Commission for Communications Regulation

Response to Consultation & Final Specification

Setting a Maximum Fixed and Mobile Number Porting Charge

(Response to Consultation Document No 08/65)

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1 Executive Summary

The Commission for Communications Regulation (‘ComReg’) published the consultation on ‘Setting a Maximum Fixed and Mobile Number Porting Charge’ on 15 August 2008 in ComReg Document No. 08/65. The consultation set out the proposed maximum number porting charges for both fixed and mobile number porting. The maximum charges proposed by ComReg were based on the specified costs that an operator should recover through number porting charges to other operators which were set out in ComReg Document No 07/98[1]. ComReg’s conclusions based on the review of the responses to the consultation are as follows:

- **Mobile Number Porting**:

Following ComReg’s assessment of the operator submissions and further consideration given to the issues raised as part of the responses, ComReg specifies that all mobile operators can charge no more than a maximum wholesale charge of €2.05 for all mobile number ports out, going forward.

- **Fixed Number Porting**:

Following consideration of the responses received from fixed operators, ComReg has specified on a range of fixed wholesale NP charges, going forward. ComReg specifies that a fixed operator can charge no more than a maximum charge of €4.02 for a single wholesale port outwards completed in normal hours. ComReg has also set out a number of other fixed wholesale NP charges, including maximum charges for ports completed outside of normal hours, ports deferred for a two hour period and ports validated and rejected. ComReg specifies that a fixed operator can charge no more than a maximum charge of €3.50 for Geographic Number Portability (‘GNP’) in the context of Unbundled Local Metallic Path (‘ULMP’) and no more than a maximum charge of €5.74 for Non-Geographic Number Portability (‘NGNP’).

The date of this decision is 29 January 2009. The maximum charges set out will remain in place for a period of two to three years. A review maybe carried out within this timeframe if exceptional circumstances arise and ComReg believes that a further review is required.

ComReg, in a separate Consultation Document No. 08/66[2], consulted on the most appropriate option in determining the basis of the refunds due to other operators since the 30 November 2007 to the date of the final specification on the maximum fixed and number porting charges going forward. The response to this consultation will be published shortly.

[1] Response to Consultation & Specification on Number Portability in the Fixed and Mobile Sectors.

[2] Consultation & Draft Direction on 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).

2 Introduction

ComReg is responsible for the regulation of the Irish electronic communications sector, this includes the regulation of Number Portability ('NP') under Regulation 26(1)[3] 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[4] ('NGNP') and Geographic Number Portability[5] ('GNP'). It was subsequently introduced to the mobile sector with the launch of Mobile Number Portability ('MNP') in 2003.

ComReg initiated a 'Consultation on Number Portability in the Fixed and Mobile Sectors' (Consultation Document No. 07/21) on 10 April 2007. This consultation included the proposal to issue a Specification to all relevant undertakings specifying the allowable costs for the pricing of interconnection related to the provision of NP for the purpose of ensuring that pricing for interconnection related to the provision of NP as provided for in Regulation 26(1) of the Universal Service Regulations is cost oriented. Secondly, to clearly identify who pays the NP charge, to establish whether retail users should pay a direct charge for NP and issue a Specification to all relevant undertakings in relation to this. After due consideration was given to the responses received to this Consultation, a Response to Consultation and Specification was published on 30 November 2007 in ComReg Document No 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.

On 18 January 2008, 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. Following ComReg's request for costing data, a number of mobile and fixed operators provided data to ComReg for review. ComReg carried out a detailed review of the operator submissions.

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[3] 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."

[4] 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.

[5] 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.

On 15 August 2008 ComReg published Consultation Document No. 08/65 which set out the details of ComReg's review of the operator submissions and the proposed maximum mobile number porting charge and fixed number porting charges. The deadline for receipt of responses was 19 September 2008. A number of responses were received to the consultation and these are set out below.

Operator	Fixed/Mobile Network
Hutchinson 3G Ireland Limited	Mobile Network Operator
Vodafone (Ireland) Limited	Mobile Network Operator
O2 Communications (Ireland) Limited	Mobile Network Operator
Meteor Mobile Communications Limited	Mobile Network Operator
Tesco Mobile Ireland	Mobile Network Operator
Eircom Limited	Fixed Network Operator
BT Communications Ireland Limited	Fixed Network Operator
Imagine	Fixed Network Operator
Magnet Networks Limited	Fixed Network Operator

The details of the operator responses as well as ComReg's consideration in relation to the issues raised are included in the sections below.

3 Legal Background

Regulation 26 of the Universal Service Regulations 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."

Regulation 26 implements Article 30 of the Universal Service Directive[6].

In July 2006, the European Court of Justice ('ECJ') in the 'Mobistar'[7] case provided further clarification on the interpretation of Article 30(2) of the Universal Service Directive (transposed in Ireland by Regulation 26(2) of the Universal Service Regulations).

The key clarification is as follows:

"Pricing for interconnection related to the provision of number portability, as referred to in Article 30(2) of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive), concerns the traffic costs of numbers ported and the set-up costs incurred by mobile telephone operators to implement requests for number porting.

Article 30(2) of Directive 2002/22 does not preclude the adoption of a national measure laying down the specific method to be used in calculating costs and which fixes in advance and on the basis of an abstract model of the costs maximum charges which may be charged by the donor operator to the recipient operator as set-up costs, provided that the charges are fixed on the basis of the costs in such a way that consumers are not dissuaded from making use of the facility of portability."

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[6] Directive 2002/22/EC of the European Parliament and the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services.

[7] C-438/04, reference for a preliminary ruling under Article 234 EC from the Cour d'appel de Bruxelles (Belgium), made by decision of 14 October 2006, received at the Court on 19 October 2004, in the proceedings Mobistar SA v. Institut belge des servies portauz et des telecommunications (IBPT).

The Consultation Document No 07/21 & the Response to Consultation Document No 07/98 had two main purposes. Firstly, to set out a clear interpretation of cost orientation in the context of NP and to issue a Specification to all relevant undertakings specifying the allowable costs for the pricing of interconnection related to the provision of NP for the purpose of ensuring that pricing for interconnection related to the provision of NP as provided for in Regulation 26(1) of the Universal Service Regulations is cost oriented. Secondly, to clearly identify who pays the NP charge, to establish whether retail users should pay a direct charge for NP and issue a Specification to all relevant undertakings in relation to this.

The text of the Specifications included in ComReg Document No 07/98 was as follows:

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.

The further legal basis for making of a Specification in relation to the maximum number porting charges is as follows:

These Specifications are made by ComReg pursuant to Regulation 26(2) of the Universal Service Regulations 2003 and the obligations contained in ComReg Decision No D05/07 and having regard to ComReg’s functions and objectives under sections 10 and 12 respectively of the Communications Regulation Act, 2002.

ComReg now issues final Specifications 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 Document No. 07/98 above. The final Specifications are set out in Section 6 of this document.

4 Assessment of Relevant Costs

In ComReg Document No 07/21 ComReg discussed the related cost categories for NP. In brief, the NP related costs were categorised as follows:

- **General system provisioning costs:** These are once-off costs in modifying network and support systems to enable the inter-operator product and are independent of operator demand.
- **Per-line enabling/Transaction costs:** These are the operating and administrative costs of implementing NP facilities.
- **Central Database Reference Costs:** These are costs incurred by operators which require the use of a centralised hub or central reference database. There are two types of costs involved, the systems costs in the set up and developing of the database itself, and the annual costs of subscribing and maintaining the database. Included are ‘IN’ Costs and ‘Look Up’ Costs.
- **Ongoing Routing Costs:** This category of costs includes the cost of adding a routing prefix (the re routing element) and the cost of any additional routing between networks (the conveyance element) that may be required when a call is being routed to a ported number.

As part of the initial Consultation Document No.07/21, ComReg also consulted on the proposal to issue a Specification to all relevant undertakings specifying that the allowable costs for the pricing of interconnection related to the provision of NP should be limited to the incremental administrative cost to the donor operator of per-line enabling/transaction costs, based on a fully efficient number porting process.

After considering all operator responses to the consultation document ComReg issued a Specification in its Response to Consultation Document No. 07/98. This Specification was as follows:

‘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’.

An Information Notice was published by ComReg on 18 January 2008, ComReg Document No. 08/09[8]. ComReg also sent a number of formal letters to fixed and mobile operators on that date. Both the information notice and letter set out a formal request for specific data from operators to demonstrate how their number porting charge was in line with ComReg’s Specification. A number of responses were received to ComReg’s request, of which seven respondents provided pricing submissions.

[8] Request for NP Price Submission from Fixed and Mobile Operators.

A number of operators requested the details of ComReg's review of its costing submission. For these operators ComReg set out, in detail, the basis for disallowing each of the costs specific to that operator and also the basis for allowing those costs which are to be recovered through the NP charge. ComReg also included the calculation of the cost oriented NP charge for that particular operator based on the volume information provided by that operator and the allowable costs determined by ComReg in line with its Specification of 30 November 2007. The detail provided by ComReg also gave operators the opportunity to respond, as part of their response to Consultation Document No. 08/65, on other issues which they wished to raise regarding ComReg's assessment of their specific costing submission.

The sections below detail ComReg's proposals (as set out in Consultation Document No. 08/65) in relation to the allowable and disallowed costs, operator responses to the consultation and ComReg's position and final conclusion.

4.1 Mobile operator relevant costs

4.1.1 *Summary of Consultation Proposal*

Following ComReg's review of the five mobile operator responses, ComReg set out in Consultation Document No. 08/65 the details of the cost categories submitted by the operators as part of their submissions. The table 1 below sets out the categories of costs submitted by the mobile operators in demonstrating their compatibility with the Specification on the cost orientation obligation in relation to the pricing of MNP. The table also provides information as to how ComReg proposed to classify each cost category. ComReg was of view that the majority of the costs listed (below) were not incremental administration costs and should not be recovered via the MNP charge.

