



Commission for
Communications Regulation

Release of 1800 MHz spectrum rights of use

Information Memorandum

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An Coimisiún um Rialáil Cumarsáide

Commission for Communications Regulation

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Chapter 1

1 Introduction

- 1.1 In Document 13/88¹, ComReg published its proposals for the release of three Lots of liberalised spectrum rights of use in the 1800 MHz band, being those Lots which were unassigned in ComReg's Multi-Band Spectrum Award (MBSA) Process, together with a draft Information Memorandum setting out the processes and procedures which would implement same.
- 1.2 In Document 13/102², ComReg set out its response to consultation and final Decision on this spectrum release proposal.
- 1.3 In light of its consideration of all submissions received in response to Document 13/88 and other relevant information before it, and its Decision as set out in Document 13/102 and, having regard to its obligations under the Authorisation Regulations, ComReg now publishes this Information Memorandum, which details more particularly the processes and procedures ComReg will employ to implement its Decision D14/13 as set out in Document 13/102.

1.1 Legal Framework and Agreement

- 1.4 In preparing this Information Memorandum, ComReg has been guided by its statutory functions, objectives and duties relevant to the management of Ireland's radio frequency spectrum (which are outlined in Annex 1 of Document 13/102).
- 1.5 A Statutory Instrument to facilitate the Award Process and any subsequent grant of Licences under section 5 of the Wireless Telegraphy Act 1926, as amended, has yet to be signed into law. This Statutory Instrument (the "Regulations") is being prepared in line with Document 13/102 and Decision D14/13.³
- 1.6 In addition, Interested Parties should note the requirement to be authorised to provide an electronic communications network or

¹ ComReg Document 13/88 – Consultation on the release of 1800 MHz spectrum rights of use - published 13 September 2013

² ComReg Document 13/102 – Response to Consultation and Decision on the release of 1800 MHz spectrum rights of use - published 14 November 2013

³ As noted in paragraph 2.99 of Document 13/102, "*the new 1800 MHz Regulations should substantially reflect the Liberalised Use Licence Regulations*" (S.I. 251 of 2012)

service in Ireland.⁴ Interested Parties can consult ComReg's website for further details.⁵

1.7 Chapters 2, 3 and 4 of this Information Memorandum contain the terms of the agreement which Interested Parties will agree to in participating in the Award Process and attention is specifically drawn to these Chapters given the important and potentially binding provisions contained therein.⁶

1.2 Structure of Information Memorandum

1.8 The remainder of this Information Memorandum is structured as follows:

- **Chapter 2** details the Award Spectrum, the Lots included in the Award Process, and the terms and conditions of 1800 MHz Licences and Preparatory Licences that may be awarded through this Award Process;
- **Chapter 3** details the Auction Rules and provides timelines for the Award Process;
- **Chapter 4** provides additional details on the legal terms and conditions that are applicable to this Award Process;
- **Annexes:**
 1. Glossary; and
 2. Application Form;

⁴ Under Regulation 4(1) of the Authorisation Regulations, any undertaking intending to provide an electronic communications network or service shall, before doing so, notify ComReg of its intention to provide such a network or service, following which that undertaking will be deemed to be authorised under Regulation 4(4). Under Regulation 4(6) of the Authorisation Regulations, any undertaking which fails to comply with Regulation 4(1) or Regulation 4(5) (notification of any changes to the information supplied) commits an offence.

⁵ See www.comreg.ie/licensing_and_services/general_authorisation.551.html for further details.

⁶ Interested Parties should note that ComReg reserves the right to make amendments to the Auction Rules after the finalisation of this Information Memorandum to correct any errors therein, or to further clarify matters, whether identified by ComReg, its consultants or Interested Parties, where such amendments are necessary or appropriate to ensure that the Auction Rules operate in the manner intended by ComReg, as set out in the Information Memorandum. ComReg will promptly bring any such amendments to the attention of Interested Parties. Interested Parties are reminded that they are obliged to bring any errors to ComReg's attention promptly. See also, Chapter 4 in this regard.

- 1.9 In anticipation of receiving correspondence on matters relating to this document, ComReg hereby gives notice that it will publish all material correspondence received in this regard. Such information will be subject to the provisions of ComReg's guidelines on the treatment of confidential information.⁷

⁷ Guidelines on the treatment of confidential information, ComReg Document 05/24

Chapter 2

2 The Award Spectrum and Licences

2.1 The Award Spectrum

- 2.1 In this Award Process 30 MHz of 1800 MHz spectrum is being made available in the 1750-1765 MHz and the 1845-1860 MHz frequency ranges as set out in Table 1 below (the “**Award Spectrum**”).

Frequency Band	Frequency Pairing (FDD)	
	Uplink band (MHz)	Downlink band (MHz)
1800 MHz	1750 - 1765	1845 – 1860

Table 1: The Award Spectrum

- 2.2 The Award Spectrum is being made available in 2 × 5 MHz Spectrum Blocks (or “Lots”) and therefore comprises of three (3) Lots of paired spectrum.
- 2.3 ComReg is retaining the nomenclature used in the MBSA Process pertaining to these Lots to enable the unique identification of each Lot within the 1800 MHz band. Accordingly, the 3 Lots comprising the Award Spectrum are denoted as Lots I, J and K.
- 2.4 The specific frequency assignment for each Lot are is set out in Table 2 below.

Frequency Band	Name of Lot	Uplink / Downlink Frequency
1800 MHz	I	1750.0 - 1755.0 MHz 1845.0 - 1850.0 MHz
1800 MHz	J	1755.0 - 1760.0 MHz 1850.0 - 1855.0 MHz
1800 MHz	K	1760.0 - 1765.0 MHz 1855.0 - 1860.0 MHz

Table 2: Lots in the Award Spectrum

- 2.5 The Lots in the Award Spectrum are unassigned in Time Slice 1, save for a Test and Trial licence for low power emissions in one 200 kHz channel of Lot I which expires on 31 January 2014.
- 2.6 In accordance with the MBSA Process, Hutchison 3G Ireland Limited (H3GI) possesses spectrum rights of use to all 3 Lots of the Award Spectrum in Time Slice 2. Accordingly, any rights of use to Lots I, J and K granted in the Award Process will expire no later than 12 July 2015.
- 2.7 Figure 1 and Figure 2 below identify the current holders of spectrum rights of use to each Lot in the 1800 MHz band in Time Slice 1 and 2, respectively.

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
Telefonica	Telefonica	Telefonica	H3GI	H3GI	Vodafone	Vodafone	Vodafone	Unassigned	Unassigned	Unassigned	Meteor	Meteor	Meteor	Meteor

Figure 1: Current spectrum assignments in the 1800 MHz band in Time Slice 1 (until 12 July 2015)⁸

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
Telefonica	Telefonica	Telefonica	Vodafone	Vodafone	Vodafone	Vodafone	Vodafone	H3GI	H3GI	H3GI	H3GI	Meteor	Meteor	Meteor

Figure 2: MBSA Process spectrum assignments in the 1800 MHz band in Time Slice 2 (from 13 July 2015 until 12 July 2030)

- 2.8 Winning Bidders in the Award Process will also be entitled to apply for a Preparatory Licence which will allow the Licensee to install networks and associated equipment in advance of the commencement date of its 1800 MHz Licence, but will not allow any wireless telegraphy transmissions. The terms and conditions attached to a Preparatory Licence are described in subsection 2.3 of this document and will also be set out in the Regulations.

⁸ Note:

- Telefónica's GSM1800 licence in lots A, B and C is due to expire in December 2014 and are non-liberalised;
- Meteor's GSM1800 licence in lots L and M is due to expire in July 2015 and are non-liberalised.

2.2 1800 MHz Licences – Terms and Conditions⁹

- 2.9 The following describes the principal terms and conditions associated with an 1800 MHz Licence. These terms and conditions are to be set out in the Regulations.
- 2.10 Among other things, the 1800 MHz Licences will expire on 12 July 2015 (or such other date as may be specified by ComReg).

2.2.1 Scope of the 1800 MHz Licence

- 2.11 An 1800 MHz Licence will allow the Licensee to keep and have possession of, install, maintain, work and use Apparatus for terrestrial systems capable of providing electronic communications services in the 1800 MHz band.
- 2.12 An 1800 MHz Licence is "non-exclusive" for the national terrestrial territory of the Republic of Ireland and all Apparatus licensed under an 1800 MHz Licence are required to comply with the relevant European Commission (EC) decisions for the spectrum band(s) licensed including, in particular, EC Decision 2009/766/EC¹⁰ as amended.¹¹
- 2.13 The following is intended to be set out in the Regulations:
- a "non-exclusive" licence, means that ComReg is not precluded from authorising other persons to keep, possess, install, maintain or use other Apparatus "on a non-interference and non-protected basis" in the spectrum encompassed by the Lots;¹² and
 - "on a non-interference and non-protected basis" means a basis on which no harmful interference may be caused to any

⁹ Where general principles are stated in this Information Memorandum they may not necessarily be immediately qualified by any provisos, exceptions or reservations that apply. Accordingly, this document should be construed as a whole and read in conjunction with the Regulations.

¹⁰ European Commission Decision on the harmonisation of the 900 MHz and 1800 MHz frequency bands for terrestrial systems capable of providing pan-European electronic communications services in the Community. (2009/766/EC)

¹¹ In April 2011 EC Decision 2011/251/EU amended EC Decision 2009/766/EC.

¹² It is standard practice in Ireland that rights of use in spectrum bands licensed to particular licensees are also made available for use by other Apparatus on a non-interference and non-protected basis. ComReg does not presently foresee any material change in its policy on non-exclusivity over and above that already applied in other spectrum licensing regimes in Ireland.

Radiocommunication Service, and on which no claim may be made for the protection of Apparatus operating on this basis against harmful interference originating from Radiocommunication Services.

2.2.2 1800 MHz Licence Duration

2.14 The expected commencement and expiry dates of the Lots, and the corresponding 1800 MHz Licence/s, are set out in Table 3 below.

Commencement Date	Expiry Date
1 February 2014 (or such other date as may be specified by ComReg)	12 July 2015 (or such earlier date as may be specified by ComReg)

Table 3: Commencement and expiry dates of Lots and corresponding 1800 MHz Licence/s

2.15 There is no implied or express right of renewal, extension or any other form of prolongation of an 1800 MHz Licence beyond the expiry date of 12 July 2015 as specified herein.

2.2.3 Licence Conditions Applicable to all 1800 MHz Licences

2.16 This section describes the conditions which are applicable to all 1800 MHz Licences.

Quality of Service (“QoS”) and associated compliance reporting conditions

2.17 It is a condition of an 1800 MHz Licence that the Licensee meet minimum Quality of Service (“QoS”) obligations¹³. These QoS obligations relate to:

- the Minimum “Availability of the Network” Standard; and
- the Minimum “Voice Call” Standard.

2.18 The specifics of these QoS obligations will be set out in the Regulations.

¹³ The QoS obligations attached to a 1800 MHz Licence apply to all relevant services provided using the Spectrum Blocks licensed in Part 1 of a Licensee’s Licence. For the avoidance of doubt, this will include all relevant services of the Licensee and those services provided by any third parties via contractual or other arrangements with the Licensee that use those Spectrum Blocks.

- 2.19 It is also a condition of an 1800 MHz Licence that the Licensee shall, after the first twelve months, measure and submit an annual report to ComReg on its compliance with the above QoS obligations (“QoS Compliance Report”).
- 2.20 This compliance reporting condition includes that:
- in the QoS Compliance Report the Licensee shall notify ComReg whether the Licensee has either (a) met the relevant QoS obligations as set out in its 1800 MHz Licence, or (b) failed to meet the said obligations and reasons for same;
 - the measurements required for the QoS Compliance Report shall be agreed with ComReg in advance and the compliance report shall have sufficient detail and granularity to allow the Commission to verify the Licensee’s measurements;
 - upon request by ComReg, the Licensee shall carry out Drive Test Measurements and submit these results to ComReg. These Drive Test Measurements are to be carried out at the Licensee’s own expense and to a standard as agreed with ComReg; and
 - the Licensee shall submit its QoS Compliance Report within the 31 calendar days following the anniversary of the 1800 MHz Licence Commencement Date of the 1800 MHz Licence.
- 2.21 Given the duration of an 1800 MHz Licence and, for the avoidance of doubt, a Licensee will only be required to submit one QoS Compliance Report.

Compliance with rules to prevent spectrum hoarding

- 2.22 It is a condition of the 1800 MHz Licence that the Licensee complies with any rules to prevent spectrum hoarding as laid down by ComReg under Regulation 17(10) of the Framework Regulations. While no such rules have been currently laid down by ComReg, ComReg reserves the right to specify such rules in the future and such rules may apply to 1800 MHz Licences issued pursuant to the Award Process.

Assignment of rights and obligations of an 1800 MHz Licence

- 2.23 Assignment of rights and obligations of an 1800 MHz Licence (including trading of rights of use for radio frequencies attached to an 1800 MHz Licence) will be permitted.

2.24 In relation to any such assignment of rights and obligations, among other things, it is a condition of the 1800 MHz Licence that the Licensee shall:

- notify ComReg of its intention to transfer some or all of its rights of use of radio frequencies attached to its 1800 MHz Licence;
- only transfer rights of use for radio frequencies attached to its 1800 MHz Licence in accordance with the procedures on the transfer of rights of use for radio frequencies specified by ComReg;¹⁴
- not transfer rights of use for radio frequencies attached to its 1800 MHz Licence without the prior consent of ComReg, which shall not be unreasonably withheld, where ComReg has yet to specify its procedures for the transfer of rights of use for radio frequencies; and
- ensure that any Assignee¹⁵ enters into a valid and binding agreement to comply with all conditions and obligations under the Regulations and the 1800 MHz Licences and Preparatory Licences issued pursuant to the Regulations; and to provide to the Assignor¹⁶ or ComReg, as appropriate, such details as ComReg is entitled to require from a Licensee from time to time.

2.25 While ComReg has specified draft procedures on the transfer of rights of use for radio frequencies¹⁷, these have yet to be finalised. It should also be noted that any transfer of rights of use would not only have to comply with electronic communication law but also applicable competition law.

¹⁴ For the avoidance of doubt, any such procedures shall be in accordance with the relevant provisions of the Authorisation and Framework Regulations.

¹⁵ Assignee means a party to whom some or all of the rights and obligations under a Licence have been transferred.

