An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Re: ComReg Decision D02/20

Non-Confidential Submissions received to ComReg Document 19/46

Reference: ComReg 19/46s

Date: 16th January 2020

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BT Communications Ireland Ltd [“BT”] response to ComReg’s consultation:

Response to Consultation, Further Consultation and Draft Decision – Access to Non-Geographic Numbers: Imposition of price control and transparency obligations

Issue 1 – 02 July 2019

1.0 Introduction

We welcome this long awaited consultation to address material wholesale competition problems which we consider have hindered the Non-Geographic Market (including for Freephone calls) for at least a decade. We would like to take this opportunity to thank ComReg for its work a few years ago to try and find a voluntary solution to these issues which unfortunately did not succeed and we agree there is now no option but to regulate. For the current regulatory Non Geographic Number (NGN) project we understand and generally agree with ComReg’s strategic Retail/Wholesale approach to break down a large market problem into components and to address these as manageable issues.

There are two key issues where we have significant concerns, the first the closure of the 076 range particularly as ComReg has aligned the 076 termination rate to the Geo graphic termination rate thereby removing a key pricing issue. We believe the 076 range has a place in the market and would have alleviated pressure on the shortage of geo-numbers in a number of areas and would work well for the business sector. The potential for an expensive and distracting geographic number change programme once this project completes will not be welcome by operators or customers.

The second concern is whether ComReg will be able to align the timing of the wholesale solutions with the implementation of new non-geographic retail pricing due to start from the 1st December 2019.

Lastly we are not proposing for ComReg to re-regulate the transit market, however in reality it forms an integral function within the non-geo calls market and for us there are still a couple of issues not resolved, particularly that for 1800 the terminating operator has no control or influence over the application of efficient call routing.

2.0 BT Response to the Detailed Questions

Q1. Do you agree with the current and future NGN charge flows detailed in Figure 7 to Figure 13 below in Sections 4.6 to 4.9 and the associated text?

BT Response
We agree the current NGN charge flows detailed in Figure 7 to 13 in Sections 4.6 to 4.9 although the referencing of figure 7 in at least clauses 4.44 and 4.45 appears incorrect. We would like to make the following comments to support our view:

a. For the 076 discussion we welcome the change between figure 7 (current charging arrangements) and figure 8 (future charging arrangements) i.e. the change of direction of the transit charges towards the call originator. In a Calling Party Pays (CPP) model the originating wholesale operator is paying for the call and has control to choose the most efficient routing and thus the charging arrows should point towards the originator as in Figure 8. Given the need to change the diagrams we consider ComReg should also make the direction of payment clear in the Decision Instrument.

b. For 1850 and 1890 we agree with the charging flow identified in Figure 9 and whilst we understand the approach to remove the transit details to simplify the diagram, we consider the remaining transit issue is a material problem for the interim operation of 1850 and 1890. We acknowledge the worked examples provided by ComReg at Annex 3 figure 28 (current charging arrangement), figures 29 and 30 (future charging arrangement) are helpful in highlighting the unchanged operation and continuing transit problem.
c. For 0818 we welcome and agree the change in direction of transit charges from figure 10 (current charging arrangements) and figure 11 as again this reflects the correct operation of a Calling Party Pays model. This is for the same reasons as explained in our response for 076 above. As for the 076 service, we believe ComReg should make the direction of payment clear in the Decision Instrument.

d. For 1800 we note figures 12 and 13 are the same but with different titles which gives us concern that the payment of transit charging remains with the TO giving a lack of incentive for efficient routing.

Q2. ComReg requests that if respondents consider that the analysis below in Sections 4.6 to 4.9 is incorrect that a detailed description is provided and supported, where appropriate, with sample (non-confidential) interconnection agreement(s)?

BT Response

- For 1850 and 1890 we agree with the charging flow Figure 9 depicts the correct flow absent transit, however we believe transit is a material issue and the consequences of a de-regulated transit within the call flow needs to be considered in more detail to avoid potential abuse until Dec 2021. Please see our response to question 4 for more details.
- For 1800 we have the same comments as for Shared Services that transit charges are potentially material issues.

Q3. Do you agree with ComReg's preliminary conclusion on wholesale charges for 076 numbers?

BT Response

Notwithstanding our position that the 076 range should be saved, we note the finite time remaining before the closure of the 076 number ranges and fully support the ComReg proposal to change the transit direction in Figure 8 as such is appropriate for the Calling Party Pays model. This allows the party paying the bills to select the most efficient options for the routing of the calls and this should be included in the decision instrument. Please also see our response in 1a.

Q4. Do you agree with ComReg's preliminary conclusions on wholesale charges for Shared Cost numbers?

BT Response

We understand ComReg's position of forbearance given the complexity of the revenue share scenarios and the relatively short time to the closure of the 1850 and 1890 ranges at the end of the 2021, however, we think ComReg is optimistic that customers can easily and quickly move to 0818 and 1800. We consider the rate of migration will have a dependence on how much a Service Provider has invested in their numbers such as the need to change marketing material, stationary, vehicle livery etc. Hence whilst some customers will be able to move easily, others won't so they and their supporting network operators could be potentially exposed to continued problems until the ranges close.

We agree with the ComReg analysis at clauses 4.106 to 4.109 that there is a cyclical aspect to charging in that an operator raising Origination Rates/Transit Rates or Termination Rates will lead to a neutralising response from other parties. We note at 4.87 ComReg is monitoring that one operator has raised its Wholesale Termination Rates in response (and to counteract) an increase in Wholesale Origination Rates from a mobile operator.

We would also like to provide comments to the possible limited continuation of the 1850 range as follows:

We are aware from the ComReg chaired industry meetings that some key national utilities are seeking to continue their 1850 numbers for a period to be specified following the general closure of the range in 2021. For the following reasons we consider these remaining numbers, if permitted by ComReg, should migrate towards the Freephone charging model.

1. ComReg's identified issues for closing the 1890 and 1850 would continue which are counter to the objectives of the ComReg Retail Decision and the aims of this wholesale consultation. We believe using the proposed Freephone charging model would limit customer confusion and any bill shock.
2. Assuming ComReg are successful in achieving its proposals in this wholesale consultation then the 1800 numbers should be affordable for the utilities and calls would be free to the caller for important issues such as reporting downed powerlines, gas leaks etc.
3. Given the small number of utilities seeking the continuation of 1850 and that the utilities will be phasing out these numbers the costs should be low and reducing.
4. There should be no financial incentive to encourage the continued use of 1850 for any party.
5. The use of the Freephone charging model removes the complexity of the revenue share mechanism for operators.

Q5. Do you agree with ComReg's preliminary conclusions on wholesale charges for 0818 numbers?

BT Response
For the 0818 preliminary conclusions we welcome and agree to the changes in the direction of transit charging for the same reasons outlined in our response to 076.

We also welcome the preliminary conclusion to set a price cap for 0818 origination to prevent originating operators charging a Fixed Voice Call Origination (FVCO) rate absent overcharging (above the Fixed Termination rate) by the terminating operator. However, in the event that the transit operator significantly increases their rate, and absent possible competition from another transit provider or direct connection this scenario does seem exposed to the actions of the transit player.

As for our response to 1850 and 1890 we agree with ComReg's analysis on clauses 4.106 to 4.109 that the complexity of moving away from the default (i.e. No WORs and basically an FTR level WTR) acts to prevent an abuse of charging. However, this may create a new concern of whether the transit operator, or more correctly the settlement clearing function could have too much power and the ability to raise transit rates with ease.

Q6. Do you agree with ComReg's preliminary conclusions on wholesale charges for calls to 1800 numbers?

BT Response
We agree with ComReg's preliminary conclusion to regulate wholesale call origination pricing given the considerable negative customer and competition issues that we have experienced over the years and which ComReg has highlighted in its consultation. We believe these problems have been largely due to the high call origination rates for over a decade and we agree with ComReg these have led to the decline of free to caller services in Ireland. We also acknowledge that

ComReg applied considerable effort to find a voluntary solution to resolve the competition problems which unfortunately were not successful leaving regulation as the only way to resolve.

Whilst we support the change to cost orientation for call origination, we remain concerned that ComReg describe a two party system for counterbalancing charges, whereas in reality it is largely a three party system. Whilst we are not seeking for ComReg to re-regulate the transit market however understanding the consequences of the behaviour of this third party is important to whether the proposals will be successful. We therefore trust that ComReg will apply discretion in any dispute where the transit operator imposes unreasonable pricing and both the originating and terminating operators act independently to counter balance the charges.

Q7. Do you agree with the costing principles proposed for modelling the costs to inform the wholesale charges for call origination to Freephone NGNs, as outlined in the DotEcon Report and summarised in Section 4.10 of this Consultation?

BT Response
BT would like to make the following observation to the costing principles for modelling costs as below:

1. Reference clause 4.148. We note the comment below:
   "It is ComReg's view that the technology evolution is not as marked in the fixed core network as it has been in the Mobile RANs".

   We consider this comment incorrect for a number of reasons. Firstly it's not comparing like with like as core and access networks are different. It would be more accurate to compare a fixed core vs a mobile core in which case it might be found that established fixed operators are also currently experiencing huge change in migrating from TDM switches to VoIP type solutions with considerable ancillary service changes to support the changes. For access the mobile 3G, 4G and 5G are all well highlighted significant technology changes and clearly sign-posted, however in the fixed world the role out of access is also rapidly changing with fibre Broadband creating huge changes and costs for both the incumbent and the other operators as higher speed CPE is often required, new wholesale connection and migration charges have been implemented as well as considerable systems investment in order handling, interoperability etc. to make the transformation. The fixed world is anything but static.

Q8. Do you agree with ComReg's preliminary view that the Draft MVCO Model is appropriate for determining a LRAIC+ for Mobile Voice Call Origination to a Freephone NGN?

BT Response
We will pass on this question due to a lack of detailed knowledge of the mobile solutions.

Q9. Do you agree with the approach taken to include an additional mark-up to the LRAIC+ for MVCO to allow for the recovery of a proportion of the common costs not recovered in the Pure LRIC for Mobile Voice Call Termination?

BT Response
We agree with the approach taken to include an additional mark-up to the LRAIC+ for MVCO to allow for the recovery of a proportion of the common costs not recovered in the Pure LRIC for Mobile Voice Call Termination. Not to recover these costs would both not allow the reasonable recovery of costs by the operator and potentially cause an incorrect regulatory distortion to make non-geo calls cheaper than geo calls.

Q10. Do you agree with the approach taken to quantify the reasonable retail costs that are relevant to calls originating to Freephone numbers hosted on another operator's network?

BT Response
We agree with the approach taken to quantify the reasonable retail costs that are relevant to calls originating to Freephone numbers hosted on another operator's network.

Q11. Do you agree with ComReg's preliminary view that the Draft FVCO Cost Model is appropriate for determining a LRAIC+ cost for Fixed Voice Call Origination to a Freephone NGN?

BT Response
We agree in general with ComReg's preliminary view that the Draft FVCO Cost Model is appropriate for determining a LRAIC+ cost for Fixed Voice Call Origination to a Freephone NGN.

Q12. Do you agree with the approach taken to include an additional mark-up to the LRAIC+ for FVCO to allow for the recovery of a proportion of the common costs not recovered in the Pure LRIC for Fixed Voice Call Termination?

BT Response
We agree with the approach taken to include an additional mark-up to the LRAIC+ for FVCO to allow for the recovery of a proportion of the common costs not recovered in the Pure LRIC for Fixed Voice Call Termination. Not to recover these costs would both not allow the reasonable recovery of costs by the operator and potentially cause an incorrect regulatory distortion to make non-geo calls cheaper than geo calls.

Q13. Do you agree with the approach taken to quantify the reasonable retail costs that are relevant to calls originating to Freephone numbers hosted on another operator's network?

BT Response
We agree with the approach taken to quantify the reasonable retail costs that are relevant to calls originating to Freephone numbers hosted on another operator's network.

Q14. Do you have any comments on the Regulatory Impact Assessment and in your opinion are there other factors which ComReg should consider in completing its Regulatory Impact Assessment? Please provide reasons for your response, clearly indicating the relevant paragraph numbers to which your comments refer, along with relevant factual evidence supporting your views.

BT Response
The Regulatory Impact Assessment is comprehensive and we fully agree with the harm being caused by the currently operation of the market, particularly for 1800 calls where many Service Providers will not use Freephone due to the high cost. We also agree that organisations such as charities and those involved in public service are exposed to unreasonable current high costs with little option but to consider other options chargeable to the caller.

We are not seeking for the transit market to be re-regulated and it is out of scope, however given it is integral to the actual operation of the market we do feel the regulatory impact of the joint operation of the regulated and non-regulated should have been evaluated to at least understand the consequences of the changes in the RIA.

End

Please direct enquires to john.odwyer@bt.com
Thank you.

Access to Non-Geographic Numbers: Imposition of price control and transparency obligations

Response by COLT Technology Services Ltd.
NON-CONFIDENTIAL VERSION
July 2nd 2019

Reference: Submission to ComReg Document No 19/46

Colt Technology Services Ltd. (hereinafter referred to as "Colt") welcomes the opportunity to respond to ComReg's consultation regarding the imposition of price controls and transparency obligations on Non-Geographic numbers in Ireland. In this short response, Colt will reply briefly to each question while also focusing on the major aspects of this request for inputs which are of direct relevance to Colt: ComReg's preliminary conclusions on wholesale charges for calls to 076, Shared Cost, 0818 and 1800 numbers.

Colt supports the proposed measure for Universal Access (0818 numbers). For 076 and Shared Cost numbers, Colt disagrees with ComReg on the effectiveness of Regulatory Forbearance and recommends the implementation of a price control.

Finally, Colt questions the risk of a regulatory-induced distortion between Freephone and Geographic numbers, and proposes to implement Pure LRIC as a cost standard for the regulation of wholesale origination charges to Freephone numbers.

For Colt, the regulation of wholesale origination services is of crucial importance to safeguard competition and ensure end-to-end connectivity and access to Non-Geographic Numbers. Therefore, Colt appreciates ComReg's initiatives and efforts to achieve these objectives.

Introduction

1. Headquartered in London, the Colt Group[1] is a multinational fixed telecommunication operator which provides both data and voice services, for business customers (enterprises and wholesale), in more than 50 major cities across Europe, North America and Asia. While Colt is a small operator in the Irish market, the Group has a massive global footprint and a lot of regulatory experience around the world.

2. Amongst other services, Colt offers IN (Intelligent Network) voice retail and wholesale services[2] using call origination services, from many other network operators in Ireland, as an access mechanism. Colt's IN services are usually provided through Non-Geographic number ("NGN") ranges (including Freephone, Shared-Cost numbers and Premium-Rate numbers) and represents over [redacted] of Colt's voice revenue in Ireland.

3. In the value chain of calls to NGNs, Colt is positioned, almost exclusively, as a terminating operator ("TO"). Indeed, as a business-only operator, Colt does not provide any voice service to residential customers and serves mostly Service Providers ("SPs"). Therefore, as Colt has to purchase large volumes of origination on other networks in Ireland, Colt is very sensitive to the level of origination tariffs charged in the wholesale market. Colt also is sensitive regarding other conditions, such as the interconnect port charges and monthly fees, which incumbents could use to harm competition if left unregulated.

4. Colt is in favor of implementing retail and wholesale remedies simultaneously. As highlighted by ComReg in document No.18/65[3], the current structure of the NGN markets allows originating operators ("OOs") to impose relatively high retail and wholesale charges, thus benefiting from a greater surplus on the expense of TOs, end-users and service providers. Although ComReg's proposed retail remedies will successfully limit OOs' ability to charge excessive retail tariffs, they could increase their incentives to charge higher wholesale origination tariffs in order to offset the revenue loss incurred on the retail side.

5. Colt agrees with ComReg's analysis concerning the inefficient use of NGNs in Ireland. In Colt's opinion, this inefficiency could be explained by two complementary factors:
    - OOs' ability to set WOR ("Wholesale Origination Rates") higher than the cost actually incurred due to their bottleneck control over access to end-users; and
    - TOs' lack of bargaining power to prevent OOs from exploiting their bottleneck control.

6. Therefore, in Colt's view, ComReg's intervention in the wholesale market is extremely important to achieve the required end-to-end connectivity and to ensure that both OOs and TOs are able to cover their costs fully, without exploiting any bottleneck control they might possess.

7. In light of the above, Colt welcomes ComReg's initiative to study the different intervention policies in the NGN wholesale market, and uses this opportunity to share its opinion on the proposed measures.

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[1] Colt is a licensed telecom operator in Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Ireland, Italy, Japan, Luxembourg, Netherlands, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Spain, Sweden, Switzerland, UK and USA.
[2] Colt IN Services are network based call routing services that take inbound calls and deliver them with advanced routing options to wherever in the world the customer wants them to go.
[3] Link: https://www.comreg.ie/publication/submissions-to-consultation-18-65/

Response to ComReg's questions

Question 1. Do you agree with the current and future NGN charge flows detailed in Figure 7 to Figure 13 below in Sections 4.6 to 4.9 and the associated text?

8. Colt agrees with ComReg's presentation of current and future NGN charge flows as demonstrated in Sections 4.6 to 4.9 of the Consultation.

Question 2. ComReg requests that if respondents consider that the analysis below in Sections 4.6 to 4.9 is incorrect that a detailed description is provided and supported, where appropriate, with sample (non-confidential) interconnection agreement(s)?

9. Colt agrees with the analysis detailed by ComReg in Sections 4.6 to 4.9. Colt does not have any evidence that the presented information is incorrect or incomplete.

Question 3. Do you agree with ComReg's preliminary conclusion on wholesale charges for 076 numbers?

10. Colt does not agree with ComReg's preliminary conclusion on wholesale charges for 076 numbers.

11. ComReg suggests that, given the similarities between Geographic and 076 numbers, imposing a regulated termination rate on calls to 076 numbers is sufficient to deter originating operators from imposing any wholesale origination rates, thus ensuring a smooth end-to-end connectivity. This conclusion is based on the current behavior of originating operators for calls to Geographic numbers.

Colt's concerns regarding ComReg's proposal:

12. Despite the similarities between 076 and Geographic numbers, the retail remedies imposed on NGN by the NGN Decision is likely to drive OOs to treat both ranges differently in the wholesale market. Respectively, the readiness of ComReg to deviate from existing market practices has in Colt's opinion led directly to the departure of many operators from the "deemed-to-be" regime.

13. On the one hand, the Geo-linking condition has a greater impact on NGNs than on Geographic numbers. Indeed, including calls to NGNs into bundles will reduce OOs' (marginal and total) retail revenue from these calls, while the revenue from calls to Geographic numbers is likely to remain unaffected. This gives OOs an incentive to recover lost retail revenues by imposing WOR on calls to 076 numbers, regardless of their current behavior for calls to Geographic numbers.

14. On the other hand, the announced withdrawal of 076 numbers incentivizes OOs to levy high WOR for calls towards this range in order to maximise their short-term profit and drive their competitors out of the market. Indeed, if OOs decided to levy WOR for calls to 076 numbers, TOs will be forced to support these charges (i.e. impossible to pass them through to SPs because the CPP principle applies, or to increase their WTR as they are regulated). Consequentially, small TOs, such as Colt, will struggle to recover their costs, have the quality of their service reduced, lose their clients and eventually may be forced to exit the market.

