



Commission for
Communications Regulation

Annexes: Spectrum Trading in the Radio Spectrum Policy Programme (RSPP) bands

A framework and guidelines for spectrum transfers in the RSPP bands

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Annex: 1 International Updates

Overview of trading procedures in a selection of other countries

A 1.1 The Electronic Communications Committee (ECC) of CEPT published a report in May 2011 which was a “Description of Practices Relative to Trading of Spectrum Rights of Use” (ECC Report 169). This report compared spectrum trading procedures in 18 CEPT countries. A short overview of the report is set out below.

ECC Report 169

A 1.2 The Report sets out information on the procedures of transferring and leasing of usage rights in CEPT countries. Information on the regulations applicable to transfers and on the role of spectrum authorities was collected via a questionnaire, which is set out in an annex to the ECC Report 169 (at Annex 1.0 of the Report).

Notification of intention to transfer

A 1.3 Section 3.2.2.1 of the ECC Report 169 provides a list of information required at notification of the intent to transfer. The ECC Report 169 states that the provision of information to the NRA is an essential step where the NRA is required, in the national regulatory framework, to consider approving a transfer. Notably, only two countries (Finland and Sweden) do not require transferring parties to notify the NRA of the intention to transfer.

A 1.4 In brief, the range of information sought from various NRAs includes the following:

- Consent of the holder of the usage rights (Lithuania, Romania);
- Information about the parties (holder and transferee) that seek to trade usage rights (Austria, France, Norway, Romania, Slovak Republic, UK). This information can be used to assess whether competition is infringed (Czech Republic, Switzerland), and should indicate if the parties are part of the same undertaking (Lithuania);
- Reference of the usage right (frequency licence number) that will be transferred (Denmark, France, Norway, Romania, Slovak Republic);
- Date of the transfer (France);
- Financial conditions of the transfer (France), established conditions of the contract (Portugal);

- Evidence of the technical and financial capacity of the assignee to comply with the license obligations (France, Switzerland), certificate of incorporation of the transferee rights (Slovak Republic); and
- The commitment of the assignee to assume all the obligations arising from the licence; The rights of use of radio frequencies granted through competitive or comparative selection procedures may be transferred only where the assignee has complied with all of the required minimum conditions considered at the initial granting of the licence, as well as by his undertaking of all obligations under the licence (Romania).

Publication of information prior to transfer

A 1.5 Section 3.2.2.2 of the ECC Report 169 claims that eight countries do not publish information prior to a transfer while seven countries publish some information before the transfer. In brief, the range of information published includes the following¹:

- Information on both parties (Austria, Czech Republic, UK); and
- Information on the licence (including licence number for Denmark, UK), may include frequency, technical details, territory (Denmark, Lithuania).

Approval of transfer

A 1.6 Section 3.2.2.3 of the ECC Report 169 sets out a comparison of the circumstances where a transfer can be refused by NRAs. Although most countries require approval for all types of trades, however in Denmark it is only required for the trading parts of licences issued after an auction or a public tender and in France trading of spectrum licensed on a first come first served bases does not need an explicit authorisation for a transfer. Further, in Portugal a public consultation takes place before a transaction on the rights of use is concluded. In the UK it has been concluded that it would be neither proportionate or necessary for the generality of tradable licence classes to continue to require the parties to a trade to obtain consent from the regulator (Ofcom).

A 1.7 In brief some of grounds set out in the ECC Report 169 to refuse transfers include the following:

- Negative impact on competition (Austria, Czech Republic, Finland, France, Lithuania, Norway, Portugal, Romania, Slovenia, Sweden, Slovak Republic, Switzerland);
- The transferee does not qualify for obtaining a licence (Romania, UK);
- The licensee is in breach of licence (UK);

- Unacceptable modification of the usage (Romania, Sweden), including of internationally harmonised frequencies (Czech Republic, Portugal, Slovak Republic);
- Unpaid payment for a licence issued following an auction (Denmark, Sweden), or unpaid spectrum fees (Romania);
- Licence holder cannot guarantee compliance with obligations on the licence (Slovak Republic, Switzerland) such as minimum requirements of geographic coverage or provision of services with remaining spectrum (Denmark);
- Risk of interference (Finland);
- Risk to national security (Finland, UK);
- Transfer of spectrum assigned to public interest protection (defence, security and other non-commercial functions of State) (Lithuania);
- Effective and efficient use of spectrum (Portugal, Slovenia);
- Laws on broadcasting (radio and TV) are to be respected (Portugal, Romania); and
- Compliance with international obligations (UK).

A 1.8 The ECC Report 169 summarises two types of requirements in approving a transfer. First there are administrative requirements that the licensee and transferee must meet which may be simply checked by the authorities (for example, not being in breach of a licence condition). And second, there are more quantitative and qualitative requirements, such as assessing the impact on competition and such assessments may only be practical in the case of bands where the number of transactions is small.

Publication of information on the effective transfer

A 1.9 Section 3.2.2.4 of the ECC Report 169 provides a list of information required at notification of the intent

A 1.10 Publication of information on transactions is in place in Austria, Czech Republic, Denmark, Finland, France, Norway, Portugal, Romania, Russia, Slovak Republic, Spain, Sweden, UK. In some cases only information on the authorisation is available (Slovenia) and information on the transaction itself is not published. Lithuania releases information on current and former licence holders on request.

Overview of desk research material in a selection of countries.

A 1.11 An overview of the results of a desk survey is presented in tabular form below;

	Do assessments and determinations occur ex-ante	Triggers for assessments indicated?	Are criteria for assessments indicated?	Do procedures vary depending on frequency band	Do assessments occur ex post	Defined triggers for assessment	Are criteria for assessments defined	Are partial trades allowable?	Are transferees required to meet licence obligations similar to those imposed on the licensee holder for that portion of spectrum?	Are licence obligations affected in partial transfers (by time, bandwidth or geography)	Are competition assessments conducted by the licensing Authority?	Can the Authority impose remedies on trades?
Australia	✗ ¹	-	-	-	✓	✗	✗	✓	-	-	✗	-
Austria	✓ ²	✗	✗	✗	-	-	-	✓	✓ ³	✗	✓	✗ ⁴
Denmark	✓	✗	✗	✓	✓	✗	✗	✓	-	-	-	-
Finland	✓	-	✗	-	✓	-	✗	✓	✓	✗	✓	✓
France	✓	✗	✗	✓ ⁵	-	-	-	✓	✓	✓	✓	✓
Germany	✓	✗ ⁶	-	-	-	-	-	-	-	-	✓	✓ ⁷
New Zealand	✓	✗	✓ ⁸	-	-	-	-	✓	-	-	✗	✓
Sweden	✓	✓ ⁹	✓	-	-	-	-	✓	-	-	-	✓
Switzerland	✓	-	-	-	-	-	-	✓	-	-	-	✓
United Kingdom	✓	✗	✓ ¹⁰	✓ ¹¹	✗	-	-	✓	✓	-	✓	✓
USA	✓	✗	✗	-	✓	-	-	✓	✓	-	✓	-

¹ Australia: ComReg understands that the Australian Communications Media Authority (ACMA) does not carry out an assessment for spectrum trading or third party authorization, however, notified trade for less than a standard trading unit (STU) size are not allowed. In the 800 MHz band the STU is 1 MHz. ACMA claims this is in order to prevent spectrum fragmentation

² Austria: In Austria the spectrum manager (RTR) applies a “adverse effects on competition” test. The test is neither defined in the law nor in the cases where it is applied. The spectrum manager, RTR, publishes a limited number of precedents on its website http://www.rtr.at/en/tk/FRQ_trading.

³ Austria: In Austria the relevant law does not expressly address the point whether the conditions pass to the recipient or remain with the transferor or as to the effect of partial transfers on licence conditions for either party

⁴ Austria: ComReg notes that although there is no definition of ‘spectrum hoarding’, the spectrum manager RTR cleared a transfer (in a ‘merger’) under the condition that the notifying party sold some of its spectrum (Decision F7/06-9). It seems that the law provides for the regulator to accept ‘behavioural commitments’ or commitments proffered by the notifying parties. In some cases no remedies were accepted by RTR and it does not provide any guidance as to which remedies would be acceptable to it

⁵ France: In France the test is the “*impediment to effective competition for access and use of spectrum*” however, this is not further defined in law

⁶ New Zealand: The role of the spectrum regulator in spectrum trading seems to be limited to a formal assessment of the technical aspects of the ‘transaction’ and the Competition Authority is the competent authority for assessing ‘harmful effects on competition’

⁷ Germany: No remedies are listed in the information obtained by ComReg, but it is presumed that remedies would apply

⁸ New Zealand: Although no information is available as to the content of the information required for a transfer, Section 49 of the Radio and Communications Act 1989 contains a list of the content of a spectrum licence, and upon transferring a licence, the parties therefore need to ensure that the content of the licence is correct.

