



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Spectrum Leasing (Consultation 17/47s)

Submissions to Consultation 17/47

Submissions Document

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eir Group

Response to ComReg Consultation:

Spectrum leases in Ireland

ComReg Document 17/47



29 June 2017



eir response to ComReg 17/47

DOCUMENT CONTROL

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The comments submitted in response to this consultation document are those of Eircom Limited (trading as 'eir' and 'open eir') and Meteor Mobile Communications Limited ('MMC'), collectively referred to as 'eir Group'.



Question 1: Do you agree with ComReg's proposed spectrum lease framework?

eir welcomes the opportunity to review and comment on ComReg's proposed framework for spectrum leases in Ireland. It is disappointing that ComReg will potentially miss its stated intention to finalise a spectrum leasing framework in advance of 31 July 2017 as there may be imminent demand for spectrum leasing in the 3.6GHz band.

The implementation of a spectrum leasing framework in addition to the spectrum transfer framework will augment the potential for a secondary market to develop in respect of spectrum. However it is not clear to us if the proposed framework is sufficiently dynamic. The licensing arrangements appear to offer a binary choice as to the user of the spectrum in a particular area. Advances in technology facilitate dynamic frequency sharing which enhance the efficient use of spectrum. eir requests ComReg to confirm if spectrum sharing is catered for in the licensing framework for spectrum leasing.

ComReg proposes to apply the same administrative framework for spectrum leasing as previously established for spectrum transfer. eir has no objection in principle to this approach. As the framework is untested we believe that the administrative process should be reviewed for efficiency after a few requests / transactions have been processed.

As continuity of existing service provision may be relevant in this timeframe we would welcome confirmation from ComReg that it will administer a retrospective approval approach for any spectrum leasing arrangements to be entered into in the 3.6GHz band in the July / August window when the current FWALA licences expire. In our view there should be an option for an ex post review within the framework for any imminent leasing arrangements in the 3.6GHz band and more generally going forward for proposed leasing arrangements that fall within de minimus thresholds expressed in terms of geographic scope, quantum of spectrum and duration of the lease.

ComReg proposes a two phase review. The phase 1 review could take up to 35 working days and the phase 2 review, if ComReg is unable to form a view in phase 1, has an indicative timeline of 105 working days. For reasonably straightforward transactions, such as the leasing of spectrum at a small discrete number of locations we would hope that the phase 1 determination could be completed in a shorter period than the target 35 days and as noted above there is merit in establishing de minimus thresholds where the review could be undertaken on an ex post basis.

We note ComReg's discussion in section 5.2 regarding the continuation of licence conditions and that whether licence conditions apply to 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.

Regarding the text of the draft Regulations in Annex 4.

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 upon request by the of the lessor or lessee in accordance with the*



eir response to ComReg 17/47

terms of the lease." This observation is also relevant to the proposed Regulation 5(3) of the Liberalised Use Regulations.

The section title prior to Regulation 8(9) should refer to the 3.6GHz band.



Vodafone Response to ComReg document 17/47:

Spectrum leases in Ireland

Consultation on the framework for spectrum leases in Ireland

Question 1. Do you agree with ComReg's proposed spectrum lease framework?

Vodafone welcomes the publication of this consultation and the opportunity to respond.

Vodafone broadly agree with ComReg's proposed spectrum leased framework.

In line with our previous inputs to ComReg 15/131 document *Draft Radio Spectrum Management Strategy 2016 to 2018* Vodafone support moves towards a market based spectrum trading framework

We strongly support the drive to align standards and practice in Ireland with European standards in the allocation of spectrum. This is key to having effective networks in Ireland. This move to implement Spectrum Leasing will further support this objective.



Note on Implementation

We agree with the general principle of completing ex-ante competition assessment and agree that this will allow for certainty in the implementation of spectrum leases.

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.

Certainly ComReg should work to ensure the assessment is proportion to the spectrum change being made and not a burden to Lessor, Lessee, or other industry players.

We agree that the system for Leasing spectrum should broadly follow the spectrum Trading methods and we do not have further comments on the proposed Legislative changes and changes to Regulation.

Spectrum Leases in Ireland

**Response to document
17/47 from Three**



Three.ie

1. Introduction

Three welcomes the opportunity to comment on ComReg's proposals for spectrum leasing. The timing of this consultation is appropriate, with several relevant bands already in use and the 3.6GHz award process about to move into the transition phase. We agree with ComReg in relation to the purpose and objective that is intended to be achieved through spectrum leasing – to facilitate more efficient use of spectrum. We also agree with many of the specific proposals put forward by ComReg regarding licence conditions and responsibilities; however we also are of the view that the proposed framework should be modified as it runs the risk of missing the objective in its current form. The framework for spectrum leasing that is adopted now following this consultation is unlikely to be revisited for a number of years, and ComReg should take the time to get the framework right, otherwise the opportunity to facilitate leasing might be lost for a number of years.

