Commission for
Communications Regulation

Submissions received in relation to Consultation

Number Portability in the Fixed and Mobile Sectors

Submissions received from respondents

Document No:	07/98a
Date:	13th December 2007

Consultation:	07/21
Response to Consultation:	07/98

An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation
Abbey Court Irish Life Centre Lower Abbey Street Dublin 1 Ireland
Telephone +353 1 804 9600 *Fax* +353 1 804 9680 *Email* info@comreg.ie *Web* www.comreg.ie

Contents

1 Vodafone Ireland Ltd.

Vodafone Response to the ComReg Consultation on Number Portability in the Fixed and Mobile Sectors

Introduction

Vodafone welcomes the opportunity to respond to ComReg's consultation on Number Portability in the Fixed and Mobile Sectors. Vodafone considers that the draft specifications proposed by ComReg are unwarranted with respect to mobile number portability (MNP) given that there is no evidence of a significant competition problem arising from the level or structure of the existing MNP charge in this market. As outlined further in the response to the consultation questions below, the available evidence is in fact fully consistent with a market where competition is working effectively and the inter-operator MNP charge is not acting as a deterrent to subscribers switching mobile service provider.

Vodafone notes that the current inter-operator MNP charge was as an intrinsic part of the overall initiative that led to the launching of MNP in Ireland in 2003. The draft specifications proposed by ComReg as they impact on the MNP charge therefore have wider implications for the porting systems and processes currently in place. If ComReg, despite the evidence of robust competition, is nonetheless minded to incorporate the draft specifications unchanged in its final decision then it must, prior to doing so, address these fundamental issues relating to porting arrangements through active engagement with the mobile operators. Many of these central issues are set out by Vodafone in this consultation submission. Comments in relation to the proposed treatment of costs for a cost oriented NP charge are also set out further in response to the relevant consultation questions.

Response to Consultation Questions

Q. 1. Do you agree that the above cost categories are appropriate to the development of costing rules for NP? Do you believe that the categories identified above are clear and unambiguous?

While the cost categories for ComReg's proposed development of costing rules for number portability (NP) are addressed further below, Vodafone considers that this and matters relating to the treatment of costs, and the scope of allowable costs for NP, are subordinate to larger issues around which specific questions have not been framed in this consultation. Further clarification is required in relation to these issues before it will be possible for Vodafone to comment fully on the optimal approach to the proposed setting of principles for a cost oriented wholesale NP charge.

Fundamental Issues

It is not clear to Vodafone why ComReg now considers it necessary to revisit the issue of appropriate charging principles for mobile number portability (MNP) as the existing MNP charge was agreed by the mobile industry, in a process overseen and driven by ComReg, prior to the launch of MNP in 2003. The parties to the agreement included the then smaller entrant operator (Meteor), indicating that the porting charge agreed was not seen as an impediment in any way to competing in the market. Developments in the market since the launch of MNP have supported this view. For example:

- The industry has seen a very high level of take-up of the MNP facility, with more than 900,000 cumulative ports to date and the million mark forecasted to be reached by the end of 2007, This represents one in four Irish mobile customers.

- The rapid growth in Meteor's customer base to 820,000 in a maturing market demonstrates that competition has not been materially constrained by the level of the present donor charge.

It should also be noted that the porting charge has not changed in four years, representing a significant reduction in its level in real terms over the period, in spite of the increased number of operators and the increased complexity and expense involved in integrating new operators. Vodafone is strongly of the view that there are no grounds either for conducting a review of the basis of the current MNP charge or for considering the possibility of regulatory intervention given that no relevant competition problem has been identified and competitive conditions in the market are robust.

Efficient System

Notwithstanding the above, a key issue that requires clarification is the proposal to base the allowable costs for the purpose of a cost orientated NP charge on those of an efficient operator. While Vodafone agrees with the adoption of this principle where cost orientation is required, the costs of a fully efficient NP process may be viewed as going beyond merely the lowest cost approach to porting using the existing NP system to the operation at least cost of the most efficient of the various possible NP systems. It is entirely conceivable that the existing system and the most efficient NP system are not the same. It is clear that the costs of a porting process for an efficient operator will vary depending on the particular system, from among the various possible options, that is used. In the event that it were found that the most efficient (lowest cost) porting system differed from that currently in place, fundamental changes to porting systems and processes would have to occur in tandem with moves to a cost oriented porting charge. This may involve, for example, not only the establishment of different porting charges for different outcomes but also different porting charges based on the desired duration of the porting process. ComReg must clearly set out its thinking in relation to these matters before Vodafone can comment in detail on many aspects of the proposals in this consultation.