15. While the announcement of early withdrawal may encourage TOs and SPs to migrate towards

other ranges (i.e. 1800 or 0818 numbers), the delay required to achieve this migration can be quite long (e.g. notification period, decisions on more suitable number ranges, and most importantly communication of contract changes and new number ranges to customers.). As such, OOs can continue to exploit their bottleneck control by imposing high WORs for over two years (i.e. until the NGN Consolidation comes into force).

16. In light of the above, Colt believes that imposing regulated call termination as a stand-alone wholesale measure is not be enough to prevent OOs from levying (excessive) WORs; and imposing a price control on call origination (and its complementary measures) is a necessary measure.

Question 4. Do you agree with ComReg's preliminary conclusions on wholesale charges for Shared Cost numbers?

17. Colt disagrees with ComReg's preliminary conclusion regarding the appropriateness of regulatory forbearance as measure to guarantee end-to-end connectivity for Shared Cost numbers.

18. ComReg suggests that, while potential harm may arise on the short term from imposing excessive WOR, announcing the withdrawal of Shared Cost numbers more than two years in advance is enough to balance any short-term harm and will incentivize SPs to migrate their business towards other ranges as soon as possible.

Colt's concerns regarding ComReg's proposal:

19. In Colt's opinion, regulatory forbearance does not contribute to the improvement of end-to-end connectivity (which is the legal basis of ComReg's intervention) and distorts competition between big operators and those with a mostly inbound traffic.

20. ComReg acknowledges that a short term harm is likely to arise if originating operators levy a wholesale charge. Indeed, as mentioned in DotEcon's report[4]:

"This [levying a WOR] would be a particular issue if the WORs were increased (i.e. made less negative) to a level that would not be sufficient for TOs to cover their costs of service provision (or even set positive WORs as we saw with BT with 1850 and 1890 numbers upon leaving the deemed to be regime). If TOs cannot cover their costs from WORs alone, then either their incentives to market and provide NGN services will be dramatically reduced (leading to a welfare loss for SPs and those callers needing to access services over NGNs), or they will have to seek greater contributions from the SPs for meeting the costs of service provision, increasing the overall costs faced by SPs. Ultimately this would lead to the number range becoming ineffective in allowing service providers and callers to connect to each other through NGNs."

21. However, the degree of exposure to the abovementioned harm depends on the size of the operator. On the one hand, big operators, for which a significant volume of calls are on-net, will internalise their wholesale origination and termination charges. This allows them to cover their wholesale costs comfortably through retail channels, while maintaining competitive retail prices and a good quality of service. On the other hand, business-only operators, such as Colt, whose traffic is mostly inbound, are most exposed to the harm acknowledged by ComReg. This unequal exposure to harm is likely to prevent business-only and small operators from competing on a level-playing field with bigger operators.

[4] ComReg document No. 19/46a "DotEcon - A Price For Control For Regulation of Wholesale Charges For Non-Geographic Numbers" (link: https://www.comreg.ie/publication/dotecon-a-price-for-control-for-regulation-of-wholesale-charges-for-non-geographic-numbers/)

22. Colt disagrees with ComReg's conclusion that Regulatory Forbearance, accompanied by an early announcement of withdrawal, will incentivise service providers to migrate their business to alternative number ranges. Indeed, Colt believes that ComReg must avoid any strategy that leads to regulatory-induced distortions between different non-geographic numbers, even if some of these numbers will be withdrawn in few years.

23. Given that Shared Cost numbers are the most used non-geographic numbers by SPs[5], the migration procedure towards another range can be both lengthy and costly. As stated above we need time to ensure we comply with our legal and regulatory responsibilities towards our customers and to do so we need timely notification in order to designate a new and suitable number range, design a new business model and most importantly inform our customers in an appropriate time frame of these changes in order to avoid any disruption in their activity. As document 17/70d[6] highlights, *"[a]mong those who are unwilling to change their NGN [67%] the main reason given was due to potential cost implications.*" Indeed, the migration can cost SPs more than 5K € for 44% of SPs and over 10K€ for 11% of SPs. This can cause serious financial and budgetary problems for both operators and SPs, if implemented hurriedly or without the appropriate planning.

24. Colt proposes to implement a similar measure to the one proposed for 0818 numbers. While allowing OOs to impose WOR if, and only if, TOs charge a WTR that is higher than the regulated termination rate, will successfully force OOs to charge reasonable (if any) WORs. Setting the allowed WOR to the difference between the regulated and the actually charged termination rate should ensure that TOs recover the cost of call termination (of a hypothetically efficient operator) and deter them from setting excessive WTRs.

Question 5. Do you agree with ComReg's preliminary conclusions on wholesale charges for 0818 numbers?

25. Colt agrees with ComReg's preliminary conclusions on wholesale charges for 0818 numbers.

Question 6. Do you agree with ComReg's preliminary conclusions on wholesale charges for calls to 1800 numbers?

26. Colt agrees with ComReg's conclusion on the principle that a price control should be imposed on call origination for Freephone (1800) numbers. Indeed, in Colt's view, imposing a regulated origination rate will lead to great benefits for both wholesale and retail markets.

27. From a wholesale perspective, regulating the price that an OO is allowed to charge for calls to Freephones will limit its ability to exploit its bottleneck control and ensure that both OOs and TOs recover their origination costs and maintain a good quality of service.

28. From a retail perspective, regulating WORs will reduce the final bill that SPs have to pay. Indeed, by eliminating the risk of excessive WOR, the proposed measure will reduce the end-to-end cost of calls to Freephones, including the costs that TOs usually pass-through to their clients. Thus, allowing SPs to improve the quality of their services and widen the scope of their business. This improvement will ultimately benefit end-users who depend on the service in question and, most

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[5] See Table 5 in ComReg's Document number 18/65, page 163.(link: https://www.comreg.ie/publication/submissions-to-consultation-18-65/)
[6] ComReg's Document number 17/70d ,pages 14 and 17. (Link : https://www.comreg.ie/publication/ba-materials-cost-study-non-geographic-numbering/)

likely, would not have the means to access those services if they were provided through a number that follows a CPP principle.

Colt's concerns regarding ComReg's proposal:

29. Colt would like to highlight that, while the proposed price control and transparency obligations will improve end-to-end access to Freephone numbers to a great extent, unjustified wholesale charges and discriminatory practices are likely to occur.

30. Imposing a price-cap on the per-minute rate <u>only</u> might lead OOs to increase their one-off and recurring charges in order compensate any decrease in their per-minute wholesale origination revenue. This situation has occurred before Italy where port charges were more than 300% above the EU average before being subject to specific ex-ante assessment.

31. However, implementing a price-cap regulation, without the associated non-discrimination obligations, will lead to important competition harm for business-only operators such as Colt.

    Indeed, the price-cap regulation gives OOs the opportunity to apply differentiated origination charges to different operators. Big integrated operators tend to apply small (or even null) origination rates internally or between them whenever they have a balanced traffic. This will allow them to internalize origination charges and save important transaction and billing costs. However, big operators do not have any incentive to extend this agreement with relatively smaller operators, with whom they have a net positive origination revenue and to whom they usually charge the maximum cap-rate. This discriminatory treatment will limit the ability of small operators to compete with bigger operators on a level-playing field. This situation has already occurred in other European countries, especially the Netherlands, where business-only operators lost important market shares because of those discriminatory practices.

32. In order to avoid the abovementioned risks and to ensure the effectiveness of the price control, Colt recommends ComReg to:

    - Ensure that one-off and recurring charges for interconnect access services set by OOs are fair and determined on a cost-oriented basis;
    - Impose a specific WOR to all OOs instead of a cap <u>or</u> complement the proposed measures with an obligation that prohibits OOs from treating different operators differently (i.e. a non-discrimination obligation); and
    - Ensure that the transit charges (notably the incumbent's) are fair and determined on a cost-oriented basis.

Question 7. Do you agree with the costing principles proposed for modelling the costs to inform the wholesale charges for call origination to Freephone NGNs, as outlined in the DotEcon Report and summarised in Section 4.10 of this Consultation?

33. In harmony with DotEcon recommendations, ComReg proposes to use:
    - a Bottom-Up cost methodology;
    - the LRAIC+ cost standard;
    - an allowance for retail costs (if justified by the OO);
    - an allowance for a proportion of the common costs not recovered in the Pure LRIC in call termination; and
    - immediate enforcement.

34. While Colt agrees with ComReg on the points 1, 4 and 5; the remaining points raise some concerns:

The choice of the LRAIC+ model:

35. Colt understands that the main reason behind the choice of the LRAIC+ model, instead of Pure LRIC or LRIC+, is to prevent any regulatory induced distortion between NGNs and Geographic numbers.

36. However, in Colt's opinion, the substitutability between Geographic and Freephone numbers is limited; mainly because of the difference in the retail pricing principle that applies to each range. Indeed, for SPs, and regardless of the chosen cost standard, the per-minute cost of a service provided though Freephones (strictly positive because the RPP applies) will always be greater than the per-minute cost of a service provided though Geographic numbers (null because the CPP applies). Therefore, Colt does not expect any significant distortion to occur from applying the pure LRIC model for Freephone numbers[7].

37. Furthermore, Colt wishes to underline that applying any model other than pure LRIC will expose small operators, such as Colt, to serious competition harm. As mentioned in Colt's response to previous questions, operators with significant "on-net" calls will internalize their origination costs and support only the avoided costs (i.e. cost under the Pure LRIC model). For small operators, however, where most of the calls are off-net, the origination costs are usually paid at the cap rate. If lager operators charge smaller ones a rate that is higher than the pure LRIC, small operators will be at a competitive disadvantage relative to the larger firm, facing a higher average cost of origination. As a result, large operators would be in a better position to cross-subsidies other services, including retail prices, to levels that smaller operators may not be able to compete with.

38. Colt would like to draw ComReg's attention to the similarities of the market dynamics between call termination for CPP numbers, and call origination for RPP numbers; except that, in the former, the TO holds the bottleneck control, while in the latter, it is the OO that has this power. Therefore, Colt expects the regulatory principles currently applicable for CPP call termination markets (i.e. Pure LRIC) to be equally efficient for RPP call origination markets.

39. In light of the above, Colt disagrees with DotEcon and ComReg's proposal to implement a LRAIC+ model instead of a Pure LRIC model. Colt recommends ComReg to review its proposal and consider the abovementioned comments.

Allowance for retail cost recovery and additional mark-up :

40. DotEcon argues that the elimination of any mark-ups, including for common costs, would lead to relatively small gains compared to the gains of avoiding regulatory induced distortions between NGNs and Geographic numbers. Colt disagrees (see previous section).

41. Regarding the recovery of common and joint costs: In paragraph 4.140 of the Consultation, ComReg argues that:
"[…] *operators would expect revenues from voice call origination services, including calls originated to non-geographic numbers, to make a contribution to the recovery of the significant common and joint network costs that are a feature of both fixed and mobile networks as well as make a contribution to the recovery of general overheads.*" Colt disagrees.

42. ComReg claims that OOs expect to recover common and joint costs through their wholesale origination charges, only because it is the current practice for Geographic numbers (which follows a LRAIC+ model). ComReg suggests to apply the same principle for Freephone numbers in order to avoid any regulatory-induced distortion between Freephones and Geographic numbers.

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[7] In contrast with Freephones, the risk of distortion high between 0818 and Geographic numbers as the degree of substitution between both number ranges is non-negligible.

However, as explained above, the risk that this distortion occurs between Freephone and Geographic numbers is relatively small. Therefore, the necessity to recover the same costs is no longer justified.

43. In Colt's opinion, including any mark-ups to the cost base would allow larger carries to charge smaller ones costs that would have been internalised if the call was on-net; leading to serious competitive disadvantages for smaller operators such as Colt.

44. In light of the above, Colt disagrees with the proposal of ComReg to include any allowance for common costs, joint costs, retail costs or including any additional mark-ups.

Questions 8 to 14

45. Colt does not have any specific comment on questions 8 to 14, or any further issues raised.

eir

Response to ComReg Response to Consultation, Further Consultation and Draft Decision:

Access to Non-Geographic Numbers: Imposition of price control and transparency obligations

ComReg Document 19/46

2 July 2019

DOCUMENT CONTROL

Document name	eir response to ComReg 19/46
Document Owner	eir
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eir welcomes the opportunity to respond to ComReg's Consultation in relation to its review of Non-Geographic Numbers (NGNs).

INTRODUCTION

1. eir remains of the view that the point in time for the intervention required in the NGN market to stem the decline in the platform has already passed but welcomes the recognition by ComReg that on the basis that it deems intervention necessary, wholesale remedies should be considered for the proper functioning of the NGN platform and that any perceived issues cannot simply be corrected at the retail level.

2. However, as eir has previously submitted, ComReg's approach to its review of NGNs has suffered and continues to suffer from sequencing issues. While the measures initially proposed and implemented by ComReg in ComReg 17/70, ComReg 18/65 and Decision 15/18 were aimed at addressing issues at the retail level, the wholesale market should have been addressed first or at the very least in parallel. ComReg did in fact partially recognise this in its final Decision, indicating that the geo-linked measure would not come into effect in advance of any wholesale measures.

3. In paragraph 1.11 of this Consultation, ComReg has now indicated that '*the wholesale measures for calls to 1800 and 0818 numbers will come into effect on 1 January 2020*.' As ComReg will be aware, this effective date means that the proposed wholesale measures will come into effect some time after the retail price changes imposed by ComReg Decision 15/18. While ComReg proposes a date of 1 January 2020, eir notes that the draft Decision does not contain any effective date, and that there is a risk that the actual effective date may be later again, bearing in mind that ComReg had initially proposed that the present Consultation would occur in Q1 2019, and it is now Q3.

4. What ComReg is proposing is to de-couple the implementation of retail price changes from the implementation of wholesale price changes. This goes directly against the unqualified statements of intent made by ComReg in D15/18, where it stated '*any wholesale changes will also come into effect on 1 December 2019 i.e. concurrent with the Geo-linking Condition*' and further that '*This measure [retail price changes] will not be implemented in advance of any future wholesale NGN Decision'*.

5. In light of these unqualified statements, which formed part of ComReg's reasoning underpinning its Decision D15/18, eir had a legitimate expectation that retail price changes would not be

implemented in advance of a wholesale NGN Decision. It relied on those statements in not appealing Decision D15/18 within the statutory appeal window, and continues to rely on them now.

6. ComReg will be aware that de-coupling the retail from wholesale price changes will result in financial harm to eir and other operators, as they will no longer be generating retail revenue in respect of 0818 calls, yet will still be required to pay the current relatively high wholesale termination charges for 0818 calls. ComReg has not addressed this issue in its Consultation, nor has it sought any input on the issue.

7. eir submits that having given unqualified undertakings on the issue, it would be unfair and contrary to ComReg's own statutory objectives, including to promote regulatory certainty, and to act in a fair, transparent and proportionate manner, to now resile from this position, when this will cause direct financial harm to operators. eir therefore requests that ComReg now either meet its original commitment to implement wholesale price changes on 1 December 2019, or if this cannot be done, that it delay the implementation of the proposed retail price changes until the wholesale measures can be introduced at the same time, as stated in D15/18.

8. eir also remains concerned that ComReg is going beyond the scope of its powers in this Consultation process. ComReg considers that an assessment of SMP is not necessary and is therefore proposing to proceed with the implementation of wholesale price controls in line with Regulation 6(2) of the Access Regulation and/or Regulation 23(1) of the Universal Service Regulations as such a control constitutes a necessary step to ensure end-to-end connectivity and/or to ensure that end-users are able to access numbers and services using NGNs.

9. ComReg has opted, without any consideration in the present consultation, to propose regulation on this basis. The only previous consideration given to this particular approach was in ComReg 18/65, published almost a year ago in July 2018. eir is extremely concerned that ComReg has not given sufficient consideration to, or demonstrated sufficient grounds to justify regulating on this basis, which in effect will result in a significantly lower and less rigorous level of analysis and assessment prior to the imposition of price controls on operators.

10. ComReg will be aware that the European Commission has advised that Article 5 of the Access Directive (the equivalent to Regulation 6) must be used with caution, taking into account the general principle of the electronic communications regulatory framework that regulation should only be imposed when necessary and must in any event be proportionate to the market failure identified.

11. However, what appears to be one of the primary rationales proposed in ComReg 18/65 for proceeding in the proposed manner was that *'an SMP assessment would not likely be completed in a timely manner to ensure the effective implementation in line with the proposed introduction of geo-linking. In that regard, while such an approach may be effective, it would not be timely and the retail measures would be significantly delayed*' (paragraph 3.79). ComReg 18/65 was published a year ago and we struggle to see how ComReg could not have undertaken the necessary SMP assessment in the intervening year. With respect, the fact that the SMP analysis may take longer is not a legal justification for not using it, and cannot in itself be a justification for bypassing the more detailed analysis it prescribes.

12. Further, while ComReg focusses on the benefit to consumers of introducing retail price controls in a timely manner, this cannot be used to outweigh ComReg's other obligations to those entities it regulates and upon whom it is proposing to impose legally binding price controls. These include obligations to promote regulatory certainty, to encourage investment, and to ensure that in imposing a measure as intrusive as price controls ComReg has taken every procedural step to ensure that it is necessary and proportionate. Utilising provisions of the Universal Service Regulations and Access Regulations aimed at access for consumers to impose business-to-business price controls without a full analysis of the market does not appear to comply with these obligations.

13. In section 3.5 of the present consultation ComReg refers to Cases C 85/14 KPN and C 397/14 Polkomtel in asserting its entitlement to rely inter alia on Regulation 23 of the Universal Service Regulations and Regulation 6 of the Access Regulations. However, in both of these cases the European Court made it clear that strict criteria had to be met in order for an NRA to rely on these provisions. In particular, as set out in paragraph 49 of the KPN decision, it is necessary to establish that;

(i) The existing tariffs are an obstacle to calling non-geographic numbers

(ii) The proposed obligation is a necessary step to ensure end-users are able to access services using non-geographic numbers

(iii) The tariff obligation is objective, transparent, proportionate & non-discriminatory

(iv) The tariff is based on the nature of the problem identified and

(v) Justified in light of the objectives laid down in Article 8 of the Framework Directive

14. Section 3.5 does not address these criteria other than to assert that ComReg *'is proposing….to remove an obstacle to calling non-geographic numbers which is not technical in nature but results from the tariffs applied…on the basis that such an obligation constitutes a necessary*

step to ensure that end-users are able to access non-geographic numbers.' However, section 3.5 does not identify what the obstacles are, nor does it demonstrate how the proposed tariffs are a *'necessary step'* or how they will 'ensure' access for end-users. In particular, eir notes that;

(i) The imposition of the geo-linking measure removes any barrier to end-users accessing non-geographic numbers, thereby achieving the stated aim of Regulation 23, which relates to ensuring access to non-geographic numbers by end-users. In the circumstances, ComReg does not appear in this consultation to have established a basis entitling it to go further, relying on the same Regulation, in now imposing wholesale price controls. In that regard eir notes that the referring court in the KPN decision, which related to higher tariffs for access to call transit services to non-geographic numbers noted that such higher tariffs *'may have a marginal effect. The referring court is unsure whether, in the latter case, it can be said that end-users will not be able to access services using non-geographic numbers.'*

(ii) The sections of the consultation on harm focus primarily on the potential harm to service providers of allegedly excessive Wholesale Origination Rates, with ComReg asserting that existing rates are excessive for Service Providers and that this will have the knock-on effect of Service Providers providing a poorer service, or exiting NGN provision. This then is relied upon as the justification for imposing wholesale price controls. However, what ComReg is required to demonstrate in order to be able to rely on the relevant legal provisions is that *'such an obligation constitutes a necessary step <u>to ensure</u> end-users are able to access services using non-geographic numbers.'* In the first instance, as noted above, ComReg has provided no evidence that end-users are unable to access services, with the imposition of retail price controls. Secondly, ComReg has provided no evidence that its proposed measures will in fact lead to improved access for end-users. ComReg has not proposed any means of ensuring that the proposed price reductions for Service Providers will in fact be passed on to consumers in the form of reduced prices or enhanced services. eir is concerned at this very expansive approach to interpreting consumer 'access' as essentially justifying price reductions for businesses in the hope that these cost savings will lead those businesses to deliver greater access for end-users. There is an issue of remoteness, in that ComReg has proposed no means of ensuring that such benefits will in fact be delivered to end-users, rather than the cost savings being retained by the relevant businesses. The net effect is of ComReg taking out millions in revenue from network operators and passing it on as a cost saving to businesses in the hope that it may lead to an end-user benefit. This does not appear to meet the strict legal requirement that the proposed tariff be a necessary step *<u>'to ensure'</u>*

end-users have access, in order for ComReg to be able to rely on the relevant Regulations.