Table 1: ComReg's assessment of the costs submitted by the mobile operators

	ComReg's Cost Categories for NP	**General System Provisioning Costs** *(B)*	**Per-line Enabling/ Transaction Costs i.e. Incremental** *(A)*	**Per-line Enabling/ Transaction Costs i.e. Non Incremental** *(B)*	**Central Database Costs** *(B)*	**Ongoing Routing Costs** *(B)*
	Mobile Operator Costs Submitted					
1	Porting support staff		**X**			
2	IT support staff		**X**			
3	Invoice production/billing operators		**X**			
4	Cost of calls for port escalation problems (including multi-port escalation issues)		**X**			
5	Annual service charge to Ward Solutions (maintenance & development)				**X**	
6	Strategy support team			**X**		
7	Regulatory support team			**X**		
8	Porting training for customer care staff*					
9	Annual charge for SLA days			**X**		
10	New entrant costs	**X**				
11	Depreciation			**X**		
12	General training			**X**		
13	Reports for finance			**X**		
14	Maintenance and connectivity				**X**	
15	Return on capital**					
16	Testing and equipment upgrades	**X**				
17	Cost of customer care calls (porting)*					

Note to references used in table 1, above.

(A) – Allowable Costs

(B) – Disallowed Costs

* - This cost is not a wholesale cost and therefore is not relevant in determining a wholesale MNP charge.

** - The Specification does not allow for a return or margin to be considered as part of the charge for NP.

(A) PROPOSED ALLOWABLE COSTS

The main type of costs submitted by the mobile operators and which ComReg proposed as allowable costs, in line with its Specification set out in ComReg Document No. 07/98, included the following:

- Porting support staff;
- IT support staff;
- Invoice production/billing operations; and
- Cost of calls for single and multi port escalations (wholesale).

ComReg believed that these costs were incremental, volume dependent administration costs which in ComReg's view should be recovered by the donor operator. The cost of the porting support staff and IT support staff related to the actual full time equivalent ('FTE') costs to the porting out process. ComReg was of the view that these costs should be recovered as part of the MNP charge as these costs can fluctuate with changes in the volume of ports out. ComReg also believed that the cost of invoice production (or billing operations) would fluctuate with changes in the volumes of ports out and in ComReg's view this cost should be recovered from the recipient operator. In certain cases where there are a large number of ports out, problems may often arise where it is necessary to resolve the issue by an inter-operator follow-up call. ComReg was of the view that such costs should be recovered by the donor operator.

4.1.2 CONSULTATION QUESTION

Q.1. Do you agree with the allowable costs, in the context of mobile number porting, considered by ComReg (in table 1)? Please state the reasons for your response.

4.1.3 VIEWS OF RESPONDENTS

Of the six operators that provided a response to this question, four of the operators agreed with the allowable cost categories set out by ComReg. However, one of the four operators believed that the list was not exhaustive. One of the other operators disagreed with the allowable costs on the basis that not all relevant costs were included within the allowable costs set out and one other operator believed that IT support costs should not be an allowable cost.

The operator that disagreed on the basis that not all relevant costs were included believed that ComReg was wrong to disallow the cost of port training for customer care staff and the cost of porting related customer care calls. It was of the view that both of these costs should be included as part of the relevant allowable costs. The operator that believed that the IT support staff costs should not be included as part of the allowable costs stated that as a mobile operator with significant scale it is unlikely that additional IT support personnel would need to be allocated to support existing porting systems or that this cost would increase with porting volumes.

4.1.4 *ComReg's Position & Conclusion*

With regard to the recovery of IT costs within the MNP charge, ComReg is of the view that the support provided by the porting staff and the support provided by the IT staff is relevant in determining the number porting charge. ComReg's understanding is that, in simple terms, porting staff monitor the entire porting process. If an issue arises with a particular port or group of ports the porting support staff intervenes in the porting process. The porting support staff identifies the stage the port is at and what corrective action is necessary. If the issue is of a technical nature porting staff escalate the port to the IT support staff for resolution. Therefore it is clear that both costs are relevant and should be recoverable as part of the MNP charge. ComReg has considered the FTE costs for both porting support staff and IT support staff therefore consideration has been given to the incremental costs incurred.

In relation to the issue raised by one of the mobile operators whereby the cost of port training for customer care staff and the cost of porting related customer care calls should be recovered as part of the porting charge, ComReg re-iterates its views set out in the consultation document whereby it believes that the cost of customer care calls and the cost of training for customer care staff are not related to the provision of wholesale number portability but are retail related costs which should not be recovered as part of the wholesale charge. ComReg has allowed for the recovery of the cost of calls relating to single wholesale port escalations and also calls generated from issues with multi port orders which should therefore account for the cost of calls relating to wholesale port escalations.

ComReg remains of the view that the costs identified by it in the consultation document are the relevant costs to be recovered as part of the MNP charge. These costs, which include the cost of porting support staff, IT support staff, invoice production and the cost of calls for wholesale port escalations, are the incremental[9] administration costs of the donor operator of per-line enabling/transaction costs, based on a fully efficient number porting process. It is also of note that ComReg, as the National Regulatory Authority ('NRA'), has discretion in relation to portability charges, as acknowledged by the Court in *Mobistar*: '*once it is established that prices are fixed on the basis of costs, [Article 30(2)] confers a certain discretion on the national authorities to assess the situation and define the method which appears to them to be the most suitable to make portability fully effective, in a manner which ensures that consumers are not dissuaded from making use of that facility'*[10]**.**

[9] Short-term volume dependent.

[10] Paragraph 34 of the Mobistar Judgement, C-438/04, on 13 July 2006.

(B) PROPOSED DISALLOWED COSTS

4.1.5 SUMMARY OF CONSULTATION PROPOSAL

In ComReg Document No.08/65, ComReg was of the view that a number of the costs submitted by the mobile operators were not compatible with the Specification on the cost orientation obligation in relation to NP. These costs were as follows:

- Annual service charge to Ward Solutions (for maintenance & development);
- Strategy support staff;
- Regulatory support staff ;
- Port training for customer care staff;
- Annual charge for SLA days;
- New entrant costs;
- Depreciation;
- General training;
- Reports for finance;
- Maintenance and connectivity;
- Return on Capital;
- Testing and equipment upgrades; and
- Cost of customer care calls (porting related).

Table 1 of page 9 outlined ComReg's proposed treatment (into each of the four cost categories) of each of the costs submitted by the mobile operators. ComReg was of the view that the cost of customer care calls and the cost of training for customer care staff were not related to the provision of wholesale number portability, and were in fact related to the retail business, and should therefore not be recovered as part of the wholesale charge. ComReg also believed that a return on capital was not an allowable cost as part of the Specification in determining the charge for NP and on this basis this should not be considered as part of the charge for NP.

A number of the costs submitted by the mobile operators were administration or operating costs, however ComReg was of the opinion that none of these costs were incremental i.e. short-term volume dependent. On this basis ComReg excluded the cost of the strategy support team, the cost of the regulatory support team, depreciation, general training and the cost of reports for the finance department. ComReg believed that these costs were not incremental and were in fact incurred regardless of the changes in volumes of ports out.

4.1.6 CONSULTATION QUESTION

Q.2. Do you agree with the disallowed costs, in the context of mobile number porting, considered by ComReg (in table 1)? Please state the reasons for your response.

4.1.7 VIEWS OF RESPONDENTS

Of the six operators that provided a response to this specific question, four operators agreed with the disallowed costs proposed by ComReg while two of the operators disagreed.

One of the operators that disagreed believed that ComReg were wrong to disallow the cost of porting training for customer care staff and the cost of porting related customer care calls.

The second operator to disagree believed that other specific costs should be included as allowable including new entrant costs, strategy support teams and port training costs for customer care staff. This operator believed that the costs associated with implementing porting capability for new entrants must be allowable. This operator states that ComReg believes that new entrant costs constitutes a fixed cost which if allowable would introduce price instability when linked to fluctuating volumes, in particular falling volumes. The operator rejects this reasoning on the grounds that ComReg has no evidence to support the contention that the volumes of mobile ports have or will fluctuate to the extent that prices will vary in any material way. It further added that a total of 1.3 million customers have ported since inception of mobile number portability. This operator believes that ComReg relies on the example of the fluctuating volumes in the fixed market to justify its approach in relation to porting charges in general. It also believes that the risk of charges fluctuating due to a change in the cost/volume relationship is negligible for any reasonably foreseeable time and is an entirely unreasonable basis for excluding legitimate cost.

A second issue raised by the same operator related to the its view that large fixed costs in mobile porting arise only because of the system architecture and processes required by ComReg's mandated porting obligations. It believes that a decision by ComReg to now set a price which does not allow for any new fixed cost recovery (at least from the port charge), in effect amounts to a form of regulatory "taking". The operator further states that if it had known that its capital outlay in relation to new entry enablement would not be recoverable on the basis of a set of rules set by ComReg it could have chosen a system where a greater proportion of costs were variable and where porting should still have met industry standards. This operator's third point relates to the Mobistar case where the operator believes that the set-up costs, as defined by the ECJ, are non-recurrent additional cost generated as a consequence of the porting of one or more mobile numbers, in addition to the costs connected with the transfer of clients without number portability to another mobile operator or service provider or in order to terminate the provision of the service. The operator believes that the costs associated with establishing new entrants are once-off or non-recurring in the case of that operator and they are distinguishable from another cost category identified in the 'Mobistar case', namely the 'cost generated by the setting up of portability' which are costs incurred at the establishment of the porting regime and by the original porting operators.

