



Commission for
Communications Regulation

Decision Notice – Imposition of SMP Obligations

Market Analysis: Wholesale Voice Call Termination on Individual Mobile Networks

Decision No:	D11/05
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1 Background to the Decision

Introduction

Procedure to date

- 1.1 This Decision relates to the market for wholesale voice call termination on individual mobile networks. The formal decision instrument imposing significant market power (SMP) obligations is contained in Appendix A of this document.
- 1.2 ComReg conducted a national consultation¹ and took in to account all comments in arriving at its preliminary conclusions in relation to the appropriate significant market power ('SMP') obligations to be imposed on the operators that have been designated with SMP. As required by Regulation 20 of the Framework Regulations, the draft decision containing these preliminary conclusions and the draft measures therein was made accessible to the EU Commission in the Notification to the EU Commission and the national regulatory authorities ('NRAs') in the other member states of the EU.
- 1.3 The SMP obligations imposed by this Decision were registered by the EU Commission on 6 July 2005. They were approved by the EU Commission, in correspondence to the Chairperson of ComReg dated 5 August, 2005.
- 1.4 Pursuant to Article 7 (3) of the Framework Directive², the EU Commission examined the notification to it and noted that a further consultation would be conducted by ComReg in relation to the details and implementation of the accounting separation and cost accounting obligations. The EU Commission noted that ComReg indicated that it might also issue directions to the SMP mobile network operators ('MNOs') defining steps towards a 'glide path' or a price cap towards cost oriented prices. The EU Commission reminded ComReg that draft measures relating to these regulatory obligations are required to be notified under Article 7(3) of the Framework Directive.
- 1.5 In Document 05/51 (the Notification to the EU Commission), ComReg consulted on its draft measures and asked respondents to comment in relation to the specifics of the SMP obligations proposed.
- 1.6 The latter consultation was concerned with the wording of the draft decision only and was not a consultation on the market definition, market analysis or SMP designation or the appropriate SMP obligations to impose, which were the subject of previous consultations. ComReg has taken into account all of the respondents' submissions. These submissions and ComReg's responses thereto are out set out further below.

¹ ComReg Document 04/62b: Market Analysis Consultation on Remedies–Wholesale Voice Call Termination on Individual Mobile Networks, dated 8 June 2004.

² Directive 2002/21/EC of the European Parliament and the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services.

SMP Obligations

- 1.7 ComReg is required by the Access Regulations³ to impose *ex ante* SMP obligations that are appropriate, based on the nature of the problem identified, proportionate and justified in the light of the objectives set out in s 12 of the Act of 2002. ComReg has previously identified the SMP obligations it considered might be appropriate to impose on a SMP operator in the market for voice call termination on individual mobile networks. These were the obligations of access to and use of specific network facilities, transparency, non-discrimination, accounting separation, price control and cost accounting obligations.
- 1.8 Details of the obligations for accounting separation and cost accounting systems are currently the subject of consultation⁴ and interim measures have been outlined in Document 05/51.
- 1.9 In this document ComReg sets out its Response to Consultation in relation to the draft measures relating to the market for wholesale voice call termination on individual mobile networks and finalises the Decision in relation to SMP obligations to be imposed on Vodafone, O₂ and Meteor.
- 1.10 The Electronic Communications Appeals Panel ('ECAP') issued a ruling on 26 September, 2005, annulling ComReg's decision to impose SMP on Hutchison 3 G (Ireland) Limited ('H3GI')⁵.
- 1.11 As a consequence of the ECAP ruling, H3GI has not been designated as having SMP on the market for voice call termination on its mobile network and accordingly, the question of imposing SMP obligations upon it does not arise. ComReg notes however that H3GI responded to this consultation. As such, H3GI's comments in relation to the draft decision have been taken into account, insofar as they are of general relevance to SMP obligations and insofar as they do not relate to H3GI's specific position on the market or its views in relation to this matter.
- 1.12 The SMP obligations applicable to Vodafone, O₂ and Meteor in relation to the relevant markets (as set out in Appendix A) will be imposed from the effective date of this decision, that is, the date of its publication.

³ S.I. No. 305 of 2003 the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003 which transposes Directive 2002/19/EC of the European Parliament and the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities.

⁴ Consultation on the Proposed Financial Reporting Obligations for Dominant Mobile Network Operators having Accounting Separation and/or Cost Accounting Systems. ComReg Doc. No. (05/56).

⁵ Hutchison 3G appealed the designation of SMP: Ref No. ECAP 2004/01.

