



Commission for
Communications Regulation

Submissions to Document 12/132

Submissions on Draft Decision to renew the MMDS licences in force at 18 April 2014 in the 2.6 GHz band from 19 April 2014 to 18 April 2016

Submissions to Consultation

Reference: ComReg 12/132s

An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation

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Submissions Received from Respondents

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Content

Section

1: BT Ireland Ltd (“BT”)	4
2: eircom and Meteor Mobile Communications Ltd (“eircom Group”)	5
3: Hutchinson 3G Ireland Ltd (“H3GI”)	6
4: Telefónica Ireland Ltd (“Telefónica”)	7
5: UPC Ireland Ltd (“UPC”)	8
6: Vodafone Ireland (“Vodafone”).....	9

1: BT Ireland Ltd (“BT”)



BT Communications Ireland (“BT”) Response to ComReg’s publication:

Future of 2.6GHz radio spectrum band Consultation and Draft Decision on proposals to renew the MMDS licences in force at 18 April 2014 in the 2.6GHz band from 19 April 2014 to 18 April 2016

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Introduction

We welcome the opportunity to comment on ComReg’s proposal for the future renewal of the MMDS spectrum and we would like to make the following points.

Principle for Renewal

We generally agree with the preliminary conclusion of ComReg to adopt an open auction approach going forward but seek that the principle of encouraging new entrants to the market should be captured within this process. We consider it beneficial for improved competition for new entrants to be incentivised to use spectrum and other jurisdictions such as France, the UK and the Netherlands have supported this approach.

Renewal Dates

We note ComReg’s preferred solution is to roll-over the UPC licences to 2016 due to a shortage of time to conclude the preparatory work for a 2014 auction. We would like to offer the following views:

- The EC Decision 2008/477/EC identifies the 2500 – 2690 MHz band to be made available for mobile broadband systems throughout the European Union on a harmonised basis, and we would urge ComReg to make the band available accordingly as soon as possible. Furthermore, we also note that the Radio Spectrum Policy Programme (Decision No 243/2012/EU of the European Parliament and of the Council) requires Member States to make this band available “... by 31 December 2012 without prejudice to the existing deployment of services”. Whilst we understand that this provides provision for the existing

licence holders to continue operating, this does convey an obligation for ComReg to comply with the requirements of Decision 2008/477/EC as soon as possible which clearly indicates the spectrum should be released in 2014.

- ComReg has recently conducted a complex auction and therefore has both the experience and expertise to construct an auction for the 2.6GHz band. In our view ComReg should therefore aim for a competition as soon as possible for re-allocation of the spectrum to the successful applicant(s) by April 2014.
- Without prejudice to our above views, if there are genuine reasons why the preparation for an auction and re-allocation of the spectrum cannot be completed for April 2014 these should be considered, however it is difficult to comprehend why an additional two years is needed to complete the process. In our view an additional six months should allow sufficient time to prepare for an auction, and hence the MMDS roll-over extension could be reduced to very much less than two years.
- Our view is taking three years to complete the auction and re-allocation process is unreasonable and contrary to Decision 2008/477/EC making ComReg's Decision open to appeal.

In conclusion we support opening the 2.6GHz spectrum to competitive auction and for re-allocation to the successful applicant(s) by April 2014. We also consider that the auction should be designed to stimulate competition and should incentivise new entrants to the use this spectrum.

Documentation Control

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2: eircom and Meteor Mobile Communications Ltd (“eircom Group”)

eircom Group

**Response to ComReg Consultation Paper:
Future of the 2.6GHz radio spectrum band**

ComReg Document 12/132

31 January 2013

DOCUMENT CONTROL

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The comments submitted to this consultation are those of Meteor Mobile Communications Ltd. (MMC) and eircom Ltd (eircom) collectively referred to as eircom Group.

Response to consultation

It is over a year since the last consultation on the future of the 2.6GHz band. At that time we argued that the 2.6GHz band is strategically important for the future development of advanced mobile services in Ireland. We called on ComReg “*to avoid any further administrative delay and to move rapidly to bring the 2.6GHz band into the proposed multi-band spectrum award process*” (MBSA).

ComReg chose not to take the opportunity to bring the 2.6GHz band into the MBSA process and declined, despite repeated requests from a number of interested parties, to provide any clarity on the future of the 2.6GHz band in advance of the MBSA auction. It is an interesting coincidence that this consultation was published on 6th December only one day after ComReg published its Information Notice, Frequency Arrangements and Results of the Multi-Band Spectrum Award Process (ComReg 12/13).