The existing MNP system is a particularly complex high specification system, having been designed to meet requirements for very short average porting times. It is also characterised by considerable availability outside of normal office hours. These are key determinants of both the up-front costs and ongoing operating costs of the current MNP process. The NP system for the porting of fixed numbers is very different from that for mobile numbers in terms of the porting volumes with which it deals and the typical duration of the porting process, among other factors. The differences between the separate fixed and mobile NP systems are reflected in the different fixed and mobile wholesale porting charges.

Vodafone notes ComReg's view, as set out in Section 2 of the consultation, that there is the potential for a future increase in the demand for NP facilities arising from the possible introduction of home-zone services and other converged communications services. ComReg must specify how the proposed costing principles for NP would apply in this context. In particular ComReg must set out how it intends to reconcile the operation of two different and separate NP systems for fixed and mobile numbers in a future converged environment given that the cost oriented charge based on efficient operator costs in each case is likely to be very different, and given the current differing capacities of each system to deliver on important service dimensions such as the average duration of the NP process. Avoiding large asymmetries between the wholesale porting charges and porting service standards for different types of numbers in a converged environment may require fundamental reform of existing porting systems and processes. Greater clarity on this issue will be necessary before Vodafone will be able to respond in detail to many of the issues on which ComReg is seeking comment in the present consultation.

Cost Categories

Vodafone's comments on the cost categories proposed by ComReg for the development of NP costing rules are without prejudice to our position that addressing the issue of appropriate charging principles is unnecessary due to current satisfactory porting charge arrangements.

While in broad agreement with the main cost categories as identified by ComReg with respect to the current MNP system, Vodafone considers that ComReg's description of the cost category of 'General System Provisioning Costs' mis-characterises the expenditures incurred in developing and modifying systems and processes as being purely one-off costs, unrelated to porting volumes. Vodafone considers that many of the costs covered by this category are in fact ongoing costs, some of which are related to the volume of outgoing ports which operators are required to facilitate. Beyond the large initial development costs incurred by operators, there are recurring costs associated with the replacement of equipment and the upgrading of systems. In addition, costs are necessarily incurred periodically in expanding the capacity of mobile operator's porting systems as certain average daily porting volume thresholds are reached, therefore many system costs can be regarded as fixed only for particular porting volume ranges and it is entirely inappropriate to exclude them from the cost oriented charge.

An important group of costs not explicitly mentioned within the cost categories identified by ComReg are those associated with facilitating the integration of mobile market entrants into the existing industry MNP system. Established mobile operators have previously had to incur considerable costs in modifying their systems and undertaking the necessary testing to ensure that porting could be facilitated effectively for new mobile entrant operators. It is certain that these costs will also be incurred in the future as further market entry, particularly by MVNOs, occurs. The testing and system modification costs that are incurred by established operators in facilitating new entrants are solely attributable to specific instances of market entry by new mobile competitors, and the work involved constitutes a major project for the other operators in the industry. To date such costs have not been directly charged to the entrant operator(s). If testing costs were to be excluded from the allowable costs used in assessing a cost oriented MNP charge, as proposed by ComReg, then these costs may have to be recovered by each operator through charging project management fees to mobile market entrants.

In conclusion Vodafone notes that many of the costs included by ComReg in the 'General Systems Provisioning Costs' category are in fact dependent to varying degrees on underlying porting volumes. Even if it is assumed that it is appropriate to exclude entirely non-volume dependent costs from the assessment of a cost oriented charge, Vodafone contends that those system provisioning costs that are related to underlying porting volumes must be included within the allowable costs in addition to the Per-line enabling/Transaction costs as defined by ComReg. Vodafone does not accept that including these latter types of cost as allowable costs for the purpose of assessing a cost oriented porting charge presents insurmountable obstacles for cost models.

Q. 2. Are there any other cost categories which should be considered? Please state the reasons for your response.

Vodafone's views in relation to the cost categories set out by ComReg are set out in response to question 1. To summarise, Vodafone is in broad agreement with the main cost categories identified and is not aware of any major cost category that has been omitted by ComReg. However, Vodafone has strong reservations regarding ComReg's characterisation of the costs in the 'General System Provisiong Costs' category in particular. Vodafone would submit that it is entirely inappropriate to describe all costs in this category as one-off costs that are independent of operator demand. Vodafone considers that many system costs have at least some relationship to porting volumes and should therefore be included as allowable costs in a proposed cost oriented MNP charge.

