, there has been no spectrum transfers since the beginning of the Spectrum Transfer Framework, and therefore ComReg will continue to keep the issue of indicative timelines under review.

⁴⁴ Please see Chapter 3.1 of the Response to Consultation 17/47 for ComReg's assessment of respondents' views on this matter, in particular noting that respondents provided views as to *how* they considered the framework should operate at an implementation level.

impact on competition, and in the absence of Type 2 errors, the benefits for competition (and consumers) would be achieved regardless of whether ComReg chose Option 1 or Option 2, although such benefits would likely occur earlier under Option 1.

- A 1.39 Such "pro-competition" leases could be somewhat delayed under an *ex-ante* framework (Option 2), with the length of delay being determined by the assessment process put in place and the nature of the lease itself. Option 1 would also remove the potential for Type 1 errors.
- A 1.40 However, under Option 1, it may be difficult to establish, through an *ex-post* investigation that any perceived distortion in competition is attributable to a spectrum lease which has already occurred. Any post-lease market developments which were negative in terms of the effect on competition may arise directly from the lease, but on the other hand they may result from other causes unrelated to the lease. The potential difficulties in linking a lease to the resultant negative effects on competition could reduce ComReg's ability to effectively intervene in cases where a lease which has been implemented, appears to be having anti-competitive effects on a market.
- A 1.41 Also, because it is often far more difficult and costly to unwind a commercial transaction rather than to prevent it from occurring in the first place, it may be especially difficult to convince a court that a spectrum lease should be dissolved and unwound, in order to reverse its anti-competitive effects.
- A 1.42 Subjecting a proposed lease to an *ex-ante* assessment of its likely effects upon competition would likely provide better protection for existing competition in any market, since leases that would likely result in a distortion to competition would not proceed after the review process. However if the test was too restrictive, it could prevent leases which, on balance, are pro-competitive or neutral as to their effect upon competition (Type 1 errors). On the other hand, if the test was too loose, it could fail to prevent trades which are likely to result in a distortion in competition (Type 2 errors).
- A 1.43 Provided that the test applied under an *ex-ante* framework is appropriate, ComReg could determine that a proposed lease which is likely to result in a distortion in competition may not be put into effect, or may be put into effect subject to conditions specified by ComReg being complied with.
- A 1.44 Finally, the RSPP bands are important bands that have been identified as necessary to support increasing demand for wireless data traffic. For example, existing spectrum rights of use in the 800 MHz, 900 MHz, 1800 MHz and 2100 MHz bands are used to provide services to 5,900,909 mobile subscribers in Ireland, including mobile broadband and Machine to Machine ('M2M') subscriptions (valid as of Q2 2017). ComReg is therefore of the view that

Option 2 and an appropriate *ex-ante* assessment is particularly important for these bands as the potential for distortions to competition are more likely to arise as these bands are scarce and essential inputs to the provision of mobile services in this concentrated market.

A 1.45 Therefore, ComReg is of the preliminary view that Option 2 would have the most positive impact on competition.

Impact on consumers

A 1.46 Under Option 1, consumers may benefit from the earlier implementation of leases which, on balance, were pro-competitive or neutral as to their effect upon competition. Such benefits would likely result from increased efficiencies and lower incurred costs for undertakings, leading to improved services and/or lower retail prices.

A 1.47 However, under Option 1, a distortion to competition resulting from a spectrum lease may have already occurred by the time an investigation by ComReg commences, and such *ex-post* investigations often take a considerable length of time to complete and are dependent upon the requisite amount of evidence being found. Therefore, consumers may have already been negatively affected by the time any such investigation commences and may continue to be negatively affected for a considerable period of time thereafter. Further, depending on the particular circumstances, it may be difficult to reverse the negative effects that have occurred to competition or compensate consumers who have been negatively affected.

A 1.48 An *ex-ante* framework might result in a slower implementation of notified leases as regulatory approval would be required before parties could proceed with the lease. As result under an *ex-ante* framework, consumers would likely have to wait longer for spectrum leases to proceed, and would therefore have to wait longer for the resultant benefits to flow from such leases. However, as noted above, ComReg proposes that a spectrum lease would be assessed within a certain timetable. The framework provides for certain leases which are unlikely to raise competition concerns to be assessed within 35 working days or potentially up to no more than 105 working days. Therefore, the extent of any delay is likely to be limited unlike an *ex-post* intervention which is an indefinite process and is likely to last at least two years.

A 1.49 Furthermore, any such delays under an *ex-ante* framework would protect consumers by ensuring that spectrum leases which are likely to result in a distortion in competition may not be put into effect, or may only be put into effect subject to conditions specified by ComReg being complied with.

A 1.50 Finally, as described above, Option 2 would have the most positive impact on competition. Therefore, by extension, Option 2 would be better for consumers than Option 1. Therefore, ComReg is of the preliminary view that consumers would prefer Option 2.