⁹ Sweden: The Swedish Post and Telecom Authority (PTS) states that when a market player holds more than 50% market share, it is in a dominant position and PTS does not allow operators to gain too much market share (i.e. to hold too many frequency licences). The relevant law seems to point to ‘an adverse impact on competition’ and all notified trades seem to be assessed.

¹⁰ United Kingdom: The communications regulator in the UK, Ofcom, sets out a high level list of the types of factors it would assess in analysing a transfer in the Public Wireless Network Bands see: <http://stakeholders.ofcom.org.uk/binaries/consultations/trading-900-1800-2100/statement/900-1800-2100-statement.pdf>

¹¹ United Kingdom: For the majority of licences no *ex ante* assessment would be conducted.

Annex: 2 Legal Framework

1 Legal Framework

- 2.1 Three pieces of Irish primary legislation set out ComReg's key powers, functions, objectives and duties of relevance to spectrum trading:
- The Communications Regulation Acts 2002-2011¹ (the “**2002 Act**”);
 - The Wireless Telegraphy Acts;² and
 - The Competition Acts (“**the Competition Act**”).³
- 2.2 There is also a considerable body of secondary legislation including, in particular, a suite of five statutory instruments enacted in 2011 and collectively described as the “Specific Regulations”, comprising:
- the Framework Regulations⁴;
 - the Authorisation Regulations⁵;
 - the Access Regulations⁶;
 - the Universal Service Regulations⁷; and
 - the Privacy and Electronic Communications Regulations.⁸

¹ The Communications Regulation Act 2002, the Communications Regulation (Amendment) Act 2007, the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010 and Communications Regulation (Postal Services) Act 2011.

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

³ The Competition Act 2002, as amended by the Competition (Amendment) Act 2006 and the Communications Regulation Amendment Act 2007.

⁴ European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011).

⁵ European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011 (S.I. No. 335 of 2011).

⁶ European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011 (S.I. No. 334 of 2011).

⁷ European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011 (S.I. No. 337 of 2011).

⁸ European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (S.I. No. 336 of 2011);

- 2.3 Each of these statutory instruments transposes an equivalent EC Directive and the set of five Directives forms the Common Regulatory Framework.
- 2.4 In particular, the Framework and Authorisation Directives,⁹ as transposed into Irish law by the corresponding Framework and Authorisation Regulations, set out, amongst other things, powers, functions, duties and objectives of ComReg that are relevant to this response to consultation.
- 2.5 On 14 March 2012, a Decision of The European Parliament and of the Council establishing a multiannual radio spectrum policy programme was published (“**the RSPP Decision**”).¹⁰ The RSPP Decision mandates, amongst other things, the introduction of spectrum trading in certain bands.¹¹
- 2.6 Apart from licensing and making regulations in relation to licences, ComReg’s functions include the management of Ireland’s radio frequency spectrum in accordance with ministerial Policy Directions under Section 13 of the 2002 Act, while also having regard to its objectives under Section 12 of the 2002 Act, Regulation 16 of the Framework Regulations and the provisions of Article 8a of the Framework Directive. ComReg is to carry out its functions effectively, and in a manner serving to ensure that the allocation and assignment of radio frequencies is based on objective, transparent, non-discriminatory and proportionate criteria.
- 2.7 Wireless Telegraphy Licences are granted for fixed, finite periods of time - for example, fifteen or twenty years. Upon the expiration of the fixed duration of a licence, the licence terminates.¹² When a licence expires, the spectrum right of use vested in that licence also ceases to exist and the spectrum is re-assigned by ComReg,¹³ either through a competitive process (in accordance with the Authorisation Regulations

⁹ Directive No. 2002/21/EC of the European Parliament and of the Council of 7 March 2002 (as amended by Regulation (EC) No. 717/2007 of 27 June 2007, Regulation (EC) No. 544/2009 of 18 June 2009 and Directive 2009/140/EC of the European Parliament and Council of 25 November 2009) (the “Framework Directive”) and Directive No. 2002/20/EC of the European Parliament and of the Council of 7 March 2002 (as amended by Directive 2009/140/EC) (the “Authorisation Directive”)

¹⁰ Decision No 243/2012/EU Of The European Parliament and of the Council of 14 March 2012 establishing a multiannual radio spectrum policy programme.

¹¹ Article 6(8) of the RSPP Decision.

¹² There are some rare and very limited exceptions to this, see for example Document 11/11.

¹³ This is not the situation in all Member States; for example in the UK certain spectrum rights of use have been bought outright from the State, by private undertakings, and are held in perpetuity. In such cases, the spectrum right of use may be considered to be permanently “*transferred*” to an undertaking which would enable it also “lease”

2011) or on a first-come, first-served basis (depending on the circumstances of the particular spectrum band).

- 2.8 This Annex is intended as a general guide to ComReg's role in regulating spectrum and is not a definitive or exhaustive legal exposition of that role. Further, this section restricts itself to consideration of those functions, objectives and powers of ComReg which appear most relevant to the matter of spectrum management and trading.
- 2.9 All references in this annex to enactments are to the enactment as amended at the date hereof, unless the context otherwise requires.
- 2.10 ComReg notes that the regulatory framework in which it operates and the interpretation thereof is likely to change over time and parties proposing to trade rights of use of spectrum can expect such proposals to be considered in light of the regulatory framework in force at the date of the proposed transfer.

1.1 Primary Objectives and Regulatory Principles Under the 2002 Act and Common Regulatory Framework

- 2.11 Section 10(1) of the 2002 Act provides that ComReg's statutory "functions" include:

(a) to ensure compliance by undertakings with obligations in relation to the supply of and access to electronic communications services, electronic communications networks and associated facilities and the transmission of such services on such networks,

(b) to manage the radio frequency spectrum ...

- 2.12 ComReg's primary objectives in carrying out its statutory functions in the context of electronic communications are:
- to promote competition¹⁴;
 - to contribute to the development of the internal market¹⁵;
 - to promote the interests of users within the Community¹⁶;

¹⁴Section 12(1)(a)(i) of the 2002 Act.

¹⁵Section 12(1)(a)(ii) of the 2002 Act.

¹⁶Section 12(1)(a)(iii) of the 2002 Act.

- to ensure the efficient management and use of the radio frequency spectrum in Ireland in accordance with a direction under Section 13 of the 2002 Act¹⁷; and
- unless otherwise provided for in Regulation 17 of the Framework Regulations, to take the utmost account of the desirability of technological neutrality in complying with the requirements of the Specific Regulations¹⁸, in particular those designed to ensure effective competition¹⁹.

Promotion of Competition

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

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

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

- ensure that elderly users and users with special social needs derive maximum benefit in terms of choice, price and quality, and

¹⁷ Section 12(1)(b) of the 2002 Act. Whilst this objective would appear to be a separate and distinct objective in the 2002 Act, it is noted that, for the purposes of ComReg's activities in relation to ECS and ECN, Article 8 of the Framework Directive identifies "encouraging efficient use and ensuring the effective management of radio frequencies (and numbering resources)" as a sub-objective of the broader objective of the promotion of competition. In light of this, the assessment of different regulatory options against this objective is set out in the context of the RIA contained in document 11/60.

¹⁸ The 'Specific Regulations' comprise collectively the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011), the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011 (S.I. No. 335 of 2011), the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011 (S.I. No. 334 of 2011), the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011 (S.I. 337 of 2011) and the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (S.I. No. 336 of 2011).

¹⁹ Regulation 16(1)(a) of the Framework Regulations.

- ensure that, in the transmission of content, there is no distortion or restriction of competition in the electronic communications sector.
- 2.15 Regulation 9(11) of the Authorisation Regulations also provides that ComReg must ensure that radio frequencies are efficiently and effectively used, having regard to Section 12(2)(a) of the 2002 Act and Regulations 16(1) and 17(1) of the Framework Regulations. Regulation 9(11) further provides that ComReg must ensure that competition is not distorted by any transfer or accumulation of rights of use for radio frequencies and, for this purpose, ComReg may take appropriate measures such as mandating the sale or the lease of rights of use for radio frequencies.

Contributing to the Development of the Internal Market

- 2.16 Section 12(2)(b) of the 2002 Act requires ComReg to take all reasonable measures which are aimed at contributing to the development of the internal market, including:
- removing remaining obstacles to the provision of electronic communications networks, electronic communications services and associated facilities at Community level;
 - encouraging the establishment and development of trans-European networks and the interoperability of transnational services and end-to-end connectivity; and
 - co-operating with electronic communications national regulatory authorities in other Member States of the Community and with the Commission of the Community in a transparent manner to ensure the development of consistent regulatory practice and the consistent application of Community law in this field.
- 2.17 In so far as contributing to the development of the internal market is concerned, Regulation 16(1)(c) of the Framework Regulations also requires ComReg to co-operate with the Body of European Regulators for Electronic Communications (BEREC) in a transparent manner to ensure the development of consistent regulatory practice and the consistent application of EU law in the field of electronic communications.