We remain of the view that the 2.6GHz band is strategically important for the future development of advanced mobile services. As such we agree with ComReg’s belief “*that it would be technically and economically preferable to release the band on a service and technology [neutral] basis as early as possible*”¹. We also agree with ComReg that it will take some time to define and execute the administrative process to make new rights of use to 2.6GHz spectrum available. However we do not agree that it is appropriate to renew the existing MMDS licences for a period of 2 years to 18 April 2016 after which they will expire. This proposal sets a finite date by which ComReg must have completed all administrative activities and allowed sufficient time for the existing licensee to transition in the 2.6GHz band in order to implement the outcome of the spectrum award process.

This approach, creating interim licence extensions with finite expiry dates, was tried in respect of the 900MHz rights of use of Telefonica and Vodafone in the MBSA process. ComReg’s conduct of the MBSA process has demonstrated that issuing interim rights with a finite expiry date is not administratively efficient and creates uncertainty for the licensees. We note the many representations made by Telefonica and Vodafone expressing their concern regarding the uncertainty they faced as it became clear that the MBSA process would not be completed in sufficient time. Indeed ComReg has been recently required to undertake a rapid consultative process and to make Regulations with the consent of the Minister for Communications in order to ensure that millions of Irish citizens do not suffer detrimental loss or degradation of their mobile service by issuing a second set of interim licences.

As ComReg notes in the consultation paper the MBSA process has been ongoing since July 2009 and in light of that the administrative process in respect of the 2,6GHz band ComReg feels it “*could only make new rights of use to 2.6GHz spectrum available by April 2016 at the earliest*”² [emphasis added]. It is clear that ComReg itself recognises that April 2016 is already extremely challenging. Furthermore, as set out in the consultation paper³, there are a number of important questions that must be addressed before any final decisions can be made

¹ ComReg 12/132, paragraph 5.3

² ComReg 12/132, paragraph 5.51

³ ComReg 12/132, paragraph 5.50

determining the most effective and efficient process to make future 2.6GHz rights of use available.

The most significant question in our view is the extent to which jointly making rights of use to spectrum in other bands available with any new rights of use to the 2.6GHz spectrum, may result in a significantly more efficient outcome than making the 2.6GHz spectrum available in isolation. We agree with ComReg that the potential of including rights of use to 2.3GHz spectrum is an interesting opportunity that requires further exploration. In our view there are also exciting opportunities arising from the expiry of the FWALA scheme in 2017 and the making available of a second digital dividend in the 700MHz band in the coming years. We note in the latter case that ComReg had planned to commence investigation of the second digital dividend with a call for input in Q4/12⁴. These potential opportunities to maximise the efficient use of the 2.6GHz band by making it jointly available with other complementary spectrum must be evaluated before the specification of the administrative process to assign the spectrum rights is settled.

The answers to other questions including defining appropriate technology and service neutral technical measures, defining appropriate conditions to attach to the rights of use to 2.6GHz, and the design of the award process must also be addressed.

In our view it would be more appropriate to extend the existing MMDS licences for the 5 year period permitted under the 2003 Regulations with the addition of a mechanism whereby the extended MMDS Licences may be terminated on one year's notice which may be served when there is a high degree of certainty regarding the timing of the relevant award process. We believe this is a much more efficient approach to administer and provides greater clarity to the existing licensee whilst the future rights to use the 2.6GHz band are determined.

⁴ <http://www.comreg.ie/fileupload/Annual%20Action%20Plan%20ye%20300613.pdf>

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31 January 2013

Dear Sinead

SUBMISSION RE: COMREG DOC. NO. 12/132

I refer to ComReg Doc. No. 12/132, "Future of 2.6 GHz radio spectrum band, Publication of Consultation and Draft Decision on proposal to renew the MMDS licences in force at 18 April 2014 in the 2.6 GHz band from 19 April 2014 to 18 April 2016" (the "Consultation"). Subject to the following comments, Hutchison 3G Ireland Limited ("H3GI") agrees with ComReg's proposal: (i) to undertake a competitive award process for the 2.6 GHz spectrum so that from April 2016 new rights of use can be issued on a service and technology neutral basis; and (ii) to renew the MMDS licences still in force at 18 April 2014 in the interim and in particular, for two years to 18 April 2016.