ComReg's Preferred Option

A 1.51 ComReg is of the view that an *ex-ante* framework for spectrum leases is preferable and that the procedures for this *ex-ante* framework should be the same as that used for the Spectrum Transfer Framework.

A 1.52 While the procedures for the Spectrum Transfer Framework remain to be tested ComReg is of the view that these procedures are appropriately designed for determining whether or not the result of a spectrum transfer or lease in the RSPB Bands would be a distortion to competition. Among other things, these procedures:

- are not overly onerous on the parties involved,
- provide the notifying parties and third parties with proper opportunity to submit their views to ComReg and for ComReg to consider those submissions and, if required, to seek additional information to assist ComReg's assessment,
- provide for determination at the end of either phase 1 (without a full investigation) or phase 2 (with a full investigation); and
- ensure that ComReg's assessment is carried out in a timely manner.

A 1.53 Further, ComReg will periodically review how the Spectrum Transfer and Lease Framework is operating in practice.

A 1.54 If an *ex-post* regime was used for spectrum leases or if the *ex-ante* framework for spectrum leases was different to that used for spectrum transfers, ComReg observes that this may provide improper incentives where undesirable consequences might arise. For example, undertakings might have an incentive to engineer a transaction to fit within the spectrum lease framework in order to avoid the *ex-ante* assessment of a spectrum transfer. Transactions which could have a distortive effect on competition would then be allowed, whereas such transactions would have been blocked or approved with conditions under the Spectrum Transfer Framework. Applying the same competition assessment procedures to both spectrum leases and transfers avoids such undesirable consequences.

A 1.55 ComReg recognises that under an *ex-ante* framework, in the case of leases which were pro-competitive or neutral as to their effects upon competition, the parties thereto and consumers would have to wait longer for such trades to be

implemented. However, to the extent that any such delay may disadvantage the leasing parties and/or consumers, such disadvantage is likely to be outweighed by the following benefits of an *ex-ante* framework:

- It would be consistent with the Spectrum Transfer Framework thus avoiding the potential for regulatory shopping between the transfer and lease frameworks and the negative effects this may have.;
- It would provide greater certainty to the market that competition would be protected. This is a particularly important consideration in light of the spectrum bands where spectrum leases would be allowed, namely the spectrum bands suitable for mobile wireless broadband;
- It would better enable ComReg to prevent anticompetitive effects in the market (resulting from leases) and would therefore better protect the interest of consumers. This is a particularly important consideration in light of the number of mobile subscribers that are currently supported with these bands 5,900,909.
- It would pre-empt any structural competition concerns before they materialise. This is particularly important in light of the spectrum bands where spectrum leases would be allowed.

Annex 2: DRAFT Wireless Telegraphy Regulations

A 1.56 The draft Regulations, as presented in draft format, are subject to the Minister providing his consent under section 37 of the Communications Regulation Act 2002, as amended, and therefore in this respect may be subject to further change.

STATUTORY INSTRUMENTS

S.I. No. of 2017

Wireless Telegraphy (Transfer of Spectrum Rights of Use) (Amendment) Regulations 2017

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The Commission for Communications Regulation, in exercise of the powers conferred on it by section 6(1) of the Wireless Telegraphy Act 1926 (No. 45 of 1926) (as amended by section 182 of the Broadcasting Act 2009 (No. 18 of 2009)) and for the purposes of giving effect to Regulation 19 of the European Communities (Electronic Communications Network and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011) and Regulation 9(11) of the European Communities (Electronic Communications Network and Services) (Authorisation) Regulations 2011 (S.I. No. 335 of 2011) and with the consent of the Minister for Communications, Climate Action and Environment pursuant to section 37 of the Communications Regulation Act 2002 (No. 20 of 2002), hereby makes the following Regulations:

Citation

1. (1) These Regulations may be cited as the Wireless Telegraphy (Transfer of Spectrum Rights of Use) (Amendment) Regulations 2017.

(2) The Wireless Telegraphy (Transfer of Spectrum Rights of Use) Regulations 2014 (S.I. No. 34 of 2014) and these Regulations may be cited together as the Wireless Telegraphy (Transfer of Spectrum Rights of Use) Regulations, 2014 and 2017 and shall be construed together as one.

Amendment

2. The Wireless Telegraphy (Transfer of Spectrum Rights of Use) Regulations 2014 are amended by substituting for Regulations 2 to 8 the following Regulations 2 to 9.