15. In the circumstances eir considers ComReg has not demonstrated how its proposed wholesale price controls meet the strict criteria set down in the above cases to enable it to rely on these particular legal provisions.

16. eir considers that any issue at the wholesale level is specifically a pricing issue and therefore does not agree with the manner in which ComReg has indicated that it will pursue imposing pricing remedies without the corresponding SMP designation on the basis of an evidence based and forward looking market review. This move by ComReg to unilaterally impose pricing remedies in both the wholesale and retail markets without the prerequisite market review sets a worrying precedent and calls into question the approach that may be taken by ComReg in future. This will undoubtedly serve to undermine regulatory certainty and chill investment incentives.

RESPONSE TO CONSULTATION QUESTIONS

Q1. Do you agree with the current and future NGN charge flows detailed in Figure 7 to Figure 13 below in Sections 4.6 to 4.9 and the associated text?

17. Yes, eir agrees that the current and future NGN charge flows detailed in Figure 7 to Figure 13 and the associated text describe correctly the flows for calls to the NGN ranges i.e. 076, 1850, 1890, 0818 and 1800.

Q2. ComReg requests that if respondents consider that the analysis below in Sections 4.6 to 4.9 is incorrect that a detailed description is provided and supported, where appropriate, with sample (non-confidential) interconnection agreement(s)?

18. eir considers that the analysis accurately depicts the traffic and revenues flows and as such has no additional comments to add in this regard.

Q3. Do you agree with ComReg's preliminary conclusion on wholesale charges for 076 numbers?

19. Yes, eir agrees with ComReg's preliminary conclusion on wholesale charges for 076 numbers in that with regard to this Consultation the appropriate price control option is regulatory forbearance. However, eir has concerns with regard to ComReg's decision to impose the regulated FTR for calls to 076 for the period between the effective date of 1 August 2019 provided for in D11/19 and the removal of the range in December 2021.

20. The routing of calls from Operators to 076 services provided on the open eir network is essentially the same as the routing of calls to 0818 services. 076 numbers are not associated with any individual open eir switch. For this reason, Operators hand all traffic to eir 076 services over at tertiary nodes, including traffic that transits to other Operator 076 and traffic that is routed down the eir network to the exchange hosting the 076 service.

21. In the response to Question 5 below, it is laid out in detail why the regulated (single switch or "primary") FTR will not allow open eir to recover the LRIC of the network elements used. So the implementation of the wholesale price control for calls to 076 will strand open eir network costs. Starting with current volumes, and assuming a decline as the service moves towards withdrawal, the costs stranded will be close to [✂] per annum until the withdrawal of 076 at the end of 2021.

Q4. Do you agree with ComReg's preliminary conclusions on wholesale charges for Shared Cost numbers?

22. Yes, eir agrees with ComReg's preliminary conclusions on wholesale charges for Shared Cost numbers.

Q5. Do you agree with ComReg's preliminary conclusions on wholesale charges for 0818 numbers?

23. eir does not agree with ComReg's preliminary conclusions on wholesale charges for 0818 numbers. At paragraph 4.115 ComReg states that "*there is little evidence to suggest that the costs incurred by a TO in terminating a 0818 call are significantly different to the costs incurred when terminating a national geographic call.*"

24. This statement may be justified when the TO is the operator of a fixed network with a single switching stage that is used (among other things) for terminating calls on all service providers of 0818 services. In this case all calls, whether geographic, or to a 0818 service, are handed over by the originating or transit network operator at that single switch.

25. However, the bland assertion of *"little evidence"* in paragraph 4.115 ignores two critical factors that determine the costs of terminating calls on the open eir network. The first factor is that the network used to terminate voice services comprises about 40 switches organised into a hierarchy of primary, secondary, and tertiary nodes. The second factor is the fundamental difference between the routing of termination traffic for calls to geographic number on the one hand and of calls to 0818 service providers on the other.

26. Each primary switch serves customers (and service providers) in a particular local geography and several primary nodes are interconnected at a single secondary switch into a tandem region. The secondary nodes serve some local customers but also perform the "tandem" function of switching traffic between the primary and tertiary nodes. Tertiary switches interconnect between the tandem regions and also serve to switch international and mobile voice traffic to and from the customers connected to the primary and secondary switches.

27. When an Operator sends a call to a geographic number into the open eir network they utilise the open eir "Network Plan" that informs them which primary or secondary switch connects the called number. The Operator has the option to interconnect for call termination at that switch. If they do interconnect there, and then route the call correctly, they will be charged at the primary termination rate. This primary termination rate is the rate of 0.06 cent per minute used in the worked examples at Figure 24 and Figure 25 in Appendix 3 to ComReg 19/46. This primary rate recovers the cost of crossing a single switch.

28. When an Operator sends a call to a 0818 service into the open eir network they invariably use an interconnection at a tertiary switch. This is necessary for a number of reasons. The first is that 0818 is not a geographic code and the Operator has no information as to which primary or secondary switch or switches are used to serve the 0818 service provider. The second is that the switches used to serve a given 0818 service may change over time. 0818 is typically used to host large scale call centre or IVR applications (e.g.24-hour telephone banking). The service provider may require a number of switches to be used to deliver service resilience; they may also require time-of-day routing to deliver service from different centres during periods of lower demand.

29. So the nature of the 0818 service delivery on a multi-switch network inevitably leads to the use of more network elements to terminate calls to 0818 services than are used to terminate calls to a geographic number. Indeed there is no case where the primary termination rate for calls that cross a single switch to reach the called party will allow open eir to recover the costs of terminating a call to a 0818 service. The termination service provided is actually a blend of Single Tandem and Double Tandem call termination. For this reason the rate of €0.0006/minute shown in Figure 25 will not allow open eir to recover the costs of terminating a call to 0818.

30. Once this correction is made (the appropriate rate will be close to [✂]) then we find that the regime proposed by ComReg can be sustained. In particular, eir agrees that the calling party Operator should be charged for the transit service where they do not interconnect directly with the network hosting the called 0818 service. This change is necessary because the changes proposed by ComReg to the interconnection pricing regime for calls to 0818 move the retail margin from the network that hosts the 0818 service (i.e. the network that currently pays for transit) to the calling party network by allowing them to retain all of the retail revenue less the network costs of termination (and transit if they choose).

31. In addition and as eir has discussed at the beginning of this response, we do not agree with the timing of the retail geo-linked measure in light of the proposed timelines for the introduction of the corresponding wholesale pricing remedy. This holds in particular in relation to the future charging arrangements for 0818 numbers. De-coupling the retail from wholesale price changes will result in financial harm to eir and other operators, as retail revenue in respect of 0818 calls will no longer be generated, yet operators will still be required to pay the current high wholesale termination charges for these calls.

32. eir therefore requests that ComReg now either meet its original commitment to implement wholesale price changes on 1 December 2019, or if this cannot be done, that it delay the implementation of the proposed retail price changes until the wholesale measures can be introduced at the same time, as stated in D15/18.

33. eir also remains concerned about the manner in which ComReg is proposing to intervene in the wholesale market and the legal basis that it is using to do so.

Q6. Do you agree with ComReg's preliminary conclusions on wholesale charges for calls to 1800 numbers?

34. eir agrees in principle with ComReg's preliminary conclusions on wholesale charges for calls to 1800 numbers in that he calling party network should only be able to recover efficiently incurred

network costs from the origination charge for calls to 1800 services. Transit should still be charged to the Operator hosting the 1800 service provider.

35. However, eir remains concerned about the manner in which ComReg is proposing to intervene in the market as discussed at the beginning of this response.

Q7. Do you agree with the costing principles proposed for modelling the costs to inform the wholesale charges for call origination to Freephone NGNs, as outlined in the DotEcon Report and summarised in Section 4.10 of this Consultation?

36. Yes, eir agrees with the costing principles proposed for modelling the costs to inform the wholesale charges for call origination to Freephone NGNs.

Q8. Do you agree with ComReg's preliminary view that the Draft MVCO Model is appropriate for determining a LRAIC+ for Mobile Voice Call Origination to a Freephone NGN?

37. Yes, eir agrees with ComReg's preliminary view that the Draft MVCO Model is appropriate for determining a LRAIC+ for Mobile Voice Call Origination to a Freephone NGN.

Q9. Do you agree with the approach taken to include an additional mark-up to the LRAIC+ for MVCO to allow for the recovery of a proportion of the common costs not recovered in the Pure LRIC for Mobile Voice Call Termination?

38. Yes, eir agrees with the approach taken to include an additional mark-up to the LRAIC+ for MVCO to allow for the recovery of a proportion of the common costs not recovered in the Pure LRIC for Mobile Voice Call Termination.

Q10. Do you agree with the approach taken to quantify the reasonable retail costs that are relevant to calls originating to Freephone numbers hosted on another operator's network?

39. eir has agreed with ComReg over a considerable period of time that there are no retail costs that should, on a reasonable basis, be recovered by the Operator originating a call to a Freephone service. Indeed the basis for open eir charges for "Access to Operator Freefone Service" has been the recovery of the same network costs as are recovered from Call Origination using the LRAIC of the network costs of the elements used. This is clearly visible by comparing Service Schedule 103 with Service Schedule 206 in the open eir RIO Price List.

40. As identified in the ComReg assessment no billing, credit management, or bad debt costs are relevant because calls to 1800 services are free to the caller and, as such, do not give rise to logging, mediation, or billing generation costs, given that no record of these calls is kept by the network serving the calling party. As no billable charges result there are no credit management or bad debt costs incurred.

41. As far as other retailing costs are concerned there is a strong argument that the marketing and product management costs relevant to the Freephone service are incurred by the Operator of the network hosting the Service Provider and not the Operator hosting the calling party. As the called party pays for calls to Freephone service, the network terminating the calls charges the service provider and recovers these retail costs directly. When a service that is free to the caller is introduced it does not generally replace traffic to the original services offered by the caller's network and the revenues from the original services are still available to fund the retail costs of those original service.

Q11. Do you agree with ComReg's preliminary view that the Draft FVCO Cost Model is appropriate for determining a LRAIC+ cost for Fixed Voice Call Origination to a Freephone NGN?

42. Yes, eir agrees with ComReg's preliminary view that the Draft FVCO Cost Model is appropriate for determining a LRAIC+ cost for Fixed Voice Call Origination to a Freephone NGN. There is a view that because the originating traffic to the Freephone service is incremental to the normal level of on-net and off-net traffic, where network costs are already recovered from retail charges, that only the pure LRIC should be recovered from call origination to a Freephone NGN.

43. However, eir takes the view that the LRAIC+ standard of network cost is appropriate in case the present access to the Freephone NGN has some impact on the network traffic volumes for billed services on the originating network. The use of LRAIC+ then allows for an additional contribution to fixed and common network costs.

Q12. Do you agree with the approach taken to include an additional mark-up to the LRAIC+ for FVCO to allow for the recovery of a proportion of the common costs not recovered in the Pure LRIC for Fixed Voice Call Termination?

44. Of its nature the LRAIC+ cost standard includes a mark-up to recovery a proportion of common costs; indeed this is what the + indicates where LRAIC already recovers a contribution to the fixed network costs.

Q13. Do you agree with the approach taken to quantify the reasonable retail costs that are relevant to calls originating to Freephone numbers hosted on another operator's network?

45. For the reasons laid out in the response to Question 10, eir considers that there is no basis for allowing any network operator, fixed or mobile, to recover a contribution to retail costs from the WOR charged for originating a call to a Freephone service.

Q14. Do you have any comments on the Regulatory Impact Assessment and in your opinion are there other factors which ComReg should consider in completing its Regulatory Impact Assessment? Please provide reasons for your response, clearly indicating the relevant paragraph numbers to which your comments refer, along with relevant factual evidence supporting your views.

46. eir has a number of comments to make with regard to ComReg's Regulatory Impact Assessment (RIA). With regard to Step 1 of its approach to the RIA, ComReg states at paragraph 7.15 as follows;

> *Initiating an SMP assessment when ComReg has a more efficient mechanism for addressing the identified harm is not proportionate as an alternative option when an option that will likely achieve the same ends is available. It is also unlikely that an SMP assessment would be completed in a timely manner to ensure effective implementation in line with the proposed introduction of the Geo-linking Condition. Any delay in implementing possible wholesale measures would ultimately delay the retail measures leading potentially to further consumer harm.*

47. eir would like to reiterate that it is extremely concerned that ComReg has not given sufficient consideration to, or demonstrated sufficient grounds to justify regulating on this basis and the fact that the SMP analysis may take longer is not a legal justification for not using it, and cannot in itself be a justification for bypassing the more detailed analysis it prescribes. This sets a worrying precedent and calls into question the approach that may be taken by ComReg in future. This will undoubtedly serve to undermine regulatory certainty and chill investment incentives. eir does not consider that this likely impact has been addressed in the RIA.

48. In conducting Step 3 of its RIA, ComReg has also failed to consider the effect that de-coupling the geo-linked retail measure from the wholesale price changes will have on eir and other operators. Operators will suffer financial harm, as they will no longer be generating retail revenue in respect of 0818 calls, yet will still be required to pay the current relatively high

wholesale termination charges for 0818 calls. ComReg has not addressed this issue in its assessment.

49. In addition, ComReg states at paragraph 7.24 that it considers the proposed price controls *“ensure that OOs are able to cover their efficiently-incurred costs on an incremental basis, so are no worse off from providing NGNs.”*

50. As eir has previously stated in this response, this ignores critical factors that determine the costs of terminating calls on the open eir network. When an Operator sends a call to a 0818 service into the open eir network they invariably use an interconnection at a tertiary switch. So the nature of the 0818 service delivery on a multi-switch network inevitably leads to the use of more network elements to terminate calls to 0818 services than are used to terminate calls to a geographic number. Indeed there is no case where the primary termination rate for calls that cross a single switch to reach the called party will allow open eir to recover the costs of terminating a call to a 0818 service. The termination service provided is actually a blend of Single Tandem and Double Tandem call termination. For this reason the rate of €0.0006/minute will not allow open eir to recover the costs of terminating a call to 0818.

51. eir therefore considers that the RIA has failed to adequately address a number of serious impacts that ComReg’s maintained approach and proposed remedies are likely to have. As such, the assessment fails to establish whether the proposed regulation is likely to have the desired impact and ensure that all measures are appropriate, proportionate and justified.

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SUBMISSION TO COMREG DOCUMENT NO. 19/46

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Executive Summary

Tesco Mobile is a business in transition. Whilst trading well and having opportunities to grow, we have a number of challenges to overcome. As a result, we need smart, targeted, forward-looking regulation that takes account of: (i) the differences between MVNO's and MNO's; and (ii) the need for significant future investment. With this in mind, Tesco Mobile responds to the Consultation as follows.

We agree with/accept ComReg's proposal to: (i) forebear from intervening in relation to the 1850, 1890 and 076 number ranges; and (ii) regulate the 0818 number range in a manner similar to geographic calls. However, we strongly disagree with ComReg's proposed approach in relation to the 1800 number range. Fundamentally, the perceived issue being addressed by the Consultation is one of competition and ComReg should use the competition (and not connectivity) provisions of the European Electronic Communications Regulatory Framework to resolve it. Given the fundamental substantive and procedural differences between the competition and connectivity provisions of the European Electronic Communications Regulatory Framework (and different potential outcomes from their respective use), it is not appropriate to choose one over the other simply because it is effectively quicker and easier. It is possible that if the competition provisions of the European Electronic Communications Regulatory Framework were applied, ComReg would identify that there is no market for 'call-origination to NGNs' or that smaller originating operators do not have Significant Market Power (SMP) on such a market. In particular, ComReg's proposed approach in relation to the 1800 number range is flawed, amongst other matters, for the following reasons:

1. In the first instance, competition/market forces should be used to resolve any perceived harm.

2. Failing competition as a remedy i.e. market failure, ComReg should conduct a market review in accordance with regulation 27 of the Framework Regulations.

3. ComReg has failed to demonstrate that there are exceptional circumstances justifying the use of its proposed powers under the Access and USO Regulations (as opposed to regulation 27 of the Framework Regulations).

4. Without prejudice to the above points, ComReg has also failed to:

    4.1 Address the various conditions that apply in respect of its powers, including: (i) economic feasibility; (ii) necessity; (iii) the promotion of sustainable competition; (iv) the promotion of efficient investment and innovation; (v) proportionality; and (vi) non-discrimination, contrary to its statutory obligations. In particular:

        4.1.1 ComReg has failed to take sufficient account of the fact that ComReg's retail and proposed wholesale NGN obligations will cost

Tesco Mobile [**Confidential**]. Unlike larger operators who have a better ability to absorb and/or mitigate the cost of ComReg's proposed obligations, ComReg's proposed obligations make the challenge for Tesco Mobile greater and will force it to re-evaluate both its product and pricing portfolio to the detriment of its customers and competition in the market. This is particularly significant in light of, amongst other matters: (i) the merger between Three and O2; (ii) the departure of iD from the Irish mobile communications market; and (iii) the hardening trading environment for MVNO's in Ireland and elsewhere.

4.1.2 ComReg is apparently willing to impose immediate, significant and adverse harm on smaller originating operators, including Tesco Mobile, in the optimistic, unsubstantiated belief that terminating operators[1] and service providers[2] will pass through the perceived benefit of its proposed obligations to service providers and end-users.

4.1.3 ComReg has failed to promote regulatory predictability in that it is now proposing three different substantive and procedural approaches to competition/connection issues without clarity in terms of when/how each will apply, and in the current instance, is proposing its own mix of competition and regulatory law principles which lack the rigour of established process.

4.2 Properly analyse, amongst other matters:

4.2.1 The substitutability of NGN and other numbers i.e. the ability of end-users and service providers to use numbers other than NGN numbers to avail of and provide services.

4.2.2 The negotiation process as between Tesco Mobile and different transit or terminating operators, including the commercial pressures faced by Tesco Mobile as the fifth market entrant and an MVNO.

4.2.3 The perceived harm itself, including ComReg's powers to create a specific and proportionate remedy for service providers that provide services that are valuable to vulnerable members of society.

[1] The operators hosting 1800 numbers on behalf of e.g. a large bank conducting a marketing campaign.
[2] The organisations availing of 1800 numbers e.g. the large bank referred to in footnote 1.