¹⁶ Assignor means the party from whom some or all of the rights and obligations under a Licence have been transferred.

¹⁷ See ComReg Document 12/76.

Provision of updated information for Part 2 and Part 3 of the 1800 MHz Licence

- 2.26 Part 2 and Part 3 of the 1800 MHz Licence details the Apparatus to which the 1800 MHz Licence relates and the location of this Apparatus.
- 2.27 It is a condition of the 1800 MHz Licence that the Licensee shall, at the end of each full calendar month in the first year for which the 1800 MHz Licence is in force, submit updated information to ComReg in respect of Parts 2 and 3 of its 1800 MHz Licence.
- 2.28 It is ComReg's intention to publish details of 1800 MHz Licences, including information contained in Part 2 and Part 3, on its web-site, subject to the protection of confidential information in line with ComReg Document 05/24.¹⁸

Payment of fees

- 2.29 It is a condition of an 1800 MHz Licence that the Licensee shall make payment of fees as detailed in the Regulations.

2.2.4 1800 MHz Licence Technical Conditions

- 2.30 This section describes the technical conditions which are:
- applicable to an 1800 MHz Licence; and
 - associated with the R&TTE¹⁹ and EMC²⁰ Directives.

Spectrum in the 1800 MHz band

- 2.31 The technical conditions for the 1800 MHz band, amongst other things, require a Licensee:
- to deploy and operate terrestrial systems that are in compliance with the technical parameters set out in Decision 2009/766/EC (as amended);
 - deploying a GSM system in the 1800 MHz band, to meet the guard band obligation as set down in Decision 2009/766/EC

¹⁸ See Appendix A of ComReg Document 05/24: Response to Consultation - Guidelines on the treatment of confidential information - March 2005.

¹⁹ This refers to Article 3(2) of Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on Radio Equipment and Telecommunications Terminal Equipment and the Mutual Recognition of their Conformity.

²⁰ Directive 2004/108/EC.

(as amended), in the absence of bilateral or multilateral agreements between neighbouring 1800 MHz Licensees; and

- to comply with all MoUs agreed from time to time between ComReg and Ofcom, or its successor, in relation to the 1800 MHz band, including those set out in:
 - Document 11/50e;²¹ and
 - Document 11/50f.²²

Compliance with the R&TTE Directive

- 2.32 All radio and telecommunications terminal equipment must comply with the essential requirements and other relevant provisions of the R&TTE Directive before being placed on the market or put into service in Ireland.
- 2.33 Under the R&TTE Regulations ²³, which transpose the R&TTE Directive into law in Ireland, and the 2002 Act, it is a function of ComReg to ensure compliance, as appropriate, by persons with the relevant provisions of that legislation in relation to the placing of communications equipment on the market and the placing on the market and putting into service of radio equipment. Among other things, ComReg defines the regulated interface requirements for radio services in Ireland and these interfaces are currently set out in ComReg Document 06/47R.²⁴ That document has radio interface specifications for the 1800 MHz band and it is ComReg's intention to update ComReg Document 06/47R in due course to account for any 1800 MHz Licences issued as a result of this Award Process.
- 2.34 It is a condition of an 1800 MHz Licence that the Licensee ensures that all radio equipment worked and used under the 1800 MHz Licence operates in accordance with the relevant interface requirements as set out in ComReg Document 06/47R (as amended from time to time).

²¹ MoU between Ireland and the UK on Coordination in the 1710-1785/1805-1880 MHz Frequency Bands (see http://www.comreg.ie/_fileupload/publications/ComReg1150e.pdf)

²² MoU on Frequency Coordination between Ireland and the UK on the Frequency Bands 880-915/925-960 MHz and 1710-1785/1805-1880 MHz (see http://www.comreg.ie/_fileupload/publications/ComReg1150f.pdf)

²³ The European Communities (Radio Equipment and Telecommunications Terminal Equipment) Regulations, 2001 (S.I. No. 240 of 2001)

²⁴ Interface Requirements for Radio Services in Ireland (see http://www.comreg.ie/_fileupload/publications/ComReg0647R.pdf)

Compliance with the EMC Directive as transposed into Irish law

2.35 It is a condition of an 1800 MHz Licence that the Licensee ensures that the Apparatus or any part thereof, complies with the requirements set out in Annex I to the EMC Directive (Directive 2004/108/EC). In this regard, a Licensee has a duty to ensure that the electromagnetic disturbance generated by its licensed Apparatus does not exceed the level above which radio and telecommunications equipment or other equipment cannot operate as intended and that equipment sold, or installations constructed, by them are appropriately immune to electromagnetic interference.

2.2.5 Fees for an 1800 MHz Licence

2.36 The fee for an 1800 MHz Licence consists of:

- an Upfront Fee, which is payable as part of the Award Process;²⁵ and
- Spectrum Usage Fees (“SUFs”), which are paid prior to the grant of an 1800 MHz Licence and then over its duration.

2.37 For the avoidance of doubt, it should be noted that the grant of any Licence arising out of this Award Process is not an activity that is currently subject to Value Added Tax (“VAT”) and so all Licence fees to be paid by Licensees in connection with the Award Process will not include VAT, unless the VAT rules change in the interim.

Upfront Fee

2.38 The Upfront Fee payable by a Winning Bidder for an 1800 MHz Licence is the fee determined by the methodology as detailed in Section 3.5 of this document.

2.39 The Upfront Fee will be at least the Reserve Price for each Lot and no greater than the Bid Amount specified by the Winning Bidder for its Winning Bid.

2.40 The Reserve Price per Lot is €0.794 million.

²⁵ As discussed further in subsection 2.2.6 of this document, the net Deposit to be refunded at the end of the Auction will be the Deposit submitted plus any interest earned less the Upfront Fee.

Spectrum Usage Fees

- 2.41 An 1800 MHz Licence is subject to two SUFs. The first SUF is due prior to the grant of an 1800 MHz Licence and the second and final SUF is due prior to the anniversary of the commencement date of the 1800 MHz Licence.
- 2.42 SUFs are index-linked to the overall Consumer Price Index²⁶ (“CPI”) as published by the Central Statistics Office²⁷ of Ireland or its successor. As the CPI may vary over time, the SUF per Lot may increase or decrease over the duration of the 1800 MHz Licence, reflecting the increases or decreases in the CPI for the relevant time period.
- 2.43 The SUFs for an 1800 MHz Licence are the sum of the SUFs associated with each Lot included in the 1800 MHz Licence. For each Lot included in an 1800 MHz Licence, the SUF for a one (1) year Licence period is €0.54 Million per Lot plus the “CPI Adjustment”.
- 2.44 The CPI Adjustment to a SUF is to be calculated using 1 February 2013 as the common base date for the CPI (i.e. CPI = 100). When calculating the “CPI Adjustment” to the SUF associated with an 1800 MHz Licence, ComReg will use the most up-to-date CPI data available to it at that time. For example, where the anniversary of the commencement date of an 1800 MHz Licence is 1 February, ComReg envisages that the most up-to-date CPI data available to it is likely to be CPI data from November of the previous year.²⁸
- 2.45 Where the applicable SUF relates to a period of less than one year (as will be the case for the second and final SUF period for an 1800 MHz Licence), the SUF shall be calculated using the above methodology and adjusted on a pro-rata daily basis.

²⁶ If the CPI data ceases to be published or if the method of its calculation changes fundamentally, ComReg reserves the right to select another appropriate index and to amend the method of calculating indexing accordingly.

²⁷ See www.cso.ie

²⁸ This would take into consideration the time required for the publication of CPI data by the CSO and the administrative invoicing of the SUF to the Winning Bidder or Licensee thirty (30) calendar days in advance of the anniversary of the commencement date of the 1800 MHz Licence.

Payment Arrangements for Licence Fees

- 2.46 The Licence Fees for an 1800 MHz Licence are to be paid into ComReg's Bank Account, the details of which are specified in the Application Form as set out in Annex 2 of this document.
- 2.47 The Upfront Fee for an 1800 MHz Licence will, at the Notification and Grant Stage and subject to unusual circumstances, be deducted from the Deposit paid by the Winning Bidder and any surplus deposit will be refunded.
- 2.48 Where the due date for payment of Licence Fees falls on a day which is not a Working Day, payment shall be made on or before the last Working Day before the date on which payment would otherwise have fallen due.
- 2.49 As set out in section 3.6 of this document, where a Winning Bidder does not comply with the conditions attached to the payment of the first SUF due on the grant of its 1800 MHz Licence, it will forfeit its Upfront Fee, without prejudice to ComReg's entitlement to recover the full amount due in respect of all Lots won by that Winning Bidder as a simple contract debt.
- 2.50 Where a Licensee has been issued an 1800 MHz Licence, failure by a Licensee to make a payment of the second SUF on or before the date it falls due constitutes non-compliance by the Licensee with its 1800 MHz Licence conditions and ComReg may take steps to recover the sum due, including taking compliance actions in accordance with the Authorisation Regulations.
- 2.51 In addition, where payment of any fee is not made when due, then the Licensee shall pay to ComReg interest on the fees or part thereof that is outstanding at the appropriate EURIBOR rate, between the date when such fee, or part thereof, fell due and the date of payment of such fee or part thereof.
- 2.52 An amount payable by a person in respect of an outstanding 1800 MHz Licence fee may be recovered by ComReg from the person as a simple contract debt in any court of competent jurisdiction.

2.2.6 Refund or adjustment of Licence Fees

- 2.53 In limited circumstances ComReg may refund or adjust Licence Fees payable by Winning Bidders due to the delayed commencement of Lots.

2.54 The refund or adjustment of fees payable to a Winning Bidder for each Lot so delayed shall be calculated as follows:

- a pro-rata portion of the Upfront Fees already paid by the Winning Bidder on a daily basis for each whole day following the commencement date that ComReg does not make the Lot available; and
- a pro-rata portion of SUFs already paid by the Winning Bidder on a daily basis for each whole day following the commencement date that ComReg does not make the Lot available.

2.55 Refunds to the Winning Bidder will be paid by ComReg within 5 Working Days of its notification of delayed commencement or, if desired by the Winning Bidder, these refunds can be offset against the second and final SUF payable.

2.56 For the avoidance of doubt:

- no refund of Upfront Fees and/or SUFs shall be payable by ComReg to any Winning Bidder for any delay to the availability of any Lot caused, or contributed to, by acts or omissions of that Winning Bidder, its servants or agents, or any failure on behalf of its suppliers;
- in submitting an Application, Applicants agree that if they become Winning Bidders, a failure to obtain consents, approvals, Apparatus or funding necessary to deploy a network or complete transitional activities shall be deemed to be an omission on behalf of that Winning Bidder; and
- to the extent permitted by law, ComReg's liability for damage or loss of any nature arising from delayed access to Lots is expressly limited to the refunds identified above and, in submitting an Application, Applicants agree to same.

Other refunds of Licence Fees

2.57 Where a Licensee requests an amendment to its 1800 MHz Licence which is accepted by ComReg and which results in:

- a reduction of the quantum of spectrum assigned to an 1800 MHz Licence, the Licensee shall not be entitled to any refund of its Upfront Licence fee, but shall be entitled to any excess SUFs paid in relation to this quantum of spectrum (which has been subject to the reduction) after the date this amendment

takes effect and the Licensee no longer has a right of use over that spectrum pursuant to an 1800 MHz Licence.; or

- a reduction of the duration of one or more Lots in an 1800 MHz Licence, the Licensee shall not be entitled to any refund of its Upfront Licence fee, but shall be entitled to any excess SUFs paid in relation to the unused part of the 1800 MHz Licence term where SUFs have already been paid. Additionally, the Licensee will not be liable for any future SUFs on these surrendered Lots beyond the new expiry date of these Lots in its amended 1800 MHz Licence

2.58 Where an amendment, surrender or withdrawal of an 1800 MHz Licence results from an enforcement action taken by ComReg, no 1800 MHz Licence fees paid will be refunded to the Licensee.

2.2.7 Enforcement Actions in respect of 1800 MHz Licences – Compliance with Licence Conditions, Licence Suspension, Licence Withdrawal

2.59 Enforcement of conditions of 1800 MHz Licences shall be carried out by ComReg in accordance with its statutory functions, objectives and duties including, in particular, those set out in the Authorisation Regulations.

2.60 An 1800 MHz Licence may be suspended or withdrawn in accordance with the Authorisation Regulations.

2.61 In the event that enforcement action by ComReg results in the suspension, withdrawal (or foreshortening) of an 1800 MHz Licence or part thereof, no Licence fees paid in connection with that Licence will be refundable.

2.62 ComReg may appoint such members of its staff as it considers appropriate to be authorised officers for the purposes of the exercise by ComReg of its powers, functions and duties. For the purposes of the exercise by ComReg of its functions, an authorised officer appointed by ComReg may exercise the powers conferred by section 39(3) of the 2002 Act on authorised officers appointed under that Act.

2.2.8 Amendment of an 1800 MHz Licence

2.63 ComReg may amend the rights, obligations and procedures relating to an 1800 MHz Licence from time to time in accordance with the Authorisation Regulations.

2.2.9 Other Considerations

Spectrum reviews and amendments to Licence conditions

2.64 It is ComReg's policy to conduct, at regular intervals, reviews of spectrum management and use and, as a consequence of these reviews, amendments to licences may be proposed and implemented. Accordingly, ComReg may amend the rights, obligations and procedures relating to an 1800 MHz Licence from time-to-time and in accordance with the Authorisation Regulations. In considering any such action, ComReg would act reasonably, transparently and fully in accordance with its statutory objectives, functions and duties.

Spectrum pooling and sharing

2.65 ComReg's consideration of the issues associated with spectrum pooling and sharing were set out in its Radio Spectrum Strategy Statement (see section 3.5 of Document 11/88 and section 4.4 of Document 11/89 at www.comreg.ie). As set out in those documents, and having regard to its statutory functions, objectives and duties, it is not possible for ComReg to guarantee that individual spectrum sharing and pooling agreements will be permitted as the details of any such agreements would have to be assessed in the context of relevant electronic communications and competition law. It is only possible to make such an assessment on a case-by-case basis having regard to the specifics of a proposed arrangement and the circumstances in which the proposed arrangement would occur.

2.3 The Preparatory Licence – Terms and Conditions

2.66 The following describes the principal terms and conditions associated with the Preparatory Licence. These terms and conditions are set out in the Regulations.

