



Commission for
Communications Regulation

Response to Consultation

Number Porting:

Response to Consultation Document No. 08/66
on the basis of the 'Appropriate Refunds
Subsequent to Specification 1 of ComReg
Decision No D05/07 from 30 November 2007'

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1 Executive Summary

On 15 August 2008, the Commission for Communications Regulation ('ComReg') published the Consultation Document No. 08/65 on 'Setting a Maximum Fixed and Mobile Number Porting Charge' and Consultation Document No. 08/66 on the 'Appropriate Refunds Subsequent to Specification 1 of ComReg Decision No 05/07¹ from 30 November 2007 to the date of ComReg's final decision on a maximum charge(s)'. A number of operator responses were received in relation to both consultation documents and ComReg considered all issues raised by the respondents.

On 29 January 2009 ComReg published, in ComReg Document No. 09/04², its Decision in relation to the maximum fixed and mobile number porting charges going forward. The maximum charges set 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 on 30 November 2007. All industry operators accepted the number portability charges set by ComReg going forward.

Consultation Document No. 08/66 set out the options available to operators in terms of determining the appropriate basis for setting the amounts due in the intervening period from 30 November 2007 to 29 January 2009. The three options consulted upon were the following:

- The amount due in the interim should be based on the cost oriented NP charges determined by ComReg in ComReg Document No.09/04 (Decision No. D01/09);
- The amount due in the interim should be based on the charges determined by operators in their submission to ComReg; or
- The amount due in the interim should be managed by the operators on a bilateral basis in line with Specification 1 of 30 November 2007.

Following the receipt of operator responses to the consultation, as well as further consideration by ComReg to all the issues raised by the respondents, ComReg considers that it is for the operators in the first instance to meet their obligations from 30 November 2007 to 29 January 2009 in line with ComReg's Specification of 30 November 2007 set out in Document No. 07/98. If operators will not discharge or will not reach agreement on the relevant charges for the intervening period, Disputes may be referred to ComReg pursuant to Regulation 31 of the Framework Regulations³. If this happens ComReg will determine the relevant operator charges for this period in accordance with the costing principles set out in Specification 1 of 30 November 2007. Additionally, ComReg shall also monitor operator compliance with the Specification since 30 November 2007. For ease of reference, Section 4 of this document sets out the options available to ComReg and ComReg's position in relation to each option. Section 5 of this document sets out the 'Next Steps'.

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

² Response to Consultation & Final Specification on 'Setting a Maximum Fixed and Mobile Number Porting Charge'.

³ Disputes between undertakings in connection with obligations, including obligations under the Universal Service Regulations, may be referred to ComReg for Determination.

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)⁴ 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 Portability⁵ ('NGNP') and Geographic Number Portability⁶ ('GNP'). It was subsequently introduced to the mobile sector with the launch of Mobile Number Portability ('MNP') in 2003.

ComReg published Consultation Document No. 07/21 'Consultation on Number Portability in the Fixed and Mobile Sectors' on 10 April 2007. The Response to Consultation and Specification were published on 30 November 2007 in ComReg Document No. 07/98 (Decision D05/07). Specification 1 provided that the allowable costs for the pricing of interconnection related to the provision of NP should be limited to the incremental (i.e. short term volume dependent) administrative cost to the donor operator of per-line enabling/transaction costs, based on a fully efficient number porting process. This was for the purpose of ensuring that pricing for interconnection related to the provision of NP, as provided for in Regulation 26(2) of the Universal Service Regulations, was cost oriented and the interpretation of cost orientation was properly set out. Secondly, ComReg concluded that there shall be no direct charges to subscribers for NP.

Further to ComReg's Specifications ComReg requested pricing proposals from operators who provided a number porting service. The submission was intended to allow operators to demonstrate that their NP charge was compatible with the costing principles specified on 30 November 2007. In total, fourteen responses were received, of which seven respondents included price submissions. On 15 August 2008 ComReg set out, in a separate consultation the outcome of ComReg's review of the operator submissions as well as ComReg's proposal on the maximum cost oriented charge(s) for fixed and mobile number porting. The relevant Consultation Document was Consultation Document No. 08/65⁷. Following a number of responses from operators, on 29 January 2009 ComReg published its final Decision in relation to 'Setting a

⁴ 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."