At footnote 7 of the Consultation, ComReg states: "*Based on ComReg's recent experience of the time spent carefully developing its Multi-Band Spectrum Auction (MBSA), where its process has been ongoing since July 2009 and has involved six main consultations and responses, including careful analysis of over 2900 pages of respondents' views and independent reports on all of its proposals, ComReg currently believes that it could only likely make new rights of use to 2.6 GHz spectrum available by April 2016 at the earliest (see also http://www.comreg.ie/radio_spectrum/consultations_and_associated_documents.713.1096.html)*". [Emphasis added]

At paragraph 5.51 of the Consultation, ComReg states:

*"In ComReg's experience, and without wishing to fetter its discretion to consult extensively and properly on all relevant matters for any potential future award of new rights of use to 2.6 GHz spectrum, and/or potential joint award including rights of use to spectrum in other bands, the most likely timeframe for new licences to commence would be in early 2016 or more specifically **April 2016**. In particular, based on ComReg's recent experience of the time spent carefully developing its Multi-Band Spectrum Auction (MBSA), where its process has been ongoing since July 2009 and has involved six main consultations and responses, including careful analysis of over 2900 pages of respondents' views and independent reports on all of its proposals, ComReg currently believes that it could only likely make new rights of use to 2.6 GHz spectrum available by April 2016 at the earliest".* [Emphasis added]

Directors
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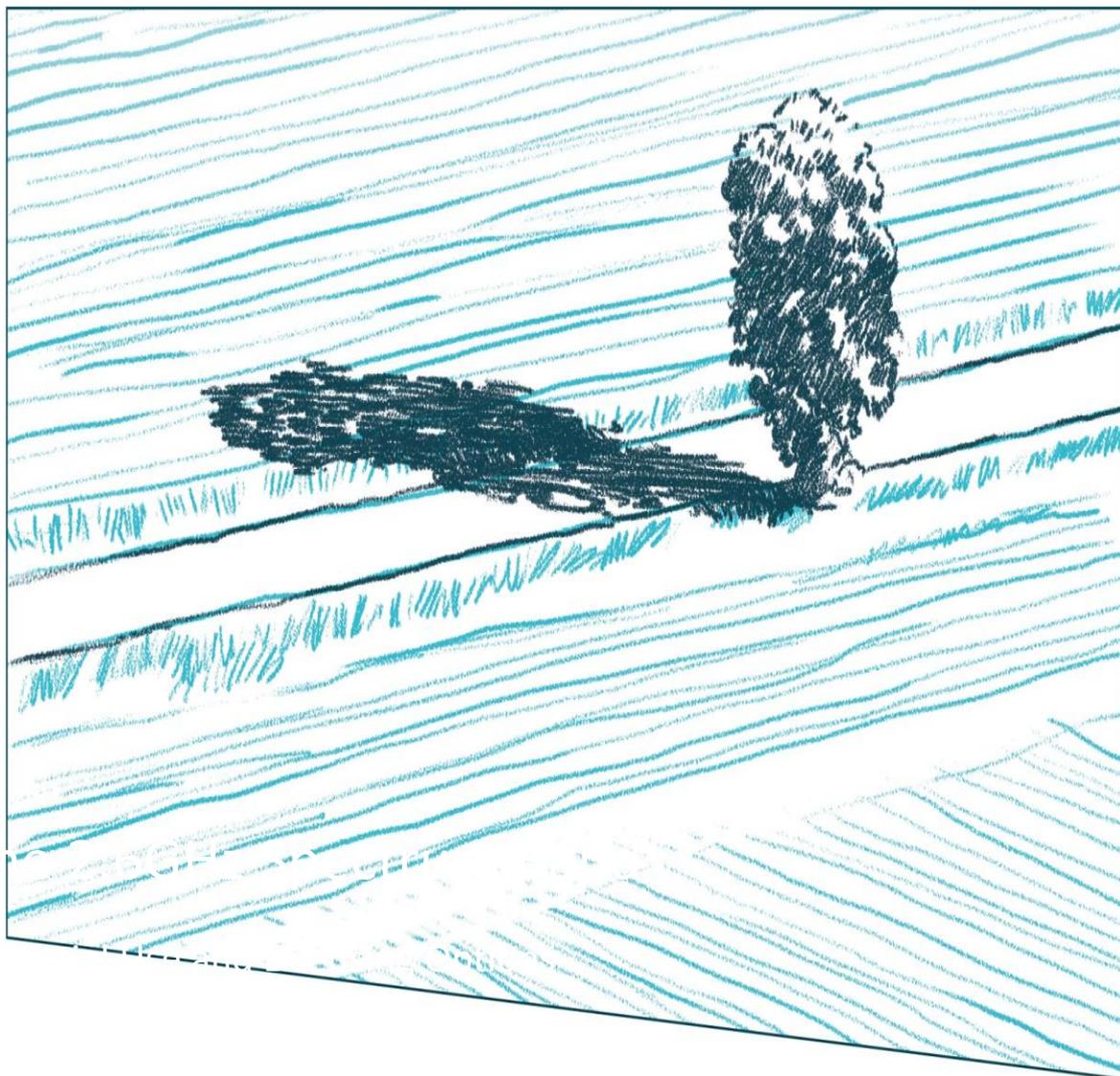
H3GI is concerned that ComReg has not provided a reasonable estimate of when it expects to issue rights of use in respect of the 2.6 GHz band on a service and technology neutral basis. Instead and by virtue of the above wording, it could be argued that ComReg has indicated when it expects to issue such rights of use "*at the earliest*". In the interests of legal and regulatory certainty, and in accordance with ComReg's functions, H3GI asks ComReg to confirm that it reasonably expects to issue rights of use in respect of the 2.6 GHz band on a service and technology neutral basis from April 2016 and to remove references to "*at the earliest*" from its final decision.