Promotion of Interests of Users

- 2.18 Section 12(2)(c) of the 2002 Act requires ComReg, when exercising its functions in relation to the provision of electronic communications networks and services, to take all reasonable measures which are

aimed at the promotion of the interests of users within the Community, including:

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

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

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

Regulatory Principles

2.20 In pursuit of its objectives under Regulation 16(1) of the Framework Regulations and Section 12 of the 2002 Act, ComReg must, pursuant to Regulation 16(2) of the Framework Regulations, apply objective, transparent, non-discriminatory and proportionate regulatory principles by, amongst other things:

- promoting regulatory predictability by ensuring a consistent regulatory approach over appropriate review periods;
- ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks and services;

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

BEREC

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

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

Other Obligations under the 2002 Act

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

- seek to ensure that any measures taken by it are proportionate having regard to the objectives set out in Section 12 of the 2002 Act;²⁰
- have regard to international developments with regard to electronic communications networks and electronic communications services, associated facilities, postal services, the radio frequency spectrum and numbering²¹; and

²⁰ Section 12(3) of the 2002 Act.

²¹ Section 12(5) of the 2002 Act.

- take the utmost account of the desirability that the exercise of its functions aimed at achieving its radio frequency management objectives does not result in discrimination in favour of or against particular types of technology for the provision of ECS.²²

Policy Directions²³

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

Policy Direction No.4 on Industry Sustainability (2003)

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

Policy Direction No.5 on Regulation only where Necessary (2003)

- 2.26 Where ComReg has discretion as to whether to impose regulatory obligations, it shall, before deciding to impose such regulatory

²²Section 12(6) of the 2002 Act .

²³ComReg also notes, and takes due account of, the Spectrum Policy Statement issued by the DCENR in September 2010.

obligations on undertakings, examine whether the objectives of such regulatory obligations would be better achieved by forbearance from imposition of such obligations and reliance instead on market forces.

Policy Direction No.6 on Regulatory Impact Assessment (2003)

2.27 ComReg, before deciding to impose regulatory obligations on undertakings in the market for electronic communications or for the purposes of the management and use of the radio frequency spectrum or for the purposes of the regulation of the postal sector, shall conduct a Regulatory Impact Assessment in accordance with European and International best practice and otherwise in accordance with measures that may be adopted under the Government's Better Regulation programme.

Policy Direction No.7 on Consistency with other Member States (2003)

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

Policy Direction No.11 on the Management of the Radio Frequency Spectrum (2003)

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

General Policy Direction No.1 on Competition (2004)

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

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

- the potential of alternative technology delivery platforms to support competition.

1.2 Other Relevant Obligations under the Framework and Authorisation Regulations

Framework Regulations

- 2.31 Regulation 17 of the Framework Regulations governs the management of radio frequencies for electronic communications services. Regulation 17(1) requires that ComReg, subject to any directions issued by the Minister pursuant to Section 13 of the 2002 Act and having regard to its objectives under Section 12 of the 2002 Act and Regulation 16 of the Framework Regulations and the provisions of Article 8a of the Framework Directive, shall ensure:
- the effective management of radio frequencies for electronic communications services
 - that spectrum allocation used for electronic communications services and issuing of general authorisations or individual rights of use for such radio frequencies are based on objective, transparent, non-discriminatory and proportionate criteria, and
 - that harmonisation of the use of radio frequency spectrum across the EU is promoted, consistent with the need to ensure its effective and efficient use and in pursuit of benefits for the consumer such as economies of scale and interoperability of services, having regard to all decisions and measures adopted by the European Commission in accordance with Decision No. 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the EU.
- 2.32 Regulation 17(2) provides that, unless otherwise provided in Regulation 17(3), ComReg must ensure that all types of technology used for electronic communications services may be used in the radio frequency bands that are declared available for electronic communications services in the Radio Frequency Plan published under section 35 of the 2002 Act in accordance with EU law.
- 2.33 Regulation 17(3) provides that, notwithstanding Regulation 17(2), ComReg may, through licence conditions or otherwise, provide for proportionate and non-discriminatory restrictions to the types of radio network or wireless access technology used for electronic communications services where this is necessary to—

- avoid harmful interference,
 - protect public health against electromagnetic fields,
 - ensure technical quality of service,
 - ensure maximisation of radio frequency sharing,
 - safeguard the efficient use of spectrum, or
 - ensure the fulfilment of a general interest objective as defined by or on behalf of the Government or a Minister of the Government in accordance with Regulation 17(6).
- 2.34 Regulation 17(4) requires that, unless otherwise provided in Regulation 17(5), ComReg must ensure that all types of electronic communications services may be provided in the radio frequency bands, declared available for electronic communications services in the Radio Frequency Plan published under section 35 of the Act of 2002 in accordance with EU law.
- 2.35 Regulation 17(5) provides that, notwithstanding Regulation 17(4), ComReg may provide for proportionate and non-discriminatory restrictions to the types of electronic communications services to be provided, including where necessary, to fulfil a requirement under the International Telecommunication Union Radio Regulations.
- 2.36 Regulation 17(6) requires that measures that require an electronic communications service to be provided in a specific band available for electronic communications services must be justified in order to ensure the fulfilment of a general interest objective as defined by or on behalf of the Government or a Minister of the Government in conformity with EU law such as, but not limited to—
- safety of life,
 - the promotion of social, regional or territorial cohesion,
 - the avoidance of inefficient use of radio frequencies, or
 - the promotion of cultural and linguistic diversity and media pluralism, for example, by the provision of radio and television broadcasting services.
- 2.37 Regulation 17(7) provides that ComReg may only prohibit the provision of any other electronic communications service in a specific radio spectrum frequency band where such a prohibition is justified by the need to protect safety of life services. ComReg may, on an exceptional basis, extend such a measure in order to fulfil other

general interest objectives as defined by or on behalf of the Government or a Minister of the Government.

- 2.38 Regulation 17(8) provides that ComReg must, in accordance with Regulation 18, regularly review the necessity of the restrictions referred to in Regulations 17(3) and 17(5) and must make the results of such reviews publicly available.
- 2.39 Regulation 17(9) provides that Regulations 17(2) to (7) only apply to spectrum allocated to be used for electronic communications services, general authorisations issued and individual rights of use for radio frequencies granted after the 1 July 2011. Spectrum allocations, general authorisations and individual rights of use which already existed on the 1 July 2011 Framework Regulations are subject to Regulation 18.
- 2.40 Regulation 17(10) provides that ComReg may, having regard to its objectives under Section 12 of the 2002 Act and Regulation 16 and its functions under the Specific Regulations, lay down rules in order to prevent spectrum hoarding, in particular by setting out strict deadlines for the effective exploitation of the rights of use by the holder of rights and by withdrawing the rights of use in cases of non-compliance with the deadlines. Any rules laid down under this Regulation must be applied in a proportionate, non-discriminatory and transparent manner.
- 2.41 Regulation 17(11) requires ComReg to, in the fulfilment of its obligations under that Regulation, respect relevant international agreements, including the ITU Radio Regulations and any public policy considerations brought to its attention by the Minister.

Transfer or lease of individual rights to use radio frequencies

- 2.42 Regulation 19 of the Framework Regulations deals with the transfer or leasing of spectrum rights of use.
- 2.43 Regulation 19(1) requires ComReg to ensure that undertakings may transfer or lease their spectrum rights of use to other undertakings, in accordance with any conditions attached to those rights of use in the bands for which this is provided for in accordance with any implementing measures adopted by the European Commission under Article 9b(3) of the Framework Directive.

- 2.44 Article 6(8) of the RSPP Decision mandates trading in the harmonised bands²⁴ as envisaged in Article 9b(3) of the Framework Directive.
- 2.45 Regulation 19(2) stipulates that ComReg shall ensure that the conditions attached to a spectrum right of use shall continue to apply after the transfer or lease, unless ComReg specifies otherwise.
- 2.46 Undertakings intending on transferring spectrum rights are required by Regulation 19(4) to notify ComReg of their intentions to do so, in accordance with procedures specified ComReg . ComReg must also ensure that such notifications are made public.
- 2.47 Regulation 19(5) states that where radio frequency use has been harmonised, a transfer of the spectrum right of use shall comply with such harmonised use .
- 2.48 Article 3 of the RSPP Decision provides as follows (insofar as is material):

“In order to focus on the priorities of this Decision, Member States and the Commission shall cooperate to support and achieve the following policy objectives:

(a) encourage efficient management and use of spectrum to best meet the increasing demand for use of frequencies reflecting the important social, cultural and economic value of spectrum;

...

(f) promote innovation and investment through enhanced flexibility in the use of spectrum, through a consistent application across the Union of the principles of technology and service neutrality between the technological solutions that may be adopted and through adequate regulatory predictability as provided for, inter alia, in the regulatory framework for electronic communications through the freeing up of harmonised spectrum for new advanced technologies, and through the possibility of trading rights of use of spectrum, thereby creating opportunities for future Union-wide digital services to be developed;

...