4.3 ComReg has acted *ultra vires* in imposing a cost orientation obligation under regulations 8 and 13 of the Access Regulations.

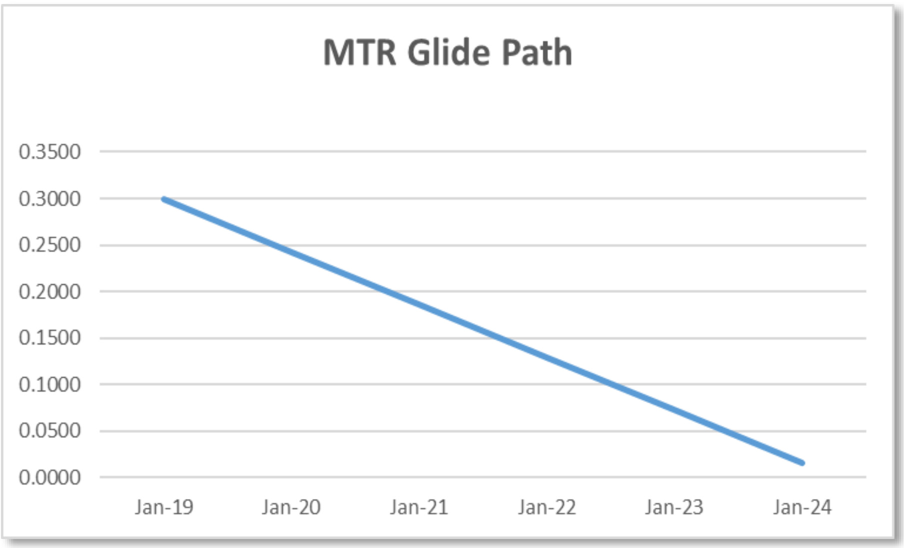
4.4 ComReg's analysis is out of date with it relying on, amongst other matters, data from 2017.

4.5 ComReg is acting unfairly towards originating operators by, amongst other matters, accepting a lower standard of proof from terminating operators and service providers, namely opinion evidence, and failing to ensure that any perceived benefit from its proposed obligations is passed through to service providers and ultimately, end-users.

For these reasons, we believe ComReg should not intervene in relation to the 1800 number range.

Strictly without prejudice to the above position, if ComReg ultimately decides to intervene in relation to the 1800 number range, Tesco Mobile believes that ComReg should apply a glide-path in respect of smaller originating operators adversely impacted by ComReg's proposed obligations, including Tesco Mobile. There is a long history of policy-makers/regulators mitigating the financial harm caused by new regulation, including specific provisions for smaller operators, including: (i) MTRs; (ii) roaming; and (iii) EU voice and SMS regulation. In this case, Tesco Mobile believes that such mitigation is warranted and proposes the following glide-path based on ComReg's current MTR glide-path:

Figure 1: Proposed NGN Glide-path based on ComReg MTR glide-path



The glide-path is for a period of five years from 1 January 2019 with equal reductions in 1800 wholesale origination rates each year (commencing on 1 January 2020). The 5 year period will provide small originating operators adversely affected by ComReg's proposed obligations, including Tesco Mobile, with a reasonable opportunity to recover from the financial impact of

ComReg's proposed obligations without having to re-evaluate their pricing and product portfolio to the detriment of its customers and competition in the market. The equal reductions are a reasonable balance between the interests of smaller originating operators, including Tesco Mobile, and those of terminating operators, service providers and ultimately, end-users.

If ComReg fails to adapt its position in light of Tesco Mobile's concerns, then it will be acting without regard to due process and the dynamic benefits that MVNO's, including Tesco Mobile, bring to the Irish mobile communications market.

Introduction

Tesco Mobile Ireland Limited ("Tesco Mobile") is a business in transition. Tesco Ireland has acquired Three's 50% shareholding in the business taking it into full ownership and Tesco Mobile must plan for a secure and profitable future. Whilst trading well and having opportunities to grow, we have a number of challenges to overcome, including: (i) [**Confidential**]; (ii) keeping pace with our competitors in meeting demands from customers which require significant investment; (iii) the changing regulatory landscape[3]; and (iv) Brexit and the impact that this will have on the overall market. As a result, we need smart, targeted, forward-looking regulation that takes account of: (i) the differences between MVNO's and MNO's; and (ii) the need for significant future investment. With this in mind, Tesco Mobile responds to the Consultation as follows.

Our Position and Rationale

Tesco Mobile welcomes the opportunity to respond to ComReg Doc. No. 19/46 (the "Consultation"). We agree with/accept ComReg's proposal to: (i) forebear from intervening in relation to the 1850, 1890 and 076 number ranges; and (ii) regulate the 0818 number range in a manner similar to geographic calls. However, we strongly disagree with ComReg's proposed approach in relation to the 1800 number range, amongst other matters, for the following reasons:

1. In the first instance, competition/market forces should be used to resolve any perceived harm. ComReg fails to adequately consider alternative methods to increase competition as between originating operators, transit operators and terminating operators in the provision of non-geographic number ("NGN") services to service providers, including greater transparency, and monitoring the effects of such methods. In so doing, it acts in breach of section 12 (1)(a)(i) of the Communications Regulation Act, 2002, as amended (the promotion of competition), regulation 6 (1)(b) of the European Communities (Electronic Communications Networks and Services)(Access) Regulations, 2011 (the "Access Regulations")(the promotion of sustainable competition) and regulation 16 (2) of the European Communities (Electronic Networks and Services)(Framework) Regulations, 2011 (the "Framework Regulations") and regulations 6 (3) and 8 (6) of the Access Regulations (the obligation to act proportionately).

2. Failing competition as a remedy i.e. market failure, ComReg should conduct a market review in accordance with regulation 27 of the Framework Regulations. The powers that ComReg is proposing to use, namely regulations 6 (2)(a) and 8 (3) of the Access Regulations, and 23 (1) of the European Communities (Electronic Communications Networks and Services)(Universal Service and End Users' Rights) Regulations, 2011 (the "USO Regulations"),

[3] http://mvnoeurope.eu/mvno-europe-invites-the-european-commission-to-take-utmost-account-of-the-itre-committees-in-depth-study-on-the-impact-of-the-roaming-like-at-home-regime/.

should only be used exceptionally. As ComReg itself previously stated (at paragraph 296, ComReg Doc. No. 09/98, emphasis added):

> *"It is the general position under the electronic communications legislative framework that SMP type obligations (including a price control obligation of cost orientation) may only be imposed on an operator that actually has SMP. The exception is that under Regulation 6 of the Access Regulations, such obligations may be imposed on operators that do not have SMP. However, that itself is subject to an exception, in that they should only be imposed "to the extent that it is necessary to ensure end-to-end connectivity". There is therefore an express statutory limitation, to what on a proper construction, is* <u>*an exceptional power*</u> *to impose SMP obligations on non-SMP operators. This is in addition to the limitations that would have to be considered under proportionality grounds and the relevant statutory objectives that ComReg has under section 12 of the Act of 2002. There are for example, a number of forms of price control, not as onerous as cost orientation".*[4]

3. ComReg has failed to demonstrate that there are exceptional circumstances justifying the use of its proposed powers, namely regulations 6 (2)(a) and 8 (3) of the Access Regulations, and 23 (1) of the USO Regulations, as opposed to regulation 27 of the Framework Regulations. In relation to its use of these powers (as opposed to regulation 27 of the Framework Regulations), ComReg provides the following reasons (at paragraph A8.16 of the Consultation):

   (a) *"Call-origination to NGNs is not a recommended market under the Commission Recommendation of 9 October 2014*[5] *on relevant product and service markets."*

   Without prejudice to the fact that ComReg has not defined a market for 'call-origination to NGNs' in accordance with applicable principles, the logical implication of this is that it is a market that tends towards effective competition as opposed to one where *ex ante* regulation might be justified. Moreover, the European Electronic Communications Regulatory Framework[6] specifically provides for a process for identifying markets which are suitable for *ex ante* regulation but which are not included in the Commission

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[4] Whilst ComReg Doc. No. 09/98 relates to the European Communities (Electronic Communications Networks and Services)(Access) Regulations, 2003, as amended and not the Access Regulations there is no material difference between the relevant provisions thereof.

[5] 2014/710/EU: Commission Recommendation of 9 October 2014 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/ EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (the "Commission Recommendation on Relevant Markets").

[6] For the purposes of this response the European Electronic Communications Regulatory Framework is defined as consisting of four European Directives, namely: Directive 2002/19/EC (Access); Directive 2002/20/EC (Authorisation); Directive 2002/21/EC (Framework); and Directive 2002/22/EC (USO), and the Irish regulations transposing them into Irish law.

Recommendation on Relevant Markets. This provides (at point 2 of the Recommendation): *"When identifying markets other than those set out in the Annex, national regulatory authorities should demonstrate, and the Commission will verify, that the following three criteria are cumulatively met: (a) the presence of high and non-transitory structural, legal or regulatory barriers to entry; (b) a market structure which does not tend towards effective competition within the relevant time horizon, having regard to the state of infrastructure-based and other competition behind the barriers to entry; (c) competition law alone is insufficient to adequately address the identified market failure(s)"*. However, ComReg has not applied this process. It is possible that if ComReg were to apply this process, it would identify that there is no market for 'call-origination to NGNs' but rather that the services under review form part of the general and competitive markets for fixed and mobile call access and origination (undermining the case for regulatory intervention and in particular, price control). Instead, ComReg applies its own mix of competition and regulatory law principles (discussed further below) which lack the rigour of established process. This constitutes a failure to follow due process and take account of relevant considerations. It also undermines legal certainty and regulatory predictability contrary to regulation 16 (2) of the Framework Regulations. It does not justify the use of these exceptional powers as opposed to regulation 27 of the Framework Regulations.

(b) *"On 14 June 2017, ComReg initiated an investigation into inter-operator charges for NGNs. As a result of that investigation, the evidence presented in ComReg Document Number 18/65, the NGN Decision as well as the 2017 and 2018 DotEcon Reports was identified and considered. Having reviewed that evidence, ComReg came to the preliminary view that it may address the harm identified with Regulation 8(3) of the Access Regulations in conjunction with Regulation 6(2) of the Access Regulation and/or Regulation 23(1) of the Universal Service Regulations[7]."*

Without prejudice to comments below in respect of the evidence identified by ComReg, this evidence does not justify the exceptional use of these powers as opposed to regulation 27 of the Framework Regulations.

(c) *"Initiating a SMP assessment when ComReg has a more efficient mechanism for addressing the harm is not proportionate as an alternative option that would likely achieve the same ends is available (i.e. is there a plausible, less restrictive, alternative measure)."*

ComReg has not demonstrated: (i) how use of the above powers is more efficient; (ii) how regulation 27 of the Framework Regulations *"… would likely achieve the same ends …"*; and (iii) in what way use of the above powers would be *"less restrictive"*. Given the fundamental substantive and procedural differences between regulation 27 of the

[7] See Case C-85/14. EU:C 2015: 610 KPN BV v ACM and Case C-397/14, ECLI:EU:C:2016:256 Polkomtel sp. z o.o. v. Prezes Urzedu Komunikacji Elektronicznej.

Framework Regulations and the above powers (and different potential outcomes from their respective use), it is not appropriate to choose one over the other simply because it is effectively quicker and easier. 'More efficiency' does not justify the exceptional use of these powers as opposed to regulation 27 of the Framework Regulations.

(d) *"An SMP assessment would not likely be completed in a timely manner to ensure the effective implementation in line with the proposed introduction of the Geo-linking Condition. In that regard, while such an approach may be effective, it would not be timely and the retail measures would be significantly delayed, harming end-users for longer than necessary, particularly given the availability of more timely and equally effective regulatory measures."*

With all due respect, ComReg cannot rely on its own actions to justify further actions. It also cannot use the perceived harm as justifying its use of these powers. Otherwise, perceived harm could always be used to justify use of these powers over regulation 27 of the Framework Regulations and regulation 27 would be rendered obsolete contrary to the wording and spirit of the European Electronic Communications Regulatory Framework. How would ComReg differentiate between harm justifying the exceptional use of the above powers and harm justifying the use of regulation 27 of the Framework Regulations? Would the former have to be 'immediate and pressing'? This would appear to run contrary to the legislative intent in that the above powers are not regarded as interim or interlocutory in nature. We note ComReg's expectation that its retail NGN decision will be implemented on 1 December 2019 notwithstanding: (i) the potential absence of a wholesale decision; and (ii) possibility of an appeal. This would appear to contradict/undermine the above reason. ComReg's own actions and the perceived harm do not justify the exceptional use of these powers as opposed to regulation 27 of the Framework Regulations.

(e) *"The general aim of regulation to ensure effective competition in the market for the benefit of consumers and compliance with Regulation 23(1) of the Universal Service Regulations and measures to provide for end-to-end connectivity would likely provide this objective. A8.17 In paragraph 3.79, ComReg concluded that: "…an assessment of SMP is not necessary as such an approach would not be (a) timely to ensure effective implementation in line with retail remedies or (b) proportionate with regard to other available options. ComReg will therefore proceed with a consultation to consider implementing a wholesale price control in line with Regulation 8(3) of the Access Regulations in conjunction with Regulation 6(2) of the Access Regulation and/or Regulation 23(1) of the Universal Service Regulations as such a control constitutes a necessary step to ensure end-to-end connectivity and/or to ensure that end-users are able to access numbers and services using NGNs."*

With all due respect, the objective of the European Electronic Communications Regulatory Framework to ensure effective competition in the market for the benefit of consumers and compliance with regulation 23 (1) of the USO Regulations and measures to provide for end-to-end connectivity do not justify the exceptional use of these powers as opposed to regulation 27 of the Framework Regulations. The objective of the European Electronic Communications Regulatory Framework to ensure effective competition in the market for the benefit of consumers is also served by regulation 27 of the Framework Regulations. Whilst there is a perceived harm in how NGN services are provided to service providers, there is no failure to negotiate interconnect for the purposes of NGN services contrary to regulation 5 (2) of the Access Regulations, nor is there any failure to reach agreement in respect of interconnect for the purposes of NGN services. As a result, the perceived harm is best analysed and addressed under regulation 27 of the Framework Regulations. Fundamentally, the perceived issue being addressed by the Consultation is one of competition (as acknowledged by ComReg's economic advisor, DotEcon, at page 2 of its 2019 report (ComReg Doc. No. 19/46a)) and ComReg should use the competition (and not connectivity) provisions of the European Electronic Communications Regulatory Framework to resolve it.

4. Without prejudice to points 1 – 3 above, ComReg has also failed/failed properly to address the conditions that apply in respect of regulations 6 (2) and 8 (3) of the Access Regulations, and 23 (1) of the USO Regulations, including:

4.1 <u>Economic feasibility</u> (regulation 23 (1) of the USO Regulations)

ComReg has failed to conduct any economic feasibility study. In particular, it has failed to conduct such a study from the perspective of individual originating operators, including: (i) the originating operator's ability to absorb/mitigate the cost of the proposed obligations; and (ii) a cost/benefit analysis in terms of those benefitting from and harmed by the proposed obligations, including end-users.

4.2 <u>Necessity</u> (regulation 23 (1) of the USO Regulations)

ComReg has failed to properly demonstrate necessity in terms of intervention. Whilst there is a perceived harm in how NGN services are provided to service providers, there is no failure to negotiate interconnect for the purposes of NGN services contrary to regulation 5 (2) of the Access Regulations, nor is there any failure to reach agreement in respect of interconnect for the purposes of NGN services. As a result, the perceived harm is best analysed and addressed under regulation 27 of the Framework Regulations. Fundamentally, the perceived issue being addressed by the Consultation is one of competition and ComReg should use the competition (and not connectivity) provisions of the European Electronic Communications Regulatory Framework to resolve it.

4.3 The promotion of sustainable competition (regulation 6 (1) of the Access Regulations and section 12 of the Communications Regulation Act, 2002, as amended)

ComReg has failed to conduct any assessment of the sustainability of its proposed obligations from a competition perspective. In particular, it has failed to properly assess the impact that its proposed obligations will have on smaller originating operators, including Tesco Mobile. As set out above, Tesco Mobile is a business in transition and whilst trading well and having opportunities to grow, it has a number of challenges to overcome, including: (i) [**Confidential**]; (ii) keeping pace with our competitors in meeting demands from customers which require significant investment; (iii) the changing regulatory landscape[8]; and (iv) Brexit and the impact that this will have on the overall market. It has recently had to absorb the cost of: (i) further mobile termination rate (MTR) regulation; (ii) roaming regulation (without the benefit of reduced costs (as an MVNO)); (iii) intra-EU voice and SMS regulation; and (iv) ComReg's retail NGN decision (ComReg Dec. No. 18/106). In particular, ComReg's retail NGN decision will cost Tesco Mobile [**Confidential**], and ComReg's proposed wholesale obligations will cost Tesco Mobile [**Confidential**]. ComReg's proposed obligations makes the challenge for Tesco Mobile greater, forcing it to re-evaluate both its product and pricing portfolio to the detriment of its customers and competition in the market.

As can be seen from ComReg's quarterly report, Tesco Mobile consistently contributes to lowering the level of consumer pricing in Ireland. For example, in ComReg's latest quarterly report (ComReg Doc. No. (19/57R2), Tesco Mobile offers prepay and bill pay plans that are cheaper than Vodafone, Three and Eir:

[8] http://mvnoeurope.eu/mvno-europe-invites-the-european-commission-to-take-utmost-account-of-the-itre-committees-in-depth-study-on-the-impact-of-the-roaming-like-at-home-regime/.