2 Response to Consultation on the draft decisions

Introduction

2.1 ComReg received five responses in relation to its consultation on the draft measures contained in the document entitled *Market Analysis – Response to Consultation and Notification-Wholesale Voice Call Termination on Individual Mobile Networks*, dated 6 July 2005. The respondents were:

- *eircom*;
- H3GI;
- Meteor;
- O₂; and
- Vodafone.

2.2 ComReg would like to thank respondents for their helpful submissions which ComReg has taken in to account in arriving at its conclusions.

Decision Notice Issues

General

2.3 One of the respondents supported ComReg's proposal for SMP obligations in the market for wholesale mobile voice call termination. This respondent was of the view that ComReg should apply consistent standards in the implementation of regulatory measures for MNOs as it does in the fixed sector.

2.4 Another respondent commented generally in relation to ComReg's treatment of competition effects. It specifically commented on the potential to set mobile termination rates ('MTRs') to create a barrier to entry for new entrants, whereby strategically setting MTRs could provide a potential competitive advantage to operators with a larger subscriber base over smaller operators when attracting or retaining customers. It considered that its position as a new entrant would necessarily prevent it from engaging in such activity. The respondent was of the view that the imposition of SMP obligations was therefore inappropriate.

2.5 Another respondent also commented on the SMP analysis and was of the view that the basis for the decision to impose remedies was flawed.

ComReg's Position

2.6 In response in general to the comments on the competition problems, ComReg has provided a detailed treatment of the potential competition problems in ComReg documents 04/62a and 05/51.⁶ The key market failure is that the MNOs in question have been found to have SMP on their individual mobile networks and there is no prospect that their SMP will change in the near future. As a result and as outlined in

⁶ ComReg Document 04/62a-Market Analysis Consultation-Wholesale Voice Call Termination on Individual Mobile Networks, Sections 3 & 4 and ComReg Document 05/51-Response to Consultation & Notification-Remedies for wholesale voice call termination on individual mobile networks, Sections 4 and 5.

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ComReg documents 04/62a and 05/51, SMP MNOs have the ability and incentive to set MTRs above efficient levels to the detriment of end-users and warrants *ex ante* regulation.

Access

- 2.7 Two of the respondents considered that the definition of the access obligation contained in section 1.3 in the draft decision was too broad. The respondents were of the view that the wording should be amended to read so that it would be clear that it only related to the provision of mobile voice call termination services only.
- 2.8 Two of the respondents also were of the view that point III at section 3.2 (the requirement that SMP MNOs not withdraw access to facilities already granted) should be excluded from the final decision. The respondents stated that it was essential that they retained the right to terminate interconnect agreements for any breach in accordance with their agreed commercial terms. Furthermore, the respondents were of the view that the requirement not to withdraw access to facilities already granted was unnecessary as operators would already have this protection under the terms and conditions of any commercial agreement.
- 2.9 Three of the respondents disagreed with the provision contained in point IV at section 3.2, whereby all reasonable requests for access must be expedited, no later than three months from the date of the initial request. The respondents were of the view that this timeline was inappropriate. They stated there were many reasons why the process would take longer than three months to complete but still be expedited in a fair, reasonable and timely manner. One of the respondents was also of the view that it was disproportionate given that an equivalent timeline was not imposed in the fixed termination market.

ComReg's Position

- 2.10 ComReg has amended the draft decision to incorporate the views of respondents in relation to point IV in section 3 and removed the timeframe specified. However, the removal of a specific timeframe to fulfil this obligation does not however mean that requests could not in some cases be met in three or less months.
- 2.11 It was not considered necessary to change the definition referred to in section 1.3 as the obligation relates to the market for wholesale voice termination on individual networks and does not extend beyond the market defined.
- 2.12 In relation to point III of section 3.2, this obligation is not an impediment to any party's rights under an interconnection agreement, in accordance with the terms and conditions of that contract, to terminate the agreement. It is a regulatory law requirement imposed by ComReg, as opposed to a requirement that purports to interfere with contractual relations or commercial arrangements.

Transparency

Respondents' views

- 2.13 One respondent commented that section 4.4 of the draft decision, and section 4.6 both refer to publishing amendments to mobile voice call termination ('MVCT') prices.