⁵ 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.

⁶ 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.

⁷ Consultation on Setting a Maximum Fixed and Mobile Number Porting Charge.

Maximum Fixed and Mobile Number Porting Charge'. That Decision sets out the maximum number porting charges, going forward, for fixed and mobile operators.

On 15 August 2008 ComReg also published a consultation (ComReg Document No. 08/66) considering the appropriate amounts due to fixed and mobile operators between the time of ComReg's Specification on cost orientation of 30 November 2007 and the date of ComReg's final decision on a cost oriented charge(s) for fixed and mobile number porting. A number of responses were received to the consultation.

The table below includes the details of the respondents to the Consultation Document No. 08/66.

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
Magnet Networks Limited	Fixed Network Operator

The details of the operator responses as well as ComReg's consideration of 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.”

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

SPECIFICATION 1

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

SPECIFICATION 2

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

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.

On 29 January 2009, ComReg set out in Document No. 09/04 its final Specification to operators further specifying requirements to be complied with and which related 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 were as follows:

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 Appendix A of ComReg Document No. 09/04, from the date of this decision.

4 Basis of the Appropriate Refund subsequent to Specification 1 of ComReg Decision No 05/07

4.1.1 SUMMARY OF CONSULTATION PROPOSAL

Following ComReg's Consultation Document No. 08/65 on the proposed maximum mobile porting charge and set of maximum charges in relation to fixed number porting ComReg set out in Consultation Document No. 08/66, a number of options in terms of assessing the appropriate basis for determining the amounts due to operators in the intervening period, from 30 November 2007 to the date of ComReg's final decision on the number porting charge(s). The options proposed in ComReg Document No. 08/66 for ease of reference are set out below.

Option A: Refunds based on ComReg proposed (prospective) charges

In ComReg Consultation Document No. 08/65, ComReg assessed all the submissions received by operators and considered whether the number porting charges determined by it were in line with the Specification in relation to the pricing of NP as set out in Specification 1 of ComReg Document No. 07/98. ComReg was of the view that the charges proposed by it reflected the specific costs set out in its Specification of 30 November 2007. ComReg pointed out that the advantage of this option was its simplicity and clarity.

Option B: Refunds based on operator proposed charges

In ComReg Document No. 08/65, ComReg analysed all of the costs submitted by the various operators and included a detailed table on the allowable and disallowed costs. ComReg's assessment of the operator submissions highlighted that operators included a number of costs that should not be allowed as part of ComReg's Specification and therefore these disallowed costs should not be recovered in the intervening period⁸.

However, ComReg believed that some operators may be of the view that the charge(s) proposed by them, in line with Specification 1 of ComReg Decision No. D05/07, were more relevant in the intervening period. Operators appeared to interpret in their submission to ComReg, notwithstanding the particular wording of Specification 1, the cost orientation obligation in different ways and as a result a number of varying charges were proposed by each of them. ComReg expressed the view that this option may well lead to inter-operator disagreements.

Option C: Refunds managed by operators

ComReg also considered the option of allowing the operators to bilaterally agree on the amounts to be charged during the interim period from 30 November 2007 insofar as this could be done while meeting in full their obligations under Regulation 26 and Specifications of 30 November 2007. That is, where the operators in the first instance

⁸ No operator, in compiling the relevant cost data, contacted ComReg for guidance on the allowable costs based on the specification of cost orientation.

meet their obligations in line with Specification 1 of 30 November 2007, without any interaction from ComReg. ComReg pointed out that this option did not appear to require any direction from ComReg as the obligation was already clearly enunciated in Specification 1 of 30 November 2007. The advantage of this approach was the fact that it ensured compliance with the legal requirements. However, it was also noted that the disadvantage was the possibility of operator Disputes, that is notwithstanding that the obligation was already clear from the Specification 1 of 30 November 2007.

ComReg requested the views of respondents in relation to each of the options set out above so that a decision could be taken on the appropriate amounts due in the period from 30 November 2007 to the date of ComReg's final decision on a maximum fixed and mobile number porting charge.