2.3.1 Scope of the Preparatory Licence

2.67 A Preparatory Licence allows the Licensee to keep and have possession of, install and maintain WT apparatus for terrestrial systems capable of providing electronic communications services in the 1800 MHz bands. It is a condition of a Preparatory Licence that the Licensee shall not work or use said apparatus.

2.68 It is a “non-exclusive” Licence for the national terrestrial territory of the Republic of Ireland and all WT apparatus licensed under the Preparatory Licence is required to comply with EC Decision 2009/766/EC as amended.

2.69 As will be set out in the Regulations:

- a “non-exclusive” licence, means that ComReg is not precluded from authorising other persons to keep, possess, install, maintain or use other Apparatus “on a non-interference and non-protected basis” in the spectrum encompassed by the Lots; and
- “on a non-interference and non-protected basis” means a basis on which no harmful interference may be caused to any Radiocommunication Service, and on which no claim may be made for the protection of apparatus operating on this basis against harmful interference originating from Radiocommunication Services.

2.3.2 Preparatory Licence Duration and Renewal

2.70 The duration of the Preparatory Licence is set by reference to its commencement and expiry dates.

2.71 Before a Preparatory Licence will be granted to a Winning Bidder, it must pay the Upfront Fee associated with its 1800 MHz Licence. Consequently, the commencement date of a Preparatory Licence will be defined by reference to the timing of the Award Process.

2.72 The expiry date of a Lot in the Preparatory Licence will coincide with the commencement date of that Lot in the Licensee’s 1800 MHz Licence.

2.73 Once issued, the duration of the Preparatory Licence may be amended in accordance with the provisions of the Authorisation Regulations.

2.3.3 Licence Conditions Applicable to all Preparatory Licences

2.74 The conditions associated with a Preparatory Licence will be set out in the Regulations. Amongst other things, the Regulations will set out conditions in relation to:

- the assignment of the Preparatory Licence in its entirety to another party and the rights and obligations conferred with it; and
- the transfer of a Preparatory Licence to another party.

2.3.4 Fees for a Preparatory Licence

- 2.75 An administrative fee of €100.00 will be payable to ComReg prior to the issue of a Preparatory Licence.
- 2.76 Additionally before a Preparatory Licence will be issued, Winning Bidders must pay the Upfront Fee associated with its Winning Bid.

2.3.5 Enforcement Actions in respect of Preparatory Licences – Compliance with Licence conditions, Licence suspension, Licence withdrawal

- 2.77 Enforcement of conditions of Preparatory Licences shall be carried out by ComReg in accordance with its statutory objectives includes those set out in the Authorisation Regulations.
- 2.78 A Preparatory Licence may be suspended or withdrawn in accordance with the Authorisation Regulations.
- 2.79 In the event that enforcement action by ComReg results in the suspension, withdrawal (or foreshortening) of a Preparatory Licence, no Licence fees paid in connection with the related 1800 MHz Licence will be refundable.
- 2.80 ComReg may appoint such members of its staff as it considers appropriate to be authorised officers for the purposes of the exercise by ComReg of its powers, functions and duties under these Regulations. For the purposes of the exercise by ComReg of its functions under those Regulations, an authorised officer appointed thereunder may exercise the powers conferred by section 39(3) of the 2002 Act on authorised officers appointed under that Act in relation to a Preparatory Licence.

2.3.6 Amendment of a Preparatory Licence

- 2.81 ComReg may amend the rights, obligations and procedures relating to a Preparatory Licence from time to time in accordance with the Authorisation Regulations.

2.3.7 Other Considerations

Spectrum reviews and amendments to Preparatory Licence conditions

2.82 It is ComReg's policy to conduct, at regular intervals, reviews of spectrum management and use and, as a consequence of these reviews, amendments to licences may be proposed and implemented in accordance with the Authorisation Regulations. ComReg may amend the rights, obligations and procedures relating to a Preparatory Licence from time to time in accordance with the Authorisation Regulations.

Chapter 3

3 The Award Process and Auction Rules

3.1 Lots Available

3.1 Three individual Lots in the 1800 MHz band are being made available in this Award Process. Table 4 below provides an overview of these three Lots.

Lot Designator	Frequency band	1800 MHz Licence duration ²⁹	Lot size	Reserve Price per Lot	Annual SUF per Lot (before Indexation)
Lot I	1750.0 - 1755.0 MHz paired with 1845.0 - 1850.0 MHz	01/02/14 to 12/07/15	2 x 5 MHz	€0.794 million.	€0.54 million + CPI adjustment
Lot J	1755.0 - 1760.0 MHz paired with 1850.0 - 1855.0 MHz				
Lot K	1760.0 - 1765.0 MHz paired with 1855.0 - 1860.0 MHz				

Table 4: Lots available to any Interested Party participating in the Award Process

3.2 Process Overview and Timeline

3.2 The Award Process comprises the following stages:

- an **Application Stage**, during which Applicants can submit Applications, which must include their Bids for the Lots available and corresponding Deposits, to ComReg;
- a **Qualification Stage**, in which ComReg will examine Applications received and determine whether Applicants are qualified to participate in the Award Process;

²⁹ Note that, as discussed in subsection 2.2.2, the commencement and expiry dates of Lots may be adjusted by ComReg.

- an **Assessment Stage**, in which ComReg will determine the Lot/s allocated to each Applicant and the price to be paid by each Winning Bidder on the basis of Bids received on Application; and
 - a **Notification & Grant Stage**, in which ComReg will notify the Winning Bidders of their entitlement to obtain an 1800 MHz Licence and a Preparatory Licence in accordance with the outcome of the Award Process and, subject to the payment of fees and other provisions, subsequently grant Licences to Winning Bidders.
- 3.3 The timeline for the Award Process up to the end of the Application Stage is set out in Table 5 below. An indicative timeline for the later stages of the Award Process is set out in Table 6 below.
- 3.4 ComReg reserves the right to vary these timelines as may be necessary, in order to take into account any changed or unforeseen circumstances. ComReg, in doing so, would give appropriate notification (e.g. by issuing a public notice on its website or giving notice only to a selection of Interested Parties, depending on the stage of the Award Process (e.g. Applicants, Qualified Bidders)).

Stage of process	Milestone	Timeline
Application Stage	Publication of final Information Memorandum on ComReg's website	14 November 2013
	Deadline for submission of questions regarding the Award Process	26 November 2013
	Final date for responses to questions on the Award Process to be published on ComReg's website	6 December 2013
	Deadline for submission of Application Forms	13 December 2013
	Deadline for submission of Deposits	13 December 2013
	Restrictions on Auction-related communications come into effect	On submission of Application to ComReg

Table 5: Timetable for the Award Process up to the end of the Application Stage

Qualification Stage	Each Applicant to be informed by ComReg about whether it has become a Qualified Bidder or not	23 December 2013
	Return of Deposits to Applicants that have not become Qualified Bidders	~23 December 2013
Assessment Stage	Determination of the Lots assigned to each Bidder and the price to be paid	2 January 2014
Notification and Grant Stage	Notification to each Winning Bidder of their entitlement to apply for an 1800 MHz Licence	3 January 2014
	Public announcement of outcome of Award Process	
	Refund of Interest earned and any surplus funds held by ComReg	10 January 2014

Table 6: Indicative Timetable for the later stages of Award Process

- 3.5 References in this Chapter and throughout this Information Memorandum to ComReg using its discretion shall mean that ComReg shall exercise its discretion in accordance with its statutory functions, objectives and duties.
- 3.6 Any form of direct or indirect cooperation among Applicants or their stakeholders to influence the outcome of the Award Process (collusive behaviour) is prohibited.
- 3.7 Likewise, the public announcement or other disclosure to third parties of participation in the Award Process, or of Bids or bidding strategies – prior to or following the Application Stage – are prohibited.
- 3.8 In the event that an Applicant breaches the Auction Rules, that Applicant may be excluded from the Award Process, depending on the severity of the breach.
- 3.9 If an Applicant is excluded from the Award Process, it will remain liable for its Bids and any fees payable in the event that the Applicant would have become a Winning Bidder. However, the

same Applicant will not be assigned any spectrum rights won in the Award Process.

- 3.10 ComReg may, at its discretion, decide to void the Bids of an Applicant who has been excluded. Voiding of Bids of a Bidder may require a recalculation of Winning Bids and Winning Prices.

3.3 Application Stage

- 3.11 The Award Process begins on the day on which ComReg publishes this Information Memorandum, namely **14 November 2013**.

- 3.12 As set out in Table 5 above, the deadline³⁰ for all Interested Parties to submit their Applications to participate in the Award Process, (the "Application Date") together with the required Deposit is **13 December 2013**.³¹ This deadline is approximately 4 weeks following the date of publication of the Information Memorandum.

- 3.13 For the purpose of this document and the Award Process, the term "**Auction Rules**" shall refer to the rules and procedures relating to the Auction, as presented in Chapters 3 and 4 of this Information Memorandum, and to any other material to which the rules in Chapters 3 and 4 directly refer.

- 3.14 As part of their Applications and in order to be eligible to win spectrum in this Award Process, all Interested Parties must submit:

- a completed Application Form;³²
- a cleared Deposit; and
- any other documentation required to be annexed to the Application Form.

- 3.15 An Interested Party that submits an Application to ComReg is herein referred to as an Applicant.

3.3.1 Questions

- 3.16 ComReg will allow questions to be submitted to it by Interested Parties to facilitate clarity and understanding of the Award Process

³⁰ ComReg is under no obligation to consider Applications that have not been submitted in full by this Application Date.

³¹ If the Application Date in this Information Memorandum and that published on ComReg's website differ, the Application Date published on ComReg's website takes precedence.

³² See Annex 2.

and Auction Rules (see also section 4.2.5 on errors). All questions received in due time will be replied to on an ongoing basis and, as far as possible, within 8 Working Days.

- 3.17 The deadline for the submission of questions is **16:00** hours (local time) on **26 November 2013**. ComReg anticipates publishing all questions and associated answers no later than **6 December 2013**.
- 3.18 In that regard, and for this Award Process, questions must be submitted in written, hardcopy format only and cannot be submitted in any electronic format. From the publication of the Information Memorandum until the end of the Award Process, no e-mail or telephonic communications with any Applicant, in relation to or connected with the Award Process, will be entered into or considered.
- 3.19 Questions should be delivered by hand or courier to ComReg's offices and addressed as follows:
- Dr Samuel Ritchie**
1800 MHz Spectrum Award
Commission for Communications Regulation
Abbey Court, Irish Life Centre
Lower Abbey Street
Dublin 1
Ireland
- 3.20 Questions should be submitted in a sealed envelope. Delivery of any submission and, for example, anonymity of the submission is in the control of the particular Interested Party. Interested Parties should ensure that the envelope does not contain any marks which could identify the originator. Interested Parties are required to identify themselves on the question sheet within the sealed envelope.
- 3.21 Receipt of questions will be acknowledged by ComReg in writing.
- 3.22 ComReg will publish all questions together with their associated responses on an anonymous basis on its website.
- 3.23 ComReg reserves its right to, where appropriate, amend previous responses up until **6 December 2013**, such that answers provided before this date are for general guidance only and should not be considered final or relied upon until **6 December 2013**.

3.3.2 Application Form and Supporting Documents

- 3.24 The Application Form is set out in Annex 2 and must be completed by prospective Applicants in its entirety.
- 3.25 Each prospective Applicant is allowed to submit one single Application. Once a prospective Applicant has submitted an Application, the Applicant will not be permitted to revise or withdraw any of the Bids specified in its Lot Application Form, add any further Bids to the list submitted, or revise any other documents included in its Application unless the prospective Applicant is required to do so by ComReg in its discretion to do same.
- 3.26 Part 1 of the Application Form, entitled "Administrative Information", requests the Applicant to provide, among other things, details of person(s) to be used as the direct point of contact for an Applicant for purposes of the Award Process. In completing this part of the Application Form, the Applicant must also submit appropriate evidence that the persons signing the Application Form are duly authorised by the Applicant to do so ("Authorised Agents"). Appropriate evidence would include:
- where the Applicant is incorporated in the European Union, evidence that the Authorised Agents are registered pursuant to the appropriate national implementing measures transposing Article 9 of the First Company Law Directive ³³ (Regulation 6 of S.I. 163 1973 in Ireland);
 - a board resolution from an Applicant which is a company registered in Ireland;
 - an irrevocable power of attorney; or
 - equivalent evidence in respect of an Applicant from outside Ireland, supported by a legal opinion from a law firm in their jurisdiction, carrying in excess of €10,000,000 in professional indemnity insurance, addressed to ComReg, certifying that the Authorised Agents are entitled to bind the Applicants contractually.
- 3.27 Part 2 of the Application Form, entitled "Applicant Declaration", requires the Applicant to agree to be bound by the Auction Rules as set out in this document including:
- the provisions regarding agreements with third parties;

³³ Directive 68/151/EEC.

- the Auction Rules relating to confidentiality; and
 - non-collusion for the duration of the Award Process.³⁴
- 3.28 The Applicant Declaration must also be signed by, or on behalf of, the Applicant.
- 3.29 Part 3 of the Application Form, entitled "Lot Application Form", lists all seven packages of Lots for which bids may be submitted and the Reserve Price for each one of these packages. Details on how to complete the Lot Application Form are set out in section 3.3.6.
- 3.30 Applicants must also submit an Ownership Structure Document as part of their respective Applications. This document must provide details of the Applicant's ownership structure, including certification that this ownership structure is compliant with the ownership rules set out in subsection 3.3.4 and is correct to the best knowledge of the Applicant, and list the Applicant's Insiders.
- 3.31 In addition, in submitting its Application Form, an Applicant agrees to be bound by terms and conditions associated with the Award Process as set out in this Information Memorandum, which amongst other things, include:
- to the extent permitted by law, its agreement that ComReg's aggregate liability for all losses or damages of any nature arising from delayed access is expressly limited to the refunds or adjustments of Licence fees as set out in subsection 2.2.6 of this Information Memorandum;
 - its agreement that, if it becomes a Winning Bidder, then its failure to obtain consents, approvals, apparatus or funding necessary to deploy a network shall be deemed to be a breach of the Auction Rules by that Winning Bidder; and
 - its agreement to vacate fully the Lots assigned to it pursuant to the Award Process by the expiration of its 1800 MHz Licence, where it has no spectrum rights of use to one or more of these Lots in Time Slice 2.