Yours sincerely

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Head of Regulatory

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4: Telefónica Ireland Ltd (“Telefónica”)



Future of 2.6GHz radio spectrum band

Response to 12/132

21st January 2012

Telefonica

General Comments

Telefonica has supported the overall approach taken by ComReg in determining the future of the 2.6GHz band since the initial consultation (10/38). This process so far has been useful in examining the options available to ComReg and has helped clarify some considerations, e.g. whether sharing between MMDS and Mobile is possible, or whether the greater economic benefit is gained by extending MMDS licences or licensing on a liberalised basis.

We agreed with ComReg's consultant's report which showed that the greater benefit comes from licensing the 2.6GHz band on a service and technology neutral basis through an open application process. If anything has changed in the time since publication of that report, it is that the decline in customers of MMDS service has been greater than predicted, leading to an even greater benefit from re-licensing. We have also had the benefit of seeing ComReg complete its Multi-Band-Spectrum-Auction (MBSA). Though the assignment of spectrum in the 2.6 GHz band might be more straightforward, we know that it will take some time for ComReg to consult on its proposals, take its decision, and implement the licensing process. The MBSA has shown us that it could take eighteen months from the time ComReg publishes its proposals until the assignment is complete .

That ComReg should move ahead to offer licences on a service and technology neutral basis is now unequivocally established. It has also been established that the earlier the licenses are offered, the greater the overall benefit. On this basis, Telefonica is of the view that ComReg should (i) proceed immediately to issue its proposals on the award process for the 2.6GHz band, and (ii) extend the current MMDS licences for the minimum time required to complete the process. While the outcome of that process might ultimately see UPC licenced to use the same spectrum, it might also see a reduction in their spectrum holding, or there might be entirely new licensees. In either of the latter two cases, Telefonica believes that a reasonable and practical amount of time is necessary for an orderly transition to the new licences. ComReg's consultants have predicted that MMDS subscriptions will have fallen to below 30,000 by 2015. At this level of subscription, Telefonica would expect a maximum transition time of six-months is required.

The maximum amount of time by which the current MMDS licences should be extended is the time for ComReg to complete its licensing process, and for UPC to complete its transition (if needed). Allowing eighteen months for ComReg's licensing process, and six-months for transition, Telefonica believes there is merit in extending the current MMDS licences to February 2015, but not beyond then.

Telefonica agrees with ComReg's statement that "it would be technically and economically preferable to release the band on a service and technology neutral basis as early as possible". ComReg has proposed to extend the current MMDS licences by two years (to April 2016) without explaining why almost three and a half years from now is needed. Telefonica does not believe that almost three years should be needed for ComReg to complete its licensing process if it is begun now.

It is noted that ComReg has carried out a Regulatory Impact Assessment on whether to allow licences to terminate in 2014 or not, however no analysis as to the duration of the extension

required has been presented. Given that ComReg accepts that relicensing should happen “soonest”, ComReg must explain in detail the reason why such a long extension is required.

Response to the Question

Q.1 Do you agree with the analysis set out in this chapter? Please provide reasons, evidence and other relevant material in support of your view.

At present, a single operator controls the entire band – no other service or service provider can gain access. Having accepted that the greatest benefit will come from an early, open licensing process, ComReg’s objectives require it to proceed to an open licensing process without delay. If ComReg construct a proper licensing process, and if MMDS is the most beneficial use, then spectrum will be assigned for this purpose. This might need a flexible assignment method that allows for different quantities of spectrum to be assigned for different durations.

Telefonica agrees with ComReg position as stated in paragraph 5.19 that the number of MMDS subscribers is not sufficient to have a material impact on the pay-TV market. If there was any doubt about this, it is only necessary to consider the rate of decay of MMDS subscribers. Essentially, this appears to be a service at end-of-life. On the other hand, Telefonica believes there would be considerable interest in using the 2.6GHz band on a liberalised basis, including for high-speed mobile and nomadic data. This is now a standard band for mobile data services, and most countries in Europe have completed their licensing process.

