



Commission for
Communications Regulation

Decision Notice - Designation of SMP

**Market Analysis – Wholesale Voice Call
Termination on Individual Mobile Networks**

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1 Introduction

- 1.1 The new EU communications regulatory framework requires that ComReg define relevant communications markets appropriate to national circumstances, in particular relevant geographic markets within its territory, in accordance with the market definition procedure outlined in *the Framework Regulations*.¹ In addition, ComReg is required to conduct an analysis of the relevant markets to decide whether or not they are effectively competitive.
- 1.2 *The Framework Regulations* further require that the market analysis procedure under Regulation 27 be carried out as soon as possible after ComReg defines a relevant market, which takes place as soon as possible after the adoption, or subsequent revision, of the Recommendation on relevant product and service markets (“*the Relevant Markets Recommendation*”²) by the Commission.³ In carrying out market definition and market analysis, ComReg must take the utmost account of *the Relevant Markets Recommendation* and the Commission Guidelines on Market Analysis and Significant Market Power (“*The SMP Guidelines*”⁴).
- 1.3 The European Commission recommends, in its *Relevant Markets Recommendation*, that National Regulatory Authorities (NRAs) should analyse the relevant market for “**wholesale voice call termination on individual mobile networks**”.
- 1.4 ComReg has formed the view that there is a distinct relevant market in Ireland for wholesale voice call termination on individual mobile networks. ComReg also takes the view that the relevant geographic market for the provision of wholesale voice call termination on individual mobile networks is the Republic of Ireland.
- 1.5 ComReg then conducted an analysis of the relevant market to decide whether or not it is effectively competitive. ComReg used a wide range of criteria including market share, absence of potential competition, absence of or low countervailing buyer power, pricing and profitability and also conducted a prospective analysis of the relevant markets.
- 1.6 Having regard to the above, ComReg is of the view that, in accordance with the *Framework Regulations*, Vodafone, O₂, Meteor and ‘3’ should be designated as having Significant Market Power on the markets for “wholesale mobile voice call termination on individual mobile networks”.

¹ 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.

² EU Commission Recommendation of 11 February, 2003 on Relevant Product and Service Markets within the electronic communications sector susceptible to ex ante regulation in accordance with 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.

³ Regulations 26 and 27.

⁴ Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic networks and services, OJ 2002 C 165/3, (“*the SMP Guidelines*”).

- 1.7 ComReg then held a national consultation and considered all comments in coming to its preliminary conclusions on market definition, market analysis and remedies. As required by Regulation 20 of the Framework Regulations, the draft measure was then made accessible to the European Commission and the national regulatory authorities in other member states of the European Community. Having determined that the relevant markets reviewed are not effectively competitive, ComReg is now designating the undertaking with significant market power, in accordance with Regulation 27(4) of the Framework Regulations.

2 Statutory Powers Giving Rise to Decision

- 2.1 In making this Decision, the Commission for Communications Regulation ('ComReg') has, taken account, of amongst other things, its functions under Regulation 6(1) of the Access Regulations;⁵ has (where appropriate) complied with the Policy Directions made by the Minister for Communications⁶ under section 13 of the Communications Regulation Act, 2002; and has also taken the utmost account of the EU Commission's Recommendation⁷ and the Guidelines.⁸ This Decision is based on the market definition, market analysis and reasoning conducted by ComReg in relation to the market for wholesale voice call termination on individual mobile networks,⁹ as part of the consultation process arising from the ComReg document entitled Market Analysis: Wholesale voice call termination on individual mobile networks (Document No. 04/62a), dated 8 June 2004. The said document forms part of this Decision.
- 2.2 The measures imposed under this Decision were notified to the EU Commission in accordance with Regulation 20 of the *Framework Regulations* and the Article 7 Recommendation,¹⁰ and were registered by the EU Commission on 8 June 2004. The notified measures were accepted by the EU Commission, when it stated pursuant to Article 7 (3) of the Framework Directive that it had no comment, in correspondence to the Chairperson of ComReg dated 14 July 2004.
- 2.3 This Decision is made pursuant to the provisions of Regulations 25, 26 and 27 of the Framework Regulations.¹¹

⁵ 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 ('the Access Regulations').

⁶ Policy Directions made by Dermot Ahern T.D. Minister for Communications, Marine and Natural Resources on 21 February 2003 and Policy Directions made by Dermot Ahern T.D. Minister for Communications, Marine and Natural Resources on 26 March 2004.

⁷ EU Commission Recommendation of 11 February, 2003 on Relevant Product and Service Markets within the electronic communications sector susceptible to ex ante regulation in accordance with 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.