(i) maintain and develop effective competition, in particular in electronic communication services, by seeking to avoid, through ex ante measures or ex post remedies, the excessive accumulation of rights

²⁴ 790-862 MHz, 880-915 MHz, 925-960 MHz, 1710-1785 MHz, 1805 -1880 MHz, 1900-1980 MHz, 2010-2025MHz, 2110-2170 MHz, 2.5 -2.69 GHz and 3.4-3.8 GHz.

of use of radio frequencies by certain undertakings which results in significant harm to competition;”

- 2.49 Accordingly, the RSPP Decision mandates spectrum trading in the harmonised bands but requires ComReg to maintain and develop effective competition.
- 2.50 Recital 28 to the RSPP Decision notes that spectrum trading is important for increasing the efficient use of spectrum. Accordingly, Article 3(a) is of significance in the present context.

Review of restrictions on existing rights

- 2.51 Regulation 18(4) requires ComReg to consider the application of transitional measures to ensure fair competition where restrictions on existing rights are removed.

Authorisation Regulations

Rights of use of radio frequencies

- 2.52 Regulation 9(1) of the Authorisation Regulations provides that rights of use for radio frequencies for the provision of electronic communications networks or services shall be facilitated under a general authorisation. Regulation 9(1), however, is subject to Regulation 9(2) which provides that ComReg may grant individual rights of use for radio frequencies by way of a licence where it considers that certain criteria are applicable, namely that granting a licence is necessary to:
- (a) avoid harmful interference;
 - (b) ensure technical quality of service;
 - (c) safeguard the efficient use of spectrum; or
 - (d) to fulfill other objectives of general interest as defined by or on behalf of the Government or a Minister of the Government in conformity with EU law.
- 2.53 Regulation 9(3) provides that decisions by ComReg to grant individual rights of use for radio frequencies shall be subject to:
- (a) Regulations 10, 11 and 18(1)(c),
 - (b) any applicable provisions of the 1926 Act or any relevant regulations made under that Act, and

(c) any other rules ensuring the efficient use of radio frequencies in accordance with the Framework Directive and the Framework Regulations

- 2.54 Regulation 9(4)(a) of the Authorisation Regulations requires that ComReg, having regard to the provisions of Regulation 17 of the Framework Regulations, shall establish open, objective, transparent, non-discriminatory and proportionate procedures for the granting of rights of use for radio frequencies and cause any such procedures to be made publicly available.
- 2.55 Regulation 9(5) provides that when granting rights of use for radio frequencies ComReg shall, having regard to Regulations 17 and 19 of the Framework Regulations, specify whether such rights may be transferred by the holder of the rights and under what conditions such a transfer may take place.
- 2.56 Regulation 9(6) provides that rights of use for radio frequencies shall be in force for such period as ComReg considers appropriate having regard to the network or service concerned in view of the objective pursued.
- 2.57 Regulation 9(7) provides that:
- (a) where individual rights of use for radio frequencies are granted for a period of 10 years or more and such rights may not be transferred or leased between undertakings in accordance with Regulation 19 of the Framework Regulations, ComReg must ensure that criteria set out in Regulation 9(2) apply for the duration of the rights of use, in particular upon a justified request from the holder of the right.
 - (b) where ComReg determines that the criteria referred to in Regulation 9(2) are no longer applicable to a right of use for radio frequencies, ComReg must, after a reasonable period and having notified the holder of the individual rights of use, change the individual rights of use into a general authorisation or must ensure that the individual rights of use are made transferable or leasable between undertakings in accordance with Regulation 19 of the Framework Regulations.
- 2.58 Regulation 9(11) provides that ComReg shall ensure that radio frequencies are efficiently and effectively used having regard to section 12(2)(a) of the Act of 2002 and Regulations 16(1) and 17(1) of the Framework Regulations. It further provides that ComReg shall ensure that competition is not distorted by any transfer or accumulation of rights of use of radio frequencies, and for this

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

Conditions attached to rights of use for radio frequencies

- 2.59 Regulation 9(5) of the Authorisation Regulations provides that, when granting rights of use for radio frequencies, ComReg must, having regard to the provisions of Regulations 17 and 19 of the Framework Regulations, specify whether such rights may be transferred by the holder of the rights and under what conditions such a transfer may take place.
- 2.60 Regulation 10(1) of the Authorisation Regulations provides that, notwithstanding Section 5 of the 1926 Act, but subject to any regulations under Section 6 of the 1926 Act, ComReg may only attach those conditions listed in Part B of the Schedule to the Authorisation Regulations, which are as follows:
- Obligation to provide a service or to use a type of technology for which the rights of use for the frequency has been granted including, where appropriate, coverage and quality requirements.
 - Effective and efficient use of frequencies in conformity with the Framework Directive and Framework Regulations.
 - Technical and operational conditions necessary for the avoidance of harmful interference and for the limitation of exposure of the general public to electromagnetic fields, where such conditions are different from those included in the general authorisation.
 - Maximum duration in conformity with Regulation 9, subject to any changes in the national frequency plan.
 - Transfer of rights at the initiative of the rights holder and conditions of such transfer in conformity with the Framework Directive.
 - Usage fees in accordance with Regulation 19.
 - Any commitments which the undertaking obtaining the usage right has made in the course of a competitive or comparative selection procedure.
 - Obligations under relevant international agreements relating to the use of frequencies.
 - Obligations specific to an experimental use of radio frequencies.
- 2.61 Regulation 10(2) also requires that any attachment of conditions under Regulation 10(1) to rights of use for radio frequencies must be non-discriminatory, proportionate and transparent and in accordance with Regulation 17 of the Framework Regulations.

Amendment of rights and obligations

- 2.62 Regulation 15(1) of the Authorisation Regulations permits ComReg to amend rights, conditions and procedures concerning rights of use for radio frequencies, provided that any such amendments may only be made in objectively justified cases and in a proportionate manner, taking into consideration, where appropriate, the specific conditions applicable to transferable rights of use for radio frequencies. Any such amendment is also subject to Regulation 15(4), which provides that - except where the proposed amendments are minor in nature and have been agreed with the holder of a right of use for radio frequencies - before making any amendment under Regulation 15, ComReg shall give notice in such manner as it considers appropriate of its intention to make the amendment and invite interested parties to make representations within such period as may be specified but not being, except in exceptional circumstances, less than 28 days, and ComReg shall have regard to any representations made.

1.3 Other Relevant Provisions

Wireless Telegraphy Acts

- 2.63 Under Section 5(1) of the 1926 Act (as inserted by section 182 and Schedule 2 of the Broadcasting Act 2009) ComReg may, subject to the 1926 Act and on payment of the prescribed fees (if any), grant to any person a licence to keep and have possession of “apparatus for wireless telegraphy” in any specified place in the State.
- 2.64 Section 5(2) provides that every licence shall be in such form, continue in force for such period and be subject to such conditions and restrictions (including conditions as to suspension and revocation) as are prescribed in regard to it by regulations made by ComReg under Section 6.
- 2.65 Section 5(3) provides that, where it appears appropriate to ComReg, it may, in the interests of the efficient and orderly use of wireless telegraphy, limit the number of licences for any particular class or classes of apparatus for wireless telegraphy granted under Section 5(1).
- 2.66 Section 6(1) provides that ComReg may make regulations prescribing in relation to all licences granted by it under section 5, or any particular class or classes of such licences, all or any of the matters following that is to say:

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

2.67 Section 6(2) provides that ComReg may authorise and provide for the granting of licences under section 5 subject to special terms, conditions, and restrictions to any person who satisfies it that the person requires the licence solely for the purpose of conducting experiments in wireless telegraphy.

Competition Acts

2.68 Part 4A of the 2002 Act (inserted by the Communications Regulation (Amendment) Act 2007) sets out the powers and functions of ComReg under the Competition Acts. ComReg is given powers which are co-extensive with those of the Competition Authority (collectively the Competition Authority and ComReg are referred to as “a Competent Authority” in the Competition Acts) in relation to the regulation of agreements between undertakings which have as their object or effect the prevention, restriction or distortion of competition (section 4) and abuse of a dominant position (section 5) and do not extend to merger control provisions of the Competition Acts.

2.69 ComReg has the power to investigate and prosecute certain potential breaches of the Competition Acts, where the alleged breach involves the provision of electronic communications services or networks or associated facilities and to declare that certain categories of agreements between undertakings comply with the conditions set out in section 4(5) of the Competition Act (but only with the concurrence

of the Competition Authority).. ComReg and the Authority are obliged to co-operate with one another, to avoid duplication of effort and inconsistency of decision making, and prosecution by either ComReg or the Commission is a bar to prosecution by the other in respect of the same offence.

- 2.70 As ComReg's powers under the Competition Acts do not include powers in relation to merger control, any spectrum transfer that amounts to a merger will fall for consideration by the Competition Authority.
- 2.71 Conversely, any agreement between undertakings relating to the provision of electronic communications services or an electronic communications network, or associated facilities, which does not constitute a merger, will fall for ComReg's consideration under the Competition Acts. For the avoidance of doubt this would include *ex-post* assessment of agreements the effect of which was to distort competition.