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- 2.14 Two of the respondents were of the view that the requirement to produce a reference interconnect offer ('RIO') was inappropriate for the mobile market and would be overly burdensome. One of these respondents was of the view that section 4.7 should be removed from the final decision and that the remaining conditions of the obligation of transparency would be sufficient so as to ensure that all relevant information was made available to parties seeking access to the provision of termination services on a SMP operator network. One of these respondent was of the view that ComReg had not demonstrated that a RIO was necessary for the mobile termination market and believed this stemmed from ComReg's lack of understanding of the differences between the fixed and mobile markets for voice call termination. This respondent also disagreed that service level agreements ('SLAs') were necessary and was of the view that in the fixed market, fixed termination product set SLAs were not mandated. The other respondent commented that a RIO would involve operators maintaining separate agreements for inbound traffic only, potentially increasing the number and costs of contracts and that the cost of publishing a RIO would be disproportionate to the benefit it would bring.
- 2.15 Another respondent requested that it be given time to set up a wholesale website in respect of compliance with section 4.7 of the draft decision and the publication of the RIO.
- 2.16 Another respondent recommended that ComReg apply consistent terms and conditions for processes to introduce changes to the RIOs.
- 2.17 One of the respondents also agreed with the provisions contained in section 4.8 providing that any information was requested solely for termination services and did not commercially compromise them as regards confidentiality. However, another respondent sought greater clarification of this provision.

ComReg's Position

- 2.18 ComReg agrees with one of the respondents that the wording of sections 4.4 and 4.6 in the draft decision contained some repetition. The Final Decision has been amended to correct this.
- 2.19 In relation to the comments on the RIO, ComReg considers that this remains an appropriate obligation to allow ComReg and OAOs to observe price and non-price terms and conditions for MNO's termination products (and the processes for the RIO's evolution). ComReg is of the view that it will ensure that operators have easy and predictable access to this information and would facilitate transparency.
- 2.20 A RIO provides greater stability in the market and is of benefit to ensure that the access obligation complied with the RIO. In this context, ComReg considers that the inability to terminate calls, whether through a refusal of access or by having to meet unfair termination terms, reduces an operator's ability to compete with SMP MNOs for subscribers in the retail market, resulting in less choice for consumers. ComReg considers that a RIO for termination on a SMP MNO's network is the least burdensome interconnection regulation that can apply, given that all MNOs have an obligation to interconnect under Regulation 5 of the Access Regulations. Furthermore, a RIO will support the obligation of non-discrimination.
- 2.21 An alternative to a RIO suggested by one of the respondents was to rely solely on the remaining conditions under the obligation of transparency. ComReg does not

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consider that this would be sufficient to ensure that non-price terms and conditions would be publicly available to all concerned parties.

- 2.22 In relation to the comments on the necessity of service level agreements, operators provide these under normal commercial practice and there is no compelling reason why ComReg should not require such commitments on time scales or quality for the better functioning of the market.
- 2.23 In relation to the comment on the processes for introducing changes to the RIO, ComReg stated in the Notification to the EU Commission, that the RIO for SMP MNOs would be of similar depth and content as that currently provided for fixed network operators.
- 2.24 ComReg considers that section 4.8 of the draft decision mirrors the wording used in the Access Regulations and that it should remain unchanged. It is however unlikely that ComReg would request the same information from SMP MNOs under this obligation if received elsewhere.

Non-discrimination

Respondents' views

- 2.25 One of the respondents commented that this obligation was not necessary as SMP operators do not discriminate between MTRs charged to fixed or mobile operators. The respondent also queried why there was an apparent distinction between an access seeker and a MNO.
- 2.26 Another respondent made a number of comments on the non-discrimination obligation, which were also largely contained in its response to ComReg consultation document 04/62b. These comments related to issues of Ramsey pricing and on-net/off-net pricing. This respondent agreed that operators should not discriminate between other MNOs and fixed operators except where these differences could be justified by objective differences in the costs of the provision of these services.
- 2.27 Another respondent was of the view that ComReg had not taken its position as a new entrant into consideration, when imposing this SMP obligation. The respondent commented that an obligation of non-discrimination would only be necessary where there was a possibility that a SMP operator would be in a position to set discriminatory MTRs to discourage new entry.

ComReg's Position

- 2.28 In relation to the comments made by two of the respondents, ComReg has already outlined in the Notification to the EU Commission its position in relation to both mobile and fixed discrimination, on-net/off-net pricing and Ramsey pricing.⁷ Furthermore, ComReg is currently addressing the issue of Ramsey pricing in the accounting separation and cost accounting systems consultation.

⁷ ComReg Document 05/51: Response to Consultation and Notification-Remedies for wholesale voice call termination on individual mobile networks, points 4.1-4.26 and 5.82-5.94.