Consumer behaviour in TV viewing is undergoing significant change. More and more time-shift video is being watched, and viewers increasingly use broadband and video players to see their TV shows and movies. Even if the MMDS band is licensed and used for the provision of data services, it will continue to deliver TV content to consumers.

Any review of the use of the band must take into consideration the benefit of competition and innovation that a release of the spectrum to the market would bring, and conversely any opportunity cost arising from an extension. ComReg should have analysed this when determining the appropriate duration of an extension.

5: UPC Ireland Ltd (“UPC”)



UPC Ireland Response to: Consultation and Draft Decision on proposal to renew the MMDS licences in force at 18 April 2014 in the 2.6 GHz band from April 2014 to 18 April 2016. ComReg 12/132



Q.1 Do you agree with the analysis set out in this chapter? Please provide reasons, evidence and other relevant material in support of your view.

Introduction

UPC Communications Ireland Limited (“UPC”) welcomes the opportunity to provide its response to ComReg on its Consultation and Draft Decision (“the consultation”) on the proposal to renew the MMDS licences in force at 18 April 2014 in the 2.6 GHz band from 19 April 2014 to 18 April 2016.

As a long-standing occupant of this band, and a company that has invested significantly in its MMDS and wider network in Ireland over the years to enable world class offerings in television, broadband internet and telephone services, UPC is particularly disappointed with ComReg’s draft decision to not extend the current MMDS licence term to 2019 as provided for under the current licences. UPC disagrees with much of the analysis provided by ComReg in support of its draft decision, however as ComReg’s intention is clear, UPC does not propose to revisit those particular issues in this response. Instead UPC discusses the now inevitable wind down of its MMDS business and the reasons why UPC believes ComReg’s proposed extension of the current MMDS licences to April 2016 is both entirely inadequate and unfortunate given the lost opportunity for pay TV services in Ireland.

Lost opportunity

While UPC does not propose to revisit earlier issues it is important to restate and summarise the lost opportunity the company believes ComReg’s draft decision represents:

- By making clear its intention not to renew the MMDS licences to 2019, ComReg has made unviable any further investment plans by UPC in its MMDS network, thus an important opportunity for Ireland to secure an enhanced competitive environment for pay-TV services on a nationwide basis has been lost.
- UPC’s nationwide MMDS TV service is a service of important social value and one that is still relied upon by a significant number of people particularly in rural Ireland. These consumers will soon no longer have a choice of pay-TV provider, with BSkyB now becoming a *de facto* monopoly provider across much of the country, particularly in light of the deficiencies of other services such as Saorview and Freesat, neither of which UPC views as an equivalent substitute for the managed MMDS service. The impact the cessation of this service will have on those households that continue to rely on the UPC MMDS service should not be underestimated. Indeed, UPC believes ComReg has a duty of care to those consumers that will be affected by the proposed decision. In this regard, UPC does



not believe ComReg has given sufficient consideration to the impact this decision will have on UPC subscribers and this would appear at odds with two of ComReg's key regulatory functions which include the promotion of competition and the protection of Irish consumers.

Extension to April 2016 entirely inadequate

UPC believes that ComReg's proposed extension of the current MMDS licences to April 2016 is entirely inadequate for the following reasons:

1. Does not allow sufficient time for a competitive awards process (auction) to be put in place.

UPC believes that any future competitive awards process (auction) for 2.6 GHz spectrum should be held jointly with all other appropriate and available spectrum bands. UPC notes ComReg's acknowledgement that it *"is currently looking at the potential of including rights of use to 2.3 GHz spectrum and that there may be other appropriate spectrum bands which should be considered, and ComReg intends to seek views on same prior to finalisation"*.¹

UPC believes that many of the arguments put forward in support of a multi-band spectrum awards process in the recent 800, 900 and 1800 MHz spectrum auction² will hold true for a multi-band spectrum awards process around 2.6 GHz when this issue is looked at in detail by ComReg going forward, for example:

- *"Spectrum bands can be used in tandem". 2.6 GHz can be used in tandem with other bands above 1 GHz by operators in the provision of communications services, therefore increased clarity on other related bands will lead to better decision making by operators. For example, one possible use for the 2.6 GHz spectrum could be to support WiMAX-based fixed wireless services, 2.3 GHz spectrum is also suitable for Time Division Duplex (TDD) systems such as WiMAX.*

- *"Holding back potentially substitutable or complementary spectrum would result in a less efficient auction process and outcome".*

- *"It is sensible to combine as many bands as possible in a single auction as it allows operators to plan for the future on a total spectrum basis".*