Annex: 3 Existing licence types in the RSPP Bands

A 3.1 An overview of existing licence types in the RSPP bands is presented in tabular form below.

Licensee	Frequency Assigned (MHz)	Award Process	Expires
RTE	790 – 862	Administrative grant	October 2012
Vodafone Ireland	900.1–907.3/945.1–952.3	Administrative grant	2013
Meteor Mobile	892.7–899.9/937.7–944.9	Comparative Evaluation	2015
Telefónica Ireland	907.5–914.7/952.5–959.7	Administrative grant	2013
Vodafone Ireland	1736.3–1750.7/ 1831.3–1845.7	Incumbent	
Meteor Mobile	1745–1750/1840–1845; 1765–1775/1860–1870	Comparative Evaluation	2015
Telefónica Ireland	1750.9–1765.3/ 1845.9–1860.3	Comparative Evaluation	2015
Vodafone Ireland	1950–1965/2140–2155 1905–1910	Comparative Evaluation	2022
Meteor Mobile	1935–1950/2125–2140	Comparative Evaluation	2027
Telefónica Ireland	1965-1980/2155-2170 1910-1915	Comparative Evaluation	2022
3 Ireland	1920–1935/2110–2125	Comparative Evaluation	2022
UPC	2520 – 2686	Administrative grant under S.I. 529 of 2003	2014 subject to SI 529 of 2003
Digiweb	3610-3635/3710 – 3735, 3660-3685/3760-3785	Comparative Evaluation, Administrative grant	Annually renewable until 2017
PermaNET	3635-3660/3735-3760, 3610-	Comparative Evaluation, Administrative grant	Annually renewable until 2017

	3635/3710-3735, 3660-3685/3760-3785, 3685-3710-3785-3800		
RippleCom	3635-3660/3735-3760	Comparative Evaluation, Administrative grant	Annually renewable until 2017
Imagine	3475-3500/3575-3600, 3500-3510, 3540-3575, 3685-3710/3785-3800 3410-3424/3510-3524	Comparative Evaluation, Administrative grant	Annually renewable until 2017
Eircom	3410-3424/3510-3524	Administrative grant	Annually renewable until 2017
Lighthouse Networks	3475-3500/3575-3600, 3575-3600, 3610-3635/3710-3735, 3660-3685/3760-3785	Comparative Evaluation, Administrative grant	Annually renewable until 2017
FastCom	3660-3695/3760-3785	Comparative Evaluation, Administrative grant	Annually renewable until 2017
Rapid Broadband	3540 - 3575	Comparative Evaluation, Administrative grant	Annually renewable until 2017
Western Broadband Networks	3540 - 3575	Comparative Evaluation, Administrative grant	Annually renewable until 2017
Airspeed	3610-3635/3710-	Comparative Evaluation,	Annually renewable until

	3735, 3685 – 3710/3785 - 3800	Administrative grant	2017
Real Broadband	3540 - 3575	Comparative Evaluation, Administrative grant	Annually renewable until 2017
State services	3435 – 3475	Administrative grant	Indefinite

Annex: 4 Draft Guidelines for Spectrum Transfer Analysis and Procedures

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INTRODUCTION

A 4.1 These Guidelines set out general approach of the Commission for Communications Regulation (ComReg) to assessing whether or not proposed transfers of spectrum rights of use (spectrum trades) would likely result in distortions to competition and/or hoarding, in any market.

A 4.2 These Guidelines are intended to be accessible and, insofar as possible, everyday language is used. Where technical terms are used, explanations are given.

- a) The term spectrum trade means a commercial transaction where an undertaking transfers its legal right to use radio frequency spectrum in a specific band to another undertaking.
- b) For the purposes of these Guidelines, the term “undertaking” has two concurrent meanings, as set out in the Framework Regulations and in the Competition Act 2002, respectively – i.e. “undertaking” means a person engaged or intending to engage in the provision of “electronic communications networks” or “electronic communications services” or “associated facilities” (as those terms are defined in the Framework Regulations) while it also means a person being an individual, a body corporate or an unincorporated body of persons engaged for gain in the production, supply or distribution of goods or the provision of a service.
- c) The term RSPP refers to the “Radio Spectrum Policy Programme”²⁵.
- d) The term SDC refers to a “substantial distortion to competition” and the term SDC test refers to the test adopted to assess proposed transfers which are notified to ComReg.

A 4.3 These Guidelines apply to all spectrum transfers notified to ComReg pursuant to Regulation 19 of the Framework Regulations 2011.

A 4.4 Spectrum transfers are considered by assessing, amongst other things:

- a) the effect of the spectrum transfer on market structure . This can, for example, involve reviewing whether the spectrum transfer would give rise to changes in the number of market participants, their capacity to provide wireless electronic communications services or other services, their market shares and other factors;

²⁵ Decision No 243/2012/EU Of The European Parliament and of the Council of 14 March 2012 establishing a multiannual radio spectrum policy programme

- b) whether the spectrum transfer would likely have an effect on the level of rivalry among existing competitors in the market. In this regard, both unilateral and coordinated effects are examined;
- c) whether the spectrum transfer would likely have an effect of leading directly to efficiency gains that cannot be realised by any means other than the spectrum transfer; and
- d) The analysis of factors (a) to (c) above are brought together in order to make a final determination as to whether the notified spectrum transfer would result in a distortion to competition.

A 4.5 In some cases, it may be possible for ComReg to conclude that a spectrum transfer will not result in a SDC by examining some but not all of the above factors. Some of the above factors may be also taken into account in assessing the effects on competition of non-horizontal spectrum transfers, in the manner set out in Section 4.

A 4.6 Circumstances may arise that are not clearly envisaged in these Guidelines, and ComReg shall consider such circumstances on a case-by-case basis. These Guidelines are interpreted in a flexible manner, and ComReg reserves the right to deviate from the Guidelines if it forms the view that to do otherwise would result in a perverse outcome. Statements relating to distortive effects of the spectrum transfer in this document should be interpreted as referring to the views of ComReg based on the information available to it.

A 4.7 All lists of factors in these Guidelines are considered to be non-exhaustive unless otherwise stated.

A 4.8 These Guidelines may be altered from time to time by ComReg. Any such alteration will be published.

IDENTIFYING MARKETS WHERE DISTORTION TO COMPETITION COULD EMERGE

A 4.9 Having regard to established economic principles, relevant European Commission guidance²⁶ and Irish and EU statutes and case law, ComReg will, where appropriate, seek to define the product and geographic scope of the relevant market(s) which may be impacted by all proposed spectrum transfers which are notified to it. This provides a basis for assessing proposed spectrum transfers as to the possibility of them having a distortive effect on competition, in any defined market. In defining the relevant product and geographic scope of the market, ComReg may also distinguish between wholesale and retail markets (i.e. “upstream” and “downstream” markets) that are directly and indirectly relevant to a spectrum transfer.

A 4.10 However, it should also be noted that in some circumstances ComReg may assess the effects upon competition directly, without having first defined the relevant market(s). For example, the SDC test can be applied by identifying the competitors of the parties to the proposed spectrum transfer (i.e. the transferee of the spectrum right of use and the recipient of that right of use). This may include competitors who are outside the relevant market(s) but are nevertheless potentially impacted by the proposed spectrum transfer. Such additional factors may be relevant for the assessment of a proposed spectrum transfer and therefore may be taken into consideration by ComReg when conducting its SDC analysis.

A 4.11 Market definition, where utilised, provides a conceptual framework within which the impact of a proposed spectrum transfer can be assessed. It is not always necessary to reach a firm conclusion on market definition - for example, where it is clear that the proposed spectrum transfer is not likely to raise competition concerns on any reasonable definition of the market.

²⁶ European Commission (1997), ‘Commission Notice on the definition of relevant market for the purposes of Community competition law’, Official Journal C 372 , 09/12/1997 P. 0005 – 0013.

A 4.12 Market definition recognises that a spectrum right of use is a factor of production that combines with other intermediate inputs to provide a product to end-users. ComReg's approach is generally to be technologically neutral (unless specific circumstances dictate otherwise) and to focus on the actual use of spectrum, rather than on the technology employed. This general approach is based on the assumption that end-users of a particular electronic communications service, provided over a wireless network, generally have no preference as to the technological means of delivering that service (subject to considerations regarding quality, price and relevant product parameters). In this context, technologies and spectrum rights of use are both factors of production which enable undertakings to provide operates communications network and/or provide electronic communications services to end-users.

A 4.13 In defining any relevant market(s), ComReg will consider whether any effective demand-side or supply-side substitutes exist such as would directly or indirectly constrain the price setting behaviour of a hypothetical monopolist supplier of the product being sold by the firm in question. To the extent that such effective substitutes may exist, and may constrain pricing behaviour, a broader product market definition may be appropriate.