It should be noted that Vodafone's comments on the cost categories proposed by ComReg for the development of NP costing rules are without prejudice to our position that addressing the issue of appropriate charging principles is unnecessary due to current satisfactory porting charge arrangements.

Q. 3. Do you agree with ComReg's proposed treatment of each of these types of cost? If so please provide reasons. If not please provide reasons and suggest alternatives.

No. Vodafone's views in respect of the proposed treatment of the categories of costs identified by ComReg are set out in response to question 1. To summarise:

- ComReg's description of the cost category of 'General System Provisioning Costs' mis-characterises the expenditures incurred in developing and modifying systems and processes as being purely one-off costs, unrelated to porting volumes. Vodafone considers that many of the costs covered by this category are in fact ongoing costs, some of which are related to the volume of outgoing ports which operators are required to facilitate.

- Costs associated with facilitating the integration of mobile market entrants into the existing industry MNP system are an important group of costs not explicitly mentioned within the cost categories identified by ComReg. Vodafone believes that these should be considered allowable costs in the determination of a cost oriented porting charge.

- The issue of allowable costs cannot be separated from the underlying systems and processes used. Specification of allowable costs for the determination of a cost oriented charge has wider implications for porting systems and processes that must be resolved prior to any final decision.

Q. 4. Do you agree with ComReg's view that the allowable costs for the purpose of the cost orientation for NP should be those based on an efficient operator? Please state the reasons for your response.

Vodafone agrees with the principle that the allowable costs for the purpose of determining a cost oriented number portability charge should be based on those of an efficient operator. As set out in the response to Q1 however, clarification is required in relation to what this involves in practice in the context of ComReg's current proposals.

Basing the porting charge on the costs of an efficient undertaking provides the proper incentives for operators to adopt those technologies and processes that enable effective porting of fixed and mobile numbers at least cost. The efficient operator porting charge also creates the appropriate incentive for operators to grow their businesses to a size that enables them to benefit from available economies of scale.

Q. 5. Do you agree that it may be appropriate for ComReg to use independent cost models – i.e. bottom up models in the determination of NP charges? Please state the reasons for your response.

Vodafone considers that independent cost models may be appropriate but, if they were to be used, operators would need to have considerable input into the formulation of the models to ensure that they accurately reflect the actual cost conditions and all the functionality of the porting system. This view is without prejudice to Vodafone's position that ComReg's proposed draft specifications are disproportionate and unnecessary.

Q. 6. Do you believe that a different standard of efficiency should be applied to different operators? Please elaborate on your response.

Vodafone does not agree that a different standard of efficiency should be applied to different operators, even if scale effects were found to be significant. This approach to a cost oriented number portability charge would lead to asymmetric charges across the operators, effectively unfairly penalising recipient operators for the inefficiency of certain donor operators. This approach would also reduce the incentives for less efficient small operators to grow their revenues and subscriber base so as to reach the scale necessary to benefit from resulting scale economies.

Vodafone contends that the relevant standard for an efficient operator is an undertaking that has reached the equivalent of the minimum efficient scale at which most scale economies can be achieved. The single efficient number portability charge determined on this basis should apply uniformly to all undertakings operating in the relevant market.

Q. 7. Do you agree with ComReg's view that the donor operator should be able to levy a NP charge which covers the incremental administrative cost element of its per-line enabling/transaction costs from the recipient operator? Please state the reasons for your response.

Vodafone considers that donor operators should be able to levy a NP charge which allows them to recover, on an efficient operator basis, all the legitimate costs necessarily incurred by them in the provision of number portability. This is necessary as a cost is incurred by the donor operator in providing an important service and benefit to the recipient operator.

Q. 8. What are your views on pricing structures for NP? Please state the reasons for your response.

The existing single charge resulted from commercial agreement between the parties even though a range of charges for different porting processes was proposed by some operators. If there is a move to cost-oriented prices, a charging system with different prices for various porting outcomes is desirable because it would create the proper incentives for both donor and recipient operators to maximise the efficiency of their porting processes.

Q. 9. Do you agree with ComReg's proposal that there should be no direct charge to retail subscribers for NP? Please state the reasons for your response.

No. Vodafone believes that it is neither appropriate nor necessary for ComReg to specify that there be no direct charges to subscribers for the porting of mobile numbers given that such charges are not currently implemented by any mobile operator, and are not likely to be introduced going forward.