3.3.3 Deposits

- 3.32 An Applicant must submit a Deposit with its Application. The required amount of the Deposit shall correspond to the largest Bid Amount (sum of the Reserve Price and amount bid in excess of the

³⁴ In addition to those rules under Irish and EU competition law.

Reserve Price) specified for any package bid for by the Applicant in its Lot Application Form.

- 3.33 The Applicant's Deposit must be transferred to the bank account nominated by ComReg as specified in Part 3 of the Application Form, and is to be received as cleared funds in ComReg's account³⁵, before **23:59** (11.59 PM) on the final day that Applications are permitted, namely **13 December 2013**.
- 3.34 The receipt of Deposit will be acknowledged by ComReg in writing after Applications have been opened and ComReg has been able to correlate Deposit amounts received with Bid Amount information given in part 3 of the Application Form.
- 3.35 Deposits will be held by ComReg in euro. Any amount of a Deposit to be repaid to an Applicant will be repaid in euro unless, arising from an action taken by the State, funds held in the relevant ComReg account are compulsorily redenominated or converted into a currency other than euro, in which case ComReg shall return the appropriate amount in the currency into which the account was redenominated or converted at the rate applicable on the date of any such redenomination or conversion. The Applicant bears any risk of any exchange rate fluctuations or compulsory currency redenomination or conversion.
- 3.36 ComReg will place all monies received from each Applicant into an NTMA³⁶ "Exchequer Account". Interest will be paid by ComReg on funds held by it during the Award Process and Applicants will receive all interest accrued in this account.

3.3.4 Confidential Information and Applicant behaviour

- 3.37 Applicants are reminded that they are subject to rules, both under the Auction Rules and under competition law, prohibiting the coordination of bidding decisions with other Applicants or the sharing of information with other Applicants that could affect those Applicants' bidding decisions.
- 3.38 This subsection sets out the rules (in addition to those rules under Irish and EU competition law) that govern the behaviour of

³⁵ Applicants are cautioned to ensure that the cleared funds received by ComReg are required to be the amount of the Deposit specified in euro. Applicants should ensure that the amount of funds received by ComReg is not diminished by bank charges, exchange rate fluctuations or similar matters.

³⁶ National Treasury Management Agency.

Applicants from the time of submission of their Applications until the grant of 1800 MHz Licences. The Auction Rules require that an Applicant shall refrain from any action that could upset the running of the Award Process. The Auction Rules also set out a number of specific rules in relation to Confidential Information and collusion, other restrictive practices capable of distorting the outcome of the Award Process, and the behaviour of employees and legal entities that are related or connected to the Applicant.

- 3.39 As part of its Application to be awarded spectrum rights of use in the 1800 MHz band in which radio frequencies are being made available in the Award Process, each Applicant is required to confirm that it has and will continue to comply with the Auction Rules and that it has taken all reasonable measures to ensure that its Connected Persons, employees and Insiders³⁷ have and will continue to at all times comply with these rules. Notwithstanding subsection 3.3.4 if at any point it becomes apparent that an Applicant or Bidder, its Connected Persons or its Insiders have failed to comply with these rules, the Applicant or Bidder, as appropriate, will be deemed responsible for that breach and may, depending on the nature and seriousness of the breach, be excluded from the Award Process and/or forfeit part or all of the Deposit it paid at the Application Stage. In certain circumstances, ComReg may also suspend or withdraw a Winning Bidder's Licence(s) if, after award of the Licence(s), it emerges that the Bidder, its Connected Persons or its Insiders breached these rules.
- 3.40 Confidential Information and Insiders **Confidential Information** means any information which, if known to another Applicant, may influence the amount that the Applicant is willing to Bid for Lots or the strategy it adopts in bidding for such Lots in the Auction. Confidential Information shall include (but not necessarily be limited to) information as to a Applicant's business case, its pre-Auction related activities, its Bid strategy, information as to the identity of a Applicant's Authorised Agents, or the Prices it is willing to Bid for spectrum. Confidential Information relating to individual Applicants shall also include the Applicant's actual participation in the Award Process.
- 3.41 A **Bidding Group** is defined as an Applicant and its Connected Persons.

³⁷ See paragraph 3.47 for a definition of an Insider.

3.42 A person (the “Connected Person”) is a **Connected Person** in relation to an Applicant where the Connected Person and/or any of its Controlling Persons and/or any of its Controlled Persons:

- a) either by itself or in concert with another person or other persons Controls the Applicant;
- b) either by itself or in concert with another person or other persons has a direct or indirect Interest of 10% or more in the Applicant;
- c) is a partner ³⁸ of the Applicant;
- d) either by itself or in concert with another person or other persons has an agreement, wholly or partly, to finance or otherwise assist the Applicant in connection with the Award Process;
- e) is Controlled by the Applicant alone or in concert with another Connected Person or Persons; or
- f) has as a director or senior executive any individual who is a director or senior executive of the Applicant or any of its Controlled Persons.

3.43 A person (the “**Controlling Person**”) will be deemed to control another person (the “Controlled Person”) in the circumstances described in the following paragraphs (and “Control” will be construed accordingly):

- a) where the Controlling Person and/or its Controlled Persons and/or its Associates, either by itself or in concert with other persons has:
 - an Interest in 30% or more of the share capital of the Controlled Person;
 - the right to cast 30% or more of the votes of shareholders on any matter at shareholders meetings;
- b) where the Controlled Person routinely or generally acts in accordance with the instructions of the Controlling Person;
- c) where, in the plain meaning of the words, the Controlling Person and/or its Controlled Persons controls the Controlled Person;

³⁸ Within the meaning of the Partnership Act 1890 or equivalent legislation in the jurisdiction where the entity is formed.

- d) where the Controlling Person is capable of exercising decisive influence on the activity of the Controlled Person by means of:
- securities, contracts or any other means, or any combination of securities, contracts or other means; and/or
 - ownership of, or the right to use all or part of, the assets of the “Controlled person”, and/or
 - rights or contracts which enable decisive influence to be exercised with regard to the composition, voting or decisions of the organs of the “Controlled Person”; and/or
 - without limitation by the foregoing, any other way.
- e) In addition to the above, in determining whether influence of the kind referred to above is capable of being exercised by a “Controlling Person” over a “Controlled Person”, regard shall be had to all the circumstances of the matter and not solely to the legal effect of any instrument.

3.44 In the definitions of “Connected Person” and “Controlled Person” a person is “in concert” with another person in circumstances where:

- a) one person Controls the other person; or
- b) one person is Associated with the other person; or
- c) there is an agreement or arrangement (whether or not legally binding) between those persons as to co-ordinated or concerted behaviour or activity by those persons (or either of them); or
- d) within the plain meaning of the expression “concerted”, the persons’ behaviour or activity is concerted.

3.45 An “**Interest**” shall include:

- a) an ownership interest, legal or beneficial, actual or contingent;
- b) an interest as the holder of a mortgage, charge, lien, hypothecation or other encumbrance;
- c) any derivative interest such as a participation or sub-participation where the holder of the Interest and/or any of its Controlled Persons directly or indirectly bears some or

all of the rewards and / or some or all of the risks of the relevant entity, shares or other securities;

- d) an option to acquire any of the foregoing;
- e) a right to convert a right or asset (such as a debt security) into any of the foregoing.

3.46 An “**Associate**” of any entity means:

- a) a director or company secretary or like officer of the entity and/or of its Controlled Persons;
- b) a senior executive of the entity and/or of its Controlled Persons;
- c) a spouse, civil partner or cohabiting partner of the foregoing;
- d) any minor child of the foregoing and any child of the foregoing residing with the foregoing;
- e) any partner of the foregoing;
- f) any entity Controlled by any one or more of the foregoing and any partner of such entity.

3.47 An **Insider** shall mean an entity that has:

- received Confidential Information about that Applicant but is not a Connected Person;
- undertaken, wholly or partly, to finance or assist a member of a Bidding Group in connection with the Award Process; or
- has provided advice to the Applicant in formulating its Bid strategy and/or business case in connection with the Award Process.

An Insider can be a legal entity or a natural Person. For example, an Insider could be a potential participant in a joint bid or a bank or other funder, in either case, with knowledge of a Applicant’s business case, valuations or Bid ceilings, or it could be an auditor, consultant, lawyer, economic adviser, or other professional assisting in the preparation of a Bid. Each Applicant shall submit a list of its Insiders to ComReg, at the time of its Application, and it shall inform ComReg thereafter of every change to its list of Insiders.

Restrictions

- 3.48 The rules regarding Confidential Information set out in this section shall apply from the date that an Applicant submits its Application or the Application Date, whichever is the earlier, to the end of the Award Process. Confidentiality regarding the outcome of the Award Process must be maintained until ComReg makes a public announcement at the end of the Award Process as detailed in subsection 3.9.
- 3.49 Except in accordance with the Exemption from Insider Rules as discussed below, Bidding Groups and Insiders must not convey Confidential Information to any other person, including another Bidding Group or its Insiders, either by making public such information, or by communicating such information directly to another Bidding Group or its Insiders or indirectly through an intermediate source.
- 3.50 It is possible that at the Application Date an Applicant is unaware that it has a common Insider with another Applicant. If ComReg finds that two or more Applicants have a common Insider, it shall:
- notify the Applicants concerned, indicating a deadline for them to apply for exemption from the rules on common Insiders;
 - require the relationship of one or more of the Applicants with the common Insider to terminate insofar as the Award Process is concerned; or
 - exclude the affected Applicants from further participation in the Award Process.
- 3.51 If the Applicants concerned are not granted an exemption by ComReg and/or they do not alter the common Insider situation to ComReg's satisfaction, then ComReg shall exclude the Applicants from further participation in the Award Process. If the relationship is brought to light later in the Award Process, ComReg may also declare the result of the Award Process as not binding, either in whole or in part, on ComReg.
- 3.52 If two or more Applicants have a common Insider, and it is not possible to bring the situation to an end within the deadline set by ComReg, and ComReg does not grant an exemption, one or more of the Applicants may withdraw from participation in the Award

Process, before the deadline for doing so set by ComReg, so that it is not necessary for ComReg to exclude all affected Applicants.

Exemption from Insider rules

- 3.53 ComReg may, in exceptional circumstances and at its sole discretion, grant exemption from the rules relating to common Insiders described above. ComReg may attach terms to any such exemption.
- 3.54 In considering whether to grant an exemption, ComReg will consider the arrangements put in place by a common Insider, to prevent the dissemination of Confidential Information relating to one Applicant from the individuals acting for that Applicant within the common Insider to the individuals acting for another Applicant.
- 3.55 In considering whether or not to grant an exemption, ComReg will require certain information from the Applicant, including (but not necessarily limited to) the following:
- details of all individuals acting for each Applicant within the common Insider;
 - an organisation chart showing the positions of each of these individuals within the common Insider;
 - a copy of any appropriate policies and procedures manuals used by the common Insider in relation to the segregation of customer data;
 - a written undertaking from the common Insider, in a form acceptable to ComReg, to segregate all Confidential Information relating to the Applicants that it is acting for and not to use any common personnel in relation to the different Applicants.
- 3.56 If an Applicant seeks an exemption, it will consent to ComReg contacting the managing director, managing partner, or person occupying an equivalent position in the common Insider, to seek the appropriate written undertaking, which shall be expressed to be for the benefit of ComReg.

Collusion and other disruption to the Award Process

- 3.57 All Applicants and Bidding Groups shall refrain from doing any of the following:

- disclosing any Confidential Information beyond the Applicant and its Connected Persons and Insiders;
- disclosing any Confidential Information in breach of undertakings made by an Applicant pursuant to any exemption to the rules on Connected Persons and Insiders granted by ComReg;
- obtaining Confidential Information in relation to any other Applicant;
- communicating with other Applicants and their Connected Persons with the intention or effect of coordinating bidding within the Auction;
- entering into agreements with other Applicants or their Connected Persons in relation to the Award Process;
- undertaking any action that is intended to, or is likely to, distort the outcome of the Award Process; and
- for the duration of the Award Process, exchanging information, coordinating or entering into agreements with other Applicants and their Connected Persons regarding the Applicant's strategy for use of the 1800 MHz Licence.

The above requirements shall be binding upon all Applicants until ComReg has publicly announced the final outcome of the Award Process.

- 3.58 Subject to ComReg's discretion to conclude otherwise, any merger or acquisition that may occur during the Award Process shall not be considered an act that could adversely affect the Award Process.
- 3.59 Notwithstanding the provisions of the paragraphs above, any member of a Bidding Group, or Insider may disclose Confidential Information to its employees, agents or other representatives, and vice versa, where this is necessary for the purposes of:
- determining the Applicant's participation and preparing for its participation in the Award Process, including its Bid strategy;
 - assisting the Applicant during its participation in the Award Process; and

- dealing with commercial and regulatory matters following, and directly concerned with, the outcome of the Award Process, including, for example, liaison with ComReg prior to the grant of 1800 MHz Licences.

However, such disclosure shall not include disclosure to any members of another Bidding Group except with ComReg's prior written consent.

Restrictive agreements

3.60 A Bidding Group, or its Insiders may neither prior to the submission of an Application, nor after the submission of an Application and until ComReg publicly announces the outcome of the Award Process, enter into any agreement or establish any understanding with a provider of equipment or software, which directly or indirectly:

- restricts the provider's ability to supply equipment or software to another Applicant or another Applicant's Connected Persons regarding the planning, establishment or operation of a network in Ireland involving the frequencies which are subject to this Award Process; or
- restricts the prices or other terms and conditions that the provider can offer another Applicant or its Connected Persons regarding the planning, establishment or operation of a network in Ireland involving the frequencies which are subject to this Award Process.

3.61 An Applicant, its Connected Persons or Insiders may not either prior to or during the Award Process enter into any agreement or establish any understanding with a third party if the agreement or understanding directs this third party not to participate in the Award Process, or restricts the ability of this third party to participate in the Award Process.

Directors and employees

3.62 Circumstances may arise where Bidding Groups and their respective Insiders have common directors and/or employees. If this occurs, the Applicants concerned need to ensure that the respective persons:

- are not, directly or indirectly, involved in the preparation and/or submission of the Application for both Applicants or their

Connected Persons, such that they are involved in the Award Process for one Bidding Group only;

- are not in possession of, do not obtain, or have knowledge of any Confidential Information concerning both Applicants or their respective Connected Persons or Insiders; and
 - are involved in Bidding for one Applicant only or not at all.
- 3.63 Prior to the submission of its Application, a potential Applicant shall take all reasonable measures with a view to identifying its Connected Persons, Associated Applicants and Insiders.
- 3.64 A Bidder shall ensure that its Connected Persons take all reasonable measures to identify and inform the Applicant if they have any board members or employees who are Insiders in relation to another Applicant, such that the Applicant can take appropriate precautions to ensure that the rules on Confidential Information and collusion are not breached.