Figure 2: Residential Pre-paid Mobile Phone Services Basket (National)

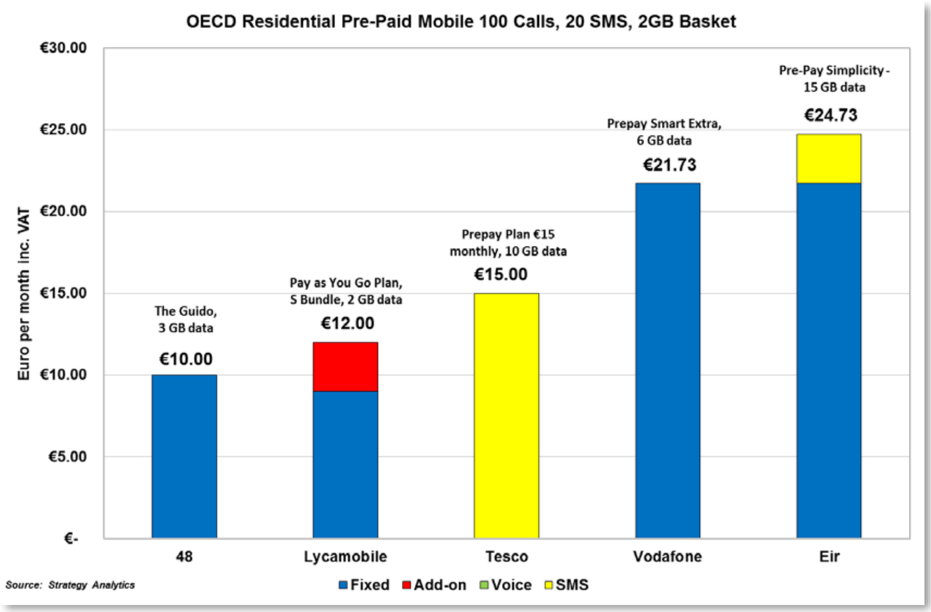
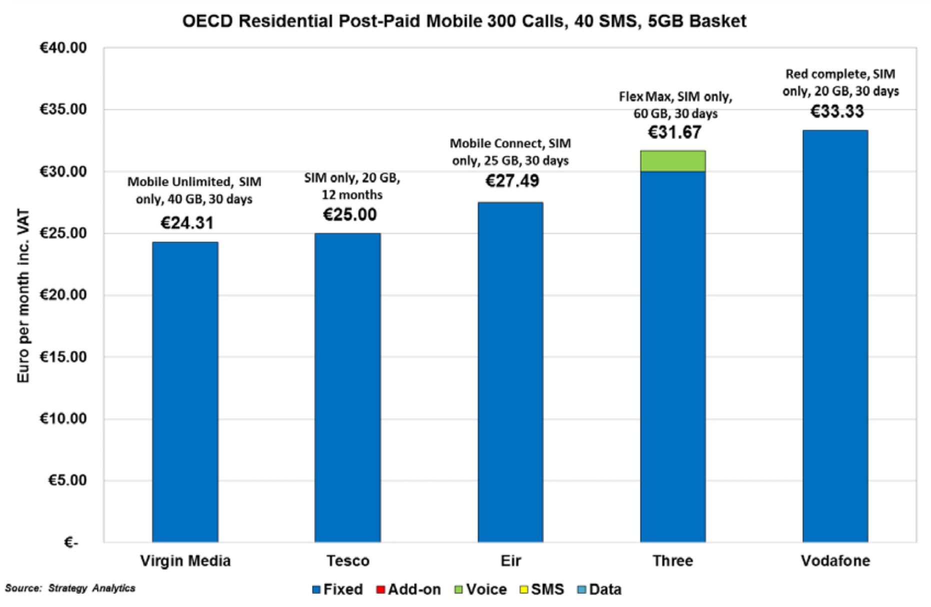


Figure 3: Residential Post-paid Mobile Phone Services Basket (National)



In addition, Tesco Mobile recently won the Switcher Award for Best Value Mobile Operator 2019. This contribution is particularly significant in light of: (i) the merger between Three and O2 (2014) which was highly criticised by ComReg (ComReg Doc. No. 14/53); (ii) the departure of iD from the Irish mobile communications market (2018); (iii) the BEREC report which estimated that the Three/O2 merger led to price increases for low, medium and high mobile users in Ireland in the first half year after the merger and in particular, that prices for medium and high mobile users were estimated to be over 20% higher in the first half of 2015 than they would have been had the merger not occurred (BEREC Doc. No. BoR (18) 119); and (iv) the hardening trading environment for MVNO's in Ireland and elsewhere, as evidenced by, amongst other matters, the low number/departure of MVNO's in/from the Irish mobile communications market. As stated by ComReg (at paragraph 348 of ComReg Doc. No. 09/98): *"As has been set out at paragraph 343, international experience indicates that the entry of MVNOs can increase competition in the mobile market. ComReg is required by the General Policy Direction on Competition to have special focus on competition in this market and a final determination that inhibited the entry of new players would have the effect of limiting potential competition in this market"*. ComReg's proposed wholesale obligations puts this contribution at risk.

4.4 <u>The promotion of efficient investment and innovation</u> (regulation 6 (1) of the Access Regulation)

ComReg's failure to properly assess the impact that its proposed obligations will have on smaller originating operators (discussed above) will have an indirect and adverse impact on their and MNO's ability to invest and innovate. As stated by ComReg (at paragraph 342 of ComReg Doc. No. 09/98, emphasis added): *"In considering the provisions of section 12 (2)(a)(iii) of the Act of 2002 (encouragement of efficient investment in infrastructure and promotion of innovation) ComReg recognises that investment in competing infrastructures is likely to give rise to sustainable competition. There are already four [now 3] competing mobile networks (H3GI, Vodafone, O2 and the Eircom group). At this time, no further licensing of MNOs is envisaged by ComReg. The hosting of a MVNO allows a mobile network operator to maximise the usage of its network; thus enabling it to optimise its investment. In the absence of new infrastructure entrants in the mobile market, the entry of MVNOs has the potential to introduce innovate retail propositions. In that context, MVNOs are a means to increase effective competition in the retail mobile market. Moreover, a final determination by ComReg that inhibited or damaged the business case for MVNO entry would not be conducive to the promotion of innovation. It could also inhibit the optimisation of cost recovery for those operators who had built their own networks. ... "*.

4.5 <u>Giving the maximum benefit to end-users</u> (regulation 6 (1) of the Access Regulation and section 12 of the Communications Regulation Act, 2002, as amended)

ComReg's failure to properly assess the impact that its proposed obligations will have on smaller originating operators (discussed above) will have a direct and adverse impact on the maximum benefit to end-users.

4.6 Proportionality and justification in light of the objectives laid down in the Communications Regulation Act, 2002, as amended (to promote competition, to contribute to the development of the internal market and to promote the interests of users within the European Union) and regulation 16 of the Framework Regulations (regulations 6 (3) and 8 (6) of the Access Regulations)

ComReg's proposed obligations are disproportionate, amongst other matters, for the following reasons:

(a) ComReg's proposed obligations will have a disproportionate effect on smaller originating operators, including Tesco Mobile. Unlike larger operators who have a better ability to absorb and/or mitigate the cost of ComReg's proposed obligations, ComReg's proposed obligations make the challenge for Tesco Mobile greater, forcing it to re-evaluate both its product and pricing portfolio to the detriment of its customers and competition in the market.

(b) Whilst ComReg has engaged in extensive qualitative research, it has not quantified the perceived harm to service providers and is apparently willing to find in favour of this unquantified harm rather than the quantified and tangible harm set out above.

(c) ComReg has failed to narrowly construe regulation 6 (2)(a) of the Access Regulations and impose an obligation that balances the relative harms in accordance with its prior decision in ComReg Doc. No. 09/98 (paragraphs 295 and 307 - 366), including a proper analysis the negotiation process as between different originating, transit and terminating operators (including Tesco Mobile) and service providers, including countervailing buyer power (discussed further below). In this regard, Tesco Mobile is not a terminating operator who has *"... reduced incentives to change the existing wholesale regime as some of the excess returns are passed through as a more generous termination rate"* (paragraph 3.69 of the Consultation).

(d) ComReg has failed to properly consider its powers to create a specific and proportionate remedy for service providers that provide services that are valuable to vulnerable members of society for example by promoting the number range specifically created by the European Electronic Communications Regulatory Framework for services of social value, namely beginning with "116" under regulation 22 of the Framework Regulations. In this regard, ComReg's proposed obligations confer a disproportionate, unquantified benefit on large and profitable terminating operators and service providers.

(e) ComReg has failed to apply a glide-path to mitigate the harm caused by its proposed obligations to smaller originating operators. In this regard, it accepts the recommendation of its economic advisor, DotEcon, that (at page 49): *"As we have seen from current wholesale prices, the mobile origination rates for calls to*

1800 are much higher than eir's regulated rates compared to fixed, so the change will hit them harder. ... Considering the level of harm being raised by the current price levels it would not be proportionate to allow rates to remain significantly above the modelled cost. For 1800 freephone numbers, we have shown that there is real and observed damage from the existing wholesale origination rates, and that price levels should fall to regulated rates as soon as possible to ensure that the harm arising from current rates is mitigated. There is a need to ensure that end-to-end connectivity is not compromised. ... There would seem to be no legitimate reason for why prices could not be set at regulated levels with relatively little notice (for example, there would be no need for revisions of contracts and there is no need for retail price adjustments)". Without having, amongst other matters, quantified the perceived harm to service providers, narrowly construed regulation 6 (2)(a) of the Access Regulations and proposed an obligation that balances the relative harms and properly considered its powers to create a specific and proportionate remedy for service providers that provide services that are valuable to vulnerable members of society, ComReg acts disproportionately in accepting this advice.

ComReg's proposed obligations are <u>unjustified</u> in light of the objectives laid down in section 12 of the Communications Regulation Act, 2002, as amended, and regulation 16 of the Framework Regulations, amongst other matters, for the reasons set out above and below. In particular, ComReg's proposed obligations do nothing to ensure that any perceived benefit from its proposed obligations is passed through to service providers and ultimately, end-users. ComReg is apparently willing to impose immediate, significant and adverse harm on smaller originating operators, including Tesco Mobile, in the optimistic, unsubstantiated belief that terminating operators and service providers will pass through the perceived benefit of its proposed obligations to service providers and end-users.

4.7 <u>Objectivity, transparency, non-discrimination and proportionality</u> (regulations 6 (3) of the Access Regulations and 16 (2) of the Framework Regulations)

In pursuit of its objectives, ComReg must apply objective, transparent, non-discriminatory and proportionate regulatory principles by, amongst other matters:

(a) <u>Promoting regulatory predictability by ensuring a consistent regulatory approach over appropriate review periods</u>

ComReg has failed to promote regulatory predictability in that it is now proposing three different substantive and procedural approaches to competition/connection issues without clarity in terms of when/how each will apply, namely: (i) regulation 27 of the Framework Regulations; (ii) regulations 6 (2)(a) of the Access Regulations and regulation 31 of the Framework Regulations as effectively applied in ComReg 09/98; and (iii) regulations 6 (2)(a) and 8 (3) of the Access Regulations, and 23 (1) of the USO Regulations as applied in this instance. In addition, it is proposing its own mix of competition and regulatory law principles which lack the rigour of established process. Amongst other matters, it fails to: (i) properly define the relevant market, including properly analysing the substitutability of NGN and other numbers in accordance with existing competition law/regulatory principles (discussed further below); and (ii) properly analyse the perceived competitive harm, including defining such terms as *"market power"* (paragraph 3.75), and *"bottleneck control"* (paragraph 3.68), and analysing the negotiation process as between different originating, transit and terminating operators (including Tesco Mobile) and service providers, including countervailing buyer power (discussed further below). For example, without any analysis of the negotiation process as between Tesco Mobile and transit and terminating operators, ComReg states that Tesco Mobile (implied) has the ability to increase prices at will and independently of others (paragraph 4.128 of the Consultation)(DotEcon reaches the same conclusion at page 1 of its 2019 report for ComReg (ComReg Doc. No. 19/46a)). This runs completely contrary to the spirit and intention of the European Electronic Communications Regulatory Framework. As stated by the European Commission in its recent review of the Commission Recommendation on Relevant Markets (emphasis added): *"The appropriate identification of relevant markets susceptible to ex ante regulation is key to the overall functioning of the EU Regulatory Framework and it has been confirmed as a key regulatory tool in the new European Electronic Communications Code. It allows the National Regulatory Authorities (NRAs) to focus their regulatory efforts on markets where competition is not yet functioning effectively. Having a list of pre-identified relevant markets subject to ex ante regulation helps NRAs to regulate these markets in a coordinated manner, thereby contributing to the development of the internal market. <u>A stable and pertinent list of relevant markets is also vital for providing market players with legal certainty and thus stable business planning</u>"*.

(b) <u>Ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks and services</u>

Ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks and services also involves, in dissimilar circumstances, treating undertakings differently. As set out above, ComReg has failed to properly assess the impact that its proposed obligations will have on smaller originating operators, including Tesco Mobile. Unlike larger operators who have a better ability to absorb and/or mitigate the cost of ComReg's proposed obligations, ComReg's proposed obligations make the challenge for Tesco Mobile greater, forcing it to re-evaluate both its product and pricing portfolio to the detriment of its customers and competition in the market. As ComReg stated (at paragraph 344 of ComReg Doc.

No. 09/98, emphasis added): *"In considering the provisions of section 12 (2)(b)(iii) of the Act of 2002 (ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks and services and associated facilities) ComReg is cognisant that it has adopted an approach whereby it does not automatically apply cost oriented price controls to new entrants or operators with low market share with immediate effect once a regulatory intervention on has been identified as being appropriate. ComReg believes that such an approach should be on a case by case basis and should take account of the overall market position of the operator in question, as well as the level of prices that are already in the market. In this regard, ComReg has exercised forbearance in the implementation of cost orientation remedies, opting instead for price caps and glide paths with market or time based thresholds for the commencement of such controls. Therefore, if ComReg were to impose a cost orientation obligation on TMI without good reason (which as set out above does not exist) this would not be consistent with the provisions of section 12 (2)(b)(iii) of the Act of 2002"*.

(c) Safeguarding competition to the benefit of consumers and promoting, where appropriate, infrastructure-based competition

As discussed above, ComReg's proposed obligations fail to safeguard competition to the benefit of consumers and promote, where appropriate, infrastructure-based competition.

(d) Promoting efficient investment and innovation in new and enhanced infrastructures, including by ensuring that any access obligation takes appropriate account of the risk incurred by the investing undertakings and by permitting various cooperative arrangements between investors and parties seeking access to diversify the risk of investment, while ensuring that competition in the market and the principle of non-discrimination are preserved

As discussed above, ComReg's proposed obligations fail to promote efficient investment and innovation in new and enhanced infrastructures.

(e) Imposing ex-ante regulatory obligations only where there is no effective and sustainable competition and relaxing or lifting such obligations as soon as that condition is fulfilled

As discussed above, ComReg has not afforded effective and sustainable competition a sufficient opportunity to remedy the perceived harm.

5. Without prejudice to points 1 – 4 above, ComReg has failed to properly analyse, amongst other matters, the following:

5.1 The substitutability of NGN and other numbers

The substitutability of NGN and other numbers i.e. the ability of end-users and service providers to use numbers other than NGN numbers to avail of and provide services. Whilst ComReg lists a number of factors which it believes indicates that NGN and other numbers are non-substitutable numbers (at paragraph 2.49 of ComReg Doc. No. 18/65), none of those factors could not be fulfilled by e.g. mobile numbers. In addition, ComReg contradicts itself by stating (at paragraph 4.140 of the Consultation): *"ComReg is also of the preliminary view that, given the degree of substitutability that exists between calls originating to geographic and non-geographic numbers, avoiding possible regulatory-induced distortions between both types of origination call is an important consideration"*.

5.2 The negotiation process as between different originating, transit and terminating operators, and service providers

The negotiation process as between different originating, transit and terminating operators, and service providers, including countervailing buyer power.

5.3 The negotiation process as between Tesco Mobile and different transit or terminating operators

The negotiation process as between Tesco Mobile and different transit or terminating operators. Tesco Mobile entered the Irish market in 2007, however, it has never been approached in relation to reducing its charging either by transit or terminating operators.[9] Service providers are not the only providers that have limited choices. In negotiating any NGN price, Tesco Mobile would have to consider, amongst other matters: (i) the commercial loss in not agreeing an acceptable rate; (ii) the reputational loss in not connecting its customers to a generally accessible NGN; (iii) the cost, time and potentially negative outcome of dispute resolution in accordance with regulation 31 of the Access Regulations; (iv) the countervailing buying power of a transit or terminating operator (as evidenced by the recent price retaliation documented in paragraph 4.87 of the Consultation); and (v) the commercial pressures faced by Tesco Mobile as the fifth market entrant and an MVNO, including the need to legitimately cross-subsidize its other products. ComReg has not asked Tesco Mobile any questions in respect of any of these matters throughout this consultation process.

[9] To the best knowledge, information and belief of the current management.

5.4 Price retaliation

The recent price retaliation documented in paragraph 4.87 of the Consultation, deciding instead to monitor this development going forward.

5.5 The perceived harm itself

The perceived harm itself, including ComReg's powers to create a specific and proportionate remedy for service providers that provide services that are valuable to vulnerable members of society for example by promoting the number range specifically created by the European Electronic Communications Regulatory Framework for services of social value, namely beginning with "116" under regulation 22 of the Framework Regulations.

5.6 Complexity in pricing and competition

The fact that the European Electronic Communications Regulatory Framework does not automatically provide for cost orientation in all ex-ante regulation, reflecting the complexity in pricing and competition in electronic communications and highlighting the need for ComReg to do a sophisticated analysis of competition in the relevant market(s).

6. Without prejudice to points 1 – 5 above, ComReg has acted *ultra vires* in imposing a cost orientation obligation under regulations 8 and 13 of the Access Regulations. In setting a price control, the standard that it needs to meet is whether that price is the minimum required in order to ensure connectivity (necessity). ComReg has not properly considered this standard and instead has applied the same standard that it would apply under regulation 27 of the Framework Regulations (without the checks and balances contained within that provision), namely what form of price control is appropriate in order to address the perceived market failure. In this regard, it and its economic advisors, DotEcon, have been unduly influenced by the price control obligations of eir, an SMP designated and price-controlled operator. As ComReg stated (at paragraphs 360, 364, 365 and 370 of ComReg Doc. No. 09/98, emphasis added):

> *"With regard to Point 1 of the determination shown in paragraph 359 above, pursuant to Regulation 6 (2)(a) of the Access Regulations, ComReg's power to impose a price on an undertaking which has not been designated as having SMP is limited to settling a price which ensures end-to-end connectivity. Therefore, ComReg does not have the to set a price lower than the highest price currently in the market at which ensures end-to-end connectivity. …*
>
> …
>
> *It is ComReg's view that a determination which linked the future MTRs of an undertaking which has not been designated with SMP (i.e. TMI) to the future MTRs of an undertaking*

> *subject to an SMP obligation of price control (i.e. H3GI), would be beyond the powers conferred on ComReg by regulation 6 (2)(a) of the Access Regulations*.
>
> *Pursuant to Regulation 6 (2)(a) of the Access Regulations, ComReg's power to impose a price on an undertaking which has not been designated as having SMP is limited to setting a price which ensures end-to-end connectivity. Therefore, ComReg does not have the power to set a price lower than the highest price currently in the market at which end-to-end connectivity occurs*. …
>
> …
>
> *ComReg set out, at paragraphs 319 to 320, its consideration of the Access Regulations with regard to a legal basis for setting a final price for TMI's MTR. ComReg considered that Regulation 14 of the Access Regulations provides for the imposition of price controls, including cost orientation, on undertakings with SMP and is therefore not applicable in this instance. Regulation 6 (2)(a) of the Access Regulations provides an exception, allowing for the imposition of SMP type obligations (including price control) on non-SMP operators. This provision is expressly qualified that the imposition of obligations, is permissible only "to the extent that it is necessary to ensure end-to-end connectivity". ComReg concluded that, in setting a final price for TMI's MTR to resolve this dispute, its vires was limited to setting a price to the extent necessary to ensure end-to-end connectivity. ComReg also concluded that to determine a price which is lower than the highest price at which end-to-end connectivity is currently occurring in the market (i.e. H3GI's current MTR), would be beyond the powers conferred on ComReg by Regulation 6 (2)(a) of the Access Regulations*".

7. Without prejudice to points 1 – 6 above, ComReg's analysis is out of date with it relying on, amongst other matters, data from 2017.