¹ ComReg 12/132, para. 5.50, page 73

² ComReg 10/105, para 2.3.1.1, page 7



Given ComReg's recent experience of the significant time involved in putting multi-band spectrum auctions in place we believe that the gap to ComReg's current proposed 2.6 GHz spectrum extension of April 2016 is completely inadequate and unnecessarily increases the likelihood of this valuable spectrum lying fallow for a significant period. If it is assumed that it will be April 2013 before ComReg has a final decision on this consultation, there would then only be a period of three years to April 2016. During this time ComReg would have numerous issues to resolve including but not limited to the following:

- Decision on bands to include
- Decision on competitive awards process
- Decision on type of auction, if preferred awards process
- Decision on transition arrangements
- Training of auction participants
- Holding of auction
- Monitoring transition

In this present consultation, ComReg states that the current multi-band auction of 800, 900 and 1800 MHz spectrum has been ongoing since July 2009 and UPC understands that the finalisation of transition arrangements resulting from this auction are still ongoing and may continue for a number of months yet, therefore close on four years from July 2009 (and counting) to finalise this auction process.

In fact, UPC understands that the 800, 900 and 1800 MHz auction process has been ongoing since **July 2008**, with the publication of the first consultation *ComReg 08/57 Liberalising the use of 900 MHz and 1800 MHz spectrum bands* (which would have taken a number of months for ComReg to prepare prior to publication). Therefore UPC believes that the most relevant benchmark available to ComReg to indicate the likely time to complete a multi-band spectrum auction is in fact **five years (and counting)**. Further there is limited potential for the learnings from that auction process to be directly transferrable to any new auction process given the fact that an auction of 2.6 GHz (and other appropriate spectrum such as 2.3Ghz) is likely to involve new auction participants that may be inexperienced and/or entirely unfamiliar with the complex issues involved.

UPC believes that ComReg has significantly under-estimated the time required to finalise a potential multi-band spectrum auction of 2.6 GHz and other appropriate spectrum. **We therefore call on ComReg to change its proposed extension date from April 2016 to a more realistic and achievable April 2017 date.** This would allow ComReg and the industry just under four years to complete an auction and transition to alternative uses. Although ambitious given the five plus years for the current 800, 900 and 1800 MHz auction, UPC believes this new date minimises the likelihood of this valuable spectrum lying fallow for a significant period of time. In addition, UPC would argue that ComReg needs to put in place measures to ensure that



there is no risk that this spectrum will lie fallow at any stage following the expiry of the proposed MMDS extension and any subsequent award and use of the 2.6 GHz spectrum by other operators. From UPC's standpoint it would be entirely unacceptable to risk this spectrum lying fallow for any significant period of time through unnecessarily tight and arguably unachievable deadlines being imposed by ComReg itself. It is UPC's view that if ComReg does not extend the period of MMDS use to April 2017, the risk of the spectrum lying fallow significantly increases. Should this occur, this would be in contravention with one of ComReg's primary statutory functions namely, to ensure the efficient management and use of the radio frequency spectrum in Ireland.

2. The speed of wind down of UPC's current MMDS business necessitated by ComReg's proposed April 2016 date risks causing significant brand and reputational damage to UPC and unnecessary revenue dilution.

UPC has invested significantly in its network in Ireland over the years to enable world class offerings in television, broadband internet and telephone services. In addition, UPC has invested significant time, effort and capital to improve its brand image and reputation in the Irish market. There are still a considerable number of subscribers to UPC's MMDS service despite increased and intense competition from other providers such as BSkyB. It is therefore imperative that ComReg allow UPC the maximum time to vacate this spectrum and extend the current proposed deadline to April 2017. To not do so would result in:

- Unnecessary and disproportionate revenue dilution for UPC through the premature wind down of the service particularly given that UPC believes there is significant risk that the 2.6 GHz spectrum will lie fallow under ComReg's current timeframe proposals and the potential impact this may have on UPC's future investment in the Irish business

- Unnecessarily increasing the brand and reputational damage to UPC arising from the premature withdrawal of its MMDS service. It is UPC's experience that many of the remaining MMDS customers have been with UPC since launch of service. The core of this remaining base are loyal UPC customers that have become accustomed to the technology and do not want to move away from the service they have become accustomed to over the years. The transition of these customers to alternative service providers will need to be carefully managed and will take considerable time and effort. UPC believes that this move will have enormous brand and reputational consequences for the company and will be difficult to explain to subscribers as a situation being outside of the company's control. The confusion and consumer unease around the recent digital switch off illustrates this point well, where despite the considerable communication and education process undertaken by various organisations (Wheel, DCENR etc.), significant numbers of consumers



were generally confused regarding the implications for their TV service and as a result slow to act. Therefore an extension to ComReg's proposed timeframe from the current April 2016 to April 2017 would be very helpful in managing the wind down of the service and the careful migration of those consumers off the MMDS platform.