It is important to consider carefully the role that leasing can play in addition to / as opposed to the other market mechanisms for distributing spectrum rights that are currently in place. Three considers that leasing is most appropriate to provide shorter term and relatively quick access to spectrum, and we believe the proposal put forward by ComReg may inhibit the emergence of some valid cases for leasing in practice. ComReg should consider the possibility of a streamlined approvals process for some types of lease, that can be concluded quickly and with low burden. Three's proposal is explained further below.

2. Market Mechanisms – Horses for Courses

ComReg decided some time ago to adopt market mechanisms for the assignment of spectrum, particularly for mobile and broadband services. ComReg has already used this mechanism several times, starting with the 26GHz auction in 2008, then the MBSA in 2012, and most recently in the 3.6GHz auction. The reasoning for use of auctions in the award of spectrum has been examined on several occasions, and has been generally accepted across Europe (and indeed in most other countries), i.e. that it should ensure the most economically efficient outcome from a spectrum award.

Spectrum auctions tend to be infrequent however, and involve burdensome forward-looking assessments and investment on the part of bidders. In most cases, the investment involved dictates that the licence period is 15 to 25 years or longer. Over this kind of timeframe, the market and technology conditions can go through several iterations of change and it is possible that there can be periods where the most efficient use of the spectrum is not obtained by the original licensee themselves. This might particularly be the case at the beginning of a licence period; at the end of a licence period (when only a limited time remains in which to make a return from

new investment); but also for short periods during the term, e.g. during a changeover in technology.

It is during these periods of transition when a non-transferable licence is too rigid to extract maximum efficiency, i.e. there could easily be a user who could make better use of some of the spectrum than the original licensee. These conditions might apply for a short period only, or in some geographical areas only, however it is in these circumstances that the flexibility to transfer spectrum can be beneficial to all concerned, including ultimately consumers.

ComReg has already developed a framework for spectrum transfer as is underpinned by the Spectrum Transfer Regulations¹, and we believe careful consideration must now be given to the different role that can be played by a lease as opposed to a transfer. In Three's view there is a "pecking order" or hierarchy to the market mechanisms available to determine rights of use of spectrum as summarised in Table 1 and in the text below:

1. The original auction/award by ComReg is the primary assignment, which involves long-term planning and financing. This is where the primary licence conditions and owners of the right of use are determined.
2. The transfer of spectrum rights of use allows a licensee to transfer some or all of their rights of use to a third party, and in this case the relevant rights and obligations would transfer to the new licensee permanently (though it might only be part of the original licence). Transferred rights of use would not be expected to revert back to the original licensee.
3. Leasing allows for the transfer of rights of use on a short term basis, and these rights of use would be expected to revert back to the original licensee. Three agrees with ComReg that in the case of a lease, the rights and obligations would remain with the original licensee.

Market Mechanism	Attributes
Assignment by Regulator (e.g. auction)	<ul style="list-style-type: none"> • Long term • Very slow to complete • High burden to obtain • Large investment required • Sets original licence conditions • Can have significant impact on competition
Spectrum Transfer	<ul style="list-style-type: none"> • Medium term • Can be slow to complete • Can involve a high burden to obtain • Lower investment than auction • Licence obligations/conditions transferred • Can have impact on competition

¹ Wireless Telegraphy (Transfer of Spectrum Rights of Use) Regulations 2014, SI 34 of 2014

Spectrum Lease	<ul style="list-style-type: none"> • Short term • Should be quick to complete • Should be low burden to obtain • Lower investment than auction/transfer • Licence obligations not transferred • Unlikely to impact competition
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Table 1 – Hierarchy of market mechanisms for spectrum rights of use.

A lease fulfils a different requirement to a spectrum transfer, in that it should generally be considered to be shorter term and more likely to meet an immediate requirement without prejudicing the original licensee’s long term rights of use.

Three believes that the spectrum leasing process adopted by ComReg must accommodate the more short term nature of a lease, otherwise it will be no different than the transfer process that is already in place, and will add nothing to the “toolbox” of options available to spectrum users. To make leasing a distinct alternative to transfer, the process available should be:

- Quick to access and deliver certainty
- Low cost
- low burden for applicants

Three is concerned that the process proposed by ComReg for spectrum leasing is excessively burdensome, costly, and slow. For these reasons, it is not sufficiently different from the existing spectrum transfer process to facilitate short term transfers of spectrum. Three recommends that ComReg make an amendment to the proposed process, as detailed in section 7 below.

3. Current Context in Ireland

At this time, ComReg has already awarded rights of use for three of the most commonly used RSPP bands: 800MHz; 900MHz; & 1800MHz. We are also in the “final quarter” for three of the four 2100MHz licences, and in addition the process to award rights of use in the 3.6GHz band is now in the closing stages. The 3.6GHz band in particular highlights the need for a quick and easy leasing process, and one that does not seem to be facilitated by the process ComReg envisages. We can also see that there might be potential for leasing in the 2100MHz as existing licences head towards expiry, and also as the other RSPP bands are licensed.

By way of example, in the 3.6GHz band a number of existing licensees continue to operate Fixed Wireless Access services, some of which meet a localised demand. Only one of the existing licensees has obtained a new right of use, so transition arrangements are required. As a new licensee, Three would be open to considering leasing some of its rights of use to existing licensees on a short term basis in order

to minimise the disruptive effect of the transition. There would be no long term impact on competition arising from such a lease, only benefit for the existing consumers. Having reviewed ComReg's proposed process for leasing, it would seem to be ruled out as a possibility in these cases - the time, effort, and cost involved are excessive given that there would likely be a number of different individual applications.

Though the above is just one example, it does demonstrate the kind of situation ComReg should be seeking to facilitate to resolve through spectrum leasing. Three believes this could be resolved by the addition to the process as suggested in section 7 below.

4. Lessons from other countries

A review of spectrum trading in other EEA countries (based on Cullen International documents) provides little insight into the success or otherwise of leasing arrangements. Most trades seem to have been transfers rather than leases. We note that in Sweden the PTS has exempted small scale leasing from the *ex ante* approval requirement.

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.

5. Legislation

We note that ComReg has considered the most relevant legislation in developing its proposal for a spectrum leasing framework:

- Article 9 of the Framework Directive
- Regulation 19 of the Framework Regulations

and in addition:

- The proposed European Electronic Communications Code.

In relation to the existing legislation, we note that both the Framework Directive and the Framework Regulations provide that the procedures adopted for spectrum

transfer and spectrum leasing can apply to other bands in addition to the RSPP bands, e.g. Regulation 19(1)(b) provides that ComReg:

“may, in the case of bands which are not identified by the European Commission under Article 9b(3) of the Framework Directive, provide for undertakings to transfer or lease individual rights to use radio frequencies to other undertakings in accordance with any procedures specified by the Regulator.”

In the interest of providing flexibility that could increase spectrum efficiency, ComReg should remain open to accepting applications for lease of spectrum in bands other than the RSPP bands. It is acknowledged that there are only limited cases where multi-annual rights of use for spectrum have been granted at present, so the scope for leasing outside of the RSPP bands may also be limited, however this might change.

The European Electronic Communications Code appears on track to progress to adoption through the ordinary legislative procedure from Autumn 2017. 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. The draft EECC addresses spectrum transfer and leasing and some of the proposals are directly relevant to this consultation. In particular, 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.

6. ComReg’s Proposal

ComReg Proposes to adopt the existing spectrum transfer process to provide for leasing. We notice that the principal difference between transfer as it exists today and leasing as proposed will be that the original licensee remains responsible for the licence conditions, and that the lease may be time-limited. Three believes there is greater scope to differentiate leasing from transfer and this should be driven by the demand that it is trying to meet, rather than a being driven by a desire to simply meet a legislative requirement to provide for leasing.

Scope – we note ComReg’s proposal that spectrum leasing should apply to the RSPP bands only. While it is it is recognised that there is a consistency to the RSPP bands which would mean the same process might apply uniformly across these bands, and that might not apply to other spectrum, ComReg should remain open to using the process to review leasing applications outside of these bands. Three does not see why ComReg should limit the scope of the process at this time.

Burden – We would see the proposed process as appropriate in certain cases of proposed leasing, though we believe there may only be a limited number of cases where a long term lease is required in preference to a transfer. The process is appropriate where “large” transfers are proposed which are likely to raise competition concerns, however it does not cater for “small” leases. The process is excessively burdensome in terms of time and resource required to clear an application. In addition, the administration fee is excessive.

We note the requirement in the proposed Electronic Communications Code that spectrum leasing should have the “least onerous process possible”. Three’s belief is that in the circumstances where leasing is most likely to be the preferred option (“small transfers”), it would be ruled out due to the burden of the process.

Administration Fee – Three’s view is that the administration fee proposed by ComReg is excessive, and would be a barrier to “small” leasing proposals, whereas it is precisely in these situations that ComReg should be seeking to facilitate flexibility in assignment of rights of use.

7. Three’s Suggested Addition

Three is of the view that the current proposed process would miss some of the most relevant cases where spectrum leasing might have a beneficial impact. To remedy this, 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 leases which individually (or in total where there is a lease renewal) have a duration of less than 3² 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 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.

ComReg’s Regulatory Impact Assessment should include an analysis of the above option.

² We believe 3 years is the appropriate cut-off, however it might be that this is slightly more or less.