“Interpretation

2. (1) In these Regulations, unless the context otherwise requires:

“Act of 1926” means Wireless Telegraphy Act 1926 (No. 45 of 1926);

“Act of 2002” means Communications Regulation Act 2002 (No. 20 of 2002);

“assessment commencement date” means the date on which the Commission commences its assessment of a proposed transfer which in any event shall be on the working day following receipt of a valid notification in accordance with Regulation 4;

“Authorisation Regulations” means European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011 (S.I. No. 335 of 2011);

“Commission” means Commission for Communications Regulation;

“condition” means an obligation on the part of an undertaking arising by virtue of a proposal put forward by it being subject to a statement in writing by the Commission such as is mentioned in Regulation 5(5);

“electronic communications network”, “electronic communications service” and “associated facilities” have the meanings assigned to them in the Framework Regulations;

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

“lease” means the assignment by a Licensee (the “lessor”) of some or all of a right of use granted under a licence for a period less than the remaining duration of the right of use to another party (the “lessee”), after which the right of use reverts to the lessor;

“licence” means a licence granted in accordance with section 5 of the Act of 1926 to keep, have possession of, install, maintain, work and use apparatus for wireless telegraphy in any specified place in the State or in any specified ship or other vessel or aircraft;

“licensee” means the holder of a licence for the time being in force;

“notification” means a notification of a proposed transfer made to the Commission under Regulation 4(1);

“notification fee” means the administrative fee payable by the notifying parties pursuant to Regulation 4(2);

“notifying party” means the transferor and/or the transferee as the context so requires;

“right of use” means the right of a licensee to use certain radio frequencies within the spectrum bands set out in the Schedule and which frequencies are specified in a licence subject to such conditions and restrictions as prescribed by the licence itself or by any Regulations governing the licence made by the Commission under section 6 of the Act of 1926;

“Schedule” means the schedule to these Regulations;

“transfer” means the assignment by a licensee (“the transferor”) of some or all of a right of use granted under a licence to another party (“the transferee”).

(2) In these Regulations –

(a) a reference to an enactment or regulation shall be construed as a reference to the enactment or regulation as amended or extended by or under any subsequent enactment or regulation;

(b) a reference to a Regulation or a Schedule is to a Regulation or Schedule to these Regulations, unless it is indicated that a reference to some other enactment is intended; and

(c) a reference to a paragraph or subparagraph is to the paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended.

(3) A word or expression that is used in these Regulations and that is also used in the Act of 1926 has, unless the context otherwise requires, the same meaning in these Regulations as it has in that Act;

(4) A word or expression that is used in these Regulations and that is also used in the Act of 2002 has, unless the context otherwise requires, the same meaning in these Regulations as it has in that Act;

(5) A word or expression that is used in these Regulations and that is also used in the Framework Regulations or the Authorisation Regulations has, unless the context otherwise requires, the same meaning in these Regulations as it has in those Regulations;

Transfer or Lease, or both, of a spectrum right of use

3. (1) These Regulations apply to any proposed transfer or lease of rights of use in the spectrum bands set out in the Schedule 1.

(2) The regulations under which licences are granted to use rights of use in the spectrum bands set out in Schedule 1 are hereby amended solely for the purpose of permitting the transfer or lease of those rights of use in accordance with these Regulations.

(3) For the purposes of these Regulations a transfer occurs when a transferee lawfully acquires one or more rights of use from a transferor and the transferor divests itself of all such rights of use. The transferor and the transferee must be undertakings. The lessor and lessee must be undertakings.

(4) A transfer or lease, or both, notified under Regulation 4(1) must be submitted by the notifying parties in accordance with procedures specified by the Commission and shall be assessed by the Commission in accordance with guidelines published by the Commission, which may be varied by the Commission from time to time.

(5) A transferred right of use shall remain in effect for the remainder of the term of the transferor's licence in which the transferred right of use was originally vested and shall expire in full on the same date as the transferor's licence was due to expire and shall not be renewed or extended beyond that date.

(6) A leased right of use shall remain in effect until the date the lease licence is due to expire as specified in the lease licence unless amended by, or until it is withdrawn by the Commission or withdrawn upon request by the lessee. A lease licence shall not be renewed or extended beyond the date specified in the lease licence without the Commission setting out a determination in accordance with these Regulations, which shall require a full notification to be furnished to the Commission by the notifying parties accordingly.

(7) Save as otherwise provided in these Regulations, no part of these Regulations shall operate so as to amend an existing licence condition or to enable or permit a licensee to avoid compliance with any licence condition save where the Commission gives its prior consent in writing to any such amendment or condition not being complied with.

(8) These Regulations shall not apply to any transfer that forms part of a merger or acquisition which is required to be notified to the Competition Authority in accordance with Part 3 of the Competition Acts 2002 to 2012 or to the European Commission in accordance with Council Regulation (EC) No 139/2004. The Commission must be informed of any such merger or acquisition at the same time it is notified to the Competition Authority or the European Commission, as appropriate.