Mobile operators have never imposed direct charges on mobile customers who choose to port their number. This reflects the strong competitive dynamics in the mobile market - all operators have strong incentives to ensure that subscribers intending to port to their networks are not deterred by significant switching costs. In addition there is little prospect of a direct retail charge for porting being implemented by any mobile operator in the future given the likely highly adverse impact that such a decision would have on customer perceptions and the operator's market position. With regard to the porting of mobile numbers there is no issue of diminished competition in the market arising from a direct charge switching cost for subscribers and a proposed obligation not to impose retail charges for MNP is consequently completely unwarranted.

Notwithstanding the above, although it may be appropriate for ComReg to prohibit a direct retail charge by donor operators to retail customers for porting, Vodafone objects on principle to the proposed specification as it relates to prohibiting retail charges for porting introduced by recipient operators. Vodafone's position is based on the fact that while a retail charge for porting imposed by operators as donors may have implications in terms of reducing competition by deterring customers from switching, in a competitive market operators as recipients of ports have every incentive to ensure that their actions do not deter customers from switching to them. It is not credible that retail porting charges levied by recipient operators would be set at a level that had a significant adverse effect on competition in the market given the incentives faced by the recipient operator. Such charges, where imposed would not have any ant-competitive intent and would be based on valid commercial considerations. Consequently Vodafone considers that the proposal to prohibit retail porting charges by recipient operators is an entirely disproportionate and unnecessary regulatory measure. Operators should be allowed to reserve the right to introduce retail charges for ports where they are recipient.

Q. 10. Respondents are requested to provide views on whether the proposed specifications are proportionate and justified and offer view on other factors (if any) ComReg should consider in completing its Regulatory Impact Assessment.

Vodafone considers that the proposed specification of the allowable costs for the pricing of interconnection as it relates to the provision of mobile number portability is neither proportionate nor justified. As set out in the response to question 1, Vodafone does not believe that there are sufficient grounds for issuing the proposed specification as the existing wholesale MNP charge was previously agreed by the industry in a process overseen by ComReg and no evidence has been presented to support the position that the level or structure of the current charge is having an adverse impact on competition. The available evidence, such as high porting volumes and the progress made by entrant operators, demonstrates not only that no specific competition problem arising from the current MNP charge is present, but that competition in the overall market is intense. In these circumstances, it is unclear that there would be any beneficial impact from ComReg's proposed regulation.

ComReg's proposal to prohibit direct charges to subscribers for number portability is also unjustified. As set out in the response to question 9, this is because direct charges to retail customers for NP are not currently implemented by any mobile operator and the competitive dynamics in the mobile market are such that they are not likely to be introduced going forward.

Vodafone considers that the RIA set out in Section 7 of the consultation document fails to correctly identify and describe all of the impacts of the proposed specifications. Vodafone notes that while the asserted beneficial impacts of regulatory options provisionally chosen by ComReg are clearly set out, the associated costs have in some instances been omitted from the assessment. In provisionally concluding that specifying allowable costs for a cost oriented NP charge is the most appropriate option, ComReg states that:

> *"ComReg considers this approach to be the most appropriate as it is fully transparent, it facilitates operators in ensuring compliance with the cost orientation obligation and sends the appropriate signals to the marketplace."* [1]

However ComReg incorrectly omits any reference to the compliance costs that would be incurred by operators if this option were imposed.

The assessment of the regulatory alternatives with regard to the parties from whom the NP charge is to be recovered is similarly incomplete. ComReg rejects option 3 – 'The Consumer who ports pays' based on the view that it would discourage consumers from switching network providers and therefore have a negative impact on competition; Vodafone notes however that ComReg does not identify that rejecting this option may also have costs for consumers where a retail porting charge is already in place. If an operator is compelled to withdraw an existing retail porting charge then it may have to recover its porting costs from the prices of other services that it offers. In a competitive market this may lead, for example, to the price of voice calls falling more slowly than would otherwise be the case. In circumstances where the operator fully absorbed the porting costs itself, its profitability would be reduced with implications for its

[1] *ComReg document 07/21, p14.*

incentive to invest and innovate. This may be a factor for operators in the fixed market where such retail porting charges are present.

It is possible that the benefits of choosing a particular regulatory option outweigh the costs, but this can only be clearly determined following a full RIA assessment that quantifies the various impacts. ComReg must include the above impacts in its assessment, and quantify them to the extent that this is feasible.

