



Consultation & Draft Direction

**Number Porting:**

**Appropriate Refunds Subsequent to Specification 1 of ComReg Decision No 05/07 from 30 November 2007 to date of ComReg's final decision on a maximum charge(s)**

|                     |                       |
|---------------------|-----------------------|
| <b>Document No:</b> | <b>08/66</b>          |
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All responses to this consultation should be clearly marked:- "Reference: Submission re ComReg 08/66" as indicated above, and sent by post, facsimile, e-mail or on-line at [www.comreg.ie](http://www.comreg.ie) (current consultations), to arrive on or before 5.30pm on 19 September 2008 to:

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Please note ComReg will publish all respondents submissions with the Response to this Consultation, subject to the provisions of ComReg's guidelines on the treatment of confidential information – ComReg 05/24

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## 1 Introduction

ComReg is responsible for the regulation of the Irish Telecommunications sector, this includes the regulation of Number Portability ('NP') under Regulation 26(1)<sup>1</sup> of the Universal Services Regulations.

NP is a facility which allows subscribers to retain their existing fixed or mobile number when moving between network operators. NP was first introduced in the fixed sector in 2000 with the introduction of Non-Geographic Number Portability<sup>2</sup> ('NGNP') and Geographic Number Portability<sup>3</sup> ('GNP'). It was subsequently introduced to the mobile sector with the launch of Mobile Number Portability ('MNP') in 2003.

ComReg published consultation Document no 07/21 'Consultation on Number Portability in the Fixed and Mobile Sectors' on 10 April 2007. The response to consultation and Specification was published on 30 November 2007 in ComReg Document 07/98. The specification provided that the allowable costs for the pricing of interconnection related to the provision of NP should be limited to the incremental (i.e. short term volume dependent) administrative cost to the donor operator of per-line enabling/transaction costs, based on a fully efficient number porting process. This was for the purpose of ensuring that pricing for interconnection related to the provision of NP, as provided for in Regulation 26(2) of the Universal Service Regulations, was cost oriented and the interpretation of cost orientation was properly set out. Secondly, ComReg concluded that there shall be no direct charges to subscribers for NP.

Further to ComReg's specifications ComReg requested pricing proposals from operators who provided number porting services. The submission was intended to allow operators to demonstrate that their NP charge was compatible with the costing principles specified on 30 November 2007. In total, fourteen responses were received, of which seven respondents included price submissions. The outcome of ComReg's review of the operator submissions as well as ComReg's proposal on a cost oriented charge(s) for fixed and mobile number porting is detailed in ComReg consultation document no 08/65.

This consultation document considers the appropriate refunds due to fixed and mobile operators between the time of ComReg's specification on cost orientation on 30

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<sup>1</sup> Regulation 26(1) states that "An undertaking providing a publicly available telephone service, including a mobile service, shall ensure that a subscriber to such service can, upon request, retain his or her number independently of the undertaking providing the service – (a) in the case of geographic numbers, at a specific location, and (b) in the case of non-geographic numbers, at any location'. This paragraph shall not apply to the porting of numbers between networks providing services at a fixed location and mobile networks."

<sup>2</sup> Non-geographic number portability refers to a situation where a customer who has had allocated to him or her, a non-geographic number associated with a particular type of service (such as 0800 freephone, a 07 personal number, or a 090 premium rate number) can retain that number when changing to a different operator or service provider offering a service of the same or similar type.

<sup>3</sup> Geographic Number Portability refers to a situation where a customer who has had allocated to him or her, a geographic number can retain that number when changing to a different operator or service provider offering a service of the same or similar type.

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November 2007 and the date of ComReg's final decision on a cost oriented charge(s) for fixed and mobile number porting (consultation document no 08/65).

## 2 Legal Background

Regulation 26 of the Universal Service Regulations has been in force and provides that:

“(1) An undertaking providing a publicly available telephone service, including a mobile service, shall ensure that a subscriber to such service can, upon request, retain his or her number independently of the undertaking providing the service (a) in the case of geographic numbers, at a specific location, and (b) in the case of non-geographic numbers, at any location. This paragraph shall not apply to the porting of numbers between networks providing services at a fixed location and mobile networks.