Sanctions

- 3.65 As part of their Applications, Applicants agree to be bound by a series of possible administrative sanctions for infringement of the Auction Rules.
- 3.66 Interested Parties should note that certain breaches of the Auction Rules and other behaviours that Applicants and/or Bidders could engage in may entitle other Applicants and/or Bidders to seek redress under civil law and, moreover, may also constitute offences relating to, amongst other things, competition law, fraud and conspiracy. In respect of certain such behaviours, liability can be imposed on the individuals engaging in the behaviour as well as on the organisation. In the event that such behaviour comes to the attention of Applicants during the Award Process they are obliged under the Auction Rules to notify ComReg immediately to enable appropriate action to be taken.
- 3.67 In the event that an Applicant or Bidder breaches any of these rules, it can face, subject to ComReg's discretion, a number of alternative sanctions depending on the severity of the breach. Specifically, the list of possible sanctions includes, but is not limited to:
- exclusion from the Award Process; and/or

- forfeiture of part or all of the Deposit which was paid on Application.
- 3.68 If an Applicant is excluded from the Award Process, then ComReg, at its discretion, may void Bids made by the Applicant in question. For the avoidance of doubt, on exclusion of a Applicant, ComReg may continue with the Award Process unchanged, save for the exclusion of that Applicant. ComReg reserves the right to make such alterations to the Award Process as it considers appropriate at its discretion.
- 3.69 A breach by an individual Applicant, its Connected Persons or Insiders of any of the rules mentioned in this subsection, may lead to the forfeiture of part or all of the Deposits paid by that Applicant. The amount of a Deposit to be forfeited for breach of these rules will be determined by ComReg by reference to the nature and severity of the breach and its impact.
- 3.70 Actions which may lead to a Applicant's exclusion from the Award Process and/or the forfeiture of a Applicant's Deposit include the following:
- submitting materially ³⁹ false or misleading information to ComReg;
 - failing to update ComReg, in a timely manner, in relation to any change to material information submitted within its Application or during the Award Process;
 - an Applicant or any member of its Bidding Group colluding or attempting to collude with any other person to distort the outcome of the Award Process, or is acting in a way which is likely to distort the outcome of the Award Process;
 - an Applicant or any member of its Bidding Group, or any Insider, disclosing Confidential Information to others during the period of restrictions on communications, other than in accordance with Exemption from Insider Rules as discussed above;

³⁹ Where reference is made in this Information Memorandum to matters being material, ComReg, acting reasonably, shall be entitled to decide whether or not a matter is material. Accordingly, where an Applicant has any doubt as to the materiality of a matter, it should be reported to ComReg.

- an Applicant or any member of its Bidding Group obtaining or attempting to obtain Confidential Information in relation to any other Applicant;
- any member, director or employee of a member of an Applicant's Bidding Group, who is also a director or employee of a member of another Bidding Group, taking part in the preparation by both Bidding Groups for participation in the Award Process or receiving Confidential Information relating to both Bidding Groups or participating in the Award Process in relation to more than one Bidding Group;
- an Applicant, its Connected Persons or Insiders canvasses directly or indirectly any ComReg Commissioner or member of staff of ComReg or any person associated in any way with the Award Process; and
- any other breach of the Auction Rules contained in Chapter 3 or the agreement with ComReg described in Chapter 4.

In certain circumstances, ComReg may also suspend or withdraw a Winning Bidder's Licence(s) if, after grant of the Licence(s), it emerges that the Bidder, its Connected Persons or its Insiders breached the Auction Rules set out in Chapter 3 or the agreement with ComReg described in Chapter 4.

- 3.71 In cases where breaches are caused not by the Applicant, but by its Connected Persons and Insiders, then ComReg has discretion to waive or limit the application of sanctions set out in this subsection if it can be shown that the breach occurred without the Applicant's knowledge, that the Applicant has taken all reasonable steps to avoid the breach and that the breach has not had a material impact on the Award Process.
- 3.72 Nothing in this Information Memorandum shall preclude ComReg from seeking alternative remedies for breach of the Auction Rules set out herein, including, but not limited to, a claim for damages, or the bringing of proceedings under the Competition Act 2002, as amended, or the Communications Regulation Acts 2002-2011 or the Specific Regulations.

3.3.5 Application procedure

- 3.73 In order to take part in the Award Process, Applicants must submit, four completed and identical Application Forms on paper including

four identical copies of an Ownership Structure Document on paper and an electronic copy of same in an editable format on CD-ROM. The container(s) in which the Application Form and Ownership Structure Documents and CD-ROM are submitted must not in any way disclose the identity of the Applicant.

- 3.74 ComReg will only accept applications on **13 December 2013** between **10.00 and 16.00 hours (Irish time)**. Applicants are required to make an appointment with ComReg to submit an application. To make an appointment to submit an Application, Applicants are required to contact **Dr Samuel Ritchie** between **10 December 2013** and **11 December 2013**, and between 10.00 to 13:00 and 14:00 to 16.00 hours (Irish time) at:

Phone: 00 353 (0)1 804 9619

- 3.75 All applications will be date stamped. Each Applicant will be given a receipt acknowledging the submission of its application.
- 3.76 No Applications will be opened by ComReg until after 16.00 hours (Irish time) on the closing date for receipt of applications. Applications will be opened in the presence of an independent auditor.
- 3.77 The deadline for receipt of Deposits, as set out in subsection 3.3.3 will be 23:59 on the Application Date, namely **13 December 2013**.
- 3.78 As noted at subsection 3.3.1 above, ComReg will allow questions to be submitted regarding the Award Process up until 16:00 hours (local time) on **26 November 2013**. Following that date, and onwards through to the conclusion of the Award Process, no questions will be accepted from Applicants or Interested Parties, save for those that would qualify as permitted communications of the type set out in subsection 3.8.1 of this document (Communication with ComReg) and save for those communications and responses which are specifically requested by ComReg or its agents in accordance with the Information Memorandum.

3.3.6 Completing the Lot Application Form

- 3.79 Each Bid consists of:
- a package (the Lots that the Bid applies to); and
 - a Bid Amount (the price the Applicant is offering to pay for the Lots in the package).

- 3.80 If a Bid is selected as a Winning Bid, then the Applicant will be allocated the package specified in the Bid, and required to pay an Upfront Fee no greater than the Bid Amount specified in the Bid.
- 3.81 Applicants may bid for the following packages:
- Lot I;
 - Lot J;
 - Lot K;
 - Lots I and J;
 - Lots I and K;
 - Lots J and K; or
 - Lots I, J and K.
- 3.82 The Lot Application Form lists all possible packages that an Applicant may bid for, the Lots included in that package along with the Reserve Price that applies to that package (calculated as the sum of reserve prices of all Lots included in the package). In order to bid for a package, the Applicant must specify a Bid Amount for the corresponding package that it is willing to pay. The Bid Amount must be at least the Reserve Price for the package and in whole Euros.
- 3.83 Any of the valid package Bids submitted by an Applicant may be selected as a Winning Bid, in which case the Bidder will be allocated the package specified in the Bid for a price no greater than the Bid Amount specified in the Bid. However, at most one Bid from each Applicant can be selected as a Winning Bid – therefore an Applicant is only liable to pay up to the Bid Amount specified in at most one of its Bids.

3.4 Qualification Stage

3.4.1 Process for approval of Applications

- 3.84 Once the Application Date has passed, ComReg will evaluate all Applications received within the specified time window and evaluate which Applications are valid.⁴⁰ Applicants that submitted valid Applications at the Application Stage that are approved by ComReg are referred to as Bidders.

⁴⁰ Details of what constitutes a valid Application are set out in section 3.3.

- 3.85 Following the completion of its assessment of Applications, ComReg will inform each Applicant whether or not it has been approved by ComReg to become a Bidder.
- 3.86 ComReg will not inform Bidders about the identity of other Bidders or unsuccessful Applicants who fail to become Bidders.

3.4.2 Qualification Assessment of Applications

- 3.87 If an Applicant fails to ensure that ComReg receives the Deposit associated with the Lots applied for in its Lot Application Form ⁴¹ in full by the deadline specified by ComReg, ComReg may, at its discretion, decide that the corresponding Application is not valid and that the Applicant will not become a Bidder and will thus not be eligible to participate in the Award Process. Alternatively, it may provide a short additional period of time for the full Deposit to be paid.
- 3.88 In the event that the Applicant does not become a Bidder by virtue of failing to submit its Deposit in full, any incomplete Deposit that has been paid to ComReg will be returned soon after the end of the Qualification Stage in accordance with the indicative timeline for the return of Deposits to unsuccessful Applicants provided in Table 6 above or as may have been extended by any grace period permitted by ComReg for the Deposit to be topped up.
- 3.89 If any aspect of an Application (other than the partial payment of a Deposit) is found to be incomplete, only partially complete, unclear or otherwise invalid, ComReg has the discretion to decide what measures to take, reflecting the nature of the ambiguity, omission or invalidity. These measures include seeking clarification or verification of information already provided, requesting further information from the Applicant or deeming that Application invalid.
- 3.90 In particular, if at any point during the Award Process an Applicant is found by ComReg to have submitted information on its ownership structure which is materially incomplete or incorrect, ComReg has the discretion to take whatever measures that it deems appropriate, including requiring that one or more Applicants verify information already provided, and to provide additional information and supporting evidence. If ComReg is unable to determine to its reasonable satisfaction that two or more Applicants are not

⁴¹ As set out in section 3.3.3, the required amount of the deposit corresponds to the largest Bid amount specified for any Package of Lots in the Applicants Lot Application Form.

connected or associated (in accordance with the terms of subsection 3.4) on the basis of information provided to it, it reserves the right to treat those Applicants as being connected or associated.

- 3.91 In the event that an Application is in any material way incomplete, inaccurate, invalid or untrue, ComReg may decide not to allow the Applicant to become a Bidder. If, having determined that Applicant may become a Bidder, ComReg becomes subsequently aware that the Bidder's original Application was incomplete, inaccurate, invalid or untrue, ComReg may, at its discretion, allow the Bidder the opportunity to clarify or correct the information already provided. If the Bidder cannot provide correction or clarification to ComReg's satisfaction within a time limit specified by ComReg, that Bidder may be excluded from the Award Process with return of all, part or none of the Bidder's Deposit in accordance with the indicative timeline as set out in Table 6 above. In the event of any material inaccuracy or untruth in an Application being identified, ComReg reserves the right to exclude the Bidder from the Award Process without providing an opportunity for the Bidder to clarify or correct the information already provided.
- 3.92 In the case where an Applicant is declared unsuccessful in its Application on account of such deficiencies in its Application, its Deposit will be returned in accordance with the timetable for return of Deposits to unsuccessful Applicants provided in Table 6 above as may have been extended by any grace period permitted by ComReg in seeking to address such deficiencies. Applicants are reminded that even if they are unsuccessful in becoming Qualified Bidders, they remain bound by the Auction Rules on release of Confidential Information until the grant of all 1800 MHz Licences by ComReg.
- 3.93 In the case where an Applicant's Application is considered incomplete, inaccurate, invalid or untrue retrospectively, its Deposit may or may not be returned, in whole or in part, depending on the nature and seriousness of the deficiency of its Application. In the case where at least a partial Deposit is to be returned, these funds will be returned within one week of the Applicant being informed that it is not eligible to take further part in the Award Process.
- 3.94 Applicants are subject to an on-going obligation to inform ComReg of material changes in all circumstances affecting any of the information provided in their Applications. If an Applicant becomes aware of a material error, omission or inaccuracy in its Application,

the Applicant will inform ComReg as soon as reasonably possible. This obligation on an Applicant continues throughout the entire Award Process until such time that all 1800 MHz Licences have been granted.

3.5 Assessment Stage

3.95 The Assessment Stage determines the Lots allocated to each Bidder, on the basis of the Bids received in the Application Stage.

3.5.1 Determination of Winning Bidders and Winning Prices

3.96 A Feasible Allocation of Lots amongst Bidders consists of a selection of Bids such that:

- at most one Bid is selected from each Bidder; and
- all the Lots included in the Bids selected can be awarded given the available spectrum.

3.97 The total value of a Feasible Allocation is the sum of the Bid Amounts of the selected Bids.

3.98 The selection of Winning Bids (the Winning Outcome) is a Feasible Allocation that yields the maximum total value across all Feasible Allocations.

3.99 If there is only one Feasible Allocation that yields the maximum total value across all Feasible Allocations, this will be the Winning Outcome.

3.100 In the event of a tie amongst multiple Feasible Allocations of equal highest total value, then the Winning Outcome will be selected at random from the tied allocations.

3.101 If there are no valid Bids from any Bidders, then no spectrum rights will be awarded.

3.5.2 Price Determination

3.102 A price will be determined for each Winning Bidder. Prices are determined based on the concept of opportunity cost, and reflect the value that could have been generated by allocating the Lots won by Winning Bidders to other Bidders.

3.103 Opportunity cost is defined for each possible subset of Winning Bidders⁴². The opportunity cost of assigning the Lots they have won to the Winning Bidders in a particular subset is determined by the value that could have been obtained by allocating these Lots to the remaining Bidders (i.e. all Bidders not included in that subset). Specifically, the opportunity cost is the aggregate value that the remaining Bidders would have obtained from the Lots allocated to the Winning Bidders included in the subset *over and above* the aggregate value they actually obtain in the Winning Outcome. The joint opportunity cost for a subset of Winning Bidders is, therefore, the difference between:

- the highest total value that could be achieved across all Feasible Allocations that do not include any of the Bids submitted by the Winning Bidders included in the subset; and
- the sum of Bid Amounts from Winning Bids (in the Winning Outcome) that were submitted by the Winning Bidders not included in the subset.

3.104 Prices are determined jointly for all Winning Bidders and are set to ensure that:

- the price for each Winning Bidder is at least the Reserve Price for the Lots it has won;
- the price for each Winning Bidder does not exceed the bid amount of its Winning Bid;
- the sum of prices for the Winning Bidders in each possible subset of Winning Bidders is no less than the joint opportunity cost of allocating to that subset of Winning Bidders the Lots they have won; and
- subject to the previous conditions being met, the total sum of prices is the smallest possible.