Price Control and Cost Accounting

Views of Respondents

- 2.29 One respondent was of the view that the imposition of a price ceiling at current rates was inappropriate given what it described as the very low MTRs in Ireland relative to European standards. It was of the view that ComReg had many outstanding issues to deal with, such as the approach to a uniform target MTR and the impact of 3G and therefore questioned how ComReg had arrived at the conclusion that the current levels of MTRs were at an appropriate level to set a price ceiling. To this end, the respondent requested that at the very least, ComReg should list averaged MTRs in section 6.5 of the draft decision.
- 2.30 It also believed that ComReg should amend section 6.6 of the draft decision to include paragraph 6.12 in the Notification to the EU Commission where it is stated that *“ongoing reductions in termination rates would reduce the need for early regulatory intervention for instance by setting rates by reference to EU or national benchmarks.”*⁸
- 2.31 This respondent was also of the view that it would be appropriate to use national benchmarks to initiate immediate reductions in the MTRs of the smaller operators that have been found to have SMP in this market, given the history of voluntary reductions by Vodafone and O₂.
- 2.32 Another respondent repeated its view that the imposition of the obligation of price control based on cost orientation was inappropriate when, it was claimed, ComReg did not have any evidence of its actual costs. It also stated that imposing a ceiling on their MTRs at the current 2G level, contradicted the principles of cost orientation and technological neutrality. In particular, it argued that their charges were currently below cost and requested more specificity on how long it would be required to price below cost under the proposed remedy.
- 2.33 Two of the respondents repeated their views in relation to the treatment of 3G networks in setting a target termination rate. One of these respondents believed that any target rate should be set using all the underlying costs, including the costs of 3G networks. The other respondent was of the view that ComReg needed to provide more clarity on how it proposed to interpret technology neutrality. If ComReg planned to peg the MTRs of the smaller operators to that of Vodafone and O₂, then it would need to take into account the fact that those operators’ costs were based on 2G and 3G networks and would have a different cost base than that of a 3G network only. Similarly, it commented that any international benchmarking exercise would have to distinguish between 2G/3G networks and 3G networks only.
- 2.34 This respondent also was of the view that the manner in which ComReg proposed to impose the cost orientation obligation made the effects of the obligation unclear and uncertain. It believed that there were fundamental issues such as the approach to benchmarking and technology neutrality that created uncertainty and that ComReg was not in a position to impose cost orientation at this stage.

⁸ ComReg Document 05/51: Response to Consultation and Notification-Remedies for wholesale voice call termination on individual mobile networks, Section 6.

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- 2.35 One respondent also repeated its view that obligations should be applied equally to all operators and that therefore section 6.3 of the final decision should be amended to provide that all SMP operators would have the obligation of cost accounting systems imposed on them. However, another respondent supported the proposal to impose a lighter regulatory burden on the smaller operators that have been found to have SMP in this market.
- 2.36 This respondent also repeated its support for the use of wholesale price caps for MTRs. It was of the view that benchmarking would only be appropriate as an interim measure, pending the availability of adequate cost models.

ComReg's Position

- 2.37 The price ceiling at current levels is intended to be an interim measure until further information becomes available, in particular, from the accounting separation and cost accounting systems consultation that will assist ComReg in determining an appropriate cost oriented termination rate or rates. ComReg considers that in light of the Calling Party Pays principle and the lack of sufficient countervailing buyer power, SMP MNOs will continue to have the ability and incentive to set high termination charges and that this is likely to be the case in the Irish market. ComReg therefore considers it appropriate to set a ceiling on MTRs at current levels in the short-term. However, ComReg has decided to adopt the suggestion that the ceiling be calculated by reference to an average of prices weighted by traffic volumes, since this has been the method used to evaluate price changes in the past.
- 2.38 In relation to the respondent's suggestion that ComReg amend point 6.6 of the draft decision, ComReg considers that the section appropriately reflects paragraph 6.12 of the Notification to the EU Commission and ComReg's approach to implementing cost orientation but for the avoidance of doubt has amended the Final Decision to read that it "*may, amongst other options, employ benchmarking.*" In relation to the respondent's proposal to benchmark a smaller SMP operator, ComReg has retained the right to direct an SMP MNO with regard to moving to any cost oriented rate and this may involve among other things, benchmarking or the use of a glide path.
- 2.39 In relation to the general issues raised by respondents surrounding 3G MTRs and uniform pricing and the imposition of an obligation of cost orientation at this time, ComReg stated in the Notification to the EU Commission that it would consult further on these issues. The current consultation on accounting separation and cost accounting systems will provide ComReg with information on cost data. The issue of uniform MTRs and 3G will need to be reviewed after cost data becomes available and accordingly, ComReg does not consider it appropriate to comment further in relation to this issue at this time.⁹
- 2.40 ComReg does not agree that section 6.3 of the draft decision should be amended to include all SMP MNOs as it is more proportionate to impose a lighter form of regulatory intervention on some operators. ComReg is of the view that comprehensive cost accounting or cost modelling exercises, which are necessary and

⁹ ComReg Document 05/56: Consultation on the proposed financial reporting obligations for dominant mobile network operators having accounting separation and/or cost accounting systems obligation, Section 14.