Overall Conclusions on ComReg's Consultation Proposals

Vodafone considers that the draft specifications proposed by ComReg are unwarranted with respect to mobile number portability (MNP) given that there is no evidence of a significant competition problem arising from the level or structure of the existing MNP charge in this market. The existing MNP charge was agreed by the mobile industry, in a process overseen and driven by ComReg, prior to the launch of MNP in 2003. The parties to the agreement included the then smaller entrant operator (Meteor), indicating that the porting charge agreed was not seen as an impediment in any way to competing in the market. Developments in the market since the launch MNP, such as the high level of porting activity and the large growth in Meteor's market share in a maturing market, are consistent with a market where competition is robust and competition problems requiring regulatory intervention are absent.

The current inter-operator MNP charge was as an intrinsic part of the overall initiative that led to the launching of MNP in Ireland in 2003. The draft specifications proposed by ComReg as they impact on the MNP charge therefore have wider implications for the porting systems and processes currently in place. If ComReg, despite the evidence of robust competition, is nonetheless minded to incorporate the draft specifications unchanged in its final decision then it must, prior to doing so, address these fundamental issues relating to porting arrangements. These issues relate, for example, to how the costs of an efficient porting process are determined, the implications of the proposals for porting of fixed and mobile numbers in a future converged environment, and impacts for charging structures in terms of varying charges based on different expected duration times for porting and porting outcomes.

With regard to the cost categories identified by ComReg and the proposed allowable costs for a cost oriented NP charge Vodafone considers that:

- ComReg's description of the cost category of 'General System Provisioning Costs' mis-characterises the expenditures incurred in developing and modifying systems and processes as being purely one-off costs, unrelated to porting volumes. Vodafone considers that many of the costs covered by this category are in fact ongoing costs, some of which are related to the volume of outgoing ports which operators are required to facilitate.

- Costs associated with facilitating the integration of mobile market entrants into the existing industry MNP system are an important group of costs not explicitly mentioned within the cost categories identified by ComReg. Vodafone believes that these should be considered allowable costs in the determination of a cost oriented porting charge.

- The issue of allowable costs cannot be separated from the underlying systems and processes used. Specification of allowable costs for the determination of a cost oriented charge has wider implications for porting systems and processes that must be resolved prior to any final decision.

With regard to the proposed specification prohibiting retail porting charges for subscribers, Vodafone believes that this is neither appropriate nor necessary given that such charges are not currently implemented by any mobile operator, and are not likely to be introduced going forward.

Vodafone considers that the RIA set out in Section 7 of the consultation document fails to correctly identify and describe all of the impacts of the proposed specifications. It is possible that the benefits of choosing a particular regulatory option outweigh the costs, but this can only be clearly determined following a full RIA assessment that quantifies the various impacts. ComReg must include the above impacts in its assessment, and quantify them to the extent that this is feasible if it is to comply with Government RIA Guidelines.

2 O2 Ireland Ltd.

Response

To

ComReg Document No. 07/21

‘Consultation on Number Portability in the Fixed and Mobile Sectors’

May 2007

O2 Ireland welcomes this consultation on Number Porting (NP) and we hope that any decisions arising from this consultation will ensure that the very significant investment made by the mobile industry in developing and implementing a “best in class” mobile porting system will continue to benefit Irish consumers into the future.

In order to achieve this goal we believe it is imperative that the importance of appropriate and fair compensation to MNO’s for development of such leading edge industry solutions needs to be recognised from the outset. Not to do so could have unintended adverse implications for number porting and future investments of a similar nature.

With regard to this particular consultation we have a number of concerns on the lack of clarity provided on the scope of the consultation, in particular we are concerned with the lack of clarity as to ComReg's views and intentions on the cost of porting numbers from Fixed to Mobile operators. On page 3 of the consultation ComReg states that “there is potential for a future increase in the demand for NP facilities arising from the possible introduction of “Home Zone” services and the introduction of Triple Play Services by operators”.

Are we to assume from this:

- that ComReg believes Fixed to Mobile porting is within the scope of this consultation or,
- do we look to ComReg’s extracts from the legislative basis for Number Porting also shown on page 3 of the consultation document (S.26 of the Universal Service Regulations) which states “……shall not apply to the porting of numbers between networks providing services at a fixed location and mobile networks”?

The lack of clarity on this very important aspect of the consultation does not help operators to assess ComReg’s proposals in an appropriate manner. This ambiguity forces operators to respond to a consultation without having a clear understanding of the consultations scope or current and future financial implications.