3.105 If more than one set of possible prices meet the previous conditions, then the auction prices will be those which minimise the sum of squared differences between the individual opportunity cost of assigning each Winning Bidder the Lots it has won and its price, rounded up to the nearest Euro.

⁴² These include the subset consisting of all Winning Bidders and the subsets formed by single Winning Bidders.

3.106 For the avoidance of doubt the price for any Winning Bidder cannot exceed the Bid Amount that the Winning Bidder has specified in its Winning Bid.

3.6 Notification and Grant Stage

3.107 Once ComReg has determined the Winning Bidders and prices, ComReg will notify each Bidder in writing whether or not it has been successful in acquiring Lots in the Award Process.

3.108 In the case of Bidders who do not win any Lots in the Award Process, ComReg will return the relevant amount of its Deposit to it (less any Deposit forfeiture imposed in accordance with the Auction Rules) within approximately two weeks of this notification.

3.109 In the case of Winning Bids, ComReg will notify the Winning Bidders of their entitlement to obtain an 1800 MHz Licence and a Preparatory Licence, subject to compliance with certain obligations as set out below, including their obligation to pay the Upfront Fee.

3.110 The **Upfront Fee** to be paid by each Winning Bidder prior to the grant of an 1800 MHz Licence will become immediately due and payable once ComReg has notified Winning Bidders of their entitlement to obtain an 1800 MHz Licence.

3.111 Due to the nature of the award process, the Deposit held by ComReg on behalf of each Winning Bidder should be greater than or equal to the Upfront Fee due from a Winning Bidder. Accordingly, ComReg shall be entitled to deduct that Upfront Fee from the said Deposit and if the amount of a Winning Bidder's Upfront Fee is less than the amount of its Deposit, the balance of the said Deposit will be returned to that Winning Bidder by ComReg within 5 days of this notification (less any Deposit forfeiture imposed in accordance with the Auction Rules). If, whether due to forfeiture of all or part of a Winning Bidder's Deposit, or otherwise, the Deposit retained by ComReg on behalf of that Winning Bidder is less than the Upfront Fee due from that Winning Bidder, the balance of the Upfront Fee shall be paid to ComReg prior to the grant of any Licence.

3.112 In respect of an 1800 MHz Licence, the notification will state that, upon grant of such a Licence, the Winning Bidder is obliged to comply with the terms and conditions associated with the 1800 MHz Licence and will among other things:

- specify the Lots to be included in the Licence in accordance with the Lots allocated to the Bidder in the Award Process;

- specify the commencement date of each Lot to be included in its Licence;
- specify the expiry date of each Lot to be included in its 1800 MHz Licence and the expiry date of its Licence; and
- specify the information required by ComReg to populate Part 2 and Part 3 of the Licence and state that the Winning Bidder is obliged to provide such information to ComReg in advance of the commencement date of its 1800 MHz Licence.

3.113 Note that the Winning Bidder is required to pay the SUFs associated with the Licence, and that payment for the first SUF must be made in advance of the issue of the Licence. The SUF invoice may require payment in a time period shorter than 30 days in order that payment is received in advance of the commencement date of the 1800 MHz Licence.

3.114 Where the Winning Bidder has submitted the Upfront Fee in respect of each Lot to be included in its 1800 MHz Licence prior to the commencement date of that Lot and complies with the conditions set out above, ComReg will issue an 1800 MHz Licence to the Winning Bidder.

3.115 ComReg may at its discretion extend the time limit in order for Bidders to fulfil these obligations. If a Winning Bidder does not comply with the conditions relating to the payment of the Upfront Fee or the other conditions relating to the grant of its 1800 MHz Licence, it will forfeit its Deposit and entitlements to a Licence, without prejudice to ComReg's entitlement to recover the full amount due in respect of all Lots won as a simple contract debt.

3.116 Once an 1800 MHz Licence has been issued to a Winning Bidder, ComReg will publish the text of the Licence and subsequent amendments to same on its website subject to the protection of confidential information in line with ComReg Document 05/24.

3.7 Transition Rules

3.117 In the MBSA Process, ComReg indicated that depending on the nature and extent of Transition activities required between Time Slice 1 and Time Slice 2, ComReg reserved the right to apply the Transition rules set out in the MBSA Information Memorandum to the Existing GSM Licensees and Winning Bidders of Lots in Time Slice 1 in the 800 MHz, 900 MHz and 1800 MHz bands.

- 3.118 As some reorganisation of the 1800 MHz band is likely to be required between Time Slice 1 and Time Slice 2, ComReg is of the view that all Licensees holding rights of use in the 1800 MHz band will need to co-operate in order to ensure a smooth transition between Time Slices.
- 3.119 Accordingly, ComReg reserves the right to adopt a Transition Project Plan, as set out at paragraph 3.165 of the MBSA Information Memorandum, and to make such plan binding on all Winning Bidders in respect of any spectrum awarded pursuant to this Award Process, in the same manner that it is binding upon Winning Bidders in respect of Liberalised Use Licences issued pursuant to the MBSA Award Process.

3.8 Liquidated Damages

- 3.120 An essential part of ensuring that Winning Bidders fully vacate the Lots won pursuant to this Award Process is the identification of, and agreement to pay, liquidated damages to ComReg where a Winning Bidder fails to vacate the spectrum which it wins pursuant to this Award Process on or before the expiry of the 1800 MHz Licence which it wins.
- 3.121 The total amount of liquidated damages payable by Winning Bidders will be based on the refunds or adjustments of licence fees that ComReg pre-estimates that it may have to make to HG3I (or its successor in title) in the event that ComReg may be unable to make the Lots available for use by HG3I (or its successor in title) on commencement date of Time Slice 2. Section 2.2.6 of the MBSA Information Memorandum contains details of the nature of refunds or adjustments payable by ComReg in respect of the relevant MBSA fees paid by H3GI (being the current holder of the rights of use for the Lots in Time Slice 2), and shall be used by ComReg in pre-estimating the payable liquidated damages pursuant to a Winning Bidders' failure to fully vacate the Lots won pursuant to this Award Process on or before the expiry of the 1800 MHz Licence which it wins. These liquidated damages are payable immediately on request and are non-refundable.

3.9 Other Matters

3.9.1 Communication with ComReg

3.122 From the publication of the Information Memorandum all communication by Interested Parties with ComReg relating to the Award Process is to be via written correspondence on paper. No email correspondence will be considered or entered into until the end of the Award Process.

3.9.2 Exceptional Circumstances

3.123 If exceptional circumstances arise during any stage of the Auction, ComReg has the discretion to:

- void all package Bids received in the Auction, and either suspend the Auction or restart the Auction; and/or
- take any other steps or measures in running the Award Process which are appropriate and proportionate to the exceptional circumstances which have arisen and which further the objectives of the Award Process and ComReg's objectives.

3.124 ComReg will determine whether a situation of exceptional circumstances has arisen. Exceptional circumstances could include, for example, material concern about collusion amongst Bidders.

3.125 In the event that a Bidder is excluded from the Auction and some, or all, of its Bids are deemed invalid, ComReg would typically expect not to use any of its exceptional powers to modify any Auction outcome as this could adversely affect other Bidders. However, ComReg does not fetter its discretion in this regard.

3.10 End of Award Process

3.126 Once ComReg has determined the Winning Bids for all Packages the results of the Award Process will be notified to Bidders and, in tandem, made public.

3.127 The following information will be released:

- the identity of the Winning Bidders;
- the Lots awarded to each Winning Bidder;

- the Price to be paid by each Winning Bidder.

Chapter 4

4 Legal Terms and Conditions

4.1 Important Notice

- 4.1 This Information Memorandum is being made available by ComReg solely for the purposes of assisting prospective Bidders in deciding whether they wish to proceed to participate in the Award Process in accordance with the terms of this Information Memorandum and to assist prospective Bidders and their agents in preparing for and understanding the Award Process. This Information Memorandum may not be used for any other purpose and, when using it for the stated purposes above, prospective Bidders are strictly subject to the terms and conditions set out in this Information Memorandum.
- 4.2 In this Information Memorandum an “**Interested Party**” shall have the meaning ascribed to this expression in the Glossary to this Information Memorandum.
- 4.3 To the extent permitted by law, no representation or warranty or undertaking (express or implied) is or will be made by ComReg or its personnel or agents and no liability or responsibility is or will be accepted by ComReg or its personnel or agents as to:
- i. the adequacy, accuracy or completeness of the information, opinions or statements (or the basis on which they are premised) contained in this Information Memorandum or in any of the documents referred to herein;
 - ii. any omissions, errors or misstatements contained in this Information Memorandum or in any documents referred to herein; and
 - iii. the contents of any written or oral information made available by ComReg or its personnel or agents to Interested Parties or any third party relating to the Award Process.
- 4.4 To the extent permitted by law, any liability for any loss or damage of any nature arising from this Information Memorandum and its use by Interested Parties is expressly disclaimed by ComReg.
- 4.5 Without prejudice to the foregoing and to the extent permitted by law, ComReg’s aggregate liability for all losses or damages of any nature arising from delayed access to Lots is expressly limited to the

refunds or adjustments of Licence Fees as set out in subsection 2.2.6 of this Information Memorandum.

- 4.6 To the extent permitted by law, Interested Parties shall not be entitled to rely on the contents of this Information Memorandum to argue that they have rights or expectations, pursuant to legitimate expectation, estoppel or other related legal arguments, that:
- i. ComReg will not exercise any of its rights reserved in subsection 4.2.6 of this chapter;
 - ii. they will be awarded any spectrum at the end of the Award Process;
 - iii. bidding in any particular manner will, of itself, guarantee success in the Award Process;
 - iv. ComReg will during the term of any Licence granted pursuant to the Award Process modify the terms of such licence, or the regulations affecting such licence, in any manner and, without prejudice to the generality of the foregoing, that ComReg will provide for spectrum trading or leasing or that ComReg will permit the use of any particular new technologies in the spectrum licensed in the Award Process; or
 - v. ComReg will reassign rights of use of spectrum licensed pursuant to the Award Process in any particular way at the termination of any licences granted pursuant to the Award Process.
- 4.7 While ComReg, its personnel and agents intend to implement the Award Process, ComReg, its personnel and agents give no indication or commitment and make no statements as to the possible outcomes of this Award Process.
- 4.8 In accessing this Information Memorandum, Interested Parties acknowledge that they will be solely responsible for their own assessment of any matter connected with the Award Process to which the Information Memorandum relates. Interested Parties are responsible for forming their own views, deciding if they will partake in the Award Process, completing the relevant Application forms and calculating any Bids.
- 4.9 All dates in this Information Memorandum are, unless specifically stated to the contrary, target or indicative dates only and may be subject to change at the sole discretion of ComReg acting subject to its statutory functions, objectives and duties.

- 4.10 Whilst the information in this Information Memorandum has been provided in good faith, it does not purport to be comprehensive nor to have been independently verified. Interested Parties should form their own views. ComReg reserves the right to amend this Information Memorandum and any information or documents contained or referred to herein in accordance with paragraph 4.29 of this Chapter 4.
- 4.11 Nothing in this Information Memorandum is, or should be relied upon as, a promise or representation as to ComReg's ultimate decision in relation to the award of a licence or licences. ComReg reserves the right to suspend or not to proceed with the Award Process or any part thereof and may terminate the Award Process or any part thereof at any time and, in such event, ComReg shall not be liable, howsoever, to any Interested Party save for ComReg's obligations to return deposits in certain circumstances. ComReg also reserves the right, in accordance with law, to change any procedure in relation to the Award Process. ComReg reserves the right to reject any and all Applications received as part of the Award Process or not to select any Applicant for the grant of a Licence. Interested Parties are recommended to seek their own financial, legal and technical advice at their own cost in relation to the Award Process. The publication of this Information Memorandum or any information made available in connection with the Award Process does not constitute nor is to be taken as constituting the giving of financial, legal, technical or investment advice by ComReg, its personnel or agents.
- 4.12 Any conflict of interest or potential conflict of interest – including but not limited to any conflict arising under the rules set out in sections 3.3.4 and 3.3.5 of this Information Memorandum – must be disclosed to ComReg by any Interested Party or by any prospective or actual Bidder as soon as such conflict of interest or potential conflict of interest becomes apparent. The appropriate course of action to be taken in such event shall be decided upon by ComReg, in its discretion acting subject to its statutory functions, objectives and duties.
- 4.13 This Information Memorandum should be read and construed in accordance with the previous documentation issued by ComReg as part of this process including:

- a) Consultation and draft Decision 13/88⁴³;
- b) Response to Consultation and Decision 13/102;

along with the associated consultants' reports and other relevant ComReg documents⁴⁴, the "Consultation Process Documents"). In the event of any conflict between the views expressed in any of the Consultation Process Documents the view expressed in the later document shall take precedence. Where any draft document, for instance a draft statutory instrument, draft decision or draft Information Memorandum has been supplanted by a finalised document, the draft document should be discounted entirely. In the event of any conflict or inconsistency between the Consultation Process Documents and this Information Memorandum, this Information Memorandum shall take precedence.

- 4.14 The legal and contractual obligations described in this Chapter of the Information Memorandum are imposed on Interested Parties who are furnished with or who download this Information Memorandum and ComReg reserves the right to enforce such obligations. Copyright (and any other intellectual property rights) in this Information Memorandum vest and remain in ComReg and its licensors and recipients of this document including Interested Parties shall not use or copy this Information Memorandum other than in pursuit of the purposes described in paragraph 4.1 above, without the permission of ComReg. Applicants who submit applications to enter the Award Process shall be obliged to express their acceptance to the provisions of this Chapter as part of the application process (see section 3.3 and Annex 2).
- 4.15 This Information Memorandum and all matters arising out of or in connection with or in any way related to this Information Memorandum shall be governed and construed in accordance with the laws of Ireland and shall be subject to, and Interested Parties hereby expressly submit to, the exclusive jurisdiction of the Irish courts.

⁴³ See, <http://www.comreg.ie/fileupload/publications/ComReg1388.pdf>

⁴⁴ See also;

- ComReg Document 13/103 – DotEcon Report – Assessment to responses to Consultation 13/88;
- ComReg Document 13/89 – DotEcon Report - ComReg allocation of unassigned Time Slice 1 1800 MHz spectrum: Advice on award process and rules, <http://www.comreg.ie/fileupload/publications/ComReg1389.pdf>.