⁸ Commission Guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services.

⁹ As referred to in the EU Commission's Recommendation.

¹⁰ Commission Recommendation of 23 July 2003 on notifications, time limits and consultation provided in Article 7 of Directive 2002/21/EC of the European Parliament and the Council on a common regulatory framework for electronic communications networks and services.

¹¹ 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.

3 Market Review

Market Definition

- 3.1 This Decision relates to the market for wholesale voice call termination on individual mobile networks.
- 3.2 The relevant geographic market for the product markets is defined as the Republic of Ireland.
- 3.3 ComReg's conclusions in this Decision are based on the lack of demand and supply-side substitution at the wholesale level for the termination of calls by individual MNOs, and the current method of charging for mobile voice call termination (i.e. CPP) perpetuates the fact that consumer demand for mobile voice call termination is inelastic, further insulating individual MNOs from price competition.

Designation of Undertaking with Significant Market Power ('SMP')

- 3.4 The criteria used to assess SMP in the wholesale voice call termination on individual mobile networks include:-
 - i. Market shares;
 - ii. Absence of, or low, countervailing buying power;
 - iii. Absence of potential competition; and
 - iv. Pricing and Profitability
- 3.5 Vodafone, O₂, Meteor, and '3' are designated as having SMP in the wholesale market for voice call termination on individual mobile networks.
- 3.6 A reference in this section to Vodafone, O₂, Meteor or '3' shall be deemed to include Vodafone, O₂, Meteor or '3' and any undertaking which is associated with, or is controlled by, or controls, directly or indirectly, the undertaking in question and which carries out business activities in Ireland, where the activities engaged in (either directly or indirectly) are activities falling within the scope of the relevant market defined in section 2 of this Decision.

SMP Obligations

- 3.7 ComReg is required to impose *ex ante* regulatory obligations that are, appropriate, based on the nature of the problem identified, proportionate and justified in the light of the objectives set out in Article 8 of the Framework Directive.¹² ComReg has

¹²The Guidelines provide at paragraph 114 that:-

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previously identified remedies it considers may be appropriate to impose on a SMP operator in these markets. These were the obligations of access to and use of specific network facilities, transparency, non-discrimination and cost-orientation. Supporting obligations of Cost Accounting Systems and Accounting Separation were envisaged for Vodafone and O₂ only. However, ComReg has consulted on the remedies to be imposed and the details to attach to those considered suitable in this instance.¹³ In accordance with Regulation 20 of the *Framework Regulations* and the Article 7 Recommendation remedies will be made accessible to the EU Commission and other NRAs and ComReg will make a final decision following their comments, if any.

'Merely designating an undertaking as having SMP on a given market, without imposing any appropriate regulatory obligations, is inconsistent with the provisions of the new regulatory framework, notably Article 16(4) of the framework Directive. In other words, NRAs must impose at least one regulatory obligation on an undertaking that has been designated as having SMP.'

¹³ ComReg Document no 04/62b consults on appropriate remedies for the wholesale voice call termination market on individual mobile networks. Responses to this consultation were received on the 20th July. ComReg's position in relation to this consultation has yet to be finalised.

4 Decision Notice Issues

Provision of Information

- 4.1 ComReg may, under Regulation 17(1) of the Framework Regulations require any undertaking to provide (within such time as ComReg shall specify in the document containing the requirement) any information, including financial information, that ComReg considers necessary for the purpose of ensuring compliance with this Decision.¹⁴

Directions

- 4.2 ComReg may, for the purpose of further specifying requirements to be complied with relating to obligations imposed by this Decision, issue directions to any undertaking to do or refrain from doing anything which ComReg specifies in the direction and the undertaking shall comply with any such directions.

¹⁴ Any request made shall be made subject to Regulation 17(2) of the Framework Regulations and shall be proportionate to the performance by ComReg of the task of monitoring compliance and the ComReg shall give reasons justifying its requirement for the information, including a statement as to which of ComReg's statutory duties gives rise to the request.

5 Conclusion

Designation 5.1

Vodafone is designated as having SMP in the wholesale voice call termination market on individual mobile networks.

O₂ is designated as having SMP in the wholesale voice call termination market on individual mobile networks.

Meteor is designated as having SMP in the wholesale voice call termination market on individual mobile networks.

‘3’ is designated as having SMP in the wholesale voice call termination market on individual mobile networks.

The above designations are made pursuant to regulation 27(4) of the Framework Regulations.

Effective Date

5.1 This Decision shall be effective from the 29th of July 2004.

John Doherty

Chairman

The Commission for Communications Regulation

The 29th day of July, 2004