Given the ambiguity on the scope of the consultation and the obvious importance of any decision in this area on number portability solutions and the potential impact on future investment decisions by the mobile industry in particular, we believe that a further consultation will be necessary before ComReg could arrive at a decision. We have highlighted areas and raised questions which we believe will need to be addressed by ComReg.

Q.1. Do you agree that the above cost categories are appropriate to the development of costing rules for NP? Do you believe that the categories identified above are clear and unambiguous?

Firstly, O2 does not agree that the above cost categories are appropriate to the development of costing rules for NP. We believe that in order to better reflect the costs of a mobile operator, the “Per-line / Transaction cost” category would be better described as Per-line / Per-number transaction costs.

In addition, we do not believe that the categories identified by ComReg are clear and unambiguous. For example, under the heading of general system provisioning costs ComReg implies that it is only network and support system costs that are covered. However it is not clear where the significant costs incurred by mobile operators in training and educating both their own staff and consumers during the implementation phase of MNP would fall. Are these costs not necessary "to enable the inter-operator product" and largely "independent of operator demand."?

The lack of detail provided by ComReg in discussion of each of the broad cost categories presented is even more apparent when one considers that the process, systems and routeing for Fixed and Mobile Porting in Ireland are very different and the systems, processes and routeing for Fixed to Mobile Porting have yet to be decided.

Given the diverse nature of porting activity the consultation potentially covers and the fact that the majority of operators only have a detailed understanding of either Fixed or Mobile Porting we believe it is essential in facilitating a full and comprehensive consultation process that ComReg first provides details of the specific costs for each element it believes fall under each of the cost categories currently provided.

Equally if ComReg fail to provide more comprehensive detail on the costs it believes form part of each cost category we may face lengthy disputes at a later date. If as ComReg appear to be suggesting later in the consultation that charges be agreed on a bi-lateral basis, clarity at this stage as to which charges are included in each cost category is vital.

Q. 2. Are there any other cost categories, which should be considered? Please state the reasons for your response.

As discussed above O2 does not believe that it is possible to provide a definitive answer to this question given the lack of clarity on the consultations scope and the lack of detail provided by ComReg when discussing the cost categories provided. Following further clarification from ComReg O2 would be happy to provide its views on other cost categories.

Q. 3. Do you agree with ComReg's proposed treatment of each of these types of cost? If so please provide reasons. If not please provide reasons and suggest alternatives.

O2 does not agree with ComReg's proposed treatment which effectively means that all costs except incremental administrative costs are recovered through interconnect charges.

As discussed above the process, systems and routeing for Fixed and Mobile Porting in Ireland are very different. While the costing treatments chosen by ComReg in Fixed Porting may have been appropriate given the scale of Fixed Porting in Ireland and the porting solution chosen, they may not be appropriate or indeed sensible for Mobile Porting in Ireland.

As to ComReg's proposals being appropriate to the porting of numbers from fixed to mobile operators O2 would suggest that it would be sensible to decide on the appropriate systems, processes and routeing before asking operators to comment on possible costing principles for such a service, if indeed that is what ComReg intended to do in this consultation.

In any case, O2 believes that a proper consideration of the question posed by ComReg can only be facilitated by ComReg presenting a full and comprehensive description of the two systems currently in place.

On a more general point O2 believes that ComReg's proposed costing treatment has only one objective and that is to minimise the charge operators can levy for the number porting service. We believe this to be an inappropriate and potentially dangerous precedent for future investment by mobile network operators in particular. It is widely acknowledged that the mobile porting system in Ireland is one of the best if not the best such system in Europe. The Mobile porting system in Ireland has been developed at great expense and considerable investment of time and resources by MNO's. While it is difficult to predict exactly what charge would ultimately result if ComReg's costing treatment were to be implemented it would certainly result in a charge which is much less than the Mobile porting charges being sanctioned by other European Regulators for less efficient porting systems. In Germany, for example, the Regulator has set a cap of 29.95 euro per port.

Q. 4. Do you agree with ComReg's view that allowable costs for the purpose of the cost orientation obligation for NP should be those based on an efficient operator? Please state the reasons for your response.

As previously stated O2 does not at this point in time agree with ComReg's general approach to NP costs, which would effectively mean that all costs except incremental administrative costs are recovered through interconnect charges.

That being said, in general O2 supports the view that efficient operator charges are appropriate however, we believe that in order to have a fully informed discussion on the types of efficient operator charging mechanism/s that would be appropriate in this instance we believe it is necessary for ComReg to;

- Present a full and comprehensive description of the two systems currently in place along with its views on future systems as discussed earlier.
- In addition, we believe that ComReg should provide a clear and unambiguous definition of what its understanding of "an efficient operator" is in this context.

Q. 5. Do you agree that it may be appropriate for ComReg to use independent cost models - i.e. bottom up models in the determination of NP charges? Please state the reasons for your response.

O2 believes that a bottom up model approach may be an appropriate means to cost Fixed Porting in Ireland given the significant number of years this service has been in place here.

However, we believe that such an approach would not yet be appropriate for Mobile Number Porting in Ireland given the short time this service has been available.

We believe that it would be very difficult to accurately forecast the Mobile Number Porting volumes that might be achieved in future years. It is conceivable at this point in time that the high volumes of Mobile Number Porting experienced to date may not continue into the future. Experience in some other European countries suggests that once the built up demand for Mobile Number Porting has been satisfied in the early implementation years, Mobile Number Porting volumes tend to settle back to lower levels of activity[1]. After only three years of activity we believe there is not enough of a time series to pin point Ireland's position on the MNP lifecycle. This combined with the general tendency for bottom up models to understate costs would lead to a very real risk of under recovery by mobile operators.

Q. 6. Do you believe that a different standard of efficiency should be applied to different operators? Please elaborate on your response.

O2 does not believe that a different standard of efficiency should be applied to different operators. Given experience to date of both Fixed and Mobile porting in Ireland we believe there is a very real risk that operators that have made considerable investments in providing porting systems and processes which are world class in terms of operational efficiency and automation will end up being unfairly penalised.

Conversely, it is conceivable that such a proposal could lead to the entirely unsatisfactory situation where an operator that has implemented an operationally inefficient and unreliable manual system is rewarded. In addition, allowing differing standards of efficiency will lead to consumers being disadvantaged as potentially some operators could deliberately operate an inefficient system where they are net losers in terms of overall ports.

However, as mentioned previously a fuller discussion on "efficiency" can only take place when ComReg provides a definition appropriate to this discussion.

[1] Analysys;Mobile Number Portability (MNP): strategies for operators and regulators 2006

Q. 7. Do you agree with ComReg's view that the donor operator should be able to levy a NP charge which recovers the incremental administrative cost element of its per-line enabling/transaction costs from the recipient operator? Please state the reasons for your response.

Yes, however, as stated previously O2 does not agree with ComReg's proposed treatment which, effectively means that all costs except incremental administrative costs are recovered through interconnect charges.

Q. 8. What are your views on pricing structures for NP? Please state the reasons for your response.

O2 believes that option one where a charge based on a simple / single pricing structure for all types of processes regardless of the level of activity involved or outcome is preferable.

Such an approach would be more efficient and easier to manage and thus help reduce costs overall.

A charging system based on different charges for different outcomes would be inefficient and ultimately lead to greater costs being incurred by operators. This would result from the increased administrative effort that would inevitably result from disputes on porting outcomes.

Q. 9. Do you agree with ComReg's proposal that that there should be no direct charge to retail subscribers for NP? Please state the reasons for your response.

Yes, O2 supports ComReg's position that there should be no direct charge to retail subscribers for using number portability. In Ireland mobile operators have adopted this as a principle since mobile number portability was established. Equally we believe that retail subscribers should not be penalised in anyway for utilising number portability. In particular we believe that no additional monthly rental should be charged in lieu of notice where the customer who is outside of their minimum contract period is porting to another operator.

We do not believe it appropriate for any operator to charge a customer a termination charge in lieu of notice as this would mean a customer would be penalised for utilising the porting process as opposed to ceasing their contract in the normal fashion. The principle of porting is that the request to port is taken as notice to terminate and this is included in the number portability process manual. Therefore ComReg's ruling regarding direct charges should also take into account termination charges where a customer is outside of their minimum contract period.

Q. 10. Respondents are requested to provide views on whether the proposed specifications are proportionate and justified and offer view on other factors (if any) ComReg should consider in completing its Regulatory Impact Assessment.

As stated earlier the level of ambiguity in the consultation document forces operators to respond to a consultation without having a clear understanding of the consultations scope or current and future financial implications. As such it is not possible to provide a view as to whether the specifications proposed are proportionate and justified.