In Conclusion

As stated above UPC believes that ComReg's current proposed extension of the MMDS licences to April 2016 is completely inadequate and disproportionate as it risks unnecessarily compounding the negative consequences for UPC Ireland. **UPC argues it is imperative that ComReg should in response to this consultation increase the current extension to April 2017.**

In addition, UPC would strongly assert that ComReg must **also ensure that at no time following the the expiry of the MMDS licences extension and any subsequent use of the 2.6GHz spectrum by other operators, should the 2.6 GHz spectrum be allowed to lie fallow.** UPC would therefore call on ComReg to put in place a transparent process / mechanism now that would enable flexibility on the current proposed timeline in order to offset any unforeseen delays in the awards process that might result in the 2.6Ghz spectrum lying fallow. This mechanism should allow UPC to continue using the 2.6 GHz spectrum until such time as the spectrum is properly awarded to and required for use by other operators. If ComReg misses this opportunity to ensure flexibility around the term of licence beyond the proposed extension, it is highly likely that this valuable spectrum will lie fallow – an outcome that would not be in UPC's, ComReg's or the Irish consumer's best interest.

UPC maintains its view that little economic benefits will accrue in the period 2014 to 2019 if the 2.6 GHz band is re-assigned for use to support the provision of Next Generation Mobile Broadband (NGMB) services because other bands are already available for use by the mobile operators – i.e. the 800 MHz, 900 MHz, 1800 MHz and 2100 MHz bands. Indeed UPC would assert that these bands are more suitable for the provision of NGMB services in a country with Ireland's population density. It is only when operators with access to all this spectrum become capacity constrained (which UPC does not believe will occur significantly prior to 2019) that there is likely to be any requirement for allocations of 2.6 GHz spectrum for NGMB use and even then, it will be in high capacity zones, such as in dense urban areas.

In addition, UPC believes that the risk of the 2.6 GHz spectrum being unused for a significant period beyond ComReg's current proposed extension has significantly increased post the 800, 900 and 1800 MHz auction as network operators will soon be in a position to use their newly acquired spectrum more efficiently through spectrum pooling and ultimately spectrum trading (both of which ComReg has given initial indications it will allow). Combined with the possibility of market consolidation within the



Irish mobile sector in the near term, UPC believes ComReg must not miss this opportunity to pro-actively ensure that UPC can utilise the 2.6 GHz for the maximum period and also ensure on a pro-active basis that a clear mechanism is in place to ensure that 2.6 GHz spectrum will not lie fallow should a gap arise between the expiry of ComReg's final proposed MMDS extension and the 2.6 GHz being required and available for alternative use by other operators.



6: Vodafone Ireland (“Vodafone”)



Vodafone Response to the Consultation and Draft Decision on proposal to renew the MMDS Licences in force at 18 April 2014 in the 2.6 GHz Band from 19 April 2014 to 18 April 2016

Introduction

Vodafone welcomes the opportunity to respond to ComReg's consultation and Draft Decision on the proposal to renew the MMDS Licences in the 2.6 GHz Band from 19 April 2014 to 18 April 2016.

While we agree with ComReg's general position that spectrum in the 2.6 GHz band should be released on a service and technology neutral basis at the earliest feasible date, we must disagree with ComReg's view that the earliest possible date for release of this spectrum is 18 April 2016. ComReg's conclusion that mid-2016 is the earliest practicable time for release of 2.6 GHz spectrum, and its associated proposal that the duration of the existing MMDS Licences in the band be extended by a further 2 years, is based entirely on an excessively conservative and insufficiently justified assessment of the time required for completion of the necessary steps to conclude a competitive award process for the allocation of new rights of use of spectrum in the band.

It may be practicable, where ComReg has yet to commence preparations for a competitive award process that may include spectrum in other bands in addition to 2.6 GHz spectrum, to grant an extension to the duration of the MMDS Licences during a period when the spectrum may otherwise remain unused. However a 2 year extension is in Vodafone's view not objectively justified. In this context we note in particular the findings of the report of Aegis and Plum (ComReg document 11/80a) which quantified the high opportunity cost of delay in releasing 2.6 GHz spectrum on a service and technology neutral basis.

Vodafone considers that, on reasonable assumptions, it is entirely feasible for ComReg to conclude a competitive award process for the allocation of 2.6 GHz spectrum (either on its own or jointly with spectrum in other frequency bands) no later than early 2015, with new spectrum rights coming into effect immediately thereafter. Consequently any proposed extension of the duration of the existing MMDS Licences should be for a period of not more than 1 year (to 18 April 2015). Vodafone's position is set out in full in the subsequent section of this response.