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justified for larger operators are likely to be unduly burdensome in the case of operators with such a small market share.¹⁰

Accounting Separation

Views of Respondents

- 2.41 Two of the respondents were of the view that this obligation was not required to support ComReg's obligations in these markets. One of these respondents repeated its view that it was feasible to impose cost based MTRs using cost models without the additional requirement of accounting separation and stated that ComReg appeared to accept this position. The respondent restated its view that any anti-competitive behaviours could be investigated on a case by case basis once cost based MTRs had been established and stated that it did not have management accounting systems in place, making this obligation overly burdensome. The respondent also stated that the requirement for retail information under an accounting separation reporting system was inappropriate and it sought clarification of this reference.
- 2.42 The respondent also asked how, in the absence of an obligation of accounting separation, ComReg proposed to monitor the compliance of a smaller operator found to have SMP in this market with non-discrimination. This respondent requested an explanation for why a "*properly formulated cost orientation and non-discrimination obligation*" would not also be sufficient to overcome the need for accounting separation for Vodafone and O₂ when it sufficed for a smaller operator found to have SMP.
- 2.43 The other respondent repeated its view that the obligations should be applied equally to all SMP operators and that section 7.1 of the final decision should impose the obligation of accounting separation on all SMP operators. However, the respondent expressed the view that if ComReg imposed the obligations of accounting separation and cost accounting on Vodafone and O₂ only, then a smaller operator found to have SMP in this market should contribute to defray some of the costs of implementation.

ComReg's Position

- 2.44 As stated in the Notification to the EU Commission, the obligation of accounting separation may also assist in monitoring compliance with an obligation of non-discrimination. In response to the respondent that thought it would be feasible to investigate incidences on a case by case basis, ComReg considers that this form of *ex ante* regulation, as opposed to *ad hoc* intervention creates legal and operational certainty, contributes to transparency and increases confidence that costs are appropriate and that compliance with obligations has been properly demonstrated. Furthermore, the policy requirements to foster competition and investment are better served by *ex ante* regulation, quite apart from the issues raised in the Notification to the EU Commission on lead times for preparation of quality financial information.
- 2.45 ComReg considers that the obligation of accounting separation is necessary and appropriate to impose on Vodafone and O₂. The accounting separation obligation also reinforces the cost accounting obligation as it can help to ensure that costs are neither double counted nor omitted. ComReg considers that at the very least, O₂ and

¹⁰ See ComReg Document 05/51: Response to Consultation on Remedies & Notification-Wholesale Voice Call Termination on Individual Mobile Networks for more detail on this issue.

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Vodafone, as sizeable organisations must have some systems in place for recording costs. ComReg accepts that it may take time for the SMP MNOs' existing systems to meet the requirements of an accounting separation obligation but as outlined in the current consultation on accounting separation and cost accounting systems, intends to work with operators to ensure that this takes place following a realistic yet rigorous timetable.

- 2.46 In relation to the comments made by one respondent in respect of imposing the obligations of accounting separation and cost accounting on Vodafone and O₂ only, that the smaller operator found to have SMP should also contribute to defray some of the costs of implementation, ComReg does not consider this to be appropriate. Each operator found to have SMP on their network should bear the cost of the resulting regulation, as is the case with all operators that have been found dominant in these and other markets. ComReg considers that the price control obligations along with the supporting obligations of accounting separation and cost accounting imposed on Vodafone and O₂ reflect their relative size, the resulting economies of scale and scope and the consideration to developing sustainable competition in the overall mobile market. As noted by the European Regulators Group ('the ERG') the not insignificant set up costs in relation to SMP obligations should be weighed against the greater benefits to be attained from the re-focusing of regulation at a finer level of granularity¹¹.
- 2.47 In relation to the requirement for retail information ComReg addresses this in the mobile accounting separation and cost accounting systems consultation.¹²
- 2.48 In relation to the compliance of a SMP operator with a smaller total market share, with the obligation of non-discrimination, ComReg considers, for the reasons outlined in the Notification to the EU Commission¹³ that the imposition of an obligation of accounting separation is disproportionate. Instead, the obligation of transparency will ensure that operators can observe and compare easily the factors over which discrimination could take place. Transparency, through specifying the precise information to be made available, can help identify anti-competitive behaviour or deter such behaviour by supporting an implicit threat of regulation. ComReg acknowledges the effectiveness of accounting separation for monitoring compliance with non-discrimination in relation to pricing and its usefulness in supporting the obligation of cost accounting but considers it is only proportionate to impose the obligation on Vodafone and O₂.¹⁴

Regulatory Impact Assessment ('RIA')

¹¹ ERG Common Position on the Approach to Remedies in the New Regulatory Framework, p.24.