This operator also disagreed that the cost for strategy and regulatory support should not be included as part of the allowable costs. It further added that these costs relate to escalation of faults and disputes beyond the porting support team. The operator believes that these are legitimate costs as they represent the strategy and regulatory resources required to manage inter-operator issues or escalations and integrating new entrants. It further added that if these costs are not recoverable that it is logical to assume that they will withdraw these support functions. In addition, this same operator believed that port training costs for customer care staff should be allowed in the calculation of the maximum porting charge. This respondent believes that if this cost is excluded then the operator will not continue to up skill its customer services team. It also added that in its response to the initial Consultation Document No 07/21 that it agreed with an average port charge was the optimum way to recover porting costs in the interests of simplicity and certainty. However, if it had foreknowledge that ComReg would disallow these costs it would have had a much stronger view on different porting charges.

4.1.8 ComReg's Position & Conclusion

As already discussed in the section above, ComReg has disallowed the cost of customer care calls and the cost of customer care training on the basis that these costs are not wholesale porting costs but retail related costs which should not be recovered through the wholesale number porting charges. It should be noted however that ComReg has allowed for the recovery of the cost of calls relating to single wholesale port escalations and also calls generated from issues with multi port orders. ComReg believes that this should account for the cost of calls relating to issues regarding wholesale ports which maybe escalated to the wholesale division in respect of calls regarding specific issues with the wholesale porting of the number.

Another operator raised the issue that new entrant costs and strategy support costs should be recoverable as part of the MNP charge. ComReg would like to re-iterate, firstly in relation to new entrants costs that these costs appear to relate to necessary changes to the operator's system to enable internal porting systems to cater with a particular number range. ComReg remain of the view that these costs relate to general systems provisioning costs in that *these are once-off costs in modifying network and support systems to enable the inter-operator product and are independent of operator demand,* as previously defined in ComReg Document No 07/98. ComReg previously consulted, in Consultation Document No 07/21, on the related cost categories for NP and concluded, in Document No 07/98, that the costs to be recovered as part of the NP charge were *the incremental (i.e. short term volume dependent) administrative cost to the donor operator of per-line enabling/transaction costs.* ComReg therefore believes that these are the only costs relevant in terms of setting a maximum number porting charge. The same operator raised the point that the definition of '*set-up costs*' in the *Mobistar* case allows for recovery of such costs as new entrant costs. However, as acknowledged in paragraph 34 in the *Mobistar* case, ComReg as the NRA has discretion in relation to portability charges. To reiterate the point, ComReg previously consulted on the relevant cost categories for the purposes of NP pricing in ComReg Document No. 07/21. The outcome of that consultation resulted in a decision to allow the incremental (i.e. short term volume dependent) administrative cost to the donor operator of per-line enabling/transaction costs. It followed that all other costs were not to be recovered via the wholesale NP charge. In addition, it is also worth noting that the exclusion of new entrant costs appears more consistent with ensuring that customers are not dissuaded from making use of the facility of number portability.

This operator also raised the point that '*large fixed costs in mobile porting only arise because of the system architecture and processes required by ComReg's mandated porting obligations'*. ComReg is of the view that the MNP process and system architecture were agreed by industry. ComReg did ensure full implementation of MNP in a timely manner and in doing so set out a timeframe for implementation of the various stages of the process. However, ComReg did not mandate specific processes or system architecture for MNP, this was agreed by industry.

The same operator raised the point that the cost of strategy support staff costs should be recoverable as part of the MNP charge. These costs included the cost of regulatory support staff. ComReg believes that strategy support and regulatory support staff costs are incurred by the operator regardless of volume activity within the different services. ComReg further believes that these costs are common costs of the business and are not related to the specific service of number portability but rather related to the general cost of doing business. This operator also raised the point that the training costs for porting support staff should be an allowable cost as part of the MNP charge. ComReg has discussed, at the beginning of this section, the point regarding its view that the training costs for customer care staff is not a cost of the wholesale business and should therefore not be recovered as part of a wholesale MNP charge. The operators point regarding the recoverability of training costs for porting support staff on the basis that porting support staff requires additional training from that of the customer service duty is not relevant as these training costs must be incurred regardless of volume activity. ComReg believes that it is clear that movements in porting volume will not have a knock-on effect on the movements on training costs. On this basis ComReg believes that such costs should not be recovered as part of the MNP charge.

In conclusion to the points raised, ComReg is of the view that the only relevant costs, following from its Specification of 30 November 2007, for the pricing of MNP are the cost of the porting support staff, the IT support staff, invoice production (or billing) and the cost of calls for single and multi port wholesale escalations. All other costs are deemed irrelevant in terms of setting the cost oriented MNP charge. It is also worth noting that as acknowledged in paragraph 34 of the ruling in the Mobistar case, ComReg as the NRA has discretion in relation to portability charges.

4.2 Fixed operator relevant costs

4.2.1 SUMMARY OF CONSULTATION PROPOSAL

Table 2 below sets out the types of costs submitted by the fixed line operators in demonstrating how their costs were compatible with the Specification on the cost orientation obligation in relation to the pricing of fixed NP. ComReg assessed the costs submitted by the fixed operators and it then detailed in the table below its view as to the appropriate treatment of each of the costs.

In ComReg's view, the majority of the costs listed (below) were not incremental administration costs and were therefore not relevant in setting a cost oriented fixed NP charge. ComReg in its Specification described the cost categories relevant to NP and specifically stated that the only cost category relevant for the pricing of NP was the incremental administration cost, to the donor operator, of per line enabling. The table below sets out the proposed treatment of each of the costs submitted by the fixed operators into the relevant cost categories for NP.

Table 2: ComReg's assessment of the costs submitted by the fixed operators

	ComReg's Cost Categories for NP	**General System Provisioning Costs (B)**	**Per-line Enabling/ Transaction Costs -. Incremental (A)**	**Per-line Enabling/ Transaction Costs -. Non Incremental (B)**	**Central Database Costs (B)**	**Ongoing Routing Costs (B)**
	Fixed Operator Costs Submitted					
1	Provisioning i.e. support staff costs		**X**			
2	Product Management			**X**		
3	Marketing & Sales*					
4	Operations i.e. SLA[11] work			**X**		

Note to references used in table 2, above.

(A) – Allowable Costs

(B) – Disallowed Costs

* - This cost is not a wholesale cost and therefore is not relevant in determining a wholesale fixed number porting charge.

(A) *Proposed Allowable Costs*

The main costs submitted by the fixed operators and which ComReg believes fall within the allowable cost category include the following:

- Porting support staff.

ComReg is of the view that the only allowable cost, based on the actual costing data of the fixed operator submissions, is the incremental administration costs of support staff involved in exporting the number. These incremental costs relate to the cost of FTE staff. These costs are incremental, volume dependent, administration costs which in ComReg's view should be recovered by the donor operator in relation to ports out.

4.2.2 *Consultation Question*

Q.3. Do you agree with ComReg's views on allowable costs, in the context of fixed number porting, considered by ComReg (in table 2)? Please state the reasons for your response.

[11] Service Level Agreement.

4.2.3 Views of Respondents

All five operators who provided a response to this specific question agreed with the allowable costs as set out by ComReg.

One operator believed that only genuine staff costs associated with supporting number porting on an ongoing basis should be included. This operator did not agree that IT support staff costs which are already on the payroll should be included as a variable cost. A second operator did not agree that product management costs, sales and marketing costs and operations costs were not recoverable through the NP price. This operator also raised its concern that it was not allowed to recover overhead costs.

4.2.4 ComReg's Position & Conclusion

ComReg will discuss, in section (B) below, its views regarding the issues raised by one of the fixed operators on the disallowed costs i.e. product management costs, sales and marketing costs, operations costs and general overhead costs.

With regard to the point raised by one operator whereby it did not agree that IT support staff costs should be included as part of the fixed number porting charge, ComReg is of the view that provisioning costs for fixed number portability includes the FTE costs for all relevant support staff. IT support maybe considered necessary if a porting issue arises which is of a technical nature and it is therefore necessary to escalate the issue to the IT support staff for resolution. It is also worth noting that as acknowledged in paragraph 34 in the ruling of the Mobistar case, ComReg as the NRA has discretion in relation to portability charges. The IT support staff costs have been considered by ComReg in setting the relevant fixed number porting charge(s).

(B) Proposed Disallowed Costs

4.2.5 Summary of Consultation Proposal

ComReg believed that a number of the costs, submitted by the fixed operators, were not compatible with the Specification on the cost orientation obligation in relation to NP. These disallowed costs included the following:

- Product management costs;
- SLA costs; and
- Marketing and sales costs.

With regard to disallowed costs, ComReg was of the view that the cost of product management and related SLA work were not incremental costs and were therefore not allowable in determining the charge for fixed NP. In ComReg's opinion these costs were incurred regardless of the fluctuations in the volumes of ports out. ComReg was of the view that marketing and sales costs were retail costs and therefore these costs were not relevant in determining a wholesale fixed number porting charge.

4.2.6 Consultation Question

Q.4. Do you agree with ComReg's views on disallowed costs, in the context of fixed number porting, considered by ComReg (in table 2)? Please state the reasons for your response.

4.2.7 VIEWS OF RESPONDENTS

Four operators provided a response to this specific question. Of the four responses, three of the operators agreed with the disallowed costs.