(2) The Regulator may specify obligations for compliance by an undertaking to which paragraph (1) relates for the purpose of ensuring that pricing for interconnection related to the provision of number portability as provided for in paragraph (1) is cost oriented and that direct charges to subscribers, if any, do not act as a disincentive for the use of these facilities.

(3) Obligations under paragraph (2) may include a requirement that there shall be no direct charges to subscribers for number portability. Where retail tariffs for porting of numbers are permitted, the Regulator shall ensure that such tariffs may not be imposed in a manner that would distort competition and for this purpose may specify obligations to be complied with by an undertaking.”

ComReg Document No 07/98 (Decision No 05/07) set out two Specifications, the first Specification relates to the cost orientation obligation relating to the pricing of NP and the second Specification relates to direct charges to subscribers. The Specifications as set out in that document are detailed below.

### ***SPECIFICATION 1***

ComReg hereby specifies that allowable costs for the pricing of interconnection related to the provision of number portability are limited to the incremental (i.e. short term volume dependent) administrative cost to the donor operator of per-line enabling/transaction costs, based on a fully efficient number porting process. This specification is for the purpose of ensuring that pricing for interconnection related to the provision of number portability as provided for in Regulation 26(1) of the Universal Service Regulations is cost oriented.

### ***SPECIFICATION 2***

ComReg hereby specifies that there shall be no direct charges to subscribers for number portability.

Further legal basis for making of Direction:

Regulation 31 of the Universal Service Regulations relates to Directions, it provides that:

*“The Regulator may, for the purpose of further specifying requirements to be complied with relating to an obligation imposed by or under these Regulations, issue directions to a person to do or refrain from doing anything which the Regulator specifies in the direction.”*

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ComReg now proposes to issue Directions to operators further specifying requirements to be complied with and which relates to the obligation imposed on them under these Regulations, and specifically, pursuant to Specification 1 contained in ComReg Decision 05/07 above.

The current consultation document considers the appropriate refund due to operators subsequent to Specification 1 of 30 November 2007 to the date of ComReg final decision on the cost oriented charge(s) for fixed and mobile number porting.

In ComReg document no 08/65 ComReg assessed the operator's submissions so as to ensure compatibility with ComReg's specification on cost orientation in relation to NP. The full details of this assessment are included in ComReg consultation document no 08/65.

### **3 Appropriate Refund subsequent to Specification 1 of ComReg Decision No 05/07**

In ComReg document no 08/65 ComReg assessed the operator's submissions so as to ensure compatibility with ComReg's specification on cost orientation in relation to NP. The full details of this assessment are included in ComReg consultation document no 08/65. In assessing the operator submissions ComReg proposed a maximum mobile porting charge and a set of maximum charges in relation to fixed number porting. The charges proposed by ComReg are based on actual costing data which has been adjusted by ComReg to comply with the specific allowable costs set out in ComReg's specification of 30 November 2007. In assessing the appropriate basis for determining the refunds due to operators in the intervening period, from 30 November 2007 to the date of ComReg's final decision on the number porting charge(s), ComReg considers that a number of options, as detailed in the subsections below, maybe relevant and accordingly should be consulted upon.

#### **3.1 Option A: Refunds based on ComReg proposed charges**

ComReg has examined all submissions received by operators and considers the view that the number porting charges determined by it are in line with the specification in relation to the pricing of NP as set out in Specification 07/98. ComReg is of the view that the charges proposed by it reflect the specific costs set out in its specification of 30 November 2007. ComReg considers that in adopting ComReg's charges, there is greater certainty in the market place, a lesser possibility of inter-operator disputes and it increases the levels of transparency in NP charging. ComReg considers that this option should be consulted upon.

#### **3.2 Option B: Refunds based on operator proposed charges**

In ComReg document no 08/65, ComReg analysed all of the costs submitted by the various operators and included a detailed table on the allowable and disallowed costs. ComReg's assessment of the operator submissions is that operators included a number of costs that should not be allowed as part of ComReg's specification and therefore these disallowed costs should not be recovered in the intervening period<sup>4</sup>.

However, some operators may be of the view that the charge(s) proposed by them, in line with Specification 1 of ComReg Decision no D05/07, are more relevant in the intervening period. Operators appeared to interpret, notwithstanding the particular wording of Specification 1, the cost orientation obligation in different ways and as a result a number of varying charges were proposed by each of them. Refunds based on the operator proposed charges may lead to inter-operator disputes which then may require resolution. ComReg considers this option should also be consulted upon, insofar as obligations under Regulation 26 and Specifications of 30 November 2007 (ComReg Decision no D05/07) could be met in full.

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<sup>4</sup> No operator, in compiling the relevant cost data, contacted ComReg for guidance on the allowable costs based on the specification of cost orientation.

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### **3.3 Option C: Refunds managed by operators**

ComReg has also considered the option of allowing the operators to bilaterally agree on the refunds due to each other from 30 November 2007 insofar as this could be undertaken while meeting in full their obligations under Regulation 26 and Specifications of 30 November 2007. This option allows operators to agree on number porting charges, in line with Specification 1 of 30 November 2007, without any interaction from ComReg. This option does not, at this stage, appear to require any direction from ComReg. It is ComReg's preliminary view however, that this option may lead to a number of varying porting charges which are potentially not compatible with the specification of cost orientation, in line with ComReg Decision no D05/07. In addition, the amounts due between the operators may vary quite significantly which in turn may lead to inter-operator disputes requiring resolution. ComReg considers that this option should also be consulted upon, insofar as obligations under Regulation 26 and Specifications of 30 November 2007 (ComReg Decision no D05/07) could be met in full.

The options considered above require the views of respondents so that a decision can be taken on the appropriate refunds in the period from 1 November 2007 to the date of ComReg's final decision on a maximum fixed and mobile number porting charge.

**Q. 1. Do you consider Option A, Option B or Option C, to be the most appropriate option in determining the refunds from the period of 1 November 2007 to the date of ComReg's final decision on a fixed and mobile number porting charge(s)? Please state the reasons for your response.**



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## 4 Draft Directions

### 4.1 Statutory Powers giving rise to directions

These Directions are made by the ComReg pursuant to Regulation 31 of the Universal Service Regulations 2003 and the obligations contained in ComReg Decision D05/07 and having regard to its functions and objectives under sections 10 and 12 respectively of the Communications Regulation Act, 2002.

Decision D05/07 specified at Specification 1, for the purpose of ensuring that pricing for interconnection related to the provision of number portability (as provided for in Regulation 26(1) of the Universal Service Regulations) is cost oriented, that "*the allowable costs for the pricing of interconnection related to the provision of number portability are limited to the incremental (i.e. short term volume dependent) administrative cost to the donor operator of per-line enabling/transaction costs, based on a fully efficient number porting process*". Accordingly ComReg now directs as set out below and this direction applies to an undertaking providing a publicly available telephone service including a mobile service:

#### **Option A: Draft Directions on the basis that the refunds are based on the charges proposed by ComReg in Consultation 08/65**

##### **MOBILE NETWORK OPERATORS**

###### ***DRAFT DIRECTION 1***

ComReg hereby directs, pursuant to Specification 1 of ComReg Decision No D05/07, until further specified or directed by ComReg, that the charge set out in ComReg Document no 08/65<sup>5</sup> shall, within two calendar months from the date of ComReg's final decision, be applied by all mobile operators for wholesale mobile number porting outwards, from 30 November 2007 to the date of ComReg's final decision on a maximum mobile number porting charge(s) (date to be inserted).

##### **FIXED NETWORK OPERATORS**

###### ***DRAFT DIRECTION 2***

ComReg hereby directs, pursuant to Specification 1 of ComReg Decision No D05/07, until further specified or directed by ComReg, that the charge(s) set out in ComReg Document no 08/65<sup>6</sup>, shall, within two calendar months from the date of ComReg's final decision, be applied by all fixed operators for wholesale fixed number porting outwards, from 30 November 2007 to the date of ComReg's final decision on a maximum fixed number porting charge(s) (date to be inserted).

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<sup>5</sup> Section 5, subsection 5.6.1.

<sup>6</sup> Section 5, subsection 5.6.2

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**Option B: Draft Directions on the basis that the refunds are based on the charges proposed by the operators in their price submission to ComReg**

**MOBILE NETWORK OPERATORS**

***DRAFT DIRECTION 1***

ComReg hereby directs, pursuant to Specification 1 of ComReg Decision No D05/07, until further specified or directed by ComReg;

(i) that the charges submitted to ComReg by each of the individual operators pursuant to Specification 1 of ComReg Decision D05/07 shall, within two calendar months from the date of ComReg's final decision, be applied by all mobile operators for wholesale mobile number porting outwards, from 30 November 2007 to the date of ComReg's final decision on a maximum mobile number porting charge(s) (date to be inserted); or

(ii) For those mobile operators providing a number porting service but who did not submit a price submission to ComReg per Specification 1, the charge as proposed by ComReg in Consultation Document 08/65 pursuant to Specification 1 shall, within two calendar months from the date of ComReg's final decision, apply from 30 November 2007 to the date of ComReg's final decision on a maximum mobile number porting charge(s) (date to be inserted).

**FIXED NETWORK OPERATORS**

***DRAFT DIRECTION 2***

ComReg hereby directs, pursuant to Specification 1 of ComReg Decision No D05/07, until further specified or directed by ComReg;

(i) that the charges submitted to ComReg by each of the individual operators pursuant to Specification 1 of ComReg Decision D05/07, shall, within two calendar months from the date of ComReg's final decision, be applied by all fixed operators for wholesale fixed number porting outwards, from 30 November 2007 to the date of ComReg's final decision on a maximum fixed number porting charge(s) (date to be inserted) ; or

(ii) For those fixed operators providing a number porting service but who did not submit a price submission to ComReg per Specification 1, the charges as proposed by ComReg in Consultation Document 08/65 pursuant to Specification 1 shall, within two calendar months from the date of ComReg's final decision, apply from 30 November 2007 to the date of ComReg's final decision on a maximum fixed number porting charge(s) (date to be inserted).

**Option C: Refunds are managed by the operators.**

***NO DIRECTION BY COMREG.***

This direction is made on the X day of X Month 2008.

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## **5 Regulatory Impact Assessment**

### **5.1.1 INTRODUCTION**

According to ComReg's Approach to Regulatory Impact Assessment ('RIA'), ComReg Document 07/56 & 07/56a, the purpose of a RIA is to establish whether regulation is actually necessary, to identify any possible negative effects which might result from imposing a regulatory obligation and to consider any alternatives. ComReg's proposed approach to the RIA is that in the future it will continue to conduct RIAs in respect of any proposed statutory instruments which would impose regulatory obligations, or in respect of any market analyses which propose to impose, amend or withdraw obligations, through the finding of SMP or effective competition. Appropriate use of the RIA should ensure the most effective approach to regulation is adopted.

In conducting the RIA ComReg will take into account the RIA Guidelines<sup>7</sup>, adopted under the Government's Better Regulation programme. The RIA Guidelines are not legally binding upon ComReg, however, in conducting the RIA ComReg will have regard to them, while recognising that regulation by way of issuing decisions e.g. imposing obligations or specifying requirements in addition to promulgating secondary legislation may be different to regulation exclusively by way of enacting primary or secondary legislation. In conducting a RIA ComReg will take into account the six principles of Better Regulation that is, necessity, effectiveness, proportionality, transparency, accountability and consistency. To ensure that a RIA is proportionate and does not become overly burdensome, a common sense approach will be taken towards RIA. As decisions are likely to vary in terms of their impact, if after initial investigation a decision appears to have relatively low impact, then ComReg would expect to carry out a lighter RIA in respect of those decisions.

In determining the impacts of the various regulatory options, current best practice appears to recognise that full cost benefit analysis would only arise where it would be proportionate or in exceptional cases where robust, detailed and independently verifiable data is available. Such comprehensive review will be taken when necessary.

ComReg would like to point out that as it is not imposing a new regulatory obligation on an undertaking, it is not mandatory for it to provide a RIA. However it has decided to do so in order to demonstrate that it has considered and evaluated the alternative options available.

### **5.1.2 DESCRIPTION OF POLICY ISSUES AND OBJECTIVES**

The consultation has the following purpose:

(a) to consider the appropriate refunds, in line with Specification 1 of ComReg Decision no 05/07, from 30 November 2007 to the date of ComReg's final decision on the number porting charge(s), per Consultation Document no 08/65.

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<sup>7</sup> See "RIA Guidelines: How to conduct a Regulatory Impact Analysis", October 2005, [www.betterregulation.ie](http://www.betterregulation.ie)

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### **5.1.3 IDENTIFY AND DESCRIBE THE REGULATORY OPTIONS**

*Option A – The appropriate refunds from 30 November 2007 to the date of ComReg's final decision on a cost oriented charge(s) should be based on the charges proposed by ComReg, in Consultation document 08/65 on 'Setting a Maximum Fixed and Mobile Number Porting Charge'.*

*Option A* will ensure that the refund amount will be based on the allowable costs per Specification 1, of ComReg Decision no D05/07, relating to the pricing of NP. This option is transparent and creates certainty in the market place. It may also ensure that there is less likelihood of inter-operator disputes.

*Option B- The appropriate refunds from 30 November 2007 to the date of ComReg's final decision on a cost oriented charge(s) should be based on the charges as proposed by the operators, in line with Specification 1 of ComReg Decision no D05/07, in their costing submission to ComReg.*

One option available to ComReg is to allow the refunds to be based on the charges proposed by the individual operators. Some operators may be of the view that the charge(s) proposed by them, in line with Specification 1 of ComReg Decision no D05/07, are more relevant in the intervening period. However operators appeared to interpret the cost orientation obligation in different ways. ComReg's assessment of the operator submissions is that operators included a number of costs that should not be allowed as part of ComReg's specification and therefore these disallowed costs should not be recovered in the intervening period. Given the considerable variance in the level of the charge(s) proposed by the operators, this option may lead to inter-operator disputes. This option may also lack transparency and could create uncertainty in the market place as operators would not be in a position to determine if their costs were compatible with their obligations from 30 November 2007.

*Option C –The operators should bilaterally agree on the appropriate refunds due from 30 November 2007 to the date of ComReg's final decision on a maximum fixed and mobile number porting charge(s).*

If operators bilaterally agree, insofar as this could be undertaken while meeting in full their obligations under Regulation 26 and Specifications of 30 November 2007, on the refunds due since 30 November 2007, some of the charges proposed by the operators may potentially not be in line with ComReg's specification regarding the allowable costs for the pricing of NP. As a result, this may lead to the possibility of a number of inter-operator disputes.

### **5.1.4 IMPACT ON STAKEHOLDERS**

In determining the impact on stakeholders, in relation to the regulatory options above, ComReg considered the following options:

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| <b><u>Option A: The appropriate refunds should be based on the charges proposed by ComReg, in Consultation document 08/65.</u></b>  |   |  |
|---|---|--|
| <b><u>Impact on Donor Operator</u></b>  | <b><u>Impact on Recipient Operator</u></b>  | <b><u>Impact on Consumers</u></b>  |
| <ul style="list-style-type: none"> <li>Operator certainty regarding compliance with the cost orientation obligation in relation to NP.</li> <li>The assurance of certainty and clarity in the marketplace.</li> </ul> | <ul style="list-style-type: none"> <li>Price protection for the recipient operator as the charge is in line with cost.</li> </ul>   | <ul style="list-style-type: none"> <li>The possibility of excessive, indirect retail charge passed onto consumers, by another pricing mechanism, is less likely and will be based on costs.</li> </ul> |
| <b><u>Option B: The appropriate refunds should be based on the charges as proposed by the operators in their costing submission to ComReg.</u></b>  |   |  |
| <b><u>Impact on Donor Operator</u></b>  | <b><u>Impact on Recipient Operator</u></b>  | <b><u>Impact on Consumers</u></b>  |
| <ul style="list-style-type: none"> <li>Operator uncertainty regarding compliance with the cost orientation obligation in relation to NP.</li> </ul>   | <ul style="list-style-type: none"> <li>The potential that the donor operator is charging in excess of cost and therefore the recipient operator's competitive opportunity may be constrained.</li> <li>The potential of a large number of varying NP charges, which proves difficult in terms of reconciliation of payments and invoices of the various operators.</li> </ul> | <ul style="list-style-type: none"> <li>Increased possibility of an excessive retail charge being passed indirectly to the consumer through another pricing mechanism.</li> </ul>                       |
| <b><u>Option C: The operators should bilaterally agree on the appropriate refunds due from 30 November 2007 to the date of ComReg's final decision.</u></b>   |   |  |
| <b><u>Impact on Donor Operator</u></b>  | <b><u>Impact on Recipient Operator</u></b>  | <b><u>Impact on Consumers</u></b>  |
| <ul style="list-style-type: none"> <li>Operator uncertainty regarding compliance with the cost orientation obligation in relation to NP.</li> </ul>   | <ul style="list-style-type: none"> <li>The potential that the donor operator is charging in excess of cost and therefore the recipient operator's competitive opportunity may be constrained.</li> <li>The potential of a large number of varying NP charges, which proves</li> </ul>   | <ul style="list-style-type: none"> <li>Increased possibility of an excessive retail charge being passed indirectly to the consumer through another pricing mechanism.</li> </ul>                       |

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|  |  |  |
|--|--|--|
|  | <p>difficult in terms of reconciliation of payments and invoices of the various operators.</p> <ul style="list-style-type: none"><li>• Possible increase in inter-operator disputes.</li></ul> |  |
|--|--|--|

#### **5.1.5 COMREG'S PROPOSED CONCLUSION**

As ComReg is not imposing a new regulatory obligation on an undertaking it is not mandatory for it to provide a RIA. However it has decided to do so in order to consider and evaluate the alternative options available and to inform the decision making process.

ComReg is of the view that operators must consider all options outlined, above, so that a decision can be taken on the appropriate refunds from 30 November 2007 to the date of ComReg's final decision on a maximum fixed and mobile number porting charge(s). In considering the most appropriate option, it is important to ensure that that option is in line with ComReg's Specification 1 of Decision no D05/07, that the option selected provides certainty in the market place and that it increases the levels of transparency in NP charging.

#### **5.1.6 CONSULTATION QUESTION**

**Q.2. Respondents are requested to provide views on whether the proposed directions are proportionate and justified and offer views on other factors (if any) ComReg should consider in completing its Regulatory Impact Assessment.**

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## 6 Submitting Comments

All comments are welcome; however it would make the task of analysing responses easier if comments were referenced to the relevant question numbers from this document.

The consultation period will run from 15 August 2008 to 19 September 2008 during which the Commission welcomes written comments on any of the issues raised in this paper.

Having analysed and considered the comments received, ComReg will publish a response to consultation and final decision. The response to consultation will, in effect, summarise the responses to the consultation.

In order to promote further openness and transparency ComReg will publish all respondents submissions to this consultation, subject to the provisions of ComReg's guidelines on the treatment of confidential information – ComReg 05/24. We would request that electronic submissions be submitted in an-unprotected format so that they can be appended into the ComReg submissions document for publishing electronically.

### **Please note**

ComReg appreciates that many of the issues raised in this paper may require respondents to provide confidential information if their comments are to be meaningful.

As it is ComReg's policy to make all responses available on its web-site and for inspection generally, respondents to consultations are requested to clearly identify confidential material and place confidential material in a separate annex to their response

Such Information will be treated subject to the provisions of ComReg's guidelines on the treatment of confidential information – ComReg 05/24.

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## Appendix A

### List of Questions

- Q. 1. Do you consider Option A, Option B or Option C, to be the most appropriate option in determining the refunds from the period of 1 November 2007 to the date of ComReg's final decision on a fixed and mobile number porting charge(s)? Please state the reasons for your response. ....7
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