4.1.2 CONSULTATION QUESTION

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

4.1.3 VIEWS OF RESPONDENTS

Of the eight operators who provided a response to this question, six of the operators believed that *Option A* was the most appropriate. The other two operators believed that none of the options were appropriate and that no refunds were appropriate.

Of the eight operators who opted for option *A*, one of the fixed operators believed that from a commercial perspective option *C* would be regarded as the most appropriate way forward but it noted that this could and was likely to lead to Disputes. It further added that it did not believe that ComReg's time was best placed in resolving Disputes on number portability charges. Another fixed operator believed that option *A* provided greater certainty and transparency and was less likely to result in inter-operator Disputes. One of the mobile operators believed that option *A* was the most appropriate and that mobile operators should not be allowed to take additional profits from 30 November 2007 when the higher charges which they would have applied were clearly above the appropriate cost base. This operator also stated that option *B* would reward operators who had argued for a higher price than provided for by ComReg's cost based approach. Option *B* would also allow operators that aimed high to receive the direct benefit of higher revenue whereas those operators who had taken a reasonable approach would have much lower revenue and would probably have to make a net payment to those with a higher price. This operator also believed that option *B* would also set an unfortunate precedent for future regulatory debates in that it would encourage all respondents to come in with a high price in the anticipation that this price might at least apply in the intermediate situation. This operator further added that option *C* had a high probability of protracted Disputes and varying charges. Another mobile operator believed that option *B* would not be in accordance with Regulation 26 of the Universal Service Regulations and option *C* would lead to inter operator Disputes that would have to be resolved by ComReg. Another mobile operator stated that since the introduction of MNP it repeatedly requested the regulator to intervene within this market to establish an appropriate mechanism to determine

allowable recoverable costs and secondly to establish an appropriate cross industry charge. It added that this long overdue action has finally been taken. This operator also believed that the operators within the market were aware, from 30 November 2007, of the allowable costs as determined within ComReg Decision No. D05/07.

Of the two respondents that disagreed with the three options proposed, one of these respondents believed that the issue of refunds in relation to mobile port charges should not, as a matter of law, proportionally or reasonably, apply. It further added that the only charge that should pertain to the period of ComReg's final decision is the prevailing industry charge of €20. The second operator to disagree with the options posed by ComReg believed that the Irish and European Commission ('EC') legal and regulatory framework did not provide ComReg with a basis for retroactively applying the Number Porting charges. It further added that the impact of such retroactive application of MNP charges on its financial position would be significant. It believed that retroactive application of the MNP charges when set would be contrary to the general principles of law and in EC law, non-retroactivity is considered to be an element of the basic principle of legal certainty, according to which the application of the law to a specific situation must be predictable. This operator also added that the EC courts have confirmed this in many judgements. The operator requested that if ComReg had a different view that it requested it to clearly state the basis on which it believed it was empowered to make such a decision. The operator also stated that in the absence of a legal basis for retroactive application of the NP charges the operator believed that ComReg must decide that firstly, no refunds are appropriate, secondly ComReg's imposed NP charges will apply to future porting activity from the date they are set and lastly that until such time as ComReg sets a new MNP charge that all operators wishing to avail of MNP must pay the currently applicable €20 charge.

4.1.4 COMREG'S POSITION & CONCLUSION

ComReg is of the view that Option A is not necessary as operators are aware of their obligations, and the allowable costs, as set out in Specification 1 in ComReg Document No. 07/98 of 30 November 2007.

With regard to Option B, it was clear from ComReg's assessment of the operator submissions that the operators included a number of costs that should not be recoverable as part of the NP charge in line with ComReg's Specification of 30 November 2007. Operators appeared to interpret, notwithstanding the particular wording of Specification 1, the cost orientation obligation in different ways and as a result a number of varying charges were submitted to ComReg. ComReg considers however that operators can have no legitimate expectation in relation to their individual submissions [Option B] to ComReg following from ComReg's Specification from 30 November 2007, as these submissions were clearly not in line with the costing principles enunciated by ComReg in Specification 1 of 30 November 2007.

With regard to the point raised by two of the operators in relation to the relevance of the MNP charge of €20 in the interim period, ComReg considers that operators can have no legitimate expectation that the €20 MNP charge could be applied from 30 November 2007 bearing in mind the Specification set on that date and indeed the

subsequent ComReg assessment of the mobile operator costing submissions which was available to operators.

Following a review of the operator responses to the consultation, as well as further consideration by ComReg to all the issues raised by the respondents, ComReg is of the view that it is for the operators in the first instance to meet their obligations from 30 November 2007 to 29 January 2009⁹ in line with ComReg's Specification of 30 November 2007 set out in Document No. 07/98 [Option C]. ComReg is of the view that it is clear from *Specification 1*, set out on 30 November 2007, that the only allowable costs for the pricing of number portability are 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, all number porting charges from 30 November 2007 must be in compliance with the Specification as set out.

In ComReg Document No. 07/98, ComReg stated that it intended to monitor compliance with the new costing requirements and in doing so that it would request costing submissions from the fixed and mobile operators. The costing submission would allow operators to demonstrate that their NP charges were in line with ComReg's Specification of 30 November 2007. On 18 January 2008 ComReg published an Information Notice¹⁰ requesting costing submissions from fixed and mobile operators. A total of seven costing submissions were received from both fixed and mobile operators. ComReg carried out a detailed assessment of the submissions received. Subsequently, in ComReg Document No. 08/65 ComReg set out its assessment of the cost submissions in terms of the allowable and disallowed costs. In addition, ComReg also determined the average maximum cost oriented NP charge going forward. In that Document, ComReg set out that the operators that provided a costing submission to ComReg could request ComReg's assessment of their individual submission. ComReg provided the details of its assessment to a number of operators that requested it and every operator could have sought their data. This assessment set out the allowable and disallowed costs based on the operator submission and also ComReg's determination of the individual operator cost oriented charge in line with Specification 1 of 30 November 2007.

In relation to the mobile sector, three of the four Mobile Network Operators ('MNOs') requested ComReg's assessment of their costing submissions in line with Specification 1 of 30 November 2007, which was provided by ComReg. ComReg recently provided the other MNO with its assessment of its costing submission even though this operator did not request it. One of the MNOs submitted information to ComReg that was, in ComReg's view, incomplete. This was communicated directly to the operator at the time and that particular operator was also allowed the opportunity to provide the relevant data to ComReg but it did not do so. In summary, three of the four MNOs are aware of ComReg's view of the relevant cost oriented charge consistent with Specification 1 of 30 November 2007.

⁹ ComReg Document No. 09/04 (Decision D01/09) on 'Setting a Maximum Fixed and Mobile Number Porting Charge'.

¹⁰ Request for NP Price Submissions from Fixed and Mobile Operators.

As regards fixed operators, only two operators submitted costing data to ComReg. One of the fixed operator submissions was, in ComReg's view, insufficiently granular and included costs which were in excess of industry norms. ComReg communicated its views to this operator directly and highlighted the fact that its costing data was not used in determining the cost oriented fixed NP charge going forward. The charges set by ComReg prospectively for fixed number porting were therefore based on data submitted by Eircom and as assessed by ComReg in line with Specification 1 of 30 November 2007. As ComReg understand it, historically a number of the fixed operators have used the Eircom fixed NP charges in the Eircom Reference Interconnect Offer ('RIO') price list as the basis for billing other operators for NP. While this does not appear unreasonable to ComReg nevertheless, any intervention by it, whether in the context of a Dispute or otherwise, would be predicated on compliance with Specification 1 of 30 November 2007.

To conclude, ComReg is of the view that it is for the operators in the first instance to meet their obligations for the period from 30 November 2007 to 29 January 2009 [Option C] in line with ComReg's Specification 1 of 30 November 2007, as set out in ComReg Document No. 07/98.

5 Next Steps

In general, ComReg is unlikely to intervene further if operators discharge or agree charges among themselves pursuant to their obligations and to Specification 1 of 30 November 2007.

ComReg is of the view that it is for the operators in the first instance to meet their obligations from 30 November 2007 to 29 January 2009 in line with ComReg's Specification of 30 November 2007 as set out in ComReg Document No 07/98. As already set out in the section above, ComReg has determined the individual operator charges, in line with Specification 1 of 30 November 2007, for those operators that provided complete and actual costing data to it. In essence, this should facilitate an efficient discharge or agreement regarding the relevant NP charge for the interim period.