The other respondent did not agree with ComReg on the basis that ComReg disallowed operational pay costs and relevant overhead costs. This operator believed that ComReg appeared to be adopting this position on the basis that the price should only recover short term volume dependent costs because the volatile nature of the volumes ported means the inclusion of long term/fixed costs would cause the unit price to fluctuate excessively. However, this operator maintains that ComReg has defined short term volume dependent costs in too strict a sense and that it is appropriate to recover some ‘overheads’ from pay. The operator further believed that in any pricing model some overheads move in line with pay costs and such costs should, accordingly, also be considered to be ‘volume dependent’. It added that the inclusion of such costs would not result in changes in the pattern of unit costs but rather ‘pay and overheads’ would move in line with changes in volumes, contributing to a stable pattern of unit costs while ensuring that the resulting prices contribute to full cost recovery for service providers.

The same operator also raised a point regarding wholesale product management staff costs. These costs relate to staff involved in the porting process to the extent that clarifications are often sought on the appropriate procedures to follow in more complex porting scenarios. The operator also raised the point that the sales and marketing costs relate to the handling of porting escalations and complaints raised through the account management process. On the other hand the wholesale operations staff are involved in the porting process insofar as they produce and issue SLA reports and any queries arising from these reports.

Another issue raised by this respondent related to recovery of overhead costs. The operator maintained that some of these overhead costs are short term volume dependent including such costs as IT, accommodation, supervision, pension liability and HR costs. This operator proposed that if these overhead costs are not recovered from NP that it intended recovering these costs from interconnection conveyance costs.

Another point raised by the operator related to the cost orientation obligation. The operator stated that its position in relation to the appropriate charge for NP could not be extended to the issue of the determination of a cost oriented price on the basis of an obligation of cost orientation imposed following a finding of Significant Market Power (‘SMP’). In particular, where this operator is required to offer a wholesale or interconnect service at a cost oriented price following a finding of SMP in a designated market such a cost oriented price must recover all efficiently incurred overhead costs – including a reasonable rate of return on capital employed. It further added that the difference between these situations in respect of setting a cost oriented price has been recognised by the ECJ in Mobistar and the Arcor judgments.

4.2.8 COMREG’S POSITION & CONCLUSION

ComReg has a number of points to discuss in relation to the issues raised by one of the fixed operators regarding the proposed disallowed costs. This operator believed that wholesale product management costs, sales and marketing costs and wholesale operations costs should be recovered as part of the NP charge. This operator explained that the cost of wholesale product management related to clarifications sought on the appropriate procedures to follow in more complex porting scenarios. However, ComReg is of the view that these are not incremental costs as management costs are in fact common costs of the business which, in effect, will not fluctuate with volume activity of ports. This operator also believed that sales and marketing costs should be allowed on the basis that the costs related to porting escalations and complaints raised. ComReg is of the view that escalations to the sales and marketing department indicate queries of a retail nature, relating specifically to the needs of the customer, which should not be recovered through a wholesale charge. The operator also believed that wholesale operations costs should be included on the basis that staff is involved in the porting process insofar as they produce and issue SLA reports as well as follow-up queries in relation to these reports. However, ComReg does not believe there is a direct link between the porting volume activity and the cost of producing SLA reports. ComReg is clearly of the view that these costs will not fluctuate with changes in the volume of ports out and therefore should not be recovered as part of the NP charge. The operator will need to prepare SLA reports each month regardless of whether it processes ten orders or one hundred orders.

This same operator also believed that it was appropriate to recover overhead costs from the NP charge. These overheads included such costs as accommodation, supervision, pension liability and HR costs. However, ComReg is of the view that these costs are not incremental costs and will not fluctuate with a change in the volume of ports out i.e. a movement in volumes of ports out will not cause a fluctuation in the cost of accommodation. On this basis ComReg is of the view that the overhead costs should not be recovered as part of the NP charge as these costs are not incremental costs. In addition, the operator stated that if these overhead costs were not recovered as part of the NP charge that it proposed to recover these overheads through the carrier administration charge for call conveyance. However, ComReg does not agree with this proposal. In essence, these costs are the cost of doing retail business and ComReg is of the view that these costs cannot be incurred by other operators via the interconnection conveyance charges.

The same operator also raised the point that its position in respect of the appropriate charge for NP cannot be extended to the issue of the determination of a cost oriented price on the basis of an obligation of cost orientation imposed following a finding of Significant Market Power (‘SMP’). ComReg is of the view that the definitions of cost orientation in other Directives and in the Judgement of the Court in *Arcor* are not directly applicable to Article 26 of the Universal Service Regulations. Conversely, the requirements of the Universal Service Regulations will not necessarily apply in a different context. In interpreting the requirement of cost orientation as that term appears in Regulation 26(2), regard must be had to the context in which it is used and the objective of the Directive. The objective of number portability under the Universal Service Regulations is to ensure that all subscribers of public telephone services can retain their numbers irrespective of the undertaking providing the service[12]. It is described as ‘a key facilitator of consumer choice and effective competition in a competitive telecommunications environment…’[13]. The principle of cost orientation is

[12] Universal Service Regulations, Regulation 26(1).

[13] Universal Service Directive, Recital 40.

coupled with the requirement that direct charges to subscribers, if any, do not act as a disincentive for the use of number portability. This context highlights that the focus of number portability is upon consumer choice and the costs of this facility should not impede its availability. ComReg considers that it is for the NRA to determine how this balance should be struck in the particular context of Universal Service Regulations and the objectives of number portability.

5 Setting a cost oriented charge for fixed and mobile number porting

5.1 Efficient Operator Basis

Following ComReg's review of the operator submissions in relation to the relevant NP costs and an insight into the processes involved in porting as well as a detailed review of the level and type of costs incurred, ComReg remains of the opinion that the charge(s) for NP should be those of an efficient operator. ComReg had considered the concept of operator efficiency in evaluating the operator costs submitted as part of the price submissions. The mobile number porting system employed in Ireland is a highly automated system. The current fixed number porting system used by Eircom is semi automated, in that the single geographic ports are processed through an automated system and the bulk ports through a manual system. Based on discussions with Eircom, it appeared that due to the complexity of fixed number porting, some level of manual intervention was required with regard to bulk ports. However, ComReg stated at that time that Eircom must justify to ComReg, why the automated system is not used for all ports i.e. single and bulk. In addition, ComReg also requested that Eircom demonstrate to ComReg how the charges for bulk ports were compatible with ComReg's Specification of a fully efficient number porting process. As part of the consultation ComReg requested operator views with regard to operator efficiency. This is discussed further below.

5.2 Cost Modelling

Based on ComReg's review of the operator submissions, it was ComReg's view that an independent price model was not necessary in determining the charge for fixed and mobile number portability on the basis that the process was simply an evaluation of actual incurred costs. This is further reflected in the details contained below.

5.3 Standards of Efficiency

With regard to the standards of efficiency, ComReg identified three alternatives. Firstly an independent "abstract" model of costs may be used. Secondly, the most efficient operator's costs could be used as the basis for all NP charges. Both of these approaches would imply uniformity of tariffs across operators. The third alternative would be to define "efficiency" such that it reflected the scale of the operator in question. This would only make sense if scale effects were significant, which is unlikely if only volume dependent costs are at issue.

ComReg remains of the view that applying different standards of efficiency would only make sense if scale effects were significant. ComReg considers that this is unlikely to be the case if inter operator charges are recovered by volume dependent per enabling transaction costs.

5.4 Pricing Structure for NP

5.4.1 Summary of Consultation Proposal

In the initial Consultation Document No 07/21 and the Response to Consultation Document No 07/98, ComReg discussed two possible charging methods for NP. One option was a charge based on a simple/single pricing structure for all types of processes, regardless of the level of activity involved or outcome. Another option was to have different charges depending on the outcome (i.e. one charge for a correct type of port and another charge for failed ports etc.).

In the operator responses to ComReg's initial consultation document, ComReg noted that the majority of mobile operators favoured a simple pricing approach as they believed it is more efficient and easy to manage. On the other hand Eircom believed that multiple charges are required for fixed number porting, especially considering the high level of ports failing validation. Currently the fixed number porting charges are included in Eircom's Reference Interconnect Offer[14] ('RIO'), Eircom suggested simplifying the current price structure by withdrawing charges for services that are largely unused. Eircom proposed withdrawing the charges for '2 Day Deferred Port' as there has been no orders for this type of port during the last year. In addition, this operator also proposed removing two of the multiple Caller Line Identity ('CLI') port categories as there are very few orders processed under two of these CLI categories. Eircom therefore proposed that the revised pricing structure should include three levels of charges for CLI's, one for a single CLI, one for CLIs between 2 and 100 and a third category for CLIs greater than 100. Table 3 below includes the current RIO categories of charges for fixed GNP.

Table 3: ComReg proposed pricing structure for fixed GNP

GNP Transaction Type	**1 CLI 100%**	**2-5 CLIs 90%**	**6-30 CLIs 70%**	**31-100 CLIs 40%**	**101+ CLIs 15%**
(1) Normal Hours Validated and Rejected (A)	**X**	**X**	**X**	**X**	**X**
(2.1) Normal Hours Completed	**X**	**X**	**X**	**X**	**X**
(2.2) Outside Of Normal Hours Completed	**X**	**X**	**X**	**X**	**X**
(3.1) Normal Hours Completed Deferred Port 2 HR	**X**	**X**	**X**	**X**	**X**
(3.2) Outside Normal Hours Completed Deferred Port 2 HR	**X**	**X**	**X**	**X**	**X**
(4.1) Normal Hours Completed Deferred Port 2 DAY	**X**	**X**	**X**	**X**	**X**
(4.1) Outside Normal Hours Completed Deferred Port 2 DAY	**X**	**X**	**X**	**X**	**X**
(5.1) Normal Hours Cancel	**X**	**X**	**X**	**X**	**X**
(6.1) Normal Hours Emergency Cancel	**X**	**X**	**X**	**X**	**X**
(6.2) Out of Normal Hours Emergency Cancel	**X**	**X**	**X**	**X**	**X**

[14] http://www.eircomwholesale.ie/dynamic/pdf/eircomRIOPriceList%202.23Unmarked.pdf

In the case of NGNP, included under Service Schedule 301 in Eircom's RIO, currently only one charge is applicable for the successful porting of a non-geographic number. However, ComReg believed that with an increase in Voice over Internet Protocol ('VoIP') Technology in the future there maybe an increase in the demand for the '076' number range which in effect would increase volumes for NGNP. If this were the case it maybe necessary to have a price structure similar to that of GNP in place. This would therefore accommodate the various outcomes from the porting of a NGNP (or '076') number.