A 4.14 A geographic market, is an area in which the parties to a proposed spectrum transfer are involved in the supply of the relevant products or services, and in which the conditions of competition are sufficiently similar or homogeneous as to distinguish that area from other geographic areas in which the conditions of competition are appreciably different

A 4.15 Overall, in order that ComReg may fully assess the potential effects of any proposed spectrum transfer in any market(s), the parties thereto are encouraged to identify all relevant markets which may be affected (in the Notification Form discussed further below), even though a firm conclusion on market definition may not be necessary in every case.

ANALYSIS OF COMPETITIVE EFFECTS

A 4.16 ComReg will assess the competitive effects of a proposed spectrum transfer using a two phase approach.

A 4.17 The factors which ComReg may consider during a Phase One assessment include all or any of the following:

- market shares
- concentration of spectrum holdings;

- incentives to increase prices post-transfer owing to unilateral effects;
- incentives to coordinate;
- barriers to entry; and
- efficiencies arising from the transfer.

A 4.18 ComReg may assess some or all of the above same factors in a Phase 2 assessment, but in more detail. Under the extended timetable of Phase 2, ComReg may also seek to obtain additional information from the notifying parties and from other sources, and this may include ComReg making a formal requirement that such information be provided by exercise of its powers under section 13D of the Communications Regulation Act 2002.

A 4.19 Trigger thresholds between Phase 1 and Phase 2 are not stringently defined. Where, having considered the information provided and all submissions received, ComReg is unable on the basis of the information before it to form the view that the result of the spectrum transfer will not be to distort competition in markets for electronic communications networks and electronic communications services and associated facilities in the State, ComReg will make a determination to carry out a full investigation, i.e. proceed to Phase 2.

A 4.20 This section outlines ComReg's approach to analysing the effects of a spectrum transfer on rivalry between existing competitors. It includes analysis of the effects on the behaviour of the parties to transfer and on the reactions of other market participants, particularly competitors and customers.

A 4.21 Spectrum transfers do not affect undertakings' competitive positions directly. Without a corresponding sale of the hardware assets and customer base, undertakings' actual market shares in any upstream or downstream markets are generally unaffected in the direct aftermath of transfers. ComReg's assessments of the likely competitive effects of spectrum transfers recognise that allocated spectrum rights of use influence undertakings' ability to compete.

A 4.22 While spectrum transfers will in many instances be expected to have positive results, some such transfers could increase unilateral market power or increase to likelihood of collusion among existing competitors (known as coordinated effects). In both cases, any such increase in market power as may be identified must be sustainable over time.

A 4.23 Assessment of potential unilateral and coordinated effects must cover over a sufficiently long time horizon over which spectrum holdings can affect undertakings' cost structures and capacity (as opposed to focusing on immediate market shares and pricing which most likely would not change in the immediate aftermath of a spectrum transfer).

Measuring concentration

A 4.24 Assessment of market concentration takes into account the number of competitors in a market and their shares in that market. High concentration means a market containing a relatively small number of large firms . Any assessment of the effects of a proposed spectrum trade on market concentration, pre and post trade, should include an assessment of the extent to which different spectrum bands can be employed to provide substitutable services to end-users, or to other undertakings in the context of wholesale arrangements, while comparing the differing costs of providing the same service using different spectrum bands,).

A 4.25 In Phase 1, ComReg may assess the concentration of spectrum holdings across substitutable bands (rather than market shares or turnover which are unlikely to immediately change as a result of a transfer). Any assessment would need to ensure that the bands being compared are in fact comparable and assessments would be carried out in a flexible manner and on a case-by-case basis. Any proposed spectrum transfer that proceeds into Phase 2 would likely require more thorough analysis, beyond an assessment of the effects on market concentration. .

A 4.26 ComReg will assess the potential effects of any proposed spectrum transfer on the concentration of spectrum holdings having regard to the following (non-exhaustive) considerations:

- cost advantages for undertakings with larger (or more suitable) spectrum holdings and cost disadvantages for undertakings with smaller (or less suitable) spectrum holdings;
- increased capacity for undertakings with larger spectrum holdings and capacity constraints for undertakings with smaller holdings; and
- whether any relevant spectrum right of use is being used efficiently or whether any allocated spectrum is being hoarded.

Unilateral effects

A 4.27 “Non-cooperative oligopoly” describes a market containing relatively few competitors, each of which maximises its own profits but also takes account of the actions of its competitors. ComReg’s shall consider whether a proposed spectrum transfer would strengthen any undertaking’s position in a market to such extent as to allow it to act more independently of its competitors than it could otherwise do. For example, if a spectrum transfer resulted in such significant cost advantages for one undertaking or in such a concentration of spectrum held by one undertaking, which increased the undertaking’s market power to such extent that it could largely ignore the reactions of its competitors and/or customers to actions on its part such as increasing its prices by a small but significant amount, then that would constitute a unilateral effect of the spectrum transfer.

A 4.28 ComReg will assess whether any increased spectrum holding, post-transfer, would likely give an undertaking the incentive and ability to increase its prices (or reduce its output) without concern as to the reactions of its competitors and/or customers. ComReg will consider both the short-term and the long-term effects. The long-term horizon is relevant if spectrum acquired through a transfer is likely to lead to a significant long-term cost advantage for the acquiring undertaking over its competitors.

A 4.29 The assessment of an undertaking’s ability to increase its prices takes into account a range of factors including the following:

- the ability of the undertaking’s competitors to compete effectively with it, post-transfer;
- the likelihood of new market entry;
- the ability of the undertaking’s customers to react to a price increase by switching to a competitor, and;
- whether there are any stronger customers or groups of customers can constrain the pricing behaviour of the undertaking (countervailing buyer power).

Coordinated Effects

A 4.30 A spectrum transfer may negatively distort competition if it facilitated competitors to engage in coordinated interaction, such as agreeing amongst themselves to raise their prices or reduce their output). Such behaviour is known as coordinated effects.

A 4.31 ComReg's assessment of the coordinated effects of any proposed spectrum transfer would consider whether the transfer would increase means and/or incentivise undertakings to engage in tacit or explicit collusion. The factors which ComReg shall consider ComReg shall include:

- whether the transfer has an impact on transparency in the market,
- the availability of a punishment mechanism, and;
- barriers to entry.

A 4.32 Concentration of spectrum may feed into further concentration in upstream and/or downstream market(s), and could create a situation whereby two or more undertakings could collude, in any market or markets.

A 4.33 ComReg's assessment would focus on whether the spectrum transfer may result in more symmetric cost structures and capacities among competitors, which may be conducive to tacit or explicit collusion.

- Collusive behaviour need not be equivalent to monopolist behaviour to be harmful to consumers, and collusion may harm consumers even where some competitors are not party to the collusive arrangements or where there are occasional lapses into price wars.
- ComReg also recognises that there are dynamic factors such as new technologies which may make it difficult to sustain collusive behaviour even if the spectrum transfer were to result in a more concentrated and/or symmetric market structure.
- If a spectrum transfer was likely to increase cost heterogeneity then the likelihood of resulting coordinated effects should reduce. Where appropriate, ComReg may choose to consider dynamic factors in its analysis of competitive effects. This would probably be done under Phase 2.

Spectrum trade with an Entrant

A 4.34 Spectrum transfers do not necessarily increase market concentration. A spectrum right of use may be transferred to a smaller competitor by a larger competitor, or to a new entrant without any existing spectrum rights of use.

A 4.35 While each notified spectrum transfer shall be assessed on its own merits, ComReg is unlikely to prohibit a transfer from being put into effect where a new entrant without any existing spectrum right of use acquires such a right of use. Such a transfer leading to the entry of an additional competitor would generally result in a more fragmented market.

A 4.36 Where a smaller undertaking obtains a spectrum right of use from a larger undertaking, ComReg would assess whether this would give rise to an increased risk of coordinated effects.

OTHER COMPETITIVE EFFECTS CONSIDERED BY COMREG

A 4.37 If entry into a market is relatively easy, such that the behaviour of competitors in the market is constrained by the threat of potential entry, then the impact of a spectrum transfer on competition in such a market may be minimal as potential entry would prevent both unilateral and coordinated effects.

A 4.38 In some markets for electronic communications services there is a scarcity of spectrum and so market entry is difficult (although some barriers to entry may be lowered by liberalisation of the usage of spectrum in certain bands which may allow for the provision of substitutable services utilising alternative technologies).

Spectrum hoarding

A 4.39 Spectrum hoarding can be an impediment to competition, if an efficient undertaking's growth is constrained by an incumbent undertaking holding onto spectrum that it does not need and is not using. ComReg will consider as part of its ex ante assessment of any proposed spectrum transfer whether there is a concern that the transfer could give rise to hoarding.

A 4.40 Should concerns of post-transfer hoarding arise (for example, where an undertaking that is already abundant in terms of its spectrum holdings seeks additional spectrum from another undertaking) ComReg may impose remedies to address such concerns without necessarily having to determine that the transfer may not be put into effect.