Response to Consultation Question

Q1. Do you agree with the analysis set out in this chapter? Please provide reasons, evidence and other relevant material in support of your view.

Vodafone is in general agreement with ComReg's assessment of the full range of economic, social, and other factors considered as part of the draft RIA, and with the conclusion that Option 1 (termination of existing MMDS Licences in April 2014) should be favoured over Option 2 (renewal of MMDS Licences for a period up to April 2019). We have set out our views in relation to the impact of most of the relevant factors in our responses to previous rounds of consultation on the future of the 2.6 GHz band, and ComReg has taken account of these. We consider it appropriate that, at the earliest possible date, the market should determine the optimal use of new spectrum rights in the 2.6 GHz band via an open, transparent, and non-discriminatory competitive process.

Vodafone disagrees however with the assessment (in section 5.4 of the consultation document) of the practical considerations underlying ComReg's proposal that the existing MMDS Licences should be renewed for a period of 2 years to April 18 2016. The main reason offered by ComReg for its decision to extend the duration of spectrum usage rights held under the MMDS Licences is its estimate of the likely time required to complete all the necessary steps required (including consideration of the spectrum to be awarded and conditions of licences, format of award, public consultation, holding of the competition) to complete the allocation of new 2.6 GHz rights of use, based on the experience of the time taken to complete the recently concluded award process for spectrum in the sub-1 GHz and 1800 MHz Bands. However Vodafone considers that the extensive amount of time taken from commencement to conclusion of the process leading to the award of new spectrum usage rights in the sub-1 GHz and 1800 MHz Bands is unlikely to be an accurate guide to the time that would be required to allocate and give effect to new spectrum usage rights in the 2.6 GHz spectrum band.

Vodafone notes that the process of formulating and finalising the process for the award of new spectrum usage rights in the sub-1 GHz and 1800 MHz bands had to address a number of issues that were particularly problematic and complex. These issues included the differing dates of expiration of individual spectrum licences in each of both the 900 MHz and 1800 MHz bands, and uncertainties around the timing of availability of spectrum in the 800 MHz band, that were only effectively addressed after the process of consulting on the award of spectrum had been underway for a significant period of time. Such complicating factors that could extend the number and duration of steps required to allocate new spectrum usage rights do not arise in the context of the 2.6 GHz band as there is only a single existing licensee in the band and ComReg is in a position to ensure that all of its licences to provide MMDS services can expire on the same date. Moreover, while ComReg has indicated that it may consider a joint award process for spectrum usage rights in both the 2.6 GHz and 2.3 GHz bands, we note that ComReg has already made some preparations for the allocation of spectrum in the 2.3 GHz band (such as those preceding its March 2010 workshop on the holding of an award process for spectrum in the latter band) and no other spectrum bands that could serve as candidates for inclusion in a joint spectrum award process with 2.6 GHz frequencies are cited by ComReg, or to Vodafone's knowledge appear to be in prospect within the next 2-3 years.

Vodafone considers that there is therefore every reason to believe that the holding of a competitive award process for new spectrum usage rights in the 2.6 GHz band (either on its own or jointly with spectrum usage rights in other bands) can be completed within a much shorter time period than was required for the sub-1 GHz and 1800 MHz spectrum. The experience gained by ComReg in the recent multi-band spectrum award process should also have at least some applicability to any multi-band award process including 2.6 GHz spectrum usage rights, further expediting the completion of the steps required for assigning the latter.

The second reason provided by ComReg for renewal of the existing MMDS Licences (in paragraph 5.56 of the consultation) is that the remaining MMDS subscribers should be afforded a reasonable time to move to another platform for the provision of at least equivalent TV services as they have at present. Vodafone agrees that this is a significant consideration in the assessment of whether a short term extension of existing MMDS Licences may be appropriate. However allowing a period of more than 2 years from today (through a renewal of MMDS Licences until 18 April 2015) for current customers of pay-TV services provided via the MMDS platform to switch to competing services should be more than sufficient to facilitate them in moving smoothly to an alternative TV platform of their choice.

Accordingly Vodafone considers that ComReg should review its estimate of the minimum time required to complete all the necessary steps to assign new spectrum usage rights in the 2.6 GHz

band. We believe that a full assessment of all relevant factors, particularly in the context where the net benefits of 2.6 GHz spectrum release decline significantly as a result of even moderate delay - as illustrated in the Aegis and Plum report (ComReg document 11/80a) - must lead to the conclusion that no more than a 1 year period of renewal of MMDS licences beyond the present April 2014 licence expiration date can be objectively justified.