5.4.2 CONSULTATION QUESTIONS

Q.5. Do you agree that the existing price structure for GNP, in table 3 above, remains appropriate? If not please provide suggested amendments in your response.

Q.6. Do you agree with Eircom's proposal to withdraw the category of charges for '2 Day Deferred Port' on the basis that there is currently no industry requirement for this type of port? Do you believe that the current categories of CLI's i.e. 1 CLI, 2-5 CLIs, etc should be refined to just three categories of CLIs i.e. 1 CLI, 2-100 CLIs and 101+ CLIs? Please provide a detailed response to both questions.

Q.7. Do you believe that there should be a similar pricing structure, to that of GNP, for NGNP services? Under what circumstances do you believe a detailed price structure for NGNP services is warranted? Please provide a detailed response to both questions.

5.4.3 VIEWS OF RESPONDENTS

With regard to Q5, five operators provided a response. Three of the operators agreed with the current structure for fixed number porting. One of the other operators believed that to date there is no demand for either the normal hours or outside normal hour versions of the 2 day deferred port option and it proposed that this option be withdrawn. Another operator believed that a charge for completing number ranges is appropriate e.g. a range of 100 numbers costs 100 times one number currently but the effort involved is the same or even less.

With regard to Q6, all five respondents agreed that the 2 day deferred port should be withdrawn. With regard the proposal to refine the categories of CLIs into 1 CLI, 2-100 CLIs and 101+ CLIs, four operators responded. Three respondents agreed that refining the categories was appropriate while the fourth respondent agreed with ComReg that no change in the current structure should be implemented until operator's views are known. One of the operators that agreed with refining the categories of CLIs stated that the current 2-100 CLI category represented c. 20% of total volumes. This operator further added that the new price for this extended category is the weighted average price of its constituent parts.

With regard to Q7, four operators provided a response. Three of these operators agreed that the same pricing structure should be used for NGNP as that currently used for GNP. The fourth respondent disagreed as it was of the view that the single charge for NGNP should remain in place until volumes grow to a level requiring pricing differentiation.

5.4.4 ComReg's Position & Conclusion

Overall the majority of respondents were in agreement with the pricing structure for GNP. All of the respondents agreed with Eircom's proposal to withdraw the category of charges for '2 day deferred port' on the basis that there was no demand for this particular porting service. ComReg agree that the revised pricing structure should therefore reflect the withdrawal of this porting type. In addition, the majority of respondents agreed that the current categories of ports i.e. 1 port, 2 – 5 ports, 6 – 30 ports, etc. should be refined to three categories of ports which should include 1 port, 2-100 ports and beyond 100 ports. ComReg agree with the refinement of the categories of ports on the basis that the volume of ports within the category 2-100 is relatively low. On the basis of the operator comments, the table below sets out the category of ports going forward.

GNP Transaction Type – Per CLI	**1 CLI**	**2-100 CLIs**	**101+ CLIs**
(1) Normal Hours Validated and Rejected (A)	**X**	**X**	**X**
(2.1) Normal Hours Completed	**X**	**X**	**X**
(2.2) Outside Of Normal Hours Completed	**X**	**X**	**X**
(3.1) Normal Hours Completed Deferred Port 2 HR	**X**	**X**	**X**
(3.2) Outside Normal Hours Completed Deferred Port 2 HR	**X**	**X**	**X**
(4.1) Normal Hours Cancel	**X**	**X**	**X**
(5.1) Normal Hours Emergency Cancel	**X**	**X**	**X**
(5.2) Out of Normal Hours Emergency Cancel	**X**	**X**	**X**

With regard to the pricing structure for NGNP, the majority of respondents agreed that the pricing structure should be similar to that of GNP and ComReg agrees with this. However, on the basis that current volumes for NGNP are low, ComReg is of the view that it should revisit the pricing structure for NGNP if it becomes apparent that volumes are rising. Additional volume activity for NGNP is possible, given the increase in VoIP technology and the related increase in the demand for the '076' number range. In the interim, ComReg will monitor potential volume growth relating to NGNP and will revisit the pricing structure once volumes reach a more significant level.

5.5 Setting a maximum charge

5.5.1 Summary of Consultation Proposal

In the Mobistar case it was clarified that 'Article 30(2) of [The Universal Service Directive] does not preclude the adoption of a national measure laying down the specific method to be used in calculating costs and which fixes in advance and on the basis of an abstract model of the costs, *maximum prices* which may be charged by the donor operator to the recipient operator as set up costs, provided that the prices are fixed on the basis of the costs in such a way that consumers are not dissuaded from making use of the facility of portability'.

On the basis of the clarification provided by the ECJ, ComReg was of the view that consideration should be given to the proposal of a maximum charge for fixed and mobile number porting. This would not therefore preclude the possibility that some operators might have lower costs and might be in a position to set lower charges.

5.5.2 *Consultation Questions*

Q.8. Do you agree that a maximum charge is appropriate in setting a charge(s) for fixed and mobile number porting? If not please provide detailed reasons in your response.

5.5.3 *Views of Respondents*

Of the six operators that responded to this question all operators were in agreement that a maximum charge should apply.

One operator commented that it agreed with the concept of a maximum price but stated that if a maximum price is set companies will charge the maximum price irrespective of their operating costs. Another operator agreed that a maximum charge should be set to recover the costs of an efficient operator in the relevant market with a sustainable market share. It further added that the determination of this level of cost is usually determined by an abstract modelling exercise that uses cost inputs from the incumbent – or SMP – operator but models the volume effects for a hypothetical operator with average market share. This operator also stated that to allow any operator to charge more than this level sends inappropriate economic signals – with a risk of encouraging inefficient entry. Certain operators may achieve lower unit costs from time to time – due to high volumes of porting activity and consequent scale effects. They may opt to raise a lower charge but should always be allowed to raise the maximum charge as the volume effects reducing their unit porting costs may be temporary. The unit cost of all operators will tend to be the correct level of the charge over time.

5.5.4 *ComReg's Position & Conclusion*

Further to the operator responses, ComReg is of the view that a maximum price is appropriate and allows those operators with lower costs to charge a lower per unit price for NP. ComReg's review of the fixed and mobile number porting charges involved a review of the costs incurred by a range of operators, including the significant fixed and mobile operators in the market. The number porting charges set by ComReg take into consideration the scale of the allowable costs incurred by the various operators as well as the porting out volumes achieved by these operators. A modelling exercise was not deemed necessary in setting the NP charges on the basis that the allowable costs were specific and easily identifiable.

It is of note that all operators must ensure compliance with the cost orientation obligation relating to the pricing of number portability consistent with ComReg's Specification of 30 November 2007.

5.6 Determination of a cost oriented charge

As part of the consultation ComReg included the detail of its review of the individual operator submissions with its assessment of the costs submitted and its proposed treatment in relation to each cost i.e. allowable costs and disallowed costs. The detail outlined below includes ComReg's proposed charges in relation to fixed and mobile number porting, operator responses to the consultation and ComReg's position and conclusion in this regard.

MOBILE NUMBER PORTING CHARGE

5.6.1 SUMMARY OF CONSULTATION PROPOSAL

In the Consultation Document No. 08/65, ComReg set a range of possible MNP charges based on actual cost of €1.92 to €2.54. ComReg proposed to take the weighted average by volumes[15] of the relevant mobile operator's actual costs as adjusted to comply with ComReg's Specification of 30 November 2007. This worked out at a maximum charge of €2.05 per port to be levied only by the operator losing the customer.

5.6.2 CONSULTATION QUESTION

Q9. Do you agree, on the basis of the assessment carried out by ComReg, that a cost oriented maximum charge of €2.05 should apply to all mobile number ports out? If not please provide a detailed response.

5.6.3 VIEWS OF RESPONDENTS

Of the six respondents, four operators agreed with the proposed maximum charge of €2.05 while two of the respondents disagreed.

One of the operators that agreed to the maximum charge of €2.05 further added that ComReg should go further and abolish the MNP charge altogether. This operator believes that the charge is anti-competitive and anti consumer and prevents it from bringing further value to the Irish mobile market. One of the other operators that agreed believed that it is essential that an inter-operator number portability charge is set as low as possible and to date the MNP charge has been excessive and has not reflected the incremental cost of porting numbers. It also added that the proposed charge of €2.05 should be further reduced in the future should the costs of providing this service reduce.

Of the two respondents that disagreed with the charge, one of the respondents believed that a single market charge should apply to all mobile operators but believed that due to the restricted definition of the allowable costs applied by ComReg and on the basis that some of the operator incremental costs were excluded that the maximum charge

[15] This is volumes of ports out.

of €2.05 was incorrect. The second respondent to disagree also stated that it agreed that a cost oriented maximum charge should apply but did not agree to the level of the charge at €2.05 on the basis that this charge does not cover all of the relevant costs associated with porting out and costs which should be recovered from the recipient operator. This same operator re-iterated the ruling by the ECJ whereby it stated that '*Article 30(2) of the Directive 2002/22 does not preclude the adoption of a national measure laying down the specific method to be used …………, <u>provided that the prices are fixed on the basis of the costs in such a way that consumers are not dissuaded from making use of the facility of portability</u>*'. The operator believed that there was no evidence that the original mobile port charge dissuaded customers from making use of the facility. It further added that the charge was not set at a level that obliged recipient operators to charge the porting customer for the service or which proved to be a barrier to competition. It therefore believed that ComReg has no grounds arising from the Mobistar judgement, for refusing to allow operators to recover a portion of their fixed costs from the recipient operator through the port charge. It also believes that the Mobistar judgement clearly supports the Vodafone position that the set up costs for a new entrant are recoverable, as are the incremental costs associated with porting an additional number.

5.6.4 *ComReg's Position & Conclusion*

With regard to the point raised by one operator that the MNP charge should be abolished altogether, ComReg is of the view that it was clear from the judgement of the ECJ on the Mobistar case that it accepted that there was some cost involved in providing a MNP service and that some of these specific costs should be recovered via the MNP charge. Following on from the Mobistar case ComReg, in Document No. 07/98, specified the costs to be recovered as part of the NP charge. Further to this ComReg requested operators to submit the relevant cost details in relation to Specification 1 of ComReg Document No. 07/98. Based on ComReg's review of the operator submissions, ComReg determined the appropriate level of the MNP charge. Operators should therefore be allowed to recover up to a maximum of €2.05 for porting numbers outwards. As pointed out in previous sections, the onus of the cost orientation obligation is with the individual fixed and mobile operators providing a NP service. The maximum charge that an operator can pass on for MNP is €2.05. However, if an operator's costs are at a lower level than the maximum charge then an operator can pass on the lower charges to other operators. It is anticipated that this charge will remain in place for a period of two to three years. However, in the meantime if exceptional circumstances arise which warrant a further review then ComReg may initiate a review if it is deemed necessary.

One of the operators that disagreed with the proposed maximum MNP charge of €2.05 believed that there was no evidence that the current charge dissuaded customers from porting their number. However, ComReg is of the view that customers were not aware that these charges were indirectly passed onto them and therefore there was no issue on the basis that the customer were not charged a direct fee for porting their number to another operator. A second point raised by the same operator related to its view that the set up costs as well as the incremental costs of porting an additional number should be recovered as part of the NP charge. As already discussed in section 4.1.8, and as acknowledged by the court in the ruling of the Mobistar case ComReg as the NRA has discretion in relation to portability charges. ComReg consulted on the cost categories relevant to NP as part of ComReg Document No. 07/21. A specification as to the relevant costs has already been set out in Document No. 07/98. These costs are specifically *the incremental (i.e. short term volume dependent) administrative cost to the donor operator of per-line enabling/transaction costs.* ComReg sees no reason to revisit this Specification at this stage.

FIXED NUMBER PORTING CHARGE

5.6.5 SUMMARY OF CONSULTATION PROPOSAL

In the consultation document ComReg set out, as detailed in section 4.2.1 above, the proposed allowable costs in determining a cost oriented charge in the context of fixed number porting. The proposed allowable costs in the context of fixed number porting included the incremental cost of support staff time on porting out. Only the incremental, short term volume costs, administration costs were allowable as part of the proposed charge for fixed number porting. ComReg also pointed out that the operators' allowable costs for the purpose of the cost orientation obligation for NP should be based on those of an efficient operator i.e. the charge to be recovered should be based on the assumption that a fully efficient NP process is in place. One of the fixed operators presented costs which appeared to be considerably in excess of industry best practice. ComReg discounted this submission on that basis. In addition, the submission from Eircom in relation to fixed number porting indicated that single number ports were based on an automated system while bulk porting involved technical manual handling. It appeared that due to the nature of the bulk geographic number ports relating to Internet Service Digital Network ('ISDN') lines, manual intervention was required for successful completion of the order. However, ComReg stated that it needed to understand how the charges proposed for bulk porting complied with the Specification with regard to '*fully efficient number porting process*' and the reasons why the bulk porting process was not automated, similar to the single porting process. The charges proposed by ComReg for bulk ports were based on the inclusion of a manual handling cost. It appeared that the system employed by BT in the UK was largely manual for fixed number porting, depending on the volumes of ports. The current Openreach charges reflect a lower charge for a single line geographic port while geographic ports of multi lines are based on higher charges. This appeared to reflect similar charging for fixed number porting (geographic) applied by Eircom.

With regard to NGNP, ComReg proposed a maximum charge of €5.74 which related to a single port with successful completion. ComReg also proposed a maximum charge for GNP in the context of Unbundled Local Metallic Path ('ULMP') or GLUMP (GNP + ULMP). The proposed maximum charge was €3.50. The reduced charge for GNP in the context of GLUMP compared to standard GNP was due to the efficiencies achieved by Eircom in combining the services together, as compared to providing the two services separately.

ComReg also highlighted that in its assessment of the allowable costs it had only considered those costs that were consistent to ComReg's Specification on cost orientation. The maximum charges proposed by ComReg for fixed number porting are set out in the tables below.

Table 4: ComReg proposed charges for fixed GNP

GNP Transaction Type – Per CLI	1 CLI	2-5 CLIs	6-30 CLIs	31-100 CLIs	101+ CLIs
(1) Normal Hours Validated and Rejected (A)	**1.15**	**2.79**	**2.17**	**1.24**	**0.46**
(2.1) Normal Hours Completed	**4.02**	**11.27**	**8.77**	**5.01**	**1.88**
(2.2) Outside Of Normal Hours Completed	**6.03**	**16.90**	**13.15**	**7.51**	**2.82**
(3.1) Normal Hours Completed Deferred Port 2 HR	**4.83**	**13.52**	**10.52**	**6.01**	**2.25**
(3.2) Outside Normal Hours Completed Deferred Port 2 HR	**7.24**	**20.28**	**15.78**	**9.02**	**3.38**
(4.1) Normal Hours Completed Deferred Port 2 Day	**5.63**	**15.78**	**12.27**	**7.01**	**2.63**
(4.2) Outside Normal Hours Completed Deferred Port 2 Day	**8.45**	**23.67**	**18.41**	**10.52**	**3.94**
(5.1) Normal Hours Cancel	**1.15**	**2.79**	**2.17**	**1.24**	**0.46**
(6.1) Normal Hours Emergency Cancel	**4.02**	**11.27**	**8.77**	**5.01**	**1.88**
(6.2) Out of Normal Hours Emergency Cancel	**6.03**	**16.90**	**13.15**	**7.51**	**2.82**

Table 5: ComReg proposed charge for NGNP

Non-Geographic Number Portability (successful port)	**€5.74**

Table 6: ComReg proposed charge for GNP in context of GLUMP

GNP charge in context of GLUMP	**€3.50**

5.6.6 CONSULTATION QUESTIONS

Q.10 Do you agree, on the basis of the assessment carried out by ComReg, that the charges proposed in table 4 (page 23) should apply to all fixed operators in relation to ports out for GNP? If not please provide a detailed response.

Q. 11 Do you believe that the charges for the bulk porting of geographic numbers should include the cost of technical manual handling? Please provide a detailed response.

Q.12 By including the cost of technical manual handling, do you believe that the charges for bulk ports are in line with Specification 1[16] relating to a 'fully efficient number porting process'? Please provide a detailed response.

Q.13 In terms of the current fixed number porting system used by Eircom, is it reasonable to automate single geographic number ports but require manual intervention for bulk ports? Please provide a detailed response.

Q. 14 Do you agree, on the basis of the assessment carried out by ComReg, that the charges proposed in table 5 (page 23) should apply to all fixed operators in relation to successful ports out for NGNP? If not please provide a detailed response. In addition, do you believe that there should be a multiple charges, similar to GNP, for NGNP services? Please provide a detailed response.

Q.15 Do you agree, on the basis of the assessment carried out by ComReg, that the charge proposed in table 6 (page 23) for GNP in the context of GLUMP is appropriate and reasonable? If not please provide a detailed response.

5.6.7 VIEWS OF RESPONDENTS

Of the four operators that responded to these questions regarding the proposed prices for fixed geographic number porting, two of the operators agreed with the proposed charges while one operator disagreed and another operator believed that the charges should be lower. One of the operators to agree with the proposed charges noted one exception to this. The operator stated that porting a block of numbers (i.e. 100 numbers) is easier than porting 10 or 23 numbers whereas the proposal was that the cost of porting 23 numbers should be less than porting a single block of 100 numbers. Therefore this operator proposed that the block of 100 numbers should be treated differently as they are much easier to route. This should be a standard charge and, according to this operator, it should be cheaper i.e. less than €50 as a single port is only €5. The operator that disagreed with the proposed charges for GNP referred to its comments made in relation to Q4, at Section 4.2.7. This operator disagreed on the basis that it does not believe that overhead costs and certain pay costs, as submitted by it, should be disallowed as part of the price of fixed number portability.

With regard to Q11, two operators agreed that it is reasonable to include the cost of technical manual handling of bulk porting of numbers while two operators believed that it was not. One of the operators that believed that the cost of technical manual

[16] ComReg document no 07/98, 30 November 2007.

handling should be included stated that due to the nature of these bulk orders, it was not possible to easily automate the process and that the technician plays an integral part in the porting process. It further added that current demand for bulk orders is low and these orders can be extremely complicated to process. The operator also stated that due to the nature of the system used that it was unable to validate the main numbers against their Direct Dial In (‘DDI’). Automation of this process would require very significant system changes and the operator believed that the system was the most efficient under the circumstances. The other operator that believed that the technical manual handling costs should be included in the charge for bulk ports stated that it should be included if it is a justifiable process and cost. Of the two operators to disagree, one operator believed that bulk porting should be done using an automated process and the costs reduced accordingly. The other operator disagreed on the basis that the charges should be based on efficient operator theory.