Notification of Proposed Transfer or Lease, or both

4. (1) Where a proposed transfer or lease, or both, to which these Regulations apply is intended or will occur if a public bid that is made is accepted, the transferor and the transferee, or the lessor and the lessee, or both sets of undertakings, shall notify the Commission in writing of the proposed transfer or lease. The notification shall be provided in such format and contain such information and documentation as the Commission may specify.

(2) A notification under paragraph (1) shall be accompanied by an administrative fee of €5,000.

(3) A notification under paragraph (1) shall be invalid if any of the information or documentation required by the Commission or the notification fee is not provided to the Commission in full or if any statement made is found to be false or misleading in a material respect. Any determination made by the Commission on foot of such a notification is void.

Examination by the Commission of notification

5. (1) Within 7 working days of the receipt of a notification in accordance with Regulation 4, the Commission shall cause a notice to be published on its website setting out details in respect of the notification and inviting interested parties to make submissions in writing to the Commission no later than 10 working days after the date of publication of such notice, or such shorter or longer period as the Commission may specify. The Commission shall consider all submissions received in writing within the period specified pursuant to this paragraph.

(2) The notifying parties shall, if so requested by the Commission by notice in writing, furnish within a time period specified by the Commission, such additional information as the Commission may reasonably require at any stage of an assessment of a notification. The Commission may extend the time period specified pursuant to this paragraph at the request of the notifying parties.

(3) Save where the Commission states otherwise in writing, where the Commission requires further information to be furnished to it pursuant to paragraph (2) during either the initial stage of its assessment and/or during the full investigation, the time periods indicated in Regulations 6(1) and 7(1) of these Regulations shall be suspended until such information has been provided to the satisfaction of the Commission.

(4) In the course of its assessment of a notification, the Commission may enter into discussions with the notifying parties with a view to identifying measures which would ameliorate any effects of the notified transfer or lease, or both, on competition.

(5) In the course of any discussions entered into pursuant to paragraph (4), any of the notifying parties may submit proposals to the Commission of the kind mentioned in paragraph (6) with a view to the proposals becoming binding on it or them if the Commission takes the proposals into account and states in writing that the proposals form the basis or part of the basis of its determination under Regulation 6 or 7.

(6) The proposals referred to in paragraph (5) are proposals with regard to the manner in which the transfer or lease, or both, may be put into effect or to the adoption of any other measure referred to in paragraph (4).

(7) Where a transfer or lease, or both, notified in accordance with Regulation 5, a measure identified under paragraph (4) or a proposal made under paragraph (5) would involve amending a condition of an existing licence, the Commission shall review any such amendment of a licence condition having regard to its statutory functions, objectives and duties and the relevant facts including the circumstances under which the licence was first granted and is held at that time. Such review may include public consultation.

(8) Where a review under paragraph (7) is required, the time periods indicated in Regulations 7(1) and 8(1) of these Regulations may be suspended by the Commission until such time as the Commission has concluded its review pursuant to paragraph (7) and made a determination in respect of the proposed amendment to the relevant licence condition.

Determination of issues concerned without full investigation

6. (1) In respect of a notification received in accordance with Regulation 4, the Commission shall, subject to Regulation 5, within 35 working days of the assessment commencement date, inform the notifying parties of one of the following determinations:

(a) that the transfer or lease, or both, may be put into effect on the grounds that, in the opinion of the Commission, the result of the transfer or lease, or both, would not be to distort competition;

(b) that the transfer or lease, or both, may be put into effect subject to conditions specified by the Commission being complied with on the grounds that, in the opinion of the Commission, the result of the transfer, or lease, or both, will not be to distort competition if the conditions so specified are complied with; or

(c) that it intends to carry out a full investigation under Regulation 7 in relation to the proposed transfer, or lease, or both (referred to as a “full investigation”).

(2) Where the Commission makes a determination under subparagraph (a) or (b) of paragraph (1), it shall publish on its website that determination with due regard for confidentiality, within 2 months after the making of the determination.

Determination of issues following a full investigation

7. (1) Within 5 working days of informing the parties of its determination to carry out a full investigation pursuant to subparagraph (c) of paragraph (1) of Regulation 6, the Commission shall form an opinion of the time period necessary to carry out a full investigation (referred to as a “provisional time period”), which shall not, in so far as practicable, and subject to Regulation 5, exceed 105 working days from the forming of that opinion. The Commission shall inform the notifying parties of the provisional time period in writing. Where the Commission does not make a determination under paragraph (2) within the provisional time period, the full investigation may continue according to revised timelines and the Commission may determine further provisional time period(s) and will inform the notifying parties accordingly.