¹² ComReg Document 05/56: Consultation on the proposed financial reporting obligations for dominant mobile network operators having accounting separation and/or cost accounting systems obligation, Section 13.2.

¹³ ComReg Document 05/51: Response to Consultation & Notification-Remedies for wholesale voice call termination on individual mobile networks, Section 5, pps.42-44.

¹⁴ ComReg Document 05/51: Response to Consultation & Notification-Remedies for wholesale voice call termination on individual mobile networks, Section 5, pps.36-37 and p.44.

Respondents' views

- 2.49 With regard to the RIA, two respondents expressed the view that ComReg had failed to demonstrate the required evidence based decision making as recommended in the Government White Paper on Better Regulation. Those respondents argued that ComReg is required to produce a cost benefit analysis in relation to on imposition of the obligations, in particular as it relates to the imposition of accounting separation and cost accounting systems on Vodafone and O₂ and not on all SMP operators. One of the respondents was of the view that no evidence had yet been provided by ComReg to demonstrate that a RIA had been carried out in these markets, in respect of the SMP obligations package overall, or for individual SMP obligations.
- 2.50 Another respondent commented generally in sections of its response that the effects of the SMP obligations were unclear and uncertain and that ComReg had failed to analyse the relationships of cause and effect of the proposed obligations, in particular as to how they would apply to a new market entrant.

ComReg's Position

- 2.51 ComReg believes that the level of detail contained in the consultation document (05/25) is sufficient to meet the requirements of the Government White Paper on Regulation, which recommends that the RIA should be 'relatively light and proportionate'. ComReg also carried out a comprehensive evidence based review of the relevant markets and concluded that Vodafone, O₂ and Meteor have SMP in these markets. This review was subsequently accepted by the EU Commission. ComReg has clearly shown in the consultation documents (04/62a, 0462b and 05/51) that the SMP MNOs' market power is not marginal. ComReg also recognises that it is placing new obligations on operators that have SMP in the market for voice termination of calls to end-users on individual mobile networks. However, ComReg considers that benefits arise in the market as a result of the imposition of these SMP obligations, such as those from having cost oriented prices, which prevents the leveraging of market power to the detriment of end-users.
- 2.52 In consultation documents (04/62a and 04/62b) ComReg identified and discussed the competition problems arising out of the SMP of the MNOs in the relevant markets and considered the appropriateness of potential obligations which could be imposed to address these problems. ComReg proposed obligations based on the nature of the problems that it had identified in the relevant markets and that, in light of its objectives set out in s 12 of the Communications Regulation Act, 2002, would be proportionate and justified. In its assessment ComReg considered the alternative forms of regulation, in particular the option to forebear from intervention.
- 2.53 Given the market power derived from the specific advantages accruing to the SMP operators, ComReg was of the view that other forms of regulation, including forbearance, would not address the competition problems sufficiently within the timeframe of the review. With regard to the issue of cost benefit analysis as stated in the Notification to the EU Commission, ComReg has taken the burden of compliance into account, most notably by imposing a lighter regime on MNOs with a smaller market share and by allowing the move towards a cost oriented rate to take place in a measured and gradual manner. ComReg notes that the details of the obligations to be implemented are not yet specified, and that their actual impact may vary depending upon such details. ComReg will work with the operators and engage in further

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consultation as to the specific implementation of the obligations, and in doing so, will consult on, and assess, the impact they will have on the operators, relative to the benefits obtained. ComReg has also taken a proportionate approach to the implementation of the obligation of non-discrimination.¹⁵

¹⁵ ComReg Document 05/51-Market Analysis Response to Consultation on Remedies and Notification to the EU Commission-Wholesale Voice Call Termination on Individual Mobile Networks, pps32-36.

Appendix A

Decision on Voice Call Termination on Individual Mobile Networks

STATUTORY POWERS GIVING RISE TO DECISION

- 1.1 In making this Decision and imposing the SMP obligations set out herein, ComReg has taken account of, amongst other things, its functions under Regulation 6 (1) of the Access Regulations¹⁶, has assessed the proportionality of the obligations imposed relative to the objectives of ComReg set out in s 12 of the Act of 2002¹⁷, has taken in to account the factors set out in Regulation 9 (6) and 13 (4) of the Access Regulations, has taken the utmost account of the SMP Guidelines¹⁸ and has (where appropriate) complied with and taken in to account the Policy Directions made by the Minister for Communications, Marine and Natural Resources¹⁹.
- 1.2 This Decision is made pursuant to Regulation 27 of the Framework Regulations²⁰, Regulations 9, 10, 11, 12, 13 and 14 of the Access Regulations, having taken into account the Consultation²¹, the Response to Consultation²², the SMP Designation²³, the Obligations Consultation²⁴, the Response to the Obligations Consultation²⁵ and sections 10 and 12 of the Act of 2002.