A 4.41 For example, ComReg could specify thresholds (in the form of licence conditions) for the amount of spectrum which must be used, or the date by which it must be used. Failure to meet the licence conditions could result in compliance action, for example, the licensee being required to surrender the unused spectrum.

Closeness of competition between trading parties

A 4.42 The extent to which the undertakings were competitors before, the transfer may affect the impact on competition, and therefore the distortion to the competitive dynamic in the market. The impact on or reduction of competition would be greater the closer competitors the undertakings were before the transfer (e.g. two undertakings targeting similar customer profiles and/or offering similar tariffs and bundles, which are perceived by consumers to be close substitutes).

Implications on adjacent markets (non-horizontal trades)

A 4.43 A spectrum trade could take place as a 'non-horizontal' transfer where there is no overlap in terms of the services provided on the transferee's current (if any) and acquired spectrum. Such a transfer does not produce any change in the level of concentration in the relevant market. However, while non-horizontal transfers are less likely than horizontal transfers to create competitive concerns, distortions to competition are still possible under the following circumstances.

A 4.44 An undertaking with a strong position with respect to certain services provided using spectrum could enter a new market and leverage its market power to the detriment of competition in the long term. This may, however, be unlikely for the following reasons;

- If the services are unrelated (i.e., neither substitutes or complements), it is difficult to see how leverage could occur.
- The trade may be efficiency-enhancing if the downstream services are complements.
- The acquiring undertaking may provide greater variety of services post-transfer and achieve economies of scope.
- A critical pre-requisite for distorting leveraging to occur is that the acquiring undertaking is already dominant in one of the markets which may not be the case.

Efficiencies

A 4.45 If a spectrum transfer gives rise to anti-competitive effects, it is possible that these could be compensated for by improvements in efficiencies resulting directly from the spectrum transfer. A transfer of spectrum may lead to potential benefits to customers in terms of high quality and lower prices (translated from the lower costs enjoyed by the undertaking), which may outweigh any potential distortions to competition. This depends on the spectrum band in question, as the marginal benefits of holding spectrum, or holding contingent blocks of spectrum, differ across bands. It may be important to assess the likely magnitude of these benefits and to ensure that any benefits are passed on to the customers.

A 4.46 The burden of proof for demonstrating that any efficiency benefits outweigh any negative effects would lie with the Notifying Undertakings, who may also need to demonstrate that the efficiencies would emerge with a sufficient likelihood.

A 4.47 The spectrum transfer could also result in demand-side efficiencies that result in either an increase in the demand for one or more of the products provided over a certain spectrum band or bands in the spectrum trade, or that result in the creation of a new product or set of products (for example, new wireless service).

A 4.48 Efficiencies that ComReg would not consider as part of its assessment include:

- Savings due to the integration of administration or head office functions;
- Input price reductions related to buyer power;
- Efficiencies related to economies of scale and scope that do not involve marginal cost reductions; and
- Efficiencies that may reduce prices in one market but cannot compensate for price increases in another.

Remedies

A 4.49 Transfers may be approved subject to remedies which may be proposed by the Notifying Undertakings or imposed by ComReg. Remedies shall be in accordance with Article 5(2) of the RSPP Decision and 17(10) of the Framework Directive.

SPECTRUM TRANSFER PROCEDURES

A 4.50 This section outlines the procedures for dealing with spectrum transfers notified to the Commission for Communications Regulation

NOTIFICATION AND PUBLICATION

A 4.51 In accordance with Regulation 19 of the Framework Regulations 2011, the undertakings involved in a proposed spectrum transfer shall notify ComReg. Notifications are made on ComReg's Notification Form. Undertakings should make a joint notification, though they are not obliged to do so.

A 4.52 The "Notification Date" is the date of receipt of a fully completed Notification Form including all information thereunder, and receipt of the required administrative fee. ComReg shall determine whether any Notification Form is complete and therefore valid. Notification Forms must be delivered to the below address between the hours of 09.00 and 17.00, Monday – Friday (excluding public holidays). Where a Notification Form is received later than 17.30 it shall be deemed to have been received on the next working day. In addition to the hard copy, the Notification Form and as many of the other Notification documents as are capable of being supplied electronically should be so supplied. All Notification Forms and associated documents should be addressed to:

Spectrum Licensing Manager

The Commission for Communications Regulation

Abbey Court

Blocks D, E & F,

Irish Life Centre

Lower Abbey Street

Dublin 1

email: licensing@comreg.ie

A 4.53 A Notification shall be accompanied by the administration fee which is €5000.

A 4.54 Undertakings Notifying Parties should clearly identify information provided on the Notification Form and in any other Notification documents which should be treated as confidential. Guidance on the treatment of confidential information by ComReg is set out in ComReg's published Guidelines on the treatment of confidential Information (Doc 05/24).

(a) Processing of Notification

A 4.55 Upon its receipt by ComReg, the Notification will be assessed (i) to ensure that it is a spectrum transfer within the meaning of Regulation 19 of the Framework Regulations 2011 and (ii) to confirm that all requisite information and Filing Fee has been furnished.

A 4.56 The Notifying Undertakings in the proposed trade would be required to provide the information in the Notification Form (the level of detail required in relation to the information categories may differ on a case by case basis).

A 4.57 Where ComReg considers that the notified transaction is not a spectrum transfer within the meaning of Regulation 19 of the Framework Regulations 2011, it will so inform the notifying parties as soon as possible. Where a notified transaction does not amount to a spectrum transfer, then it and the Filing Fee will be returned to the Notifying Parties involved.

A 4.58 If the Notification indicates a request for the amendment of licence conditions (either those which would be applicable to the spectrum rights of use for the portion of spectrum involved in the transfer after the transfer, or those which would continue to apply to the spectrum rights of use of the licence holder) the proposed amendment would be subject to a Variation of Rights of Use Assessment. This Variation of Rights of Use Assessment would be conducted in accordance with ComReg Document 11/34a its "ComReg Consultation Procedures".

(b) Publication

A 4.59 Up to 1 week from the "Notification Date", ComReg will publish notice of the proposed spectrum transfer it on its website;

A 4.60 Notice of notifications will give the following information:

- The name(s) of the Notifying Undertakings ;
- The reference number of the proposed spectrum trade (which will be assigned by ComReg);
- The Notification Date

- The name and contact details of the ComReg officer assigned to the proposed spectrum transfer assessment;
- The technical details of the proposed spectrum transfer
- The business activities of the undertakings involved in the proposed spectrum transfer;

DISTORTION TO COMPETITION ASSESSMENT

A 4.61 Upon receipt of the Notification Form, and if there is no proposed variation to the original rights of use of spectrum being transferred, the assessment of the transfer against distortion of competition test would commence. The date on which that assessment commences is referred to as the 'Commencement Date'.

A 4.62 Upon receipt of the Notification Form, if the proposed transfer includes a proposal for a variation to the original rights of use of spectrum being transferred²⁷; it will commence the variation of spectrum rights of use assessment. In such circumstances, the Commencement Date will be the date on which ComReg approves in principle the proposed variation of the original spectrum rights of use following its variation of rights of use Assessment

PHASE 1 ASSESSMENT

(a) Submissions

A 4.63 On the Commencement Date, ComReg would publish a notice on its website inviting interested third parties to make submissions about any distortion to competition concerns relating to the proposed spectrum transfer (the 'Phase 1 Assessment Notice').

A 4.64 Submissions will be accepted by ComReg for a period up to 10 days after the Commencement Date. Submissions from third parties should clearly indicate any information which should be treated as confidential. Guidance on the treatment of confidential information by ComReg is set out in ComReg's published Guidelines on the treatment of confidential Information (Doc 05/24).

²⁷ Variations of spectrum rights of use are discussed in detail in Chapter 3

(b) Requirement to provide further information

A 4.65 ComReg may make a written requirement, under section 13D(1) of the Communications Regulation Act 2002 (“2002 Act”), upon any one or more of the Notifying Undertakings to provide further specified information within a specified time period. It is an offence under section 13D(2) of the 2002 Act for an undertaking to (a) fail to comply with a requirement made under Section 13D(1) within the period specified in the notice or within such extended period as the ComReg allows, or (b) in purporting to comply with such a requirement, to provide to ComReg information that the undertaking knows to be false or misleading²⁸.

(c) Proposals

A 4.66 Up to 4 weeks from the Commencement Date, ComReg may enter into discussions and the Notifying Undertakings may make proposals to ComReg with regard to the manner in which the spectrum transfer may be put into effect, in relation to the spectrum transfer, of measures which would ameliorate any effects of the spectrum transfer on competition.