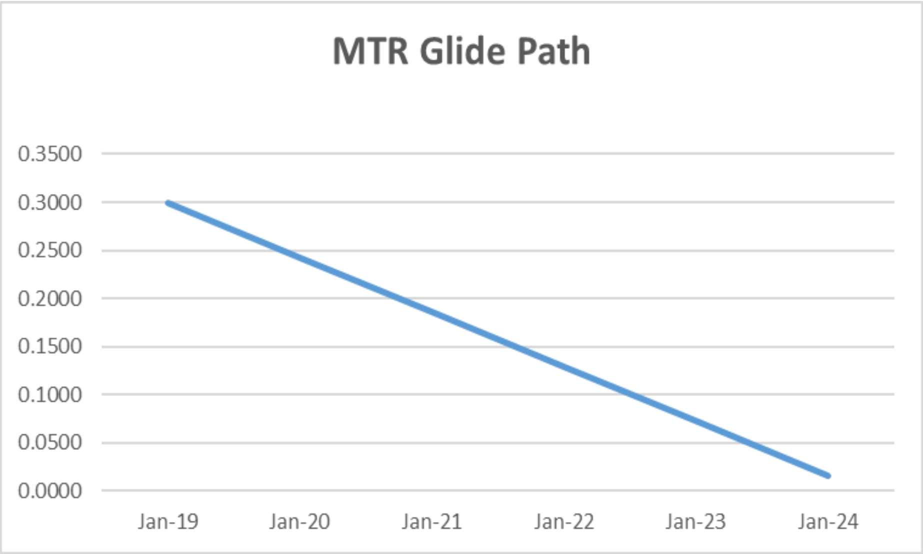
8. Without prejudice to points 1 – 7 above, ComReg is acting unfairly towards originating operators. This is demonstrated, amongst other matters, by its willingness to accept a lower standard of proof from terminating operators and service providers, namely opinion evidence (even if statistically relevant), and failure to ensure that any perceived benefit from its proposed obligations is passed through to service providers and ultimately, end-users.

For these reasons, we believe ComReg should not intervene in relation to the 1800 number range.

Glide-path as Mitigation

Strictly without prejudice to the above position and our responses to ComReg's specific consultation questions (contained in Annex 1 of this submission), if ComReg ultimately decides to intervene, Tesco Mobile believes that ComReg should apply a glide-path in respect of smaller originating operators adversely impacted by ComReg's proposed obligations, including Tesco Mobile. There is a long history of policy-makers/regulators mitigating the financial harm caused by new regulation, including specific provisions for smaller operators, including: (i) MTRs (initially through operator commitments in 2003, 2007, 2009 and subsequently in ComReg decisions under regulation 27 of the Framework Regulations); (ii) roaming (in successive European roaming regulations in 2007, 2009, 2012, 2015, 2016 and 2017); (iii) EU voice and SMS regulation (Regulation (EU) 2018/1971); and (iv) selective barring (ComReg Doc. No. 18/09). In this case, Tesco Mobile believes that such mitigation is warranted and proposes the following glide-path based on ComReg's current MTR glide-path:

Figure 4: Proposed NGN Glide-path based on ComReg MTR glide-path



The glide-path is for a period of five years from 1 January 2019 with equal reductions in 1800 wholesale origination rates each year (commencing on 1 January 2020). The 5 year period will provide small originating operators adversely affected by ComReg's proposed obligations, including Tesco Mobile, with a reasonable opportunity to recover from the financial impact of ComReg's proposed obligations without having to re-evaluate their pricing and product portfolio to the detriment of its customers and competition in the market. It also aligns with our standard 5 year business plan that we have to revise to reflect ComReg's proposed obligations (most operators will probably plan on an annual and 5 year basis). The equal reductions are a reasonable balance between the interests of smaller originating operators, including Tesco Mobile, and those of terminating operators, service providers and ultimately, end-users.

Specific Comments

In relation to section 4.11 (undertakings in scope), Postfone should be included. For the avoidance of doubt, our acceptance of ComReg's proposal to regulate the 0818 number range in a manner similar to geographic calls is without prejudice to our position above regarding ComReg's proposed approach in relation to the 1800 number range.

ComReg's Specific Consultation Questions

Please see Annex 1 for our responses to ComReg's specific consultation questions.

Conclusion

Tesco Mobile agrees with/accepts ComReg's proposal to: (i) forebear from intervening in relation to the 1850, 1890 and 076 number ranges; and (ii) regulate the 0818 number range in a manner similar to geographic calls. However, we strongly disagree with ComReg's proposed approach in relation to the 1800 number range, amongst other matters, for the reasons set out above, and request that it desist from its proposed course of action in respect of this number range. Strictly without prejudice to this position, if ComReg proceeds with its intended decision, then it ought to mitigate the impact of its proposed decision on smaller originating operators, including Tesco Mobile, by introducing changes on a gradual basis. In this regard, Tesco Mobile has proposed a glide-path that is: (i) based on ComReg's current MTR glide-path; (ii) provides small originating operators adversely affected by ComReg's proposed obligations, including Tesco Mobile, with a reasonable opportunity to recover from the financial impact of ComReg's proposed obligations; and (iii) constitutes a reasonable balance between the interests of smaller originating operators, including Tesco Mobile, and those of terminating operators, service providers and ultimately, end-users. If ComReg fails to adapt its position in light of Tesco Mobile's concerns, then it will be acting without regard to due process and the dynamic benefits that MVNO's, including Tesco Mobile, bring to the Irish mobile communications market.

Annexes

Appendix 1 – ComReg Consultation Questions and Responses

1. **Do you agree with the current and future NGN charge flows detailed in Figure 7 to Figure 13 below in Sections 4.6 to 4.9 and the associated text?**

   We do not have any comments based on the information within our knowledge.

2. **ComReg requests that if respondents consider that the analysis below in Sections 4.6 to 4.9 is incorrect that a detailed description is provided and supported, where appropriate, with sample (non-confidential) interconnection agreement(s)?**

   Please see answer to question 1 above.

3. **Do you agree with ComReg's preliminary conclusion on wholesale charges for 076 numbers?**

   Please see our response in the main body of this submission.

4. **Do you agree with ComReg's preliminary conclusions on wholesale charges for Shared Cost numbers?**

   Please see our response in the main body of this submission.

5. **Do you agree with ComReg's preliminary conclusions on wholesale charges for 0818 numbers?**

   Please see our response in the main body of this submission.

6. **Do you agree with ComReg's preliminary conclusions on wholesale charges for calls to 1800 numbers?**

   No, for the reasons set out in the main body of this submission.

7. **Do you agree with the costing principles proposed for modelling the costs to inform the wholesale charges for call origination to Freephone NGNs, as outlined in the DotEcon Report and summarised in Section 4.10 of this Consultation?**

   Please see our response to question 6 above. On the basis that we do not agree with ComReg's proposed obligations in respect of Freephone NGNs, we do not comment in respect of the costing principles proposed for modelling the costs to inform the wholesale charges for call origination to Freephone NGNs.

8. **Do you agree with ComReg's preliminary view that the Draft MVCO Model is appropriate for determining a LRAIC+ for Mobile Voice Call Origination to a Freephone NGN?**

   Please see our response to question 6 above. On the basis that we do not agree with ComReg's proposed obligations in respect of Freephone NGNs, we do not comment in respect of the costing principles proposed for modelling the costs to inform the wholesale charges for call origination to Freephone NGNs.

9. **Do you agree with the approach taken to include an additional mark-up to the LRAIC+ for MVCO to allow for the recovery of a proportion of the common costs not recovered in the Pure LRIC for Mobile Voice Call Termination?**

   Please see our response to question 6 above. On the basis that we do not agree with ComReg's proposed obligations in respect of Freephone NGNs, we do not comment in respect of the costing principles proposed for modelling the costs to inform the wholesale charges for call origination to Freephone NGNs.

10. **Do you agree with the approach taken to quantify the reasonable retail costs that are relevant to calls originating to Freephone numbers hosted on another operator's network?**

    Please see our response to question 6 above. On the basis that we do not agree with ComReg's proposed obligations in respect of Freephone NGNs, we do not comment in respect of the costing principles proposed for modelling the costs to inform the wholesale charges for call origination to Freephone NGNs.

11. **Do you agree with ComReg's preliminary view that the Draft FVCO Cost Model is appropriate for determining a LRAIC+ cost for Fixed Voice Call Origination to a Freephone NGN?**

    As we are a small originating operator in the Irish mobile communications market, we do not have the knowledge or resources to respond to this question.

12. **Do you agree with the approach taken to include an additional mark-up to the LRAIC+ for FVCO to allow for the recovery of a proportion of the common costs not recovered in the Pure LRIC for Fixed Voice Call Termination?**

    As we are a small originating operator in the Irish mobile communications market, we do not have the knowledge or resources to respond to this question.

13. **Do you agree with the approach taken to quantify the reasonable retail costs that are relevant to calls originating to Freephone numbers hosted on another operator's network?**

As we are a small originating operator in the Irish mobile communications market, we do not have the knowledge or resources to respond to this question.

14. **Do you have any comments on the Regulatory Impact Assessment and in your opinion are there other factors which ComReg should consider in completing its Regulatory Impact Assessment? Please provide reasons for your response, clearly indicating the relevant paragraph numbers to which your comments refer, along with relevant factual evidence supporting your views.**

    Please see the main body of this submission for our comments in respect of ComReg's proposed obligations, including its Regulatory Impact Assessment (RIA), and the factors which ComReg should consider in completing its RIA.

Non-Geographic Numbers

Price Control and Transparency

Response to Document 19/46 from Three

2nd July 2019

Three.ie

1. Introduction

ComReg has published several consultation documents and proposals aimed at reforming the operation of non-Geographic numbers (NGNs). The latest document in that series (19/46) is ComReg's response to consultation and draft decision on inter-operator or wholesale aspects of the operation of NGNs and Three is happy to provide comments on the draft decisions and proposals outlined in that document.

In December 2018, ComReg issued its first decision as part of this overall review (18/106), which addresses retail tariff regulation and rationalisation of the number ranges available for NGN. Those matters are now at the implementation stage across the industry. In addition, ComReg has recently issued its final decisions on the markets for both fixed and mobile voice call termination (FVCT/MVCT). Several matters covered in these decisions (and also the consultations that led to them) have a bearing on the current proposals for wholesale NGN regulation, and Three has already provided comments throughout these consultation processes. Where possible, we have avoided repeating these comments in this response as ComReg is aware of them already. Nevertheless they remain no less relevant.

There are some aspects of the draft decision which Three agrees with, however also some significant aspects where we do not. We note that the combined effect of ComReg's proposed decisions intervenes in both the wholesale and retail market for NGNs to a greater extent than for any other product of service falling under ComReg's remit. It will eliminate or restrict both retail and wholesale freedom of operators to set their own tariffs in competitive markets. This deep intervention is occurring at a time when the NGN services are being completely restructured anyhow as a result of number rationalisation. ComReg needs to be sure that in this context its proposed intervention is necessary and proportionate to remedy a clearly identified problem; that the problem is not remedied by other measures already taken by ComReg, and that ComReg has established the correct legal basis for the intervention. Three does not believe this to be the case.

2. General Points

2.1 No Wholesale Intervention for 1850, 1890 & 076

ComReg has concluded that no wholesale intervention is required for 076, 1850 and 1890 NGNs, and proposes to take no further action at this time. Three agrees with this position. In its first NGN decision (Document 18/106 the "First NGN decision"), ComReg decided that the number ranges available for NGNs should be rationalised from the current 5 down to 2. Overall, Three supported this decision, and the industry is now progressing to implementation.

The rationalisation will see users and callers migrate calls from 1850, 1890, and 076 numbers, and ComReg has already ceased to allocate new numbers from these ranges. The migration can be expected to begin "in earnest" from early 2020, and will involve a broad campaign involving ComReg, service providers and operators. It will take some effort from all involved to manage this migration properly, and if this is successful we should see 1850, 1890, and 076 diminish in importance during 2020. It would be disproportionate and inefficient to require operators to make changes at this time for number ranges that are being phased out.

In addition to the above, all NGN calls will be subject to a change in December 2019 when the retail price control part of the First NGN Decision comes into effect.

The focus and effort of the industry as a whole should now be to implement the First NGN decision. It should be understood that every change imposed on the industry requires an investment of time and resource in implementation, and at this time the effort is best focussed on migration of users off the above number ranges. ComReg's view is that the proposed wholesale intervention is necessary and will make the remaining NGNs sustainable in the long term. While Three does not agree with this position, if it were true, then it would be wrong of ComReg to impose such obligations for 1850, 1890, or 076, as this would reduce the incentive for users to migrate away from these numbers. This is most important for 1850 and 1890 as they account for the vast majority of calls.

In the case of 076, these calls follow the Calling Party Pays (CPP) model. ComReg has rightly decided that they are included in the fixed voice call termination market and subject to the fixed termination rate control. This in combination with the fact that calls to 076 must be treated the same as Geographic calls for retail charging means that there is no issue that warrants intervention while these numbers are being phased out.

2.2 Interim measure for 0818

Calls to 0818 currently follow the CPP model, with the originating operator paying a termination fee to the terminating network. There is no significant difference in the technology that is used to terminate 0818 calls vs that used to terminate geographic calls. A call to an 0818 number is essentially a geographic call that covers the entire country behind a single access code. Geographic calls and NGN calls to 0818 are substitutes for each other and are in the same market. When the First NGN Decision takes effect on 1st December, calls to 0818 will be treated identically to geographic calls for origination from all mobile (and most fixed[1]) networks.

Three has previously stated that calls to 0818 numbers should be included within the definition of the FVCT market. While ComReg did not include 0818 within the FVCT market in its most recent decision, we note that ComReg now believes this may be appropriate. It has been proposed to issue a consultation on the inclusion of 0818 within the FVCT market, which would mean that regulated fixed termination pricing would apply to these calls. **Three agrees with this proposal and urges ComReg to proceed with that consultation immediately.** ComReg should have this process concluded for 1st December 2019 to coincide with the introduction of the First NGN decision. Nevertheless, it is recognised that this process will not be concluded for several months.

In the interim, ComReg has proposed to allow originating operators to apply an origination charge for calls to 0818 only in cases where the terminating operator proposes to charge more than the regulated fixed termination rate. This origination fee would be capped by the amount by which the termination rate exceeds regulated fixed termination rate. In effect, the proposal would allow originating operators a mechanism by which they can nullify excessive termination charges for 0818 calls by introducing a countervailing origination charge.

[1] Some fixed retail plans may retain different charges for different geographic distances.

Three is willing to try to work with this mechanism as an interim measure. We note that it is not "tried and tested" in reality, and it is possible that it might lead to ever escalating termination prices and origination prices which have no net effect in the long term. We also note however that any benefit from increasing the termination rate above the regulated FTR could be eliminated by originating price increases, so terminating operators should lose any incentive to make further increases.

In the longer term, 0818 will become the only NGN available for non-Freephone calls. The traffic carried on this number range can be expected to grow with the retirement of 1890 and 1850. The interim solution is not suitable in the longer term, and should be replaced by the inclusion of 0818 in the FVCT market. ComReg should now set a date for the conclusion of the consultation and amendment of the FVCT decision.

2.3 Wholesale Origination Price Control

ComReg is proposing to introduce price control for the origination of NGN calls to 1800 and 0818. Further, the proposal is to determine the regulated prices using a BU LRAIC+ cost model, which has been adapted from the model used to determine regulated termination rates. **Three disagrees with this proposal**. ComReg has made several of errors in the application of its legal powers and the interpretation of the facts surrounding the operation of the NGN market:

- ComReg proposes to depend on Regulation 6(2) of the Access Regulations, and/or Regulation 23(1) of the Universal Service Regulations, to intervene in the market, and to use Regulations 8, 9, 18 and 13 of the Access Regulations and 23 and 30 of the Universal Service Regulations to impose price controls. These regulations cannot be used to intervene in the manner proposed by ComReg.
- No actual harm has been shown (or quantified) by ComReg that justifies intervention using the above regulations or any other regulations.
- ComReg has not demonstrated that the proposed intervention is a proportionate response to any identified or measured market failure or problem, or whether any problems identified would be remedied by the retail price intervention and structural changes which are being introduced following the first decision (18/106).
- Without prejudice to the above, ComReg's proposal to adopt pricing models taken from the regulated termination markets and adapt them to determine wholesale origination rates is fundamentally incorrect. NGN calls are not incremental but substitutional traffic.

These points are examined further below.

2.4 Legal Basis of Intervention

ComReg proposes to depend on Regulation 6(2) of the Access Regulations, and/or Regulation 23(1) of the Universal Service Regulations, to intervene in the market.

The relevant parts of Access Regulations 6(2) are:

"Without prejudice to any measures that may be taken in accordance with Regulation 8 in respect of undertakings with significant market power, the Regulator may—

(*a*) to the extent that is necessary to ensure end-to-end connectivity, impose obligations on undertakings that control access to end-users including, in justified cases, the obligation to interconnect their networks where this is not already the case,

(*b*) in justified cases and to the extent that is necessary, impose obligations on undertakings that control access to end-users to make their services interoperable, "

This Regulation allows ComReg to impose obligations to the extent that is necessary to ensure end-to-end connectivity, or to make their services interoperable. However all originating networks have already interconnected their networks and opened access to NGNs. There is no identified case where services are not already interoperable and providing end to end connectivity. This regulation does not provide a basis for intervention.

Access Regulations 8(3) states:

" . . the Regulator shall not impose the obligations set out in Regulations 9 to 13 on operators that have not been designated in accordance with paragraph (1)."

Regulations 9 to 13 specify the remedies that may be applied to an operator who has been designated with Significant Market Power according to the prescribed procedure specified in paragraph (1), and this includes price control (13). This regulation does not provide a basis for the proposed price control intervention either on its own or in combination with regulation 6(2). In fact, other than for specified exceptions it prohibits the imposition of price control without a designation of SMP. The specified exceptions do not apply in this case, and no designation of SMP has been made.

Regulation 23 of the Universal Service Regulations provides:

"23. (1) The Regulator may, where technically and economically feasible and except where a called subscriber has chosen for commercial reasons to limit access by calling parties located in specific geographical areas, specify requirements for compliance by an undertaking operating a public telephone network or providing publicly available telephone services for the purpose of ensuring that end-users are able to—

(*a*) access and use services using non-geographic numbers within the European Union, and

(*b*) access all numbers provided in the European Union, regardless of the technology and devices used by the operator, including those in the national numbering plans of Member States, those from the European Telephony Numbering Space (ETNS) and Universal International Freephone Numbers (UIFN). . . . "

This regulation provides for ComReg to specify requirements that would enable end users to access and use services using non-geographic numbers within the European Union. It is intended to provide a remedy whereby NGNs are often not accessible from one EU state to another. This is in fact the situation for 1800 numbers in Ireland – they cannot be accessed from outside of Ireland, and this remains the case even under ComReg's proposal. Even if a wider reading of this regulation was taken, ComReg's proposal is not addressing any identified case where there is no access to NGN. It will remain exactly the same before and after ComReg's decision. Regulation 23 of the Universal Service Regulations does not provide a basis for ComReg's intervention.

Regulation 30 of the Universal Service Regulations simply provides for the making of directions and does not give a basis for intervention:

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

Regulation 16(2)(f) of the Framework Regulations provides that ComReg shall impose ex-ante regulatory obligations only where there is no effective and sustainable competition that it should relax or lift such obligations as soon as that condition is fulfilled. ComReg has not carried out a competition analysis and has not found "there is no effective and sustainable competition". The proposal is contrary to this obligation on ComReg.

2.5 Consumer Harm and End to End Connectivity

ComReg's proposal to impose wholesale price control in the market for call origination is a deep intervention of the type that is only permitted under the Regulatory Framework in exceptional circumstances. ComReg has not demonstrated that those circumstances exist in the case of call origination to 1800 or 0818 numbers. As can be seen below, ComReg's market research demonstrated that there is widespread confusion among consumers in relation to the myriad of NGNs, but no evidence that end to end connectivity has been impeded, declined, or diminished.