4.2 Additional Conditions

4.2.1 Open Applications

- 4.16 All Applications (including Applications which do not ultimately become qualifying Applications) by Applicants comprise offers which must remain open and valid for three (3) months from the date of submission. Applications are contractually binding offers and the submission of an Application shall mean the Applicant unconditionally offers to agree to:
- i. the provisions of this Chapter;
 - ii. the Applicant declaration which forms part of the Application (see Annex 2); and
 - iii. the Auction Rules described in section 4.2.3 below.
- 4.17 Offers shall be deemed to be accepted (meaning that an agreement covering (i),(ii) and (iii) above has been formed between the Applicant and ComReg) once they are submitted to ComReg in accordance with the Information Memorandum and an acknowledgment of receipt has been issued by ComReg even if they subsequently do not become qualifying Applications.
- 4.18 All Applications will be assessed in accordance with subsection 3.4 of this Information Memorandum.
- 4.19 For the avoidance of doubt, the contract described in this subsection 4.2.1 is in addition to and not in substitution for the contract described in paragraph 4.14 above, which binds all parties in receipt of this Information Memorandum to the provisions of this Chapter.

4.2.2 Canvassing

- 4.20 Interested Parties must not canvass directly or indirectly any staff or the Commissioners of ComReg or any person associated in any way with the Award Process. Failure to comply with this requirement may result in an Application being deemed invalid or disqualification from the Award Process. This does not restrict an Applicant from making any representations through the communications channels specified in this Information Memorandum.

4.2.3 Auction and Transition Rules / Collusion / Improper Influence

4.21 The Award Process and Auction Rules described in this Information Memorandum and its Annexes shall form part of the agreement between ComReg and Applicants described in section 4.2.1 above. By submitting an Application, the Applicant agrees to be bound by and to comply with the Auction Rules. The Auction Rules are designed to prevent collusion or other forms of anticompetitive conduct and, for the avoidance of doubt, any direct or indirect attempt by Interested Parties to influence, in any way, the Award Process. Any breach of the Auction Rules may result in the disqualification of that/those Interested Parties or, where the party engaging in such behaviour is an agent that agent's principal. Non-exhaustive examples of such improper influence are collusion, price fixing, bid rigging, market division or breach of Award Process confidentiality.

4.2.4 Publicity

4.22 No publicity whatever regarding this Information Memorandum and/or Award Process is permitted unless and until ComReg has consented in writing, at its discretion, to the relevant communication. For the avoidance of doubt, this publicity prohibition shall prevent Interested Parties and/or their agents from making any public statements or statements likely to be made public whatsoever concerning the Award Process and/or this Information Memorandum.

4.23 ComReg may issue such communications and generate such publicity in relation to the Award Process as it considers appropriate and without notice to Interested Parties. ComReg, subject to its guidelines on the treatment of confidential information, in particular, has the right to publicise or otherwise disclose any information regarding the Award Process, the identity of Applicants (including the identity of their members, sub-contractors and agents), successful Bidders or the granting of related licence or licences at any time.

4.2.5 Errors

4.24 If Interested Parties discover any error or omission or lack of clarity in this Information Memorandum, such Interested Parties must immediately notify ComReg in writing of such error, omission or lack

of clarity which will be resolved by ComReg in such manner as it considers appropriate.

4.2.6 No Warranty and Termination

4.25 The publication of this Information Memorandum does not warrant or imply that any Interested Party will be awarded a Licence or Licences.

4.26 ComReg will act at all times to a standard expected of a public body and in line with its statutory functions, objectives and duties. ComReg reserves the right, for any reason whatever at its discretion:

- to reject Applications which do not comply with the Auction Rules;
- not to proceed with any part of the Award Process described in this Information Memorandum;
- not to provide an Interested Party with any additional information;
- not to implement any arrangement contemplated by this Information Memorandum;
- to withdraw from any discussions or consultation which ComReg might engage or have engaged in;
- to suspend the Award Process at any time;
- not to award any Licence or Licences;
- to procure the award of a Licence or Licences by alternative means; and/or
- to terminate the Award Process at any time.

4.2.7 Own Costs

4.27 Each Interested Party shall be fully responsible for the entirety of all expenses and/or costs it incurs in the preparation or submission of an Application or in participating in the Award Process. Save as otherwise expressly stated in this Information Memorandum, ComReg is not responsible for and will not pay for any expense or cost incurred or loss suffered by an Interested Party in the preparation or submission of its Application, the participation in the Award Process or otherwise. Further, ComReg is not responsible

for any travel or accommodation costs incurred by Interested Parties unless previously agreed in writing by ComReg.

4.2.8 Waiver

4.28 The failure or neglect by ComReg to enforce any provision of the Information Memorandum is not (and will not be deemed to be) a waiver of that provision and does not prejudice ComReg's right to take subsequent action in respect of such provision.

4.2.9 Amendments

4.29 ComReg reserves, at its discretion, the right, at any time until the conclusion or termination of the Award Process, to amend or modify this Information Memorandum or Award Process in any respect by way of clarification, addition, deletion or otherwise. ComReg will inform Interested Parties of any such amendments or modifications, if appropriate.

4.2.10 Conclusion of Process

4.30 The conclusion of the Award Process as set out in subsection 3.10, shall be without prejudice to the accrued rights, and obligations of ComReg and Interested Parties pursuant to this Chapter 4. The provisions of this Information Memorandum shall continue to bind ComReg and/or Interested Parties, to the extent that each of these provisions has become applicable to an Interested Party during the Award Process, after the conclusion of the Award Process.

4.31 Additional continuing obligations are imposed on Applicants pursuant to the contract formed by section 4.2.1 of this Chapter.

Annex 1: Glossary

A1.1 Definitions

- A 1.1 The definitions in this glossary shall apply to this Information Memorandum as a whole.
- A 1.2 Where a term in this glossary is defined by reference to a definition in a section or paragraph and an explanation of that term is provided in this glossary, the latter explanation is for convenience only and reference should be made to the appropriate part of the document for the definitive meaning of that term in its appropriate context.
- A 1.3 Any reference to any provision of any legislation shall include any modification re-enactment or extension thereof.
- A 1.4 Any reference to an Interested Party shall include that Interested Party's successors and assigns.
- A 1.5 The headings contained in this Information Memorandum are inserted for convenience of reference only and shall not in any way form part of or affect or be taken into account in the construction or interpretation of any provision of this Information Memorandum or the Annexes or Schedules hereto.
- A 1.6 Terms defined in this Information Memorandum shall, unless the context otherwise requires or admits, have the meaning set out below:

1800 MHz band	The frequency range 1710 – 1785 MHz paired with 1805 – 1880 MHz.
1800 MHz Licence	A Licence issued under Schedule 1 of the Regulations which entitles the holder to use certain Lots in the 1800 MHz band, subject to the terms and conditions set out therein.
Applicant	An entity that submits an Application to ComReg to be allocated at least one of the Lots being made available in the Award Process.

Application	<p>The Application to participate in the Award Process made by an Applicant.</p> <p>A valid Application is a binding commitment to pay up to the highest value Bid submitted for any Package of Lots specified on the Applicant's Lot Application Form.</p>
Application Date	The date by which Interested Parties must submit an Application to participate in the Award Process together with the required monetary Deposit.
Application Form	<p>The Application Form, as set out in Annex 2 of this Document, to be delivered as part of an Application consisting of:</p> <ul style="list-style-type: none"> • Part 1: Administrative Information • Part 2: Applicant Declaration • Part 3: Lot Application Form • any supporting documentation required to be delivered including Ownership Structure.
Application Stage	The stage of the Award Process described in subsection 3.3 of this Information Memorandum, which runs from the day on which the Information Memorandum is published up to and including the Application Date.
Assessment Stage	The stage of the Award Process used to determine Winning Bidders and Winning Prices.
Assignee	Assignee means a party to whom some or all of the rights and obligations under a Licence have been transferred.
Assignor	Assignor means the party from whom some or all of the rights and obligations under a Licence have been transferred.
Associate	As defined in subsection 3.3.4 of the Information Memorandum.
Auction	The mechanism within the Award Process used to determine Winning Bidders and Winning Prices based on the demand expressed by Applicants for Lots

Auction Rules	Rules and procedures relating to the Auction, as presented in this Information Memorandum and its Annexes.
Authorised Agent	A person who the Applicant has notified ComReg is entitled to bind an Applicant contractually in relation to the Award Process.
Award Process	The overall process through which it is intended that rights of use of the Award Spectrum will be granted in the event that at least one Applicant submits a valid Application, which by definition must include a valid Bid.
Award Spectrum	The 1800 MHz spectrum in respect of which rights of use are being made available in the Award Process as set out in paragraph 2.1.
Bid	A binding offer to buy a Package of Lots for a specific monetary amount (the Bid Amount).
Bid Amount	The monetary amount associated with an offer made by a Bidder for a specified Package of Lots. The Bid Amount must be at least the Reserve Price for the Package, and must be in whole euros.
Bidder	An Interested Party that has both submitted an Application and associated Initial Deposit to ComReg to be allocated a Package of Lots in the Award Process (thereby becoming an Applicant) and had its Application approved by ComReg, qualifying it to be allocated such Lots in the Assessment Stage.
Bidding Group	A Bidder and its Connected Persons as defined in subsection 3.3.4 of the Information Memorandum.
Confidential Information	Details of what may constitute Confidential Information for the purposes of this Award Process are provided in subsection 3.3.4 of the Information Memorandum.
Connected Person	Shall have the meaning ascribed to it in subsection 3.3.4 of the Information Memorandum.
Controlled Person	As defined in subsection 3.3.4 of the Information Memorandum.

Controlling Person	As defined in subsection 3.3.4 of the Information Memorandum.
CPI	Consumer Price Index published by the Central Statistics Office.
Deposit	A monetary amount submitted by an Applicant as part of its Application to be allocated Lots in the Award Process. For an Application to be valid, the amount of an Applicant's Deposit must be equal to the highest Bid Amount specified by the Applicant in its Lot Application Form.
Drive Test Measurement	Measurements collected using a motor vehicle
Feasible Allocation	Shall have the meaning ascribed to it in paragraph 3.96 of the Information Memorandum.
General Authorisation	An authorisation for an undertaking to provide an electronic communications network or service under and in accordance with Regulation 4 of the Authorisation Regulations.
Information Memorandum	This Information Memorandum including all of the Annexes and Schedules thereto.
Indexation	The adjustment of prices for inflation. The index of inflation that will be used will be the Consumer Price Index as published by the Central Statistics Office.
Insider	Shall have the meaning ascribed to it in section 3.3.4
Interested Party	Includes, to the extent that the context requires or admits, any of the following: <ul style="list-style-type: none"> • a respondent to Consultation Document 13/88; • a prospective Bidder; • an Applicant; • a Qualified Bidder; or • an agent of any of the foregoing.
Licence	An 1800 MHz Licence or a Preparatory Licence and "Licensee" shall be construed accordingly.

Lot (or Spectrum Block)	A 2 × 5 MHz block of the Award Spectrum. Each Lot has two specific frequency ranges associated with it, one of which is used for uplink and one of which is used for downlink.
MBSA Information Memorandum	ComReg Document 12/52 as amended
MBSA Process	The MBSA Process refers to the Multi-Band Spectrum Award process whose final results were announced in ComReg Document 12/131 on 5 December 2012
Notification and Grant Stage	The stage of the Award Process during which Deposits (minus any applicable Upfront Fees or portion of deposits forfeited for breaches of the Auction Rules) are returned to Bidders and 1800 MHz Licences are granted to Winning Bidders.
Package of Lots	A selection of one or more Lots available as follows: <ul style="list-style-type: none"> • Lot I • Lot J • Lot K • Lots I & J • Lots J & K • Lots I & K • Lots I, J & K
Preparatory Licence	A Licence issued under Schedule 2 of the Regulations, in the form set out in Schedule 2 thereof, which entitles the holder to possess and install equipment designed or configured for operation in certain Lots of spectrum in the Bands, but which does not permit any wireless telegraphy transmissions, subject to the terms and conditions set out therein.
Qualified Bidder	An Applicant who, following consideration of its Application by ComReg, has been informed, in accordance with subsection 3.4, that its Application is compliant and that it is entitled to participate in the Award Process.
Qualification Stage	A stage of the Award Process during which ComReg assesses the Applications submitted before the Application Date, evaluates which Applications are valid and determines which Applicants

	qualify to become Qualified Bidders in the Award Process.
Radiocommunication Service	A service as defined in the Radio Regulations of the International Telecommunication Union involving the transmission, emission or reception of radio waves for specific telecommunication purposes.
Reserve Price	The minimum Bid for a Lot for such a Lot to be allocated.
Spectrum Usage Fees (SUFs)	Annual fees which a successful Bidder must pay in respect of spectrum rights of use assigned in the Award Process.
Time Slice 1	A time period from 1 February 2012 to 12 July 2015 (as may be amended by ComReg).
Time Slice 2	A time period from 13 July 2015 to 13 July 2030 (as may be amended by ComReg).
Unsuccessful Bidder	An Interested Party that submits an Application to ComReg to be allocated Lots in the Award Process, is declared a Qualified Bidder but is not allocated any Lots in the Award Process.
Upfront Price/Upfront Fee	The Winning Price to be paid by a Winning Bidder for the spectrum to be assigned to it as a result of the Award Process.
Winning Bid	A Bid in respect of which a Winning Bidder is allocated at least one Lot in the Winning Combination.
Winning Bidder	A Bidder that wins at least one Lot in the Award Process.
Winning Price	The price to be paid by a Winning Bidder for the Package of Lots allocated to it in the Assessment Stage of the Award Process (determined using an opportunity cost rule).
Working Day	A day on which the clearing banks are open for business in Ireland.