(d) Determination that the spectrum transfer may be put into effect

A 4.67 Having considered the information provided and all submissions received, ComReg, if it forms the opinion that the result of the spectrum transfer will not create a distortion to competition for electronic communications services in the State, will determine that it may be put into effect. ComReg will then, within 7 weeks after the Commencement Date inform the Notifying Undertakings and any other undertakings or third parties who have made submissions, that it has so determined. On the date of the determination (“Phase 1 Assessment Determination”), ComReg, in addition to informing the Notifying Undertakings, will publish notice of the making of the determination on its website²⁹. ComReg will publish the text of its determination on its website at the earliest possible date thereafter, after allowing the Notifying Undertakings a number of days to indicate whether certain information in the determination should be redacted on the grounds of confidentiality.

²⁸ ComReg Document 10/63

²⁹ It is through the publication of this notice on its website, that ComReg will inform third parties.

PHASE 2 PHASE 2 (FULL INVESTIGATIONS)

(a) Determination to carry out a full investigation

A 4.68 ComReg, within 7 weeks of the Commencement Date will inform the Notifying Undertakings and any other undertakings or third parties who have made submissions that it intends to carry out a full investigation.

(b) Publication of the determination to carry out a full investigation

A 4.69 To the notifying parties; The determination to conduct a full investigation will be furnished forthwith to the Notifying Undertakings

A 4.70 To third parties who have made submissions; ComReg will inform³⁰ such third parties that it has determined to carry out a full investigation.

A 4.71 To the general public; On the date of the determination to carry out a full investigation, ComReg will publish notice of the making of the determination on its website and inviting submissions from third parties

(c) Submissions

A 4.72 Submissions must be received in writing within 3 weeks of the date of the determination to carry out a full investigation. Either the Notifying Undertakings or any individual or other third party is entitled to make submissions in writing and ComReg shall consider all submissions made. ComReg may, however, change this time limit by notice on its website in individual cases, if circumstances so require. Submissions should clearly indicate any information which should be treated as confidential. Guidance on the treatment of confidential information by ComReg is set out in ComReg's published Guidelines on the treatment of confidential Information (Document 05/24).

(d) Early determination of a full investigation

A 4.73 If ComReg, within 8 weeks of the date of the determination to conduct a full investigation, is satisfied that the result of the spectrum transfer will not distort competition, it will, determine that the spectrum transfer may be put into effect, or may be put into effect subject to conditions. ComReg will inform the Notifying Undertakings, on the same date, of its "Phase 2 Determination".

³⁰ It is through the publication of a notice on its website, that ComReg will inform third parties

(e) Phase 2 Assessment Preliminary Determination

A 4.74 If, having considered all submissions, ComReg is not satisfied that the result of the spectrum transfer will not distort competition, it will, within eight weeks of the date of the determination to conduct a full investigation, furnish its Phase 2 Assessment Preliminary Determination to the Notifying Undertakings. This time period may be adjusted following consultation and agreement between the Notifying Undertakings and ComReg. The Phase 2 Assessment Preliminary Determination will set out clearly ComReg's concerns regarding the effect of the proposed spectrum transfer on competition in the relevant markets.

(f) Response to Phase 2 Assessment Preliminary Determination

A 4.75 Within 3 weeks of the delivery of the Phase 2 Assessment Preliminary Determination, the Notifying Undertakings may respond in writing thereto.

(g) Discussions and Proposals

A 4.76 During the phase 2 review period, up to 3 weeks after the furnishing of the Phase 2 Assessment Preliminary Determination, ComReg may enter into discussions and the Notifying Undertakings may make proposals to ComReg with regard to the manner in which the spectrum transfer may be put into effect or to the taking, in relation to the spectrum transfer, of measures which would ameliorate any effects of the spectrum transfer on competition.

FINAL DETERMINATIONS

(a) Phase 2 Final Determination

A 4.77 On completion of the phase 2 review period, ComReg shall make one of the following determinations:

- that the proposed spectrum transfer may be put into effect;
- that the proposed spectrum transfer may not be put into effect;
- that the proposed spectrum transfer may be put into effect subject to conditions specified by ComReg being complied with and will furnish to the Notifying Undertakings the written determination.

(b) Contents of ComReg's written determination

A 4.78 In every case, ComReg's final determination in regard to the proposed spectrum transfer will include a statement of the facts, a summary of the information, evidence and submissions considered by ComReg and the reasons grounding the determination.

(c) Publication of ComReg's determination

A 4.79 ComReg will publish notice of its determination on its website on the same day as the determination is made.

Annex: 5 Draft Spectrum Transfer Notification Form

A 5.1 ComReg requires that the notifying party should provide all information necessary for it to properly assess the trade and the possibility of hoarding or distortion of competition. To progress its assessment in these matters, ComReg's information requirements include, *inter alia*, the following³¹:

General Information

A 5.2 Specify the undertakings intending to make the transfer i.e. the 'Licence Holder'. Specify the other party in the proposed transaction i.e. the 'Transferee'.

A 5.3 Provide the legal name, business address, telephone number, fax number, and web site of each notifying party and state the jurisdiction in which it is incorporated and its area of activity.

A 5.4 Provide a description of companies involved in the proposed transfer.

A 5.5 Provide the name and contact details of the authorised legal representative, for each notifying party and an address for service of correspondence. Indicate to whom acknowledgement of receipt of the notification fee should be sent.

A 5.6 Indicate whether the notifying parties are providing information separately or together as part making their joint notification of the intention to transfer.

Description of Proposed Transfer

A 5.7. Specify the licence number of the licence involved in the transfer, the specific spectrum blocks to be transferred and the intended usage of the spectrum after the transfer.

A 5.8 Provide an explanation about the current and post transfer capacity utilisation with the appropriate technical information.

³¹ Interested parties should note that prior to making any formal notification of a proposed spectrum trade, the parties thereto may request a 'pre-notification meeting' with ComReg in order to discuss the information that they shall be required to provide as part of their formal notification. At such a meeting, parties may request submit that a reduced or very minimal amount of information is required of them (because, for example, it is very clear that the proposed transfer would not distort competition) and ComReg will consider any such request and may adjust its information requirements accordingly – i.e. ComReg may inform the parties that they may omit certain information from their notification (while reserving its right to require this information at a later stage).

A 5.9 Provide information on the options considered as strategic alternatives to the transfer such as equipment upgrades, spectrum re-farming and change of technology.

A 5.10 Outline network investment plans in relation to the spectrum bands associated with the transfer.

A 5.11 Outline any contractual arrangements made in relation to the spectrum transfer agreement.

A 5.12 Outline a proposal for the division of spectrum usage fees between the licence holder and the transferee so that there is no net reduction in the spectrum usage fees payable to ComReg as a result of the transfer.

Details of Undertakings Involved

A 5.13 Provide the turnover of each undertaking involved, both worldwide and in the State for the last financial year for which such information is available and for any available interim period in the current year.

A 5.14 The quantity and specific information relating to the spectrum holdings of each Notifying Party and the quantity and specific information relating to the spectrum holdings that the parties' subsidiaries hold in Ireland.

Market Information

A 5.15 Provide a description and definition of the relevant downstream markets relating to the proposed usage of the transferred spectrum

A 5.16 Provide an estimate of the size of the markets described above, information on recent entry, any potential entry, cost of entry, comment on the minimum efficient scale and minimum spectrum requirements for a viable business

Views of Undertakings Involved

A 5.17 Provide your views as to why you consider that the proposed transaction will not lead to a distortion of competition in markets described by you above in the State.

A 5.18 Provide estimates of the shares of each undertaking involved on the market or markets described by you above. Provide also estimates of the shares of competitors in these markets and explain the origins of these estimates.

A 5.19 Provide your views as to possible efficiencies which may occur as a result of the proposed transfer. Qualify these efficiencies and extent to which consumers would benefit from them.

A 5.20 Provide your views as to why the parties believe the proposed trade does not create a risk of interference.

Supporting Documentation

A 5.21 Provide a copy of the most recent annual report for each undertaking involved.

A 5.22 Provide a copy of any reports or other documentation relating to any analysis undertaken on the effect of the proposed transfer.

A 5.23 Provide copies of any communication between the parties regarding the transfer.

Notifying Parties Declarations

All obligations and rights attached to a right of use of radio frequencies in a Wireless Telegraphy Licence in the proposed transfer are currently being met and will continue to be met by the current licence holder after the transfer (declaration by holder of right of use of radio frequencies being transferred).

The transferee will also meet all the obligations attaching to the original right of use of radio frequencies being transferred (Transferee's declaration)

Transfer includes a proposal to amend the obligations attaching to the right of use of radio spectrum being transferred. For example, the transferee proposes licence conditions different from the original licence holder's licence. *Note some licence conditions must transfer (international obligations in relation to spectrum use, harmonisation,). A declarations made here would require ComReg to assess the proposal against its statutory objectives before the distortion to competition assessment.*

Licence conditions

A 5.24 Where notifying undertakings propose different licence conditions from the original licence holder these shall be described in detail and the reasons for same.

Declaration and Signature

	Licence Holder	Transferee
Signed:
Name (Print):
Position:
Company:
Date: