



Commission for
Communications Regulation

Three Ireland (Hutchison) Limited's request for an amendment to its 2100 MHz licences

Submissions received from respondents

Submissions to Information Notice

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Vodafone response to Three Ireland (Hutchison) Limited's request for an amendment to its 2100 MHz licences

Information Notice Reference:
Date:

ComReg 16/16
29/02/2016

Vodafone position

Thank you for the opportunity to comment on this proposed change to licence conditions.

Vodafone are very concerned by this proposed change, which has significant implications for spectrum management and the approach of ComReg to spectrum licence holders.

The change proposed, if adopted by ComReg, would unilaterally change commitments agreed with the European commission as part of the clearance of the Three/O2 transaction. The change would give a competitive advantage to Three and distort competition in the market in so far as ComReg would act to change obligations unilaterally and help lower the investment costs of an operator. Finally, Vodafone would argue that if ComReg approved this proposal they would be contradicting views they expressed on spectrum efficiency which were raised in the context of the recent legal challenge Vodafone made to ComReg's views on spectrum management following the outcome of the Three/O2 transaction.

For the avoidance of doubt ComReg have maintained to date that spectrum is efficiently and effectively managed currently as ComReg are not aware of any spectrum controlled by H3GI that is not being used and also on the basis that both H3GI and O2 Ireland are compliant with their roll-out and coverage obligations in relation to spectrum licenses. The proposed changes will allow Three to not comply with the commitments made in the 3G licence and to keep a fifteen MHz block of frequencies without any coverage commitment whatsoever.

ComReg are also proposing to amend the outcome of the EU Merger decision - again contradicting their previous position that they did not have a roll in this process. This change to the Merger outcome surely is a matter for the EU Commission and the mechanism put in place to monitor to compliance with the commitments post conditional clearance must be reviewed by DG Competition.

Vodafone believe, and would draw on precedent from other occasions when Spectrum which has been assigned and is not used, that Three should surrender this spectrum and the spectrum offered to the market to ensure its reassignment on terms to be set by ComReg. Three won the 'beauty contest' to secure an A license in the 3G competition with transparent terms and conditions which they are now seeking to change. Vodafone would

be keen to compete to gain use of this band in a new competition and to allow an operator to unilaterally reduce its commitments and its investment would undermine the 3G competition and the efficient use of these bands.

Significant change to EU Commission commitments

Vodafone have raised with ComReg previously that the merger of Three Ireland and O2 left the merged company with a spectrum assignment considerably in excess of that of the other operators in Ireland. At the insistence of the EU Commission this imbalance was mitigated by Commitments that allowed new MVNO access to network capacity in the post-merger Three network, and established that the new MVNO should have an option to move to being an MNO through the acquisition of spectrum from Three.

These commitments were comprehensive and designed to encourage the creation of network competition in the mobile market. The spectrum was not assigned to a new entrant at the time of the transaction but the clear intention of the EU Commission was that Spectrum would be identified for a network operator and Three would facilitate the transfer of spectrum.

Vodafone have two major concerns. Firstly, ComReg are undermining the commitments by not allowing 2 contiguous blocks of 2100 spectrum to be readily available to a new entrant. This seriously undermines the effectiveness of the commitment and the attractiveness of the spectrum available. Secondly ComReg are attempting to address this through a change to commitments they had no involvement in and could not enforce if any such amendment was challenged. ComReg do not have the legal basis to change the commitments and should instead put these conditions into a regulation which would be open to consultation.

Vodafone are concerned that ComReg's changes are not legally enforceable against Three and therefore the commitments are fatally undermined and the intention of the conditions imposed are undermined. Given the importance of the commitments Vodafone would have expected the views of the Commission to be included and the Commitments altered by the EU Commission, not ComReg. Vodafone considers this issue to be a serious interference in the role of the EU Commission in this transaction and reserves its rights to take whatever action it thinks appropriate to protect its interests.

Negative change in lower density areas.

This proposed amendment will allow Three to build a lower capacity network in lower density areas than committed to in the 3G licence assignment process :

- this will reduce the ability of new MVNO to establish market share in rural areas, limiting their ability to move to being an MNO.
- The consolidation of network sites that Three discuss is a natural outcome of their merger and therefore does not need ComReg to approve this proposal.

Efficient use of spectrum

Vodafone started legal proceeding against ComReg on the basis that they had not reviewed the efficiency of the spectrum post the Merger transaction. We were assured ComReg had conducted a review and spectrum was efficiently assigned. Now we read this change would 'encourage the efficient use of the radio spectrum'. How can ComReg justify a view that stated initially that efficiency is measured through the active use of spectrum assigned but now says that there is a scale of efficiency is depending on operators' investments?

Three's proposal does not result in the more efficient use of spectrum; on the contrary it facilitates the rollout of network to less people and a reduction in cost for Three. This cost saving for Three should not be seen by ComReg as a gain for users. As per Regulation 16(2) ComReg should promote infrastructure based competition. It is Vodafone's view that this decision will distort competition.

Three's licence commitments

Vodafone believe that Three's coverage commitments in the 3G licensing process and their due diligence process they conducted with the acquisition of O2 mean that they have been aware of their license commitments and entered into agreements in full knowledge of the investment costs involved in holding both A and B licences. The conditions were integral parts of winning the spectrum in a competitive Beauty contest. The licence commitments of any one operator should not be changed to give them a competitive cost advantage. There does not appear to be any legal basis for ComReg to vary the licence terms of one licence holder in a competitive market, without reviewing all the license conditions application for all 2100 spectrum bands.

It is not ComReg's role to consider or attempt to intervene in investment decisions of operators. The level of investment following spectrum assignments is a matter for the operators and efficient investment is only a matter for ComReg in terms of total market considerations, not to benefit one operator

Discrimination

In ComReg's Assessment the regulatory principle in Regulation 16(2) is used as a guiding principle to ensure there is no discrimination. But by allowing Three to use twice the spectrum assignment of 2100 of other operators at a new lower set of coverage commitments Comreg are actively favouring one operator and discriminating against other operators.

By approving this decision ComReg are effectively giving one operator a cost advantage. Three bought the spectrum in an open transparent way and was aware of the need for investment, roll out etc. – ComReg assigned the spectrum with conditions, and it should not be ComReg's role to intervene in the market with the sole attempt to lower the costs of one operator.

Not technically justified

From a technical perspective equipment is available that can cover the band covering both Three licences. A copy of Nokia equipment specifications for the 2100MHz band is attached, (from published articles we understand Nokia are Three's 3G equipment suppliers). These specifications clearly state that the Transmit and Receive frequency capability cover the whole range that includes the both the Three Licences.

Correct way to deal with Spectrum being inefficiently used.

Vodafone believes that if Three cannot use the spectrum as assigned they should surrender the blocks. ComReg can then complete a reassignment process where Three could repurchase the correct assignment that suits their needs.

In summary

Vodafone regard this proposal as having significance in the context of the EC Merger decision, the 3G Licence awards and the future shape of both spectrum assignments and the overall Mobile Market. In the light of this at Vodafone view this as a significant change to the licence conditions of the 2100 licences granted in 2001/2.

Vodafone have had concerns at the spectrum management of the transaction since it was announced and have been assured by ComReg that they have no role in the EU decision or commitments and believe the spectrum assignments are efficient -what we have now is an arbitrary change to the commitments and a view that in fact the current assignments are not efficient.

Vodafone believe that ComReg are now proposing action which is not justified by their powers, their stated aims, or their previously stated position on the merger and reserve their rights to take further action as necessary.

LTE Radio Access, Rel. RL70, Operating Documentation, Issue 01

Flexi Multiradio BTS RF Module and Remote Radio Head Description

DN0951745
Issue 08
Approval Date 2014-11-27

Flexi Remote Radio Head 2TX 2100 (FRGY)

Flexi Multiradio BTS RF Module and Remote Radio
Head Description

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FRGY technical specifications.

Functional description

Table 300 FRGY functional specification

Property	Value
Output power	2x60 W
MIMO	yes, 2TX
Outdoor installation	yes
SW supported technology	WCDMA
TX frequency range	2110-2170 MHz
RX frequency range	1920-1980 MHz
DL instantaneous bandwidth	60 MHz
UL instantaneous bandwidth	60 MHz
DL filter bandwidth	60 MHz
UL filter bandwidth	60 MHz