However, in cases where inter-operator agreement cannot be reached on the relevant charge in the interim period this may be referred to ComReg by way of a Dispute. Regulation 31 of the Framework Regulations allows Disputes regarding obligations in connection with the Universal Service Regulations and obligations to be referred to ComReg for a Determination. As part of any Dispute resolution, ComReg would determine the relevant cost oriented charges in line with Specification 1 of 30 November 2007. As already noted in the section above, ComReg has already, in any event, determined the relevant cost oriented charge for a number of operators that made a costing submission to it in February 2008. It should be noted that where a Dispute is raised in relation to an operator that did not provide a costing submission to ComReg previously, that it may be necessary for ComReg to request a costing information from the relevant operator so that it can assess the relevant cost oriented charge for that particular operator for the interim period. It should also be noted that where a Dispute arises in relation to an operator that provided incomplete or estimated data to ComReg as part of its previous costing submission that it maybe necessary for ComReg to request an additional costing submission to enable ComReg to assess the cost oriented charge for the interim period.

ComReg shall also monitor operator compliance with Specification 1 of 30 November 2007 from that date. ComReg will expect operators to co-operate to meet their obligations pursuant to Specification 1 of 30 November 2007 and to co-operate in relation to ComReg's monitoring of these obligations and to provide to ComReg any relevant information that it may require as part of that process.

6 Regulatory Impact Assessment

6.1.1 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 Guidelines¹¹, 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.

6.1.2 SUMMARY OF CONSULTATION PROPOSAL

The Consultation Document No 08/66 had the following purpose:

(a) to consider the appropriate amounts due in the interim period, in line with Specification 1 of ComReg Decision No 05/07, from 30 November 2007 to the date of ComReg's final decision on the number porting charge(s).

(1) IDENTIFY AND DESCRIBE THE REGULATORY OPTIONS

Option A – The appropriate amounts due in the interim period from 30 November 2007 to the date of ComReg's final decision on a cost oriented charge(s) should be

¹¹ See "RIA Guidelines: How to conduct a Regulatory Impact Analysis", October 2005, www.betterregulation.ie

based on the charges proposed by ComReg, in Consultation Document 09/04 on 'Setting a Maximum Fixed and Mobile Number Porting Charge'.

Option A reflected the specific costs set out in its Specification of 30 November 2007. The advantage of this option was its simplicity and clarity.

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

One option available to ComReg was to base the amounts due in the interim period on the charges proposed by the individual operators. Some operators may be of the view that the charge(s) proposed by them, in line with Specification 1 of ComReg Decision No. D05/07, were more relevant in the intervening period. However, operators appeared to interpret the cost orientation obligation in different ways. ComReg's assessment of the operator submissions was that operators included a number of costs that should not be allowed as part of ComReg's Specification and therefore these disallowed costs should not be recovered in the intervening period.

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

This option allows operators to bilaterally agree on the appropriate amounts due in the interim period, insofar as this could be undertaken while meeting in full their obligations under Regulation 26 and Specifications of 30 November 2007. However, this may lead to the possibility of a number of inter-operator Disputes.

(2) IMPACT ON STAKEHOLDERS

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

<u>Option A: The appropriate amounts due in the interim period should be based on the charges proposed by ComReg, in Consultation Document No 09/04.</u>		
<u>Impact on Donor Operator</u>	<u>Impact on Recipient Operator</u>	<u>Impact on Consumers</u>
<ul style="list-style-type: none"> • Operators recovered specific costs in line with Specification 1 of 30 November 2007. • The assurance of certainty and clarity in the marketplace. 	<ul style="list-style-type: none"> • Price protection for the recipient operator as the charge is in line with cost. 	<ul style="list-style-type: none"> • The possibility of excessive, indirect retail charge passed onto consumers, by another pricing mechanism, is less likely and will be based on costs.
<u>Option B: The appropriate amounts due in the interim period should be based on the charges as proposed by the operators in their costing submission to ComReg.</u>		

<u>Impact on Donor Operator</u>	<u>Impact on Recipient Operator</u>	<u>Impact on Consumers</u>
<ul style="list-style-type: none"> Operator uncertainty regarding compliance with the cost orientation obligation in relation to NP. 	<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> Increased possibility of an excessive retail charge being passed indirectly to the consumer through another pricing mechanism.
<p><u>Option C: The operators should bilaterally agree on the appropriate amounts due, while meeting in full their obligations with Specification 1, from 30 November 2007 to 29 January 2009.</u></p>		
<u>Impact on Donor Operator</u>	<u>Impact on Recipient Operator</u>	<u>Impact on Consumers</u>
<ul style="list-style-type: none"> Ensured compliance with Specification 1 of 30 November 2007. 	<ul style="list-style-type: none"> Possible increase in inter-operator Disputes. 	<ul style="list-style-type: none"> Lesser possibility of excessive retail charges being passed indirectly to the consumer through another pricing mechanism.

ComReg was of the view that as it 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 operators must consider all options outlined, above, so that a decision can be taken on the appropriate amounts due from 30 November 2007 to 29 January 2009. In considering the most appropriate option, it was important to ensure that the option was in line with ComReg's Specification 1 of Decision No. D05/07 and that the option selected provided certainty in the market place and that it increased the levels of transparency in NP charging.

6.1.3 CONSULTATION QUESTION

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

6.1.4 VIEWS OF RESPONDENTS

The majority of operators who responded to this particular question re-iterated the points already made in relation to Q1 above.

In addition, one of the respondents expressed its disagreement with the proposed timescale of two months for refund. This respondent believed that a minimum of three months was required. Another operator requested visibility of the RIA that ComReg had carried out while a third respondent believed that the proposed direction was reasonable. One of the mobile operators believed that ComReg had no power to make a direction in relation to refunds since such power is neither conferred on ComReg by Regulation 31 of the Universal Service Regulations nor by any of the other provisions identified by ComReg in 08/66. It further added that at no point in 08/66 does ComReg refer to the power by which it is directing the refund obligations and on that basis the operator believes that ComReg's approach to refunds is unlawful, unreasonable and disproportionate. The operator also stated that without prejudice to the point just made that if ComReg is still minded to mandate refunds for the stated period other than the current €20 charge then Vodafone believe it would be most appropriate to use the operators' own proposed charges. A second mobile operator believed that option A was the most appropriate and that it did not accept that it was proportionate or justified for refunds to be applied on the basis of operator supplied costs where ComReg disallowed elements of those costs as being inconsistent with the terms of the applicable Directions. In addition, this same operator does not see any basis for suggesting that refunds be managed by operators. It believed that if refunds reflecting regulatory requirements, consistent with the provisions of Decision No. D5/07 is appropriate, then ComReg should ensure that they are applied by all operators on the same terms. The operator also commented on the Direction of 30 November 2007 and added that the Direction stipulated that costs determined on incremental administrative cost per-line enabling/transaction costs should apply from 30 November 2007 and this operator supports that position.

6.1.5 COMREG'S POSITION AND CONCLUSION

One of the operators requested visibility of the RIA that ComReg carried out. 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 believe that all relevant options were considered and evaluated by it, both within the RIA and throughout the consultation document. ComReg believe that the RIA included in the consultation appears appropriate on the basis that ComReg is not imposing a new regulatory obligation on an undertaking.

A number of the points raised in this section have been addressed by ComReg in Section 4.1.4 of the document.

To conclude, ComReg is of the view that it is for the operators in the first instance to meet their obligations in the interim period from 30 November 2007 to 29 January 2009 in line with ComReg's Specification of 30 November 2007 set out in ComReg Document No. 07/98. ComReg is of the view that it is clear from *Specification 1*, set

out on 30 November 2007, that the only allowable costs for the pricing of number portability are 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, all number porting charges from 30 November 2007 must be in compliance with the Specification set out. As already set out in Section 4.1.4 above, ComReg has determined the cost oriented charges in line with Specification 1 for a number of operators who provided a complete and actual costing submission to it. However, in cases where inter-operator agreement cannot be reached on the relevant charges, for the interim period, this may be referred to ComReg by way of a Dispute.