(2) On completion of a full investigation, the Commission shall make whichever of the following determinations it considers appropriate, namely that the transfer:

(a) may be put into effect on the grounds that, in the opinion of the Commission, the result of the transfer or lease, or both will not be to distort competition;

(b) may be put into effect subject to conditions specified by the Commission being complied with on the grounds that, in the opinion of the Commission, the result of the transfer or lease, or both will not be to distort competition if the conditions so specified are complied with; or

(c) may not be put into effect on the grounds that, in the opinion of the Commission, the result of the transfer or lease, or both, will be to distort competition.

(3) Before making a determination under paragraph (2), the Commission shall have regard to any relevant international obligations of the State.

(4) Where the Commission makes a determination under paragraph (2), it shall furnish the notifying parties a copy of the written determination within the time period specified by the Commission under

paragraph (1) and will publish on its website the determination with due regard for commercial confidentiality, within 2 months after the making of the determination.

Limitation on transfer or lease, or both, being put into effect

8. (1) A transfer or lease, or both, that has been notified to the Commission in accordance with Regulation 4 shall subject to paragraph (3), not be put into effect until:

(a) the Commission, in pursuance of Regulation 5, has determined under Regulation 6(1)(a) or (b) or Regulation 7(2)(a) or (b) that the transfer, or lease, or both may be put into effect;

or

(b) subject to Regulation 5, a period of 35 working days after the assessment commencement date has elapsed without the Commission having informed the notifying parties of the determination (if any) it has made under Regulation 6;

whichever first occurs.

(2) Any transfer or lease, or both which purports to be put into effect where the putting into effect contravenes paragraph (1), is void.

(3) Any transfer or lease, or both, which purports to be put into effect following the occurrence of one of the events listed in paragraph (1) must be put into effect within 12 months of the day immediately following the date on which that event occurs, or it shall be void.

(4) A transfer or lease, or both, which purports to be put into effect, where that putting into effect would contravene Regulation 4 shall be void.

(5) The Commission may refuse to consider a notification where the proposed transfer or lease, or both, is dependent upon the proposed transferee or lessee, or both, becoming an authorised undertaking under the Authorisation Regulations, and the transferee or lessee, or both, has not already done so.

(6) In the event that the Commission consents to a proposed transfer notified to it pursuant to Regulation 5(1), the Commission shall grant or amend all relevant licences.

(7) Compliance by the notifying parties with a determination made by the Commission under Regulations 6(1)(a) or (b) or Regulations 7(2)(a) or (b), including any conditions forming the basis or part of the basis of such determination in accordance with Regulation 5(5), shall be made a condition of any licence under which the rights of use to the transferred spectrum are made available by the Commission.

Grant and issue of spectrum transfer and lease licence(s) in the 800 MHz, 900 MHz, 1800 MHz, 2100 MHz and 3600 MHz radio bands

9. (1) The Wireless Telegraphy (3.6 GHz band Licences) Regulations 2016 (S.I. No 532 of 2016), The Wireless Telegraphy (Liberalised Use and Preparatory Licences in the 800 MHz, 900 MHz and 1800 MHz Bands) Regulations 2012 (S.I. No. 251 of 2012), and the Wireless Telegraphy (Third Generation and GSM Mobile Telephony Licence) (Amendment) Regulations 2003 (S.I. No. 340 of 2003) are amended by Schedule 2 of these Regulations.”

SCHEDULE 1Spectrum Bands to which these Regulations apply

694-790 MHz
790-862 MHz
880-915 MHz
925-960 MHz
1710-1785 MHz
1805-1880 MHz
1900-1980 MHz
2010-2025 MHz
2110-2170 MHz
2.50-2.69 GHz
3.40-3.80 GHz

SCHEDULE 2

Amendments to which these Regulations apply

(1) The Wireless Telegraphy (3.6 GHz band Licences) Regulations 2016 (S.I. No 532 of 2016) are amended as follows:

(a) In Regulation 2 by substituting for the definition of “Lease” the following definition:

“ ‘Lease’ has the meaning set out in the Wireless Telegraphy (Transfer of Spectrum Rights of Use) (Amendment) Regulations, 2017 (S.I. No. of 2017);”

(b) In Regulation 2 by substituting for the definition of “Transfer Regulations” the following definition:

“ ‘Transfer Regulations’ means the Wireless Telegraphy (Transfer and Lease of Spectrum Rights of Use) (Amendment) Regulations 2017 (S.I. No. of 2017);”

(c) by substituting for Regulation 4(5) the following:

“4. (5) The Commission may grant a 3.6 GHz Band Spectrum Lease Licence to a Lessee in accordance with the Transfer Regulations.”

(d) by substituting for Regulations 6(18), 6(19) and 6(20) the following:

“6.(18) only lease spectrum rights of use for radio frequencies attaching to a Licence in accordance with the Transfer Regulations.

6.(19) ensure that if the address of the Licensee or its Transferee or Lessee changes, the Licensee, Transferee or Lessee shall, as soon as possible, but in any event within 28 days, notify the Commission in writing of the change.”

(e) by amending Part 1 of Schedule 1 with:

text and table as set out in Schedule 3 of these Regulations.

(f) by substituting for Part 4 of Schedule 2 with:

“The Licence conditions will be specified by the Commission in accordance with the Transfer Regulations.”

(2) The Wireless Telegraphy (Liberalised Use and Preparatory Licences in the 800 MHz, 900 MHz and 1800 MHz Bands) Regulations 2012 (S.I. No. 532 of 2012) are amended as follows:

(a) In Regulation 2 by substituting for the definition “Licence” with the following definition:

“ ‘Licence’ means a Liberalised Use Licence, a Liberalised Use Spectrum Lease Licence or a Preparatory Licence, as the case may be;”

(b) by inserting the following definitions in Regulation 2:

“ ‘Lease’ has the meaning in the Transfer Regulations

‘Liberalised Use Spectrum Lease Licence’ means a Licence in the form set out in Schedule 4 to keep and have possession of Apparatus, in accordance with and subject to the terms and conditions contained in the Licence;

‘Transfer’ has the meaning in the Transfer Regulations

‘Transfer Regulations’ means the Wireless Telegraphy (Transfer of Spectrum Rights of Use) (Amendment) Regulations 2017 (S.I. No. of 2017);”

(c) by substituting for Regulation 3(1) the following:

“3.(1) These Regulations apply to:

- (a) Liberalised Use Licences,
- (b) Preparatory Licences, and
- (c) Liberalised Use Spectrum Lease Licences

in the form of the respective Licences set out in Schedules 1,2 and 4 to these Regulations.”

(d) by inserting after Regulation 4(5) the following:

“4.(6): The Commission may grant a Liberalised Use Licence to a transferee in accordance with the Transfer Regulations, 2017, and the Commission may grant a Liberalised Use Spectrum Lease Licence to a lessee in accordance with the Transfer Regulations, 2017.

4.(7): A Liberalised Use Spectrum Lease Licence to which these regulations apply shall be in the form specified in Schedule 4, with such variation, if any, whether by addition, deletion or alteration as the Commission may determine from time to time or in any particular case”

(e) by inserting after Regulation 5(2) the following:

“5.(3): The commencement date and expiry date of a Liberalised Use Spectrum Lease Licence shall be set by the Commission and specified in the Liberalised Use Spectrum Lease Licence. A Liberalised Use Spectrum Lease Licence to which these Regulations apply shall in any event expire before 31 July 2032.”

(f) by substituting for Regulation 6(15) the following:

“6.(15): notify the Commission of its intention to transfer or lease any rights of use for radio frequencies attaching to a licence.”

(g) by substituting for Regulations 6(16), 6(17) and 6(18) the following:

“6.(16) only transfer or lease spectrum rights of use for radio frequencies attaching to a Licence in accordance with the Transfer Regulations.

6.(17) ensure that if the address of the Licensee or its Assignee changes, the Licensee or Assignee shall, as soon as possible, but in any event within 28 days notify the Commission in writing of the change.”

(h) by deleting Regulation 6(19);

(i) by inserting after Regulation 7(5) the following:

“7.(6): A Liberalised Use Spectrum Lease may be revoked, suspended or withdrawn by the Commission including if it emerges that the Lessor’s Liberalised Use Licence has been revoked, suspended or withdrawn under Regulation 7.”

(j) by inserting after Regulation 8(15) the following:

“8.(16): The Spectrum Usage Fees for a Liberalised Use Licence granted on foot of a transfer are the Spectrum Usage Fees specified in paragraphs (4) and (5) of this Regulation.”

(k) by substituting Part 1 of Schedule 1 with:

the text and table as set out in Schedule 4 of these Regulations;

- (l) by inserting after Schedule 3 as a new Schedule 4:

the text and tables as set out in Schedule 5 of these Regulations;

- (3) The Wireless Telegraphy (Third Generation and GSM Mobile Telephony Licence) (Amendment) Regulations 2003 (S.I. No. 340 of 2003) are amended as follows:

- (a) by inserting the following definitions in Regulation 2:

“Lease” has the meaning in the Transfer Regulations 2017;

“Lease Licence” means a Licence in the form set out in Schedule 6 to keep and have possession of Apparatus, in accordance with and subject to the terms and conditions contained in the Licence;

“Transfer” has the meaning in the Transfer Regulations 2017;

“Transfer Regulations” means the Wireless Telegraphy (Transfer of Spectrum Rights of Use) (Amendment) Regulations, 2017 (S.I. No. of 2017);

- (b) by substituting for Regulation 3(3) the following:

“3.(3) The Commission may grant a Licence or a Lease Licence in accordance with the provisions of the Authorisation Regulations and the Transfer Regulations.”