With regard to Q12, two operators believed that by including the technical manual handling costs the charges for bulk porting were in line with the fully efficient number porting process. One operator disagreed while another operator expressed its lack of clarity on why the porting of multiple numbers was based on a manual process while the porting of single numbers was automated. One of the operators that believed the charges were in line with efficiency even by including the technical manual handling costs re-iterated the point that the NP processes are varied and complex and for these reasons defy attempts at full automation. It also added that bulk number ports are low and orders are extremely complicated. The operator maintained that system changes would be very significant and could not be justified. It believed that the process was efficient and effective given the nature and the volume of OAO activity.

With regard to Q13, three of the operators believed that it is reasonable to have an automated process in place for single ports and a manual process for bulk ports. One of the operators re-iterated the significant complexities involved in automating the process. It also added that current orders for GNP bulk ports are low in number and intermittent in nature. It maintained that these orders, which were often weeks apart, can be satisfactorily accommodated without any reduction in service to OAOs. It also stated that it is currently monitoring its processes and if volumes increase to such an extent as to justify an automated process, then it will act accordingly. One of the operators again stated that it was not clear to it why porting of multiple numbers was based on a manual process while porting of single numbers is automated. It believed that it was common process in the telecoms industry for an efficient operator to automate such processes.

With regard to Q14, two operators agreed with the proposed charges for NGNP. One operator disagreed and believed that the charge for NGNP should be reduced in line with the charges for geographic number portability. The fourth operator did not agree with the charges proposed by ComReg. As already discussed above, this operator disagreed on the basis that it believed that such costs as overheads and certain pay costs, as submitted by it, should be recoverable as part of the number porting charge. Please refer to the details already outlined at section 4.2.7 above. Only three of the four operators provided a response regarding the pricing structure for NGNP. All three respondents believed that the pricing structure for NGNP should be similar to that of GNP.

With regard to Q15, three of the respondents agreed with the proposed GNP charge in the context of GLUMP of €3.50. One of the operators disagreed and was of the view that the charge should be reduced to €2.05 in line with the mobile porting charge as the process for an efficient operator should be equivalent in the mobile and fixed networks.

5.6.8 ComReg's Position & Conclusion

ComReg disagrees with the operator who raised the point that the fixed NP maximum charges should be the same as the maximum MNP charge of €2.05. ComReg disagree on the basis that the systems and processes used for fixed and mobile number porting are different and as a result the charges should reflect this. As noted in Consultation Document No. 08/65, the system used for MNP is a highly automated system while the fixed NP system is a semi automated system. The charges set out by ComReg therefore reflect these differences.

ComReg has addressed, in section 4.2.8, the issues raised by one of the fixed operators regarding the costs which have been disallowed in determining the maximum cost oriented charge for fixed NP.

In terms of the points raised by fixed operators regarding the inclusion of technical manual handling charges as part of the fixed NP bulk charge, ComReg believes that a fully automated fixed number porting system is not justifiable for fixed bulk ports at this current time. Based on ComReg's review of the operator's fixed porting volumes, it was evident that fixed porting volumes for bulk ports were relatively low. ComReg does not currently believe that the benefits of a fully automated fixed porting system would outweigh the costs of implementing such a system based on the currently low volumes of fixed bulk ports. As pointed out by ComReg in Document No. 07/98, ComReg consider that it may well be disproportionate in cases where there are relatively few numbers of ports to insist that the NP process should be based on an automated process to ensure efficiency across the fixed and mobile sectors. It appears reasonable that the semi automated system, currently in place, for bulk ports is appropriate. In the interim, ComReg will monitor the fixed NP volume movements and if volumes increase significantly ComReg may initiate a further review of the fixed NP process.

One of the respondents stated that it was not clear to it why porting of multiple numbers was based on a manual process while porting of single numbers is automated. Based on discussions between ComReg and the fixed incumbent it appears that due to the nature of the bulk geographic number ports relating to Internet Service Digital Network ('ISDN') lines, manual intervention was required for successful completion of the order. In addition, these orders tend to be complex in nature and the volumes of bulk ports are particularly low. ComReg believes that it does not, therefore, appear reasonable at this time to mandate automation of the fixed NP system for bulk ports.

ComReg re-iterate the points made in section 4.2.8 in relation to the point raised by one of the fixed respondents in relation to the allowable costs to be recovered as part of the NGNP charge. One of the operators believed that the NGNP charges should be reduced in line with the GNP charges. However, as ComReg understand it, the NGNP process is a largely manual process on the basis that volumes are particularly low and there is currently no justification in changing the system from a manual system to an automated system. The majority of the operators who responded to Q14 agreed that the pricing structure for NGNP should be similar to that of GNP. ComReg agree that a similar price structure to that of GNP should be implemented for NGNP, however, on the basis that current volumes for NGNP are particularly low, ComReg is currently of the view that the price structure for NGNP be further reviewed once the volumes increase. Volumes are expected to increase in the future with a rise in demand for the '076' number range.

The majority of the operators who responded to Q15 agreed that the maximum charge for GNP in the context of GLUMP at €3.50 was reasonable. One operator believed that this charge should be reduced to the MNP charge of €2.05. As discussed previously, ComReg disagree on the basis that the systems and processes used for fixed and mobile number porting are different and as a result the charges should reflect this. As noted in Consultation Document No. 08/65, the system used for MNP is a highly automated system while the fixed NP system is semi automated. The charges set out by ComReg therefore reflect these differences.

Following ComReg's review of the operator responses and the consideration given to all of the issues raised the maximum NP charges set out by ComReg will remain in place for a period of two to three years. If exceptional circumstances arise in the interim period ComReg may carry out a further review if it is deemed necessary. It should also be noted that the maximum charge(s) allow some operators to agree lower charges with specific operators.

The final maximum charges for fixed number porting are set out in the tables below. As previously set out section 5.4.4, the maximum charges for GNP reflect the proposed refinement of the categories of ports to one port, 2-100 ports and 101+ ports. In addition, the table excludes the 2 day deferred port category for GNP on the basis that there is currently no operator demand for this service.

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Table 7: Maximum Charges for fixed GNP

GNP Transaction Type – Per CLI	**1 CLI**	**2-100 CLIs**	**101+ CLIs**
(1) Normal Hours Validated and Rejected (A)	**1.15**	**1.40**	**0.62**
(2.1) Normal Hours Completed	**4.02**	**5.67**	**2.50**
(2.2) Outside Of Normal Hours Completed	**6.03**	**8.51**	**3.76**
(3.1) Normal Hours Completed Deferred Port 2 HR	**4.83**	**6.81**	**3.01**
(3.2) Outside Normal Hours Completed Deferred Port 2 HR	**7.24**	**10.21**	**4.51**
(4.1) Normal Hours Cancel	**1.15**	**1.40**	**0.62**
(5.1) Normal Hours Emergency Cancel	**4.02**	**5.67**	**2.50**
(5.2) Out of Normal Hours Emergency Cancel	**6.03**	**8.51**	**3.76**

Table 8: Maximum Charge for NGNP

Non-Geographic Number Portability (successful port)	**€5.74**

Table 9: Maximum Charge for GNP in context of GLUMP

GNP charge in context of GLUMP	**€3.50**

6 Decision: Specification

6.1 Statutory Powers giving rise to specifications

These Specifications are made by ComReg pursuant to Regulation 26(2) 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 specifies as set out below and this specification applies to an undertaking providing a publicly available telephone service including a mobile service. ComReg reserves its powers to review the maximum number porting charges within the next two to three years or within this timeframe if exceptional circumstances arise and ComReg believes that a further review is required.

MOBILE NETWORK OPERATORS

SPECIFICATION 1

ComReg hereby specifies pursuant to *Specification 1* of ComReg Decision No D05/07 and Regulation 26(2) of the Universal Service Regulations, until further specified or directed by ComReg, that charging by mobile operators for wholesale mobile number porting outwards shall not exceed a maximum charge of €2.05, from the date of this decision.

FIXED NETWORK OPERATORS

SPECIFICATION 2

ComReg hereby specifies pursuant to *Specification 1* of ComReg Decision No D05/07 and Regulation 26(2) of the Universal Service Regulations, until further specified or directed by ComReg, that charging by fixed operators for wholesale fixed number porting outwards shall not exceed the maximum charges, as set out in the tables in Appendix A of this document, from the date of this decision.

This specification is made on the 29 January 2009.

7 Regulatory Impact Assessment

7.1.1 INTRODUCTION

Regulatory Impact Assessment (RIA) is an analysis of the likely effect of proposed new regulation or regulatory change. The RIA should help identify regulatory options, and should establish whether proposed regulation is likely to have the desired impact. The RIA is a structured approach to the development of policy, and analyses the impact of regulatory options on different stakeholders.

ComReg's approach to RIA is set out in the Guidelines published in August 2007, in ComReg Document No. 07/56 & 07/56a. In conducting the RIA ComReg will take into account the RIA Guidelines[17], 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. The main objective of this review is to ensure operator submissions are in line with the Specification on cost orientation in relation to NP.

7.1.2 SUMMARY OF CONSULTATION PROPOSAL

The consultation had the following purposes:

(a) to detail ComReg's assessment of operator compatibility with the cost orientation obligation in relation to the pricing for interconnection of the provision of NP; and

(b) to propose a maximum cost oriented charge(s) for ports out for both fixed and mobile operators.

[17] See "RIA Guidelines: How to conduct a Regulatory Impact Analysis", October 2005, www.betterregulation.ie

(1) IDENTIFY AND DESCRIBE THE REGULATORY OPTIONS

Option 1- Further to ComReg's Specification on the cost orientation obligation in relation to the pricing of NP, ComReg allow the individual operators to set the appropriate cost oriented charge for fixed and mobile number porting.