The rationalisation of NGN number ranges will address consumer confusion and Three has generally supported ComReg in that decision. On the other hand, wholesale price control will have little or no impact on the degree to which consumers are confused about NGNs. The legal powers that ComReg proposes to depend upon for the imposition of price control requires that a problem causing end to end connectivity has been identified. This is not the case. Further, the harm being caused by such failure of end to end connectivity would need to be quantified for ComReg to be satisfied that its intervention meets the test of proportionality. No such quantification has occurred.

ComReg states that the price control remedy which is proposed will eliminate excessive wholesale origination rates, "2.13 The connectivity failure is particularly evident for Freephone NGNs" however no connectivity failure exists or has been shown. There is in fact no evidence of any connectivity failure. Neither has ComReg established that the current rates are excessive, or what constitutes excessive rates in this circumstance. It is difficult to understand how the remedy can be considered to be the most appropriate and proportionate in the absence of establishing this.

ComReg further states in paragraph 3.74:

> 3.74 Amongst other things, ComReg remains of the preliminary view that: (a) existing WORs are excessive, especially for mobile originated calls, and have likely reduced consumers' access to services provided over NGNs;

Likely reduced access to services over NGNs – this is not high enough a bar to justify the intervention under the legislation proposed. ComReg needs to show quantified evidence to justify such intervention.

2.6 ComReg's Market Research

ComReg carried out market research and published the results of that research together with consultation document 17/70. The research shows general confusion among consumers about the purpose of the various NGNs, but no evidence that end to end connectivity is impacted. Among other things, the results shows that:

- only a minority of organisations (10%) actually use NGNs (P6), and of those a majority (~88%) also provide a geographic or mobile number for contact (P8, P44);
- only 3% of organisations have ceased using NGNs, and the main reason given for doing so is because they decided that a geographic or mobile number was just as suitable for their purpose (P25);
- most organisations (82%) who do not use NGNs believe they are not necessary (P7);
- for organisations who do not use NGNs, the cost (either for the organisation or the caller) is not a significant reason, coming as the 5th and 6th most common reason respectively (P33);
- a majority of organisations would not even consider using NGNs in future if the cost to callers or the cost to the organisation was reduced (P66).

2.7 Incremental Pricing is Incorrect

Without prejudice to Three's views above regarding the legal basis under which ComReg proposes to make intervention, in any case the use of incremental pricing is wholly incorrect. It should be noted that NGNs do not provide incremental traffic to an originating operator, but rather they substitute for calls to geographic numbers. We note that this has been accepted by ComReg as stated in paragraph 4.140:

> "ComReg is also of the preliminary view that, given the degree of substitutability that exists between calls originating to geographic and non-geographic numbers, avoiding possible regulatory-induced distortions between both types of origination call is an important consideration."

Regardless of this fact, ComReg nevertheless proposes to impose incremental pricing on originating operators. **It is incorrect to take the cost standard that applies to incremental traffic and SMP operators and simply modify it for NGN origination**. In paragraph 4.138, ComReg states:

> "In general, ComReg is of the view that the costing principle recommendations in the DotEcon Report are consistent with the principles that ComReg has adopted in previous cost models. For example, the Notified Termination Markets Draft Pricing Decision included a draft MTR Model and a draft FTR Model".

This will only create inefficient incentives for call origination. Incremental cost models in the fixed and mobile markets are used:

- in markets where SMP has been found in accordance with the regulatory framework;
- for operators who have been designated only;
- generally in markets that are contained in the list of Recommended Markets which are accepted as requiring ex-ante regulation;
- where traffic is incremental, and not substitutional.

It is incorrect to apply this cost model to NGN origination and this is demonstrated most clearly in the case of a 1800 call originated on a mobile network.

For CPP calls, the originating operator collects retail revenue from its customers. The market for mobile call origination is competitive, and no finding of SMP has ever been made in Ireland. Retail prices are set according to competitive market pressure (and are efficient) except in the case of a 1800 call, for which it is required that the retail charge is zero. In this case the only revenue available to the originating operator is the wholesale origination fee.

However given that the NGN traffic in substitutional, and that zero retail revenue can be obtained in the case of 1800, then it must be recognised that every 1800 call made from a mobile network displaces the retail revenue that would have been earned if the call had been made to a geographic number. It is this *displaced revenue* that an originating mobile operator should be allowed to recover as a wholesale origination charge. The 1800 call does not provide additional or incremental revenue.

Setting a 1800 origination rate below the displaced revenue rate forces an originating operator to carry a call at a rate below that which applies in the competitive retail market and risks creating inefficient origination. It would allow inefficient call terminators to originate traffic below the cost that applies for an equivalent geographic call, and would create a regulatory induced distortion between NGN and geographic calls. This is something that ComReg has sought to avoid:

> "4.136 (c) Cost standard - DotEcon consider that a LRAIC+ approach is preferred to a Pure LRIC approach, as a LRAIC+ approach should better ensure that originators earn similar margins on non-geographic calls as they do originating geographic calls, thereby avoiding possible regulatory-induced distortions that might affect the choice of service providers and operators regarding the treatment of different NGN number ranges and between NGNs and geographic numbers;

ComReg's proposal to treat NGNs as incremental traffic and use incremental pricing is wholly inappropriate.

2.8 Proportionality

Any intervention by ComReg which has the effect to limit an operator's freedom to negotiate their own prices must pass the test of proportionality, i.e. it must be necessary, appropriate, and be the least invasive measure necessary to remedy any identified problem. **ComReg's proposals do not pass this test, and the RIA has examined this point**. ComReg first commissioned research and analysis on the operation of the whole "NGN platform", and subsequently decided to intervene to make significant changes to this NGN platform (18/106). There are two aspects to that intervention:

- retail price limitations; and
- structural changes that will see the 5 existing number ranges rationalised down to 2.

These two different aspects of intervention are significant on their own and are in the process of implementation across all players in the market. They were introduced for the purpose of remedying issues that ComReg state were identified in its market research. Given that these changes will completely change the operation of the NGN platform, it is not possible for ComReg to determine that further intervention would be proportionate until the first decision has been implemented.

3. Response to Questions

Q1. Do you agree with ComReg's description of the current and future NGN charge flows detailed in Figure 7 to Figure 13 below in Sections 4.6 to 4.9 and the associated text?

Yes

Q2. ComReg requests that if respondents consider that the analysis below in Sections 4.6 to 4.9 is incorrect that a detailed description is provided and supported, where appropriate, with sample (non-confidential) interconnection agreement(s).

Q3. Do you agree with ComReg's preliminary conclusion on wholesale charges for 076 numbers?

Three agrees. Calls to 076 are already included the FVCT market and this number range is to disappear over period from 2020 to the end of 2021, so no intervention is warranted.

Q4. Do you agree with ComReg's preliminary conclusions on wholesale charges for Shared Cost numbers?

Three agrees that it would be inappropriate to take any action in relation to 1850 or 1890.

Q5. Do you agree with ComReg's preliminary conclusions on wholesale charges for 0818 numbers?

Three agrees with the proposal as an interim measure only. ComReg originally excluded 0818 from the call termination market because it was of the view that:

> "4.98 The reasons for not including 0818 in relevant termination markets are that, compared to typical Geographic Number, SPs receiving calls on 0818 numbers are likely to be more incentivised to have greater awareness of the WTR charged by their TO, as 0818 numbers provide SPs with indirect revenue-generating or customer management opportunities.
>
> 4.99 In particular, SPs are more likely to choose TOs with a lower WTR or switch away from TOs seeking to impose an increase in the WTR for calls to 0818 numbers on the basis that a high WTR (or a WTR increase) may be factored into the ROR levied by the OO on the caller. . . .

The above is not correct. In addition, 0818 will shortly be treated exactly as geographic calls are in the retail call origination market and are substitutes in the termination market. The FVCT definition of scope should be amended to include 0818 calls.

> ComReg intends to consult on whether fixed voice call termination of calls to 0818 numbers fall within the definition of the Relevant FVCT Markets in advance of the effective date of the Geo-linking Condition of 1 December 2019.

ComReg should proceed with the consultation as time is already tight to have this implemented by 1 December 2019.

Q6. Do you agree with ComReg's preliminary conclusions on wholesale charges for calls to 1800 numbers?

Three disagrees. It is inappropriate to impose a call origination control based on an incremental cost model. ComReg states that:

> 4.126 From a termination perspective, there is little evidence to suggest that the costs incurred by a TO in terminating a 1800 call are significantly different to the costs incurred when terminating a national geographic call with the applicable Regulated FTR. On that basis, TOs should be able to recover any termination costs via the SP.

Three agrees with this point. This highlights the competitive distortion that is created by imposing a wholesale origination fee for calls to 1800 that is below the retail *displaced revenue*.

Q7. Do you agree with the costing principles proposed for modelling the costs to inform the wholesale charges for call origination to Freephone NGNs, as

outlined in the DotEcon Report and summarised in Section 4.10 of this Consultation?

No, as explained above it is incorrect to use this cost model.

Q8. Do you agree with ComReg's preliminary view that the Draft MVCO Model is appropriate for determining a LRAIC+ for Mobile Voice Call Origination to a Freephone NGN?

No. As explained above.

Q9. Do you agree with the approach taken to include an additional mark-up to the LRAIC+ for MVCO to allow for the recovery of a proportion of the common costs not recovered in the Pure LRIC for Mobile Voice Call Termination?

Without prejudice to Three's general view that an incremental cost model is inappropriate, we note that retail sales and customer care are not covered within the mark-up.

Q10. Do you agree with the approach taken to quantify the reasonable retail costs that are relevant to calls originating to Freephone numbers hosted on another operator's network?

No – this creates an incentive where it would be possible to have a mobile subscription and only use Freephone. That clearly would not recover an operator's retail costs.

Q11. Do you agree with ComReg's preliminary view that the Draft FVCO Cost Model is appropriate for determining a LRAIC+ cost for Fixed Voice Call Origination to a Freephone NGN?

No, for the reasons already explained.

Q12. Do you agree with the approach taken to include an additional mark-up to the LRAIC+ for FVCO to allow for the recovery of a proportion of the common costs not recovered in the Pure LRIC for Fixed Voice Call Termination?

No, for the reasons already explained.

Q13. Do you agree with the approach taken to quantify the reasonable retail costs that are relevant to calls originating to Freephone numbers hosted on another operator's network?

No, for the reasons already explained.

Q14. Do you have any comments on the Regulatory Impact Assessment and in your opinion are there other factors which ComReg should consider in

completing its Regulatory Impact Assessment? Please provide reasons for your response, clearly indicating the relevant paragraph numbers to which your comments refer, along with relevant factual evidence supporting your views.

ComReg was of the view that an SMP assessment approach is not necessary or appropriate as such an approach would not be (a) timely to ensure effective implementation in line with retail remedies or (b) proportionate with regard to other available options. It is wholly inappropriate for ComReg to short-cut through its obligations in the interests of saving time or for convenience. This is particularly the case when the outcome delivered is incorrect. This is an error on ComReg's part, it is ComReg is attempting to impose SMP obligations without a finding of SMP. The legal analysis does not provide support for ComReg intervening without a finding of SMP.

The proposed price control measure is not proportionate and not justified. Particularly in the case of 1800, it proposes to require operators to originate calls at zero retail charge, that will displace their retail revenue for geographic calls, but does not allow the originating network to recover its displaced revenue. This is disproportionate. It creates inefficient call origination which is contrary to ComReg's legally defined objectives.

ComReg's RIA should assess whether there is any identified issue that is not already remedied by ComReg's first decision (18/106).

/..

Verizon response to “Response to Consultation, Further Consultation and Draft Decision Access to Non-Geographic Numbers: Imposition of price control and transparency obligations”.

Verizon is the global IT solutions partner to business and government. As part of Verizon Communications – a company with nearly $131 billion in annual revenue – Verizon serves 98 per cent of the Fortune 500. Verizon caters to large and medium business and government agencies and is connecting systems, machines, ideas and people around the world for altogether better outcomes.

Please note that the views expressed in this response are specific to the Irish market environment and regulatory regime and should not be taken as expressing Verizon’s views in other jurisdictions where the regulatory and market environments could differ from that in Ireland.

Verizon welcomes the opportunity to respond to ComReg’s document 19/46 entitled “Response to Consultation, Further Consultation and Draft Decision Access to Non-Geographic Numbers: Imposition of price control and transparency obligations” (the “Consultation”).

We strongly welcome ComReg’s proposal to introduce cost orientation for 1800 freephone numbers. ComReg will be aware that this is something that Verizon and other industry providers have been lobbying for over a number of years. We consider this will improve the competitive dynamic within the market and provide a welcome end to the highly excessive mobile charges which are over 30 cents per minute in some cases.

We are equally pleased to see the rigor that ComReg has applied to its analysis in the various consultations that preceded the Consultation, and in its final proposals. The charge control should be introduced as soon as possible to swiftly mitigate the negative consumer welfare effects associated with the current origination charges in the market.

We would however urge ComReg to be mindful of the potential for a waterbed effect where providers currently charging highly excessive origination charges seek to offset losses by raising charges for 1850 and 1890 in the next two years before they are withdrawn. There is a clear potential for short-term harm and we therefore consider that some form of safeguard cap or other safety mechanism should be considered to prevent this. ComReg must also be mindful of any gaming in the transit market that might occur as a result of these changes.

The requirement to develop and publish RIOs can mean an unnecessary burden for industry and we are not clear that there is a tangible benefit that will result from this requirement. We would urge ComReg to consider seriously whether this is really needed. In any event ComReg should also consider how it could mitigate the resulting burden by developing an industry template or considering whether efficiencies can be gained by some other form of collaboration. As well as efficiencies, it would also help consistency and inter-operability between providers.

Verizon July 2019

Virgin Media response to:

Consultation: Access to Non-Geographic Numbers: Imposition of price control and transparency obligations

ComReg 19/46

02nd July 2019

Summary

Virgin Media Ireland Limited (‘**Virgin Media**’) welcomes the opportunity to respond to ComReg’s Consultation (‘**the Consultation**’) on its Response to Consultation, Further Consultation and Draft Decision: Access to Non-Geographic Numbers: Imposition of Price Control and Transparency Obligations (‘**ComReg 19/46’**).

While understanding the complexity of the issues at hand and appreciating the work ComReg has undertaken to develop this consultation, Virgin Media does not agree with all proposals. In this response we have responded to ComReg’s questions and highlight our main issues. The main themes of this response are as follows:

1. **Introducing a cap on origination rates for 1800 numbers does not address some issues raised by operators in the geolinking consultation process**. The issues raised by operators were related to the fact that they may be operating below cost in providing services for the non-geographic numbers (NGNs) that will be geolinked from 1st December 2019. In its consultation, ComReg is making no proposals around the 1890 and 1850 NGNs but focuses on the 1800 NGN which is not relevant in the context of geolinking. Virgin Media does not believe the fact that 1850 and 1890 numbers will be withdrawn as part of the NGN consolidation is an argument for not addressing the potential issues that operators will face in implementing the geolinking condition.

2. **There is no justification for the initial significant reduction (-95%) in the proposed regulated mobile origination rate**. The proposed rate is significantly lower than what mobile operators currently charge and ComReg has not provided any valid rationale for taking this approach. This change was not anticipated and is not accounted for in approved internal budgets. A reasonable glidepath or phased approach is required to ensure mobile operators can plan accordingly.

3. **There is no acknowledgment of the range of regulatory intervention that has been introduced in the mobile area over the last couple of years**. The range of regulatory intervention in the mobile area in recent years has had serious revenue implications for mobile businesses. The proposals in this consultation only result in a further margin squeeze for operators mobile divisions.

4. **ComReg appears to be making these specific proposals in order to facilitate the implementation of its consolidation decision**. While service providers (SPs) might be incentivised to switch number because of the proposed measures, the proposals may not incentivise the operators that host the majority of 1850 and 1890 numbers to encourage SPs to change number any time soon and as a result ComReg might see an influx of number assignment requests close to the end of 2021.

Introduction

Electronic communications service (ECS) providers are operating in an intensely competitive market place which includes both wholesale and retail markets. Complicating this is that some providers operate in both retail and wholesale markets and others largely just focus on the wholesale market. Virgin Media can understand that developing solutions that address issues for all market participants can necessitate a balancing act and can sometimes result in differing impacts for alternative providers.

Virgin Media has responded to ComReg's consultation questions in the following section.

Response to Consultation Questions

Wholesale charges for NGNs:

Q. 1 Do you agree with the current and future NGN charge flows detailed in Figure 7 to Figure 13 below in Sections 4.6 to 4.9 and the associated text

Virgin Media acknowledges that the setup of the wholesale market for NGNs is quite complicated. There can be a difference in terms of the types of charges and the flow of these charges depending on whether a call has originated on a fixed or mobile network (e.g. there are no origination charges for mobile calls to 0818). We suggest that notes are added to relevant figures stating that the treatment of charges might be different depending on whether a call is originated on a mobile or fixed network.

Virgin Media requests clarity on Figures 8 and 11. Both Figures suggest that the flow of the Transit charges is going to change for 076 and for 0818 from the Terminating Operator paying to the Originating operator paying. We have reviewed ComReg's draft decision and we have not seen any clear rationale for the changes to the transit flows for these number ranges, only perhaps to align 076 and 0818 with arrangements for geographic numbers. As a result we do not understand why this change appears in Figures 8 and 11 and what competitive issue (s) this is attempting to address.

ComReg will need to update Figures 10 and 11 to take account of its recent decision around termination for 0818.

With regard to the future origination charge flows/ arrangements, we have made comments under the relevant sections below.

Q. 2 ComReg requests that if respondents consider that the analysis below in Sections 4.6 to 4.9 is incorrect that a detailed description is provided and supported, where appropriate, with sample (non-confidential) interconnection agreements(s)?

Please see our response to Question 1.

Nomadic numbers – 076:

Q. 3 Do you agree with ComReg's preliminary conclusion on wholesale charges for 076 numbers?

Virgin Media agrees with ComReg's preliminary conclusion on wholesale charges for 076.

Shared cost numbers – 1850 and 1890:

Q. 4 Do you agree with ComReg's preliminary conclusions on wholesale charges for Shared Cost numbers?

Virgin Media does not agree with ComReg's preliminary conclusion on wholesale charges for shared cost numbers. We believe that ComReg is not proposing to change the wholesale charge arrangements for the Shared Cost numbers in order to ease the implementation of its consolidation decision and to incentivise SPs to switch from the 1850/1890 numbers. We do not agree that ComReg's supporting reason that these number will be phased out in two years is a fair rationale for not introducing changes. In relation to 1850 and 1890 ComReg appears to have made a proposal based on 'issues' that *might* occur rather than on existing issues. ComReg has ignored the fact that there will be issues associated with wholesale costs for 1850 and 1890 numbers from December 2019. ComReg is in effect suggesting that it will be acceptable for some operators to potentially be out of pocket for a period of up to 2 years for 1850 and 1890. As we will have to include these in bundles and geolink from 1st December with no corresponding change at a wholesale level we will be making a revenue loss for a period of 2 years. It appears that ComReg's only argument for proposing this is that these number ranges will no longer exist after 2021 and that this particular arrangement will encourage SPs to change to 0818 or 1800 quicker.

While this is ComReg's main argument for not changing the numbers, this preliminary conclusion will not incentivise the operators that host the majority of 1850/1890 numbers to encourage SPs to change number any time soon and as a result ComReg may see an influx of number assignment requests close to the end of 2021. Ensuring that the communications plan is abided by all operators is of huge importance here and ComReg needs to ensure that all operators promptly respond to any requests by SPs to change number.

Universal Access numbers – 0818:

Q. 5 Do you agree with ComReg's preliminary conclusions on wholesale charges for 0818 numbers?

Virgin Media agrees with the preliminary conclusions on wholesale charges for 0818 numbers. However we would again highlight our question related to the change in transit charge flows (see response to question 1).

Freephone numbers – 1800:

Q. 6 Do you agree with ComReg's preliminary conclusions on wholesale charges for calls to 1800 numbers

While Virgin Media understands ComReg's intention underlying this proposal, we do not agree with the proposal as it stands from a mobile point of view. We agree that changes may need to be made to the wholesale arrangements for 1800 but we believe that the mobile proposals merit further consideration. We have outlined a number of reasons for this below and in response to the related questions that follow.

At the outset Virgin Media notes that the proposal around 1800 numbers does not address the issues raised by the majority of operators during the geolinking consultation process. The issues raised by operators were related to the fact that they may be operating below cost in providing services for the NGNs that will be geolinked from 1st December 2019. This proposal is not related to the issue at hand and, from Virgin Media's point of view, was an unexpected addition to ComReg's Wholesale Origination Consultation.

ComReg's consultation paper does not refer to the fact that some operators that host 1800 numbers may have a range of additional revenue streams associated with hosting 1800 numbers. One example is a monthly line rental charge that some operators charge. So our understanding is that not only will some operators potentially benefit from the proposal, these operators will also be able to continue to apply the monthly line rental charge which is associated with 1800 numbers. In response to potential losses in revenue, some operators may also choose to increase this line rental charge.[1]

Q. 7 Do you agree with the costing principles proposed for modelling the costs to inform the wholesale charges for call origination to Freephone NGNs, as outlined in the DotEcon Report and summarised in Section 4.10 of this Consultation?

Virgin Media believes that a LRAIC+ model is probably the most relevant for this purpose but we do not agree with ComReg's general conclusions because we do not believe the impact on different operators has been assessed fully.

Mobile voice call origination modelling:

Q. 8 Do you agree with ComReg's preliminary view that the Draft MVNO Model is appropriate for determining a LRAIC+ for Mobile Voice Call Origination to a Freephone NGN?

Virgin Media does not agree with ComReg's general views from a mobile perspective. Any change must be introduced in a transparent manner so that mobile operators can adequately plan.

Virgin Media does not support ComReg's proposal that there will be no glide path applied, and instead annual prices would be set. This view is based on recommendations provided by DotEcon. The DotEcon report[2] stated that '…*price levels should fall to regulated rates as soon as possible to ensure that the harm arising from current rates is mitigated. There is a need to ensure that end-to-end connectivity is not compromised*.' This statement is alarmist and is made with no supporting evidence as to why end-to-end connectivity would be compromised. Virgin Media is not aware of any situation where this has occurred under existing wholesale arrangements. Certainly if this is a risk for 1800, then it would also be a risk for 1850/1890. ComReg provides no valid rationale as to why a glide path should not be applied for any changes introduced to mobile origination rates.

The proposed rates result in a very large decrease in revenue for mobile operators from 1st January 2020 and does not have any regard for the impact on operators. The initial decrease in the mobile origination rate is approximately -95%, compared to the relatively stable change in fixed rates. This considerable initial decrease has not been justified in the consultation paper and mobile operator's ability to take this hit in year one is questionable, especially when combined with other recent

[1] The charge currently is set at around €12.50 per month. [✂Virgin Media is now considering the introduction of such charges for NGN numbers].
[2] Annex A.9 in 19/46a.

regulatory decisions[3]. Furthermore, the 1800 proposal was made in late May 2019 when budgets have already been approved and set for the year ahead without the inclusion of a provision for a wholesale origination rate price control for the 1800 number. [✂This places practical and strategic risks on the mobile unit within Virgin Media as we have not been allowed to plan for this accordingly and have not been able to plan around not having to pass on the decrease in revenues to end-users in some form in the short term]. The proposed introduction of such a large initial rate decrease (significantly impacting mobile operator revenues) takes no account of the commercial realities of running a business and points to the importance of regulatory certainty.

As the 1800 number will continue to exist after 2021, if a price control is to be introduced for mobile operators we suggest a glidepath or a phased approach with a much more realistic, gradual decline over a number of years to prevent revenue shock and limit the potential impact on end-users.

Q. 9 Do you agree with the approach taken to include an additional mark-up to the LRAIC+ for MVCO to allow for the recovery of a proportion of the common cost not recovered in the Pure LRIC for Mobile Voice Call Termination?

See responses to questions 6, 7 and 8.

Q. 10 Do you agree with the approach taken to quantify the reasonable retail costs that are relevant to calls originating to Freephone numbers hosted on another operator's network?

See responses to questions 6, 7 and 8.

Fixed voice call origination modelling:

Q. 11 Do you agree with ComReg's preliminary view that the Draft FVCO Cost Model is appropriate for determining a LRAIC+ cost for Fixed Voice Call Origination to a Freephone NGN?

In terms of the fixed model, Virgin Media agrees in principle with the approach taken by ComReg. The proposed rates are not significantly different to what we currently charge under the 'deemed to be' regime so, while unexpected, the proposal should not have a significant impact on our approved budgets.

Q. 12 Do you agree with the approach taken to include an additional mark-up to the LRAIC+ for FVCO to allow for the recovery of a proportion of the common costs not recovered in the Pure LRIC for Fixed Voice Call Termination?

We agree with the approach to include an additional mark-up to the LRAIC+ for FVCO to allow for the recovery of a proportion of the common costs not recovered in the Pure LRIC for fixed Voice Call Termination.

Q. 13 Do you agree with the approach taken to quantify the reasonable retail costs that are relevant to calls originating to Freephone numbers hosted on another operator's network?

[3] Virgin Media will be regulated in the MTR market from August 2019; the introduction of intra-EEA rates; geolinking; roaming regulations

Virgin Media has no comments to make in relation to the reasonable retail costs.

Regulatory Impact Assessment:

Q. 14 Do you have any comments on the Regulatory Impact Assessment and in your opinion are there other factors which ComReg should consider in completing its Regulatory Impact Assessment? Please provide reasons for your response, clearly indicating the relevant paragraph numbers to which your comments refer, along with relevant factual evidence supporting your views.

Virgin Media has reviewed the Regulatory Impact Assessment and has a couple of comments.

One of the main objectives of ComReg as per Section 12 of the Communications Regulation Act 2002 is to promote competition. In the RIA ComReg details in section 7.20 - 7.24 how it meets this objective through its proposals. Section 7.31 (b) of the RIA deals with ComReg's objective under Regulation 16 of the Framework Regulations, '*Ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks and services'*. ComReg's analysis appears to focus on the impact on SPs. While Virgin Media agrees that this is a very relevant consideration, there is no assessment of how this impacts on different types of telecommunication operators. We believe any market review must include an assessment of impact across different types of operators.

Section 7.31 (a) of the RIA deals with ComReg's objective under Regulation 16 of the Framework Regulations, '*Promoting regulatory predictability by ensuring a consistent regulatory approach over appropriate review periods'*. While a review of the wholesale market for NGNs was called for by operators during the retail NGN consultation, it was anticipated that this wholesale review would focus on the NGNs relevant to geolinking. The wholesale consultation was published in late May 2019 when budgets have already been approved and set for the year ahead, and the 1800 review was not anticipated. Approved budgets do not include a provision for a wholesale origination rate price control for the 1800 number which now places practical and strategic risks on our mobile business. We propose a more gradual decline in the regulated mobile origination rate.

Vodafone Response to ComReg document:

Response to Consultation, Further Consultation and Draft Decision

Access to Non-Geographic Numbers: Imposition of price control and transparency obligations

Reference: ComReg 19/46

Preliminary Remarks:

Vodafone welcome the opportunity to respond to Comreg consultation 19/46.

We note that there have been a number of consultations relating to ComReg's proposals to impose new regulation on both the wholesale and retail charges for nongeographic Numbers. It is the view of Vodafone that ComReg have not taken on board the issues raised by Vodafone and other operators and that there are a number of shortcoming in ComReg's Draft Decision and particularly the proposed implementation timescales.

Throughout this process, Comreg have separated their proposed wholesale and retail remedies, and the timing of solutions, in a way that is completely unreasonable: There are now gaps in this wholesale decision and serious shortcoming in ComReg's proposals for the timing of both the retail and wholesale remedies.

As we have pointed out to ComReg in previous responses, it is unjustifiable for ComReg to seek to impose retail charges for calls that are lower than the wholesale transition or terminating charges. This critical issue remains unresolved...

As a specific example ComReg have completely failed in this consultation to address charges for 1850 and 1890 calls. We gave details to ComReg of the retail and wholesale charging price for these calls to ComReg in our response to Comreg 18/65, clearly demonstrating that there is an issue because proposed retail charges are lower than the transition and termination call charges in the market. ComReg have failed to address 1850 and 1890 in this consultation.

Comreg have proposed a new charging process for 0818 calls that adds considerable complexity and cost to the processes needed to negotiate, administer, and bill for inter-operator charges for this range. It is the view of our experts that ComReg's proposal to add Wholesale Originating charges to these calls is administratively and technically impractical. As in other NGN number ranges, ComReg have ignored the additional costs for operators associated with the administration of special solution for numbers with small call volumes.

In addition, we note that Comreg are now proposing the indefinite extension of some 1850 numbers used by the major utilities. Supporting this number range adds significant cost to retail operators that cannot be recovered by charges for the low volume of calls to these numbers. Leaving these numbers in use calls into question the entire justification for the changes to the NGN regime, and certainly removes any urgency in the implementation of the current proposals.

We recognise that a number of positive steps have been taken to simplify the charging process for non-geo numbers and welcome a number of planned processes, but we remain concerned that this is another ComReg proposal that removes revenue from industry. Such manoeuvres whether intended or unintended, should be carefully assessed by ComReg to reduce impact to users and consumers and industry.

Vodafone notes that while aspects of the transit market are out of scope in this consultation, we submit that the transit market is an integral aspect of the operation of the market

As we have noted in previous submissions implementation of these proposals will necessitate a change our contracts with service providers using us as a terminating operator (CWW in our case), including giving notice of price changes. Implementation will also involve the negotiation of new Transit and interconnect contracts and possibly the development of new interconnect billing systems. Given the likely end 2019 decision date, it is entirely impractical to propose a Jan 1 2020 implementation date.

We recommend that Comreg delay the implementation of both the wholesale and retail remedies until an overall solution is in place. This revised solution should include a more practical solution for 0818 charging and a solution for 1850 and 1890 and allow time for Operators to complete any required contract negotiations.

Response to Consultation Questions:

Q. 1 Do you agree with the current and future NGN charge flows detailed in Figure 7 to Figure 13 below in Sections 4.6 to 4.9 and the associated text?

A. 1. Vodafone agrees with ComReg's assessment and presentation of the current NGN charge flows detailed at Figures 7 – 13. We note that sections 4.6 through to 4.9 although they reference figure 7, we suggest that at least clauses 4.44 and 4.45 appear to be incorrect.

Vodafone welcomes the changes proposed by ComReg set out at figure 7 - current charging arrangements, and figure 8 - future-charging arrangements, relevant to 076 ranges. It appears to Vodafone that in a Calling Party Pays – CPP, model the originating wholesale operator pays for the call, and has full control to choose the most efficient routing. Thus, the charging arrows should point towards the originator as in Figure 8.

Vodafone agrees with the charging flow identified in Figure 9 concerning 1850 and 1890 services. We understand the approach to remove the transit details to simplify the diagram; we consider the remaining transit issue is a very material problem for the interim operation of 1850 and 1890. We acknowledge the worked examples provided by ComReg at Annex 3 figures 28 - current charging arrangement. Figures 29 and 30 - future charging arrangement, are helpful in highlighting the unchanged operation and continuing transit problem.

Vodafone welcomes and agree with the change in direction of transit charges from figure 10 current charging arrangements, and figure 11 relating to 0818. This appears to reflect the correct operation of a Calling Party Pays model.

Vodafone notes that with regard to 1800 services that figures 12 and 13 are the same. ComReg appears to have simply assigned differing titles. We are concerned that the payment of transit charging remains with the terminating operator. Thus failing to incentivise efficient routing. This is something that ComReg might need to reconsider.

Q. 2 ComReg requests that if respondents consider that the analysis below in Sections 4.6 to 4.9 is incorrect that a detailed description is provided and supported, where appropriate, with sample (non-confidential) interconnection agreement(s)?

A. 2. Vodafone agrees with the charging flow Figure 9 depicts. It shows the correct flow absent transit, however we believe transit is a material issue and needs to be considered to avoid potential abuse until the Dec 2021 watershed 1850 and 1890 services. The same transit issue applies when considering 1800 services.

Q. 3 Do you agree with ComReg's preliminary conclusion on wholesale charges for 076 numbers?

A. 3. Vodafone notes the proposed closure period for 076 number ranges. We fully support ComReg's proposals to change the transit direction in Figure 8. It is absolutely appropriate for the Calling Party Pays model and supports efficient use of the network.

Q. 4 Do you agree with ComReg's preliminary conclusions on wholesale charges for Shared Cost numbers?

A. 4
No, in our response to ComReg 17/70 we supplied details of the charge chain for 1850 and 1890 numbers. We illustrated clearly that the settlement charges for these calls considerable exceeded the proposed ComReg retail charges and proposed that the retail charges should not be changed in advance of a wholesale solution. This position was support by ComReg's own consultants:

Vodafone note ComReg's closure plans for the 1850 and 1890 ranges at the end of the 2021. Vodafone cautions ComReg in that regard. It is our experience that consumers/users may not be in a position to simply and easily move from the Shared Cost services to 1800 and 0818 as is forecast.

In addition, we note that ComReg are preparing to agree to the retention of a small number of 1850 numbers for key utilities.

It is not acceptable then for ComReg to ignore the issues that will arise due to the transition and terminating costs of these numbers. These costs are higher than the retail costs that Comreg are imposing.

We note again that these issues were clearly identified in the DotEcon report 17/70a– see the following quotes:

"It is also possible that retail remedies without corresponding wholesale remedies could even worsen the situation for SPs if originators seek to recover lost retail margins through higher wholesale charges. . ..
For these reasons, we recommended that measures to intervene in the wholesale market are considered in parallel with our proposed remedies for the retail market." Comreg 17/70a. P126

Q. 5 Do you agree with ComReg's preliminary conclusions on wholesale charges for 0818 numbers?

A. 5. Vodafone welcomes ComReg's preliminary conclusions concerning 0818 and we agree with the logic expressed concerning the proposed changes in the direction of transit charging for the same reasons outlined above.

There are issues with the proposed charging arrangements for setting Wholesale Originating Rate (WOR). It is not practical to set up a charge per terminating or transition operation. The development and maintenance of distinct charging for each terminating operator would be an expensive and difficult to administer process. The proposed limit on WOR provide no mechanism for operators to recover these costs from the small retail charges.

ComReg's analysis fails to recognise that the call costs per call for this small call groups are very considerably in excess of the call costs for the large number of geographic calls.

Operators would have to identify the transition and terminating operators for all calls and maintain charging tables to work out interconnect billing.

Q. 6 Do you agree with ComReg's preliminary conclusions on wholesale charges for calls to 1800 numbers?

A. 6. .

While Vodafone supports the change to cost orientation for call origination, we remain concerned that ComReg describe a two party system for counterbalancing charges, whereas in reality it is largely a three party system. ComReg must retain and apply discretion in any dispute where the transit operator imposes unreasonable pricing and both the originating and terminating operators act independently to counterbalance the charges.

Q. 7 Do you agree with the costing principles proposed for modelling the costs to inform the wholesale charges for call origination to Freephone NGNs, as outlined in the DotEcon Report and summarised in Section 4.10 of this Consultation?

A. 7. Vodafone observes with regard to the costing principles for modelling at clause 4.148, that is does not appear to properly and fully consider matters concerning the diverse solutions deployed and available in the fixed market. Core and access networks differ greatly and migrations away from TDM to VoIP are costly and can be cumbersome. Vodafone submits that ComReg should reconsider this section taking account of new technologies.

Q. 8 Do you agree with ComReg's preliminary view that the Draft MVCO Model is appropriate for determining a LRAIC+ for Mobile Voice Call Origination to a Freephone NGN?

Vodafone accept that the Draft MVCO Model is appropriate for determining a LRAIC+ figure for geographic calls. We contend that this model assumes large call volumes. There are additional costs per call for low volume call types such as non-Geo numbers.

Q. 9 Do you agree with the approach taken to include an additional mark-up to the LRAIC+ for MVCO to allow for the recovery of a proportion of the common costs not recovered in the Pure LRIC for Mobile Voice Call Termination?

A. 9. Vodafone agrees that there should be an additional mark-up to the LRAIC+ for MVCO to allow for the recovery of a proportion of the common costs not recovered in the Pure LRIC for Mobile Voice Call Termination.

This however does not cover all costs. There are, in addition, specific added costs for the administration of NGN numbers and for the administration and billing of interconnect for these calls.

These extra costs are in excess of the common costs covered in a LRAIC+ model.

Q. 10 Do you agree with the approach taken to quantify the reasonable retail costs that are relevant to calls originating to Freephone numbers hosted on another operator's network?

A. 10. Vodafone agrees that there are considerable additional costs associated with calls originating to Freephone numbers. While ComReg's approach has captured some of this cost, we do not believe that it is a complete picture of the costs associated with these numbers. Specifically the high costs that ComReg's current proposals will impose on our Network and IT network will need to be recovered. These are in addition to ongoing costs Retail Costs.

Q. 11 Do you agree with ComReg's preliminary view that the Draft FVCO Cost Model is appropriate for determining a LRAIC+ cost for Fixed Voice Call Origination to a Freephone NGN?

A. 11. Vodafone agrees that there should be an additional mark-up to the LRAIC+ for FVCO to allow for the recovery of a proportion of the common costs not recovered in the Pure LRIC for Mobile Voice Call Termination.

This however does not cover all costs. There are, in addition, specific added costs for the administration of NGN numbers and for the administration and billing of interconnect for these calls.

These extra costs are in excess of the common costs covered in a LRAIC+ model.

Q. 12 Do you agree with the approach taken to include an additional mark-up to the LRAIC+ for FVCO to allow for the recovery of a proportion of the common costs not recovered in the Pure LRIC for Fixed Voice Call Termination?

A. 12. Vodafone agrees with the approach taken by ComReg, to include an additional mark-up to the LRAIC+ for FVCO, in order to allow for the recovery of a proportion of the common costs not recovered in the Pure LRIC for Fixed Voice Call Termination. Omitting the recovery of these costs would not allow the reasonable recovery of costs by the operator and potentially cause market distortion making non-geographic calls cheaper than geographic calls.

Q. 13 Do you agree with the approach taken to quantify the reasonable retail costs that are relevant to calls originating to Freephone numbers hosted on another operator's network?

A. 13. See Answer 10.

Q. 14 Do you have any comments on the Regulatory Impact Assessment and in your opinion are there other factors which ComReg should consider in completing its Regulatory Impact Assessment? Please provide reasons for your response, clearly indicating the relevant paragraph numbers to which your comments refer, along with relevant factual evidence supporting your views.

A. 14. Vodafone have no comment