¹⁶ S.I. No. 305 of 2003 the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003 which transposes Directive 2002/19/EC of the European Parliament and the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities.

¹⁷ Communications Regulation Act, 2002.

¹⁸ Commission Guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services.

¹⁹ Policy Directions made by Dermot Ahern T.D. Minister for Communications, Marine and Natural Resources on 21 February, 2003 and 26 March, 2004.

²⁰ S.I. No. 307 of 2003 the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003 which transposes Directive 2002/21/EC of the European Parliament and the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services.

²¹ Document No: 03/127a: Consultation - Market Analysis – Wholesale Voice Call Termination on Individual Mobile Networks, dated 22 October, 2003. See the following link: <http://www.comreg.ie/fileupload/publications/ComReg03127a.pdf>

²² Document No. 04/62a: Response to Consultation and Notification to European Commission- Wholesale Voice Call Termination on Individual Mobile Networks, dated 8 June 2004. see the following link: <http://www.comreg.ie/publications/default.asp?nid=101658&ctype=5>

²³ Document No. 04/82: Market Analysis – Wholesale Voice Call Termination on Individual Mobile Networks, dated 29 July, 2004. See the following link: <http://www.comreg.ie/fileupload/publications/ComReg0482.pdf>

²⁴ Document No. 04/62b: Consultation - Consultation on Remedies – Wholesale Voice Call Termination on Individual Mobile Networks, dated 8 June, 2004. See the following link: <http://www.comreg.ie/fileupload/publications/comreg0462b.pdf>

1.3 In this Decision:

‘Access’ has the same meaning as in the Access Regulations;

‘Agreement’ means an agreement for the provision of voice call termination services;

‘Interconnection’ has the same meaning as in the Access Regulations;

‘MVCT’, means mobile voice call termination;

‘SMP’ means significant market power, as referred to in Regulation 25 of the Framework Regulations; and

‘SMP MNO’ means each of the mobile network operators designated as having SMP in the SMP Designation in accordance with Regulations 25-27 of the Framework Regulations but which for the avoidance of doubt does not mean H3GI.

‘O2’ means O2 Communications (Ireland) Limited which was designated as having SMP on the market for voice call termination on its own mobile network by the SMP Designation in accordance with Regulations 25-27 of the Framework Regulations;

‘Vodafone’ means Vodafone Ireland Limited which was designated as having SMP on the market for voice call termination on its own mobile network by the SMP Designation in accordance with Regulations 25-27 of the Framework Regulations; and

‘Undertaking’ has the same meaning as in the Framework Regulations.

2 SMP OBLIGATIONS

2.1 ComReg has decided to impose each of the SMP obligations, as provided for by Regulations, 10, 11, 13 and 14 of the Access Regulations, on all of the SMP MNOs. These SMP obligations are described further in the sections below.

2.2 ComReg has decided to impose the obligation of accounting separation, as provided for by Regulation 12 of the Access Regulations, following further consultation.

2.3 ComReg has decided to impose obligations in relation to cost accounting systems on Vodafone and O₂, as provided for by Regulation 14 of the Access Regulations, following further consultation.

²⁵ Document No. 05/51: Response to Consultation on Remedies and Notification to European Commission- Wholesale Voice Call Termination on Individual Networks.

3 ACCESS

- 3.1 As provided for by Regulation 13 of the Access Regulations, SMP MNOs shall have an obligation to meet reasonable requests for Access to their mobile networks by an Undertaking, if such a request is made by an Undertaking.
- 3.2 Without prejudice to the generality of Section 3.1 of this Decision, a SMP MNO shall:
- I. Meet reasonable requests for Access to specified network elements, facilities or both such elements and facilities;
 - II. Negotiate in good faith with Undertakings requesting Access;
 - III. Not withdraw Access to facilities already granted prior to the effective date of this Decision; and
 - IV. As a condition of their Access obligations, ensure that all reasonable requests for Access are expedited in a fair, reasonable and timely manner.