One option available to ComReg was to allow the individual operators to set a cost oriented charge for fixed and mobile number portability based on ComReg's Specification provided on cost orientation in relation to the pricing of NP. However, given that operators have an obligation to provide NP and also an obligation to ensure that the charge applied is cost oriented, ComReg did not consider this option to be optimal. It lacked transparency and could cause confusion in the market place as operators would not be in a position to determine if their number porting charges were in line with their obligations. In addition this could lead to a large range of porting charges, as each individual operator determines their allowable costs.

Option 2- Further to ComReg's assessment of operator submissions regarding the allowable costs for the pricing of NP, ComReg will determine the cost oriented charge for fixed and mobile number porting.

ComReg considered *Option 2* to be the most appropriate as it was fully transparent, it facilitated operators in ensuring their number porting charges were in line with the cost orientation obligation, would provide clarity and predictability as well as send the appropriate signals to the marketplace.

(2) IMPACT ON STAKEHOLDERS

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

Option 1: Operators set the cost oriented charge for fixed and mobile number porting		
Impact on Donor Operator	**Impact on Recipient Operator**	**Impact on Consumers**
• Operator uncertainty regarding compatibility with the cost orientation obligation in relation to NP. • The potential that some operator NP charges are in excess of costs (cost orientation) and are therefore overcharging the recipient operator. This also allows the donor operator to achieve greater	• The potential that the donor operator is charging in excess of cost and therefore the recipient operator's competitive opportunity may be constrained. • 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.	• Increased possibility of an excessive retail charge being passed indirectly to the consumer through another pricing mechanism.

revenues.		
Option 2: ComReg sets the cost oriented charge for fixed and mobile number porting		
Impact on Donor Operator	**Impact on Recipient Operator**	**Impact on Consumers**
• The assurance of certainty and clarity in the marketplace. • Assurance of compliance with the cost orientation obligation.	• Price protection for the recipient operator as the price is in line with cost.	• The possibility of excessive, indirect retail charge passed onto consumers, by another pricing mechanism, is less likely and will be based on costs.

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

ComReg was of the view that the preferred approach would ensure that operator's number porting charges were in line with their cost orientation obligation in relation to the pricing of interconnection relating to the provision of NP. In addition, it would provide greater certainty in the market place and increase levels of transparency in NP charging.

7.1.3 CONSULTATION QUESTION

Q.16 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.

7.1.4 VIEWS OF RESPONDENTS

Seven of the nine respondents provided a response to this particular question. Three of the operators agreed that the proposed directions were proportionate and justified. One of these operators believed that these directions were necessary to reduce barriers to competition in the mobile and fixed telecommunications sectors.

One of the operators requested visibility of the RIA that ComReg had carried out. Another operator (mobile) agreed with the charge set out by ComReg for MNP but urged ComReg to go further and to abolish the MNP charge altogether as it believed it was anti-competitive and anti-consumer and it prevented this particular operator from bringing further value to the Irish mobile market.

Another mobile operator stated that it was not clear to it at the time of the original consultation (in ComReg Document No 07/21) why ComReg deemed it necessary to revisit the issue of appropriate charging principles for MNP as the existing MNP charge was agreed by the mobile industry in a process overseen and driven by ComReg. It further believed that the developments in the market since the launch of MNP have supported this view. This operator included the following by way of example:

- The industry has seen a very high level of take-up of the MNP facility, with more than 1,000,000 cumulative ports to date. This represents one in four Irish mobile customers.
- The rapid growth in Meteor's customer base to 1,000,000 in a maturing market demonstrates that competition has not been constrained by the level of the present donor charge.

This operator also added that it should be noted that the porting charge has not changed in four years, representing a significant reduction in its level in real terms over the period, in spite of the increased number of operators and the increased complexity and expense involved in integrating new operators. It also stated that it was strongly of the view that there were no grounds for either conducting a review of the basis of the current MNP charge or for considering the possibility of regulatory intervention given that no relevant competition problem has been identified and competitive conditions in the market are robust. It also stated that once ComReg decided to conduct a review, it became clear that ComReg relied heavily on the Mobistar judgement to guide its thinking in relation to setting the appropriate charge for mobile ports. It believed that there was nothing in the Mobistar which precluded ComReg from allowing donor operators recover a portion of their fixed costs e.g. from enabling new entrants from recipient operators. The operator was of the view that ComReg excluded fixed costs on the tenuous assertion that mobile porting could see volumes decrease to the extent that recovery of the fixed cost element would cause porting charges to fluctuate unacceptably. ComReg has provided absolutely no evidence for such an assertion. The operator agreed with a reciprocal cost oriented charge based on an efficient operator but this charge should allow for the recovery of properly incurred fixed and common costs from recipient operators.

Another mobile operator was of the view that ComReg's approach of limiting the recoverable costs to incremental administrative costs was an inappropriate and dangerous precedent for future investment by network operators. The approach taken by ComReg to date in the number porting charge review and draft determination has done little to ensure efficient investment by operators going forward.

7.1.5 *ComReg's Position & Conclusion*

One of the operators requested visibility of ComReg's RIA. The operator commented that the RIA included in the consultation paper consisted effectively of one small table containing some subjective comment and opinion and that it expected that ComReg would have more substantial e.g. objective, quantitative back-up for the opinions expressed in the tables within the RIA. ComReg believes that all relevant options were considered and evaluated by it, both within the RIA and throughout the consultation document. ComReg believes that the RIA included in the consultation appears appropriate on the basis that ComReg is not imposing a new regulatory obligation on an undertaking and it was therefore not mandatory on it to provide a RIA.

With regard to the point raised by one operator that the MNP charge should be abolished altogether, ComReg is of the view that it was clear from the judgement of the ECJ on the Mobistar case that it accepted that there were costs involved in providing a NP service and that some specific costs should be recovered via the NP charge. Following on from the Mobistar case ComReg, in Document No 07/98, specified the costs to be recovered as part of the NP charge. Further to this ComReg requested operators to submit the relevant cost details in relation to Specification 1 of ComReg Document No 07/98. Based on ComReg's review of the operator submissions, ComReg determined the appropriate level of the MNP charge. Operators should therefore be allowed to recover up to a maximum of €2.05 for porting numbers outwards.

Another mobile operator queried ComReg's reasoning for revisiting the charging principles for MNP on the basis that the current charge was industry agreed and in a process overseen and driven by ComReg. As re-iterated in ComReg Document No 07/98, ComReg considered it necessary to revisit the issue of appropriate charging principles for NP based on the further clarification provided by the ECJ in the 'Mobistar' case in July 2006. This clarification related to the interpretation of Article 30(2) of the Universal Service Directive (transposed in Ireland by Regulation 26(2) of the Universal Service Regulations). In addition, some of the more recent mobile operators to the market did not agree with the level of the MNP charge and believed that an immediate review of this charge was necessary. One of the mobile operators believed that the industry agreed charge of €20 was based on a less than satisfactory negotiation process from its perspective and that it was obliged to accept the charge imposed by the two main mobile operators in the market at that time.

One of the mobile operators believed that there is nothing in the Mobistar case which precluded ComReg from allowing donor operators recover a portion of their fixed costs e.g. new entrant costs. However, as reiterated in previous sections above, ComReg is of the view that these costs relate to general systems provisioning costs in that *these are once-off costs in modifying network and support systems to enable the inter-operator product and are independent of operator demand*, as previously defined in ComReg Document No. 07/98. ComReg previously consulted, in Document No 07/21, on the related cost categories for NP and concluded, in Document No 07/98, that the costs to be recovered as part of the NP charge were *the incremental (i.e. short term volume dependent) administrative cost to the donor operator of per-line enabling/transaction costs.* ComReg therefore believes that these are the only costs relevant in terms of setting a maximum number porting charge. In addition and as previously discussed earlier in this document, as acknowledged by the court in the Mobistar case, ComReg as the NRA has discretion in relation to portability charges. It must be reiterated that ComReg previously consulted on the relevant cost categories for the purposes of NP pricing in ComReg Document No. 07/21. The outcome of that consultation resulted in a decision to allow the incremental (i.e. short term volume dependent) administrative cost to the donor operator of per-line enabling/transaction costs. Therefore all other costs were not to be recovered via the wholesale NP charge. In addition, it is also worth noting that the exclusion of new entrant costs appears more consistent with ensuring that customers are not dissuaded from making use of the facility of number portability.

With regard to the maximum charges set for NP, ComReg is of the view that this will allow the more efficient operator, with a lower cost base, to set lower porting charges. This may also encourage other operators, with currently higher incremental porting costs, to become more efficient in terms of the processes undertaken as part of the NP process and in doing so to lower its costs for NP.

Appendix A

Maximum Charges for fixed GNP (outside GLUMP)

GNP Transaction Type – Per CLI	1 CLI	2-100 CLIs	101+ CLIs
(1) Normal Hours Validated and Rejected (A)	**1.15**	**1.40**	**0.62**
(2.1) Normal Hours Completed	**4.02**	**5.67**	**2.50**
(2.2) Outside Of Normal Hours Completed	**6.03**	**8.51**	**3.76**
(3.1) Normal Hours Completed Deferred Port 2 HR	**4.83**	**6.81**	**3.01**
(3.2) Outside Normal Hours Completed Deferred Port 2 HR	**7.24**	**10.21**	**4.51**
(4.1) Normal Hours Cancel	**1.15**	**1.40**	**0.62**
(5.1) Normal Hours Emergency Cancel	**4.02**	**5.67**	**2.50**
(5.2) Out of Normal Hours Emergency Cancel	**6.03**	**8.51**	**3.76**

Maximum Charge for NGNP

Non-Geographic Number Portability (successful port)	**€5.74**

Maximum Charge for GNP in context of GLUMP

GNP charge in context of GLUMP	**€3.50**