- (c) by substituting for Regulations 4(1) and 4(2) the following:

“4.(1) A Licence or a Lease Licence shall (unless it has been revoked, suspended or withdrawn) be in force for a period of up to one year from the date on which it comes into operation and, unless renewed, shall then expire.

4.(2) Notwithstanding paragraph (1) of these Regulations where:

- (a) the licensee is a holder of a Lease Licence under these Regulations, its licence shall be for a fixed period of time which shall not exceed the period of time for which the spectrum right was originally granted (to the Lessor), following which the leased spectrum right would revert to the Lessor; and
- (b) the licensee is a holder of a Licence, which may be leased, under these Regulations, its licence shall not be renewed on the 21st anniversary after the first grant of the licence and shall then expire.”

(d) by substituting for Regulation 5(2) the following:

“5.(2) that Licensee will ensure that it makes payments of the spectrum access fees as outlined in the Regulations unless it is a licence to be granted in accordance with the Transfer Regulations where the fees will be determined under those Regulations.”

(e) by substituting for Regulation 5(4) the following:

“5.(4) that the Licensee shall notify the Commission of its intention to transfer or lease any rights of use for radio frequencies attaching to a licence. The Licensee shall only transfer or lease spectrum rights of use for radio frequencies attaching to a Licence in accordance with the Transfer Regulations 2017.”

(f) by substituting Schedule 3 with:

“Radio frequency channels on which the Apparatus is authorised by this Licence to be used, name of Spectrum Lessee, lease commencement date per spectrum block or part thereof and lease expiry date per spectrum block (if leased).”

(g) by inserting after Schedule 5 as a new schedule 6 :

the text and tables as set out in Schedule 6 of these Regulations.

SCHEDULE 3

“ Part 1 of SCHEDULE 1

Commencement and Expiry dates per Spectrum Block or part thereof.

Region	Name of Spectrum Block	Frequency Assigned to Spectrum Block	Commencement Date per Spectrum Block	Expiry Date per Spectrum Block	Name of Spectrum Lessee (if Leased)	Lease Commencement Date per Spectrum Block	Lease Expiry Date per Spectrum Block
	<i>Block A, B, C etc.</i>	<i>From ____ MHz to ____ MHz</i>	<i>DD Month YYYY</i>	<i>DD Month YYYY</i>		<i>DD Month YYYY</i>	<i>DD Month YYYY</i>

SCHEDULE 4

“Part 1 of SCHEDULE 1

Commencement and Expiry dates per Spectrum Block or part thereof.

Authorised Band	Name of Spectrum Block	Uplink / Downlink Frequency Assigned to Spectrum Block	Commencement Date per Spectrum Block	Expiry Date per Spectrum Block	Name of Spectrum Lessee (if Leased)	Lease Commencement Date per Spectrum Block	Lease Expiry Date per Spectrum Block
<i>800, 900 or 1800MHz as appropriate</i>	<i>Block A, B, C etc.</i>	<i>From ____ MHz to ____ MHz</i>	<i>DD Month YYYY</i>	<i>DD Month YYYY</i>		<i>DD Month YYYY</i>	<i>DD Month YYYY</i>

SCHEDULE 5**“SCHEDULE 4 of****WIRELESS TELEGRAPHY ACT, 1926****WIRELESS TELEGRAPHY (LIBERALISED AND PREPARATORY LICENCES IN
THE 800 MHZ, 900 MHZ AND 1800 MHZ BANDS) REGULATIONS 2012****Liberalised Use Spectrum Lease Licence for terrestrial systems capable of providing
Electronic Communications Services**

Licence under section 5 of the Wireless Telegraphy Act, 1926, to keep and have possession of apparatus for wireless telegraphy for terrestrial systems capable of providing Electronic Communications Services.

The Commission for Communications Regulation, in exercise of the powers conferred on it by section 5 (as substituted by section 182 of the Broadcasting Act 2009 (No. 18 of 2009)) of the Wireless Telegraphy Act, 1926 (No. 45 of 1926), hereby grants to the Licensee specified [insert name of Licensee] of [insert address of Licensee]:

Authorisation to keep and have possession of apparatus for wireless telegraphy for terrestrial systems capable of providing Electronic Communications Services as specified in Part 2 to this Licence, subject to such apparatus being installed, maintained, worked and used in accordance with the terms and conditions and restrictions set out in the Wireless Telegraphy (Liberalised Use Licence and Preparatory Licences in the 800 MHz, 900 MHz and 1800 MHz band) Regulations, 2012 (S.I. No. 251 of 2012) (“the Regulations”), including, but not limited to, the following:

(1) The Licensee shall ensure that it complies with all of the conditions contained within Parts 1 to 4 of this Licence; and

This Licence shall come into effect on DD/MM/YY (the “Licence Commencement Date”) and, subject to revocation, suspension or withdrawal, expires on DD/MM/YY (the “Licence Expiry Date”).