4 TRANSPARENCY

- 4.1 As provided for by Regulation 10 of the Access Regulations, SMP MNOs shall have obligations to ensure transparency in relation to Interconnection and Access.
- 4.2 Without prejudice to the generality of Section 4.1, SMP MNOs shall comply with the SMP obligations set out in Section 4.3 to 4.8.
- 4.3 SMP MNOs shall ensure that all undertakings are fully aware of MVCT prices and that they have advance notice of any amendments to MVCT prices. In this regard, SMP MNOs shall file with ComReg all Agreements (including existing Agreements) including a full description of all terms and conditions and prices relating to MVCT. All existing Agreements shall be filed within 28 days of the effective date of this Decision. All Agreements (and any amendments thereto) entered into on or after the effective date of this Decision shall also be filed within 28 days of their being entered into.
- 4.4 SMP MNOs shall each publish all existing MVCT prices within 28 days of the effective date of this Decision. SMP MNOs shall each publish all amendments to MVCT prices on their websites 28 days prior to their becoming effective.
- 4.5 SMP MNOs shall each notify all affected and interconnected undertakings and ComReg, in writing of any amendment to MVCT prices, not less than 28 days before any such amendment takes place.
- 4.6 SMP MNOs shall each:
- I. Publish on their wholesale website, and keep updated, a reference interconnect offer ('RIO') in respect of the services and facilities referred to in Section 3. The RIO shall be sufficiently unbundled to ensure that

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undertakings are not required to pay for services and facilities which are not necessary for the services requested.

II. Ensure that the RIO includes a description of the relevant offerings broken down into components according to market needs and a description of the associated terms and conditions, including prices;

III. Publish a RIO which contains details of the terms and conditions of access in respect of facilities already granted; and

IV. Fully and properly maintain supporting records which detail any amendments to the RIO for a period of 6 years, and ensure that they are available to ComReg upon request or upon the issuing of a direction by ComReg requiring that such records be made available to ComReg.

4.7 SMP MNOs shall each make publicly available information such as accounting information, technical specifications, network characteristics, terms and conditions for supply and use and prices in respect of the services and facilities referred to in Section 3, as may be specified by ComReg from time to time.

5 NON-DISCRIMINATION

5.1 The SMP MNOs shall have an obligation of non-discrimination, as provided for by Regulation 11 of the Access Regulations. Without prejudice to the generality of this obligation, each SMP MNO shall:

I. Ensure that they apply equivalent conditions in equivalent circumstances to Access Seekers and other MNOs providing equivalent services; and

II. Ensure that they provide services and information to Access Seekers and other MNOs under the same conditions and of the same quality as the SMP MNOs provide for their own services or those of their subsidiaries or partners.

6 PRICE CONTROL

6.1 As provided for by Regulation 14 of the Access Regulations, SMP MNOs shall each have obligations in relation to cost recovery and price control.

6.2 SMP MNOs shall each have an obligation to offer cost-oriented prices for MVCT. The burden of proof that charges are derived from costs, including a reasonable rate of return on investment shall lie with SMP MNOs.

6.3 Vodafone and O₂ shall have imposed on them obligations in relation to cost accounting systems, as provided for by Regulation 14 of the Access Regulations. ComReg will consult further on the detailed requirements of and the practical implementation of these obligations.

6.4 Without prejudice to Section 6.2, the average price weighted by traffic volumes for the most recent financial year offered by the respective SMP MNOs for

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MVCT on their respective networks, shall not exceed the average price, calculated by reference to the prices set out below, weighted by traffic volumes for their first financial year to end during or after December 2004, until further notice by ComReg.

Table: Prices for MVCTs to be offered by SMP MNOs

SMP MNO	MVCT Price Cent Per Minute		
	Peak	Off Peak	Weekend
Vodafone	12.90	11.42	5.97
O2	12.90	10.00	7.87
Meteor	17.776333	11.427643	8.888167

- 6.5 As and from the effective date of this Decision and prior to the establishment of a definitive level of cost oriented prices for each of the SMP MNOs, ComReg may, in pursuance of the aim of establishing such prices, issue directions to the SMP MNOs for the purposes of establishing a glide path (that is to say, a graduated step approach) towards cost orientation or a price cap in respect of MVCT prices. In doing so, ComReg may amongst other options, employ benchmarking.

7 ACCOUNTING SEPARATION

- 7.1 Vodafone and O₂ shall each have imposed on them obligations in relation to accounting separation, as provided for by Regulation 12 of the Access Regulations. ComReg is currently consulting further on the detailed requirements of and the practical implementation of these obligations.

8 EFFECTIVE DATE

- 8.1 This Decision shall be effective from the date of its publication and shall remain in force until further notice by ComReg.

ISOLDE GOGGIN

CHAIRPERSON

THE COMMISSION FOR COMMUNICATIONS REGULATION

THE 13 DAY OF OCTOBER 2005.