A1.2 European and Governmental Bodies, Regulatory and Standardisation Organisations

ComReg	Commission for Communications Regulation
DCENR	Department of Communications, Energy and Natural Resources
EC	European Commission
EU	European Union

A1.3 Primary and Secondary Legislation

S.I.	Statutory Instrument
2002 Act	The Communications Regulation Act 2002 (No. 20 of 2002), as amended ⁴⁵
Authorisation Regulations	European Communities (Electronic Communication Networks and Services) (Authorisation) Regulations 2011 (S.I. No 335 of 2011)
EC Decision 2009/766/EC	European Commission Decision on the harmonisation of the 900 MHz and 1800 MHz frequency bands for terrestrial systems capable of providing pan-European electronic communications services in the Community
EC Decision 2011/251/EU	European Commission Decision, amending Decision 2009/766/EC, on the harmonisation of the 900 MHz and 1800 MHz frequency bands for terrestrial systems capable of providing pan-European electronic communications services in the Community

⁴⁵ Includes the Communications Regulation (Amendment) Act 2007 and the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010.

Framework Regulations	European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No 333 of 2011)
The Minister	Minister for Communications, Energy and Natural Resources
Specific Regulations	Specific Regulations has the same meaning as set out in Regulation 2 of the Framework Regulations

A1.4 Glossary of Technical Terms

3G	Third Generation Mobile System (e.g. UMTS)
CPI	Consumer Price Index
ECS	Electronic Communications Service as defined under the Framework Regulations
EMC	Electro Magnetic Compatibility
FDD	Frequency Division Duplex
Guard-band	An unused spectrum bandwidth separating channels to prevent interference
GSM	Global System for Mobile Communications
Hertz	Unit of Frequency
H3GI	Hutchison 3G Ireland
kHz	Kilohertz (1,000 Hertz)
LTE	Long Term Evolution of 3G
Meteor	Meteor Mobile Communications

MHz	Megahertz (1,000,000 Hertz)
MNO	Mobile Network Operator
MbU	Memorandum / Memoranda of Understanding
QoS	Quality of Service
R&TTE	Radio Equipment And Telecommunications Terminal Equipment
SUF	Spectrum Usage Fee
Telefónica	Telefónica O2 Communications (Ireland) Ltd
UMTS	Universal Mobile Telecommunications System.
Vodafone	Vodafone Ireland Limited

Annex 2: Application Form⁴⁶

Applicants must complete Parts 1, 2 and 3 of this application form. Any additional documentation required to be supplied by the applicant as part of its application is to be appended to this application form.

Part 1: Administrative Information

For an application to be complete, the administrative information listed in Table 7 below must be provided. Note that the Applicant name provided will be that to whom licences will be awarded where relevant. Contact details for Authorised Agents are those that will be used by ComReg for circulating Bidder materials for the Award Process and for contacting the Bidder during the Award Process if necessary.

Information required	Information provided
Name of Applicant*	Name:
Complete postal address of registered office , or if it does not have a registered office, the principal place where it carries on business, and, if different, address to which all communications will be sent regarding the Award Process	Address 1:
	Address 2 (if different):
Telephone/ fax number for Applicant	Telephone: Fax:

⁴⁶ A writeable PDF format of this form will be made available on the ComReg website.

<p>Bank details of Applicant (for the purpose of returning part or all of the Applicant's Deposit where applicable)</p>	<p>Name of Bank and address of relevant branch:</p> <p>Account Number:</p> <p>Sort Code:</p> <p>BIC Code:</p> <p>IBAN No:</p>
<p>Name of Applicant's Authorised Agent 1** (Block capitals)</p>	<p>Name:</p>
<p>Position of Applicant's Authorised Agent 1</p>	<p>Position:</p>
<p>Telephone numbers, fax number and e-mail address of Applicants Authorised Agent 1</p>	<p>Telephone (fixed):</p> <p>Telephone (mobile):</p> <p>Fax:</p> <p>Email:</p>
<p>Specimen signature of Applicant's Authorised Agent 1 Witnessed By</p>	<p>Signature 1:</p> <p>Name:</p> <p>Position:</p> <p>Signature:</p>
<p>Name of Applicant's Authorised Agent 2*** (Block capitals)</p>	<p>Name:</p>
<p>Position of Applicant's</p>	

Authorised Agent 2	Position:
Telephone numbers, fax number and e-mail address of Applicants Authorised Agent 2	Telephone (fixed): Telephone (mobile): Fax: Email:
Specimen signature of Applicant's Authorised Agent 2 Witnessed By	Signature: Name: Position: Signature:

Table 7: Administrative information

* Note: In the case of Applicants that are bodies corporate, attach a certified copy of Certificate of Registration along with Articles of Association and Memorandum of Association or equivalent together with a certified translation thereof into English or Irish, where the original is not in English or Irish. Company Secretary or authorised signatory is required to certify the copy.

** Note: Authorised Agents must be authorised to bind the Bidder and to take all decisions or communicate all decisions connected with the Award Process on the Bidder's behalf including, but not limited to, the authority to submit Bids in respect of any of Lots available in the Award Process and to commit to payment of the necessary amount if the Bidder is granted spectrum.

*** Note: Applicants can authorise one more person, who could act as the Alternate Authorised Agent in case of unavailability of the primary Authorised Person. In case of any duplication of submissions made on behalf of the Bidder by different Authorised Agents, the submission made by the first Authorised Agent would be considered as final and binding.

Appropriate evidence of the authorisation of Authorised Agents, as per paragraph 3.26 of the Information Memorandum, must be attached hereto.

Part 2: Applicant Declaration

The concepts of “Associated Persons”, “Applicant”, “Bidding Group”, “Connected Person”, “Confidential Information”, “Insider”, “Legal Entity” and “Mobile Operator” for the purposes of this declaration shall be construed as defined in the Information Memorandum (Document 13/104).

We, the undersigned, being Authorised Agents of [_____]
(the “**Applicant**”) hereby undertake, warrant and declare, and to the extent that anything contemplated hereunder remains to be done, covenant, both on our own behalf and on behalf of the Applicant, having made all reasonable inquiries that:

1. The Applicant is entitled to submit the Application and participate in the Award Process, and the Applicant has obtained all necessary declarations of consent, permissions and approvals.
2. The Applicant has ensured and will ensure that all information and all declarations contained in the Application and appendices attached thereto are correct and accurate.
3. The Applicant has and will ensure that the Applicant, discloses Confidential Information only to the extent it is necessary and then only to other parties within the Applicant's own Bidding Group or to persons who, prior to such disclosure, are Insiders in relation to the same Applicant and that the Applicant shall take all reasonable measures with a view to ensuring that the person who receives such Confidential Information treats it as confidential at all times.
4. The Applicant has ensured and will ensure that the Applicant, the Applicant's employees, board of directors (where applicant is a body corporate) and persons connected with the Applicant or Insiders refrain from disclosing Confidential Information to parties other than as specified in paragraph 3 above until the Licences have been issued and from exchanging Confidential information with other parties regarding the Applicant's strategy for obtaining and use of the Licence or Licences.
5. The Applicant will ensure that the Applicant and any Connected Persons and any Insiders - shall refrain from entering into agreements or negotiations with a view to entering into agreements with other interested parties or their Connected Persons in relation to matters concerning the Award Process, including without prejudice to the generality of the foregoing agreements relating to

spectrum, network or infrastructure sharing, from the time at which this Application is submitted to the date of the issue of the 1800 MHz Licences.

6. The Applicant has ensured and will ensure that the Applicant - and, to the best knowledge of the Applicant, any Connected Persons and any Insiders - neither prior to the submission of the Application, nor after the submission thereof and until the 1800 MHz Licences have been issued, shall enter into agreements or establish any understanding with a provider of equipment or software which:
 - regulates such provider's possibility of supplying equipment or software to another Applicant or their Connected Persons concerning the planning, establishment or operation of a network using the frequencies dealt with in this Award Process, or
 - regulates the prices or other terms and conditions that a provider of equipment or software may offer another Applicant or their Connected Persons in connection with the planning, establishment or operation of a network using the frequencies dealt with in this Award Process.

To the extent that agreements already entered into or understandings already established, as mentioned in this paragraph 6, have not been terminated, the Applicant has ensured that such agreements are in compliance with competition law and the existence thereof has been disclosed in an appendix to this Declaration.

7. The Applicant has ensured and will ensure that the Applicant - and, to the best knowledge of the Applicant, any Connected Persons and any Insider - does not enter into agreements or establish any understanding with a third party, either prior to or during the Award Process, for the access to or the use of the Applicant's network or networks using the frequencies dealt with in this Award Process during the term of the 1800 MHz Licences, if the agreement or the understanding directs such third party not to participate or limits such third party's ability to participate in the Award Process.
8. The Applicant has ensured that agreements already entered into or understandings already established, as mentioned in the above paragraph, have been terminated, including to the best knowledge of the Applicant, any Connected Persons and any Insider have

ensured such agreements or understandings have been terminated.

9. The Applicant has ensured and will ensure that the Applicant – and, to the best knowledge of the Applicant, any Connected Persons and any Insiders – both prior to and after the submission of an Application and until the 1800 MHz Licences have been issued, refrains from any action that could have an adverse effect on the Award Process.
10. The Applicant shall comply with the Auction Rules as contained in the Information Memorandum including, without limitation, the provisions of Chapter 4 at all times and shall procure that its personnel, Insiders and Connected Persons, to the extent appropriate, shall also comply with the Auction Rules from the date of publication of the Information Memorandum until the commencement of the 1800 MHz Licences awarded.
11. The Applicant has ensured and will ensure that prior to the filing of its Application, the Applicant takes all reasonable measures with a view to identifying its Connected Persons and Associated Persons.
12. The Applicant will ensure that, in accordance with subsection 3.3 of the Information Memorandum, after submitting its Application all relevant changes to its ownership structures are notified to ComReg.
13. Save as disclosed in an appendix attached to this Declaration, the Applicant is (i) not, or, in case the Applicant is a partnership, a joint venture or equivalent, the relevant partners or participants are not, nor is expected to be subject to an insolvency process including, without prejudice to the generality of the foregoing, liquidation, examinership, receivership, bankruptcy, winding-up proceedings or equivalent proceedings in other jurisdictions and (ii) capable of paying its debts as they fall due.
14. Save as disclosed in an appendix attached to this Declaration, the Applicant is not, or, in case the Applicant is a partnership, a joint venture or equivalent, the relevant partners or participants are not, nor is expected to be involved in any disputes which may in any material and adverse way affect the Applicant's possibility of complying with the terms of the Licence, if the Applicant is awarded such Licence.

15. The Applicant agrees that any disclosure made under paragraphs 6, 13 and/or paragraph 14 above must contain sufficiently clear and detailed information to allow ComReg assess the Applicant’s capacity to participate in the Award Process, to comply with the Auction Rules and to comply with the terms of the Licence. The Applicant agrees that ComReg’s decision further to any assessment in this respect shall be final and that ComReg reserves the right to, where necessary and proportionate, seek further information or clarification from an Applicant, to specify the level of detail required and the timescales within which it must be provided. The Applicant agrees that any failure to cooperate fully with this disclosure requirement may result in an Applicant’s application being deemed invalid or in subsequent disqualification of the Applicant from the Award Process.

Applicant Name: _____

For and on behalf of the Applicant:

(Signature of those persons who are empowered to bind the Applicant or otherwise authorised to bind the Applicant)

Name in block capitals: _____

Date (DD/MM/YYYY):

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If the Applicant is a partnership, a joint venture or equivalent, the Declaration must also be signed by the relevant partners or participants:

As partner/participant:

(Signature)

Name in block capitals: _____

Date (DD/MM/YYYY):

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Part 3: Lot/Package Application Form

The submission of this Lot Application Form as part of a complete Application represents a binding offer by an Applicant to make the payments of the Upfront Fee and SUFs determined to be payable in respect of any one of its Bids specified herein determined to be a Winning Bid by the Auction Rules.

The Lot Application Form, including all Packages of Lots and associated Reserve Prices is set out in Table 8 below.

Deposits are to be paid into ComReg's bank account using the following details:

Bank of Ireland: 2 College Green, Dublin 2, Ireland
 Account Number: 96614639
 Sort Code: 90-00-17
 BIC Code: BOFIE2D
 IBAN No: IE96 BOFI 9000 1796 6146 39

If making a bank transfer/EFT, please ensure that:

- Reference is "1800 MHz Spectrum Award"
 - Your Bank quotes your Account Number (if an existing ComReg account holder) in making the transfer to ComReg.

Applicant Name:	
Total amount of Deposit (largest value in column E):	

Package	Lots Included in Package	Package Reserve Price	Amount Bid in excess of the Reserve Price	Total (Column C + D)
1	I	€ 794 000		
2	J	€ 794 000		
3	K	€ 794 000		
4	I & J	€ 1 588 000		
5	I & K	€ 1 588 000		
6	J & K	€ 1 588 000		
7	I, J & K	€ 2 382 000		

Table 8: Lot Application Form

To avoid doubt, Applicants are requested to strike out any package for which they are not Bidding on.

Applicant Name:

(Signature of those persons who are empowered to bind the Applicant or otherwise authorised to bind the Applicant)

Name in block capitals:

Date (DD/MM/YYYY):

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Application Checklist

Tick the boxes to ensure that all the required information is included in your application. A complete application must consist of the following:

Part 1: Administrative Information - All sections of Table 78 completed and signed.

- Appropriate evidence for signatory of Application as specified in paragraph 3.26
- Ownership Structure Document as specified in paragraph 3.30

Part 2: Applicant Declaration signed

Part 3: Lot Application Form completed and signed

Application Procedure

The application procedure is set out in subsection 3.3.5 of the Information Memorandum and states that

In order to take part in the Award Process, Applicants must submit, four completed and identical Application Forms on paper including four identical copies of an Ownership Structure Document on paper and an electronic copy of same in an editable format on CD-ROM. The container(s) in which the Application Form and Ownership Structure Documents and CD-ROM are submitted must not in any way disclose the identity of the Applicant.

ComReg will only accept applications on 13 December 2013 between 10.00 and 16.00 hours (Irish time). Applicants are required to make an appointment with ComReg to submit an application. To make an appointment to submit an Application, Applicants are required to contact Dr. **Samuel Ritchie** between **10 December 2013 and 11 December 2013**, and between 10.00 to 13:00 and 14:00 to 16.00 hours (Irish time) at:

Phone: 00 353 (0)1 804 9619

All applications will be date and time stamped. Applicants will be given a receipt acknowledging the submission of its application.

No Applications will be opened by ComReg until after 16.00 hours (Irish time) on the closing date for receipt of applications. Applications will be opened in the presence of an independent auditor.

The deadline for receipt of Deposits, as set out in subsection 3.3.3 of the Information Memorandum will be 23:59 on the Application Date of **13 December 2013**.