Signed: _____

For and on behalf of the Commission for Communications Regulation

Official Stamp**Part 1**

Lease Commencement and Expiry dates per Spectrum Block or part thereof

Lessor Liberalised Use Licence Number	Authorised Band	Name of Spectrum Block	Uplink / Downlink Frequency Assigned	Commencement Date per Spectrum Block	Expiry Date per Spectrum Block
	<i>800, 900 or 1800MHz as appropriate</i>	<i>Block A, B, C etc.</i>	<i>From ____ MHz to ____ MHz</i>	<i>DD Month YYYY</i>	<i>DD Month YYYY</i>

Part 2

The Apparatus to which this Lease Licence applies

Equipment Index Reference	Terrestrial System	Equipment Description	Manufacturer	Model

Part 3**Apparatus Location and Details**

(1) 800 MHz band

Site Identity	Latitude and Longitude	Equipment at location	Maximum EIRP⁴⁵

(2) 900 MHz band

Site Identity	Latitude and Longitude	Equipment at location	Maximum EIRP

(3) 1800 MHz band

Site Identity	Latitude and Longitude	Equipment at location	Maximum EIRP

Part 4**Licence Conditions**

The Licence Conditions will be specified by the Commission in accordance with the Wireless Telegraphy (Transfer of Spectrum Rights of Use) (Amendment) Regulations 2017.”

⁴⁵ EIRP is the Equivalent Isotropically Radiated Power

SCHEDULE 6**“SCHEDULE 6 of****WIRELESS TELEGRAPHY (THIRD GENERATION AND GSM MOBILE
TELEPHONY LICENCE) (AMENDMENT) REGULATIONS, 2003**

Lease Licence under section 5 of the Wireless Telegraphy Act, 1926, to keep and have possession of apparatus for wireless telegraphy for the purpose of providing 3G and GSM mobile telephony

The Commission, in exercise of the powers conferred on it by section 5 of the Wireless Telegraphy Act, 1926 (No. 45 of 1926) and section 4 of the Telecommunications (Miscellaneous Provisions) Act, 1996 (No. 34 of 1996) and Section 9 (1) of the Communications Regulation Act, 2002 (No. 20 of 2002) hereby grants to the licensee specified authorisation to keep, have possession of, install, maintain, work and use apparatus as specified in the Second Schedule of this licence and subject to the terms and conditions as set out in the Wireless Telegraphy (Third Generation and GSM Mobile Telephony Licence)(Amendment) Regulations, 2003 (S.I. No. 340 of 2003) and the Transfer Regulations, 2017

The Commission for Communications Regulation, grants the following Lease Licence to:
_____ of _____

1. This Lease Licence will come into operation on the ____ day of _____, YYYY_, and unless previously revoked or renewed will expire on the ____ day of _____,

2. The Licensee will ensure that it complies with the geographical and technical conditions contained within the First - third schedules to this Licence;

Part 1

Lease Commencement and Expiry dates per Spectrum Block or part thereof

Lessor 3G and GSM Licence Number	Authorised Band	Name of Spectrum Block	Uplink / Downlink Frequency Assigned	Commencement Date per Spectrum Block	Expiry Date per Spectrum Block
		<i>Block A, B, C etc.</i>	<i>From ____ MHz to ____ MHz</i>	<i>DD Month YYYY</i>	<i>DD Month YYYY</i>

Part 2

The Apparatus to which this Lease Licence applies

Equipment Index Reference	Terrestrial System	Equipment Description	Manufacturer	Model

Part 3

Apparatus Location and Details

Site Identity	Latitude and Longitude	Equipment at location	Maximum EIRP⁴⁶

⁴⁶ EIRP is the Equivalent Isotropically Radiated Power

Part 4

Licence Conditions

The Licence Conditions will be specified by the Commission in accordance with the Wireless Telegraphy (Transfer of Spectrum Rights of Use) (Amendment) Regulations 2017.”

GIVEN under the Official Seal of the Commission for Communications Regulation this,
2017.

Gerry Fahy, Chairperson,

for and on behalf of the Commission of Communications Regulation.

The Minister for Communications, Climate Action and Environment consents to the making of the foregoing Regulations.

GIVEN under the Official Seal of the Minister for Communications Climate Action and
Environment this 2017

Denis Naughten

Minister for Communications, Climate Action and Environment

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These Regulations provide for the transfer or lease, or both, of spectrum rights of use between undertakings in accordance with published procedures adopted by the Commission and not otherwise in the radio bands specified in Schedule 1. These Regulations also prescribe amendments to Wireless Telegraphy Regulations in relation to granting and issuing licences for apparatus for Wireless Telegraphy for terrestrial systems providing Electronic Communications Services in the radio bands specified.