3 Hutchinson 3G Ireland Ltd.

Hutchison 3G Ireland Limited
3rd Floor
6-10 Suffolk Street
Dublin 2
Ireland

Sharon Ward
Wholesale Division
Commission for Communications Regulation
Abbey Court
Irish Life Centre
Lower Abbey Street
Dublin 1

Private & Confidential

25 May 2007

Dear Sharon,

Re: Submission re ComReg 07/21

Please find attached a response on behalf of 3 to ComReg's "Consultation on Number Portability in the Fixed and Mobile Sectors".

If you need any further information, please do not hesitate to contact me.

Yours sincerely,

John Naughten
Head of Regulatory Affairs

Response on behalf of Hutchison 3G Ireland Limited to the ComReg Consultation on Number Portability in the Fixed and Mobile Sectors

25 May 2007

ABOUT HUTCHISON 3G IRELAND LIMITED

Hutchison 3G Ireland Limited ("H3GI") is a new entrant to the Irish market for mobile communications services. We were awarded the "A" UMTS Licence to provide Third Generation mobile and wireless communications service following the auction process carried out by the Office of the Director for Telecommunications Regulation ("ODTR"). We were awarded our licence in July 2002, at a total cost for 3G spectrum of €97m. H3GI commenced its network rollout on October 2003 and launched full commercial services on 25 July 2005. Hutchison Whampoa has made a major inward investment in developing its radio and core networks, with a view to ensuring that its service level and perceived quality are equal to or in excess of that supplied by incumbent 2G operators. H3GI's current market share is approximately 2.35%.

Market Share and subscriber numbers of Mobile Operators in Ireland Quarter 1 2006[1]			
Vodafone	O2	Meteor	3
42% 2,213,680	35.4% 1,660,260	17.4% 816,060	N/A [redacted] **(NB – Business secret)**

As a new entrant competing within a saturated Irish retail market for mobile phones, with penetration of over 100% penetration[2] of GSM based mobile telephone services, its customer acquisition costs are substantial. H3GI has built its network from scratch. This is in contrast to the incremental costs for other operators to roll out their 3G networks, which they do currently through use of their existing sites and network thereby benefiting from significant economies of scope.

H3GI's 3G network is not supplemental or secondary. H3GI met its network rollout obligation of 85% population coverage a year in advance of the milestones required under its 3G licence. Accordingly, H3GI has incurred significant fixed costs in order to meet its substantial coverage requirements under its 3G licence, which places H3GI under significant pressure to achieve scale.

H3GI participates in the Irish mobile number portability framework and has done so since 2004. We believe that Mobile Number Portability ("MNP") is critical to effective competition but

1. Figure 3.2.1 – Market Share – Number of Subscribers ComReg Document No. 07/17R Irish Communications Market: Quarterly Key Data – March 2007
2. Section 3.1, ComReg Document No. 07/17R Irish Communications Market: Quarterly Key Data – March 2007

that there are significant issues with the regulatory framework as it relates to MNP at present. Therefore, H3GI welcomes the opportunity to respond to a consultation from ComReg on Number Portability ("NP").

INTRODUCTION

The role of MNP

In a sector with a penetration rate in excess of 100%, MNP plays an essential role in facilitating effective competition. This is highlighted by the level of porting activity that has occurred to date. In ComReg's most recent Irish Communications Market: Quarterly Key Data Report the following was noted:

> *"A total of 755,500 people have used MNP to switch operator since its launch in June 2003. In Q4 2006, 85,700 mobile subscribers switched mobile operator while retaining their mobile number, slightly ahead of the quarterly average volume of numbers ported which was 75,000."*[3]

As acknowledged by ComReg in section 4.1 of its Consultation on Number Portability in the Fixed and Mobile Sectors, (the "Consultation")[4], which sets out factors to consider when assessing the charge for number porting:

> *"If the charge is at an excessive level, this will have a greater impact on smaller and new entrant operators as they are likely to be net recipients of ports. Excessive charges will distort the market as it will render unprofitable some customer acquisition which would otherwise be profitable. On the other hand, incumbent operators with a large market share are more likely to be net losers of ports and will consequently favour higher NP charges. Incumbent operators who entered the market early when penetration rates were low did not have to pay out number portability charges to the same extent as new entrants, since a greater proportion of their new business would have been with customers who did not already have a mobile phone. Newer entrants do not have this advantage."*

Therefore, an important aspect of the role of MNP is that it seeks to address what would otherwise be a barrier to entry i.e. the historical control that incumbent operators have over subscriber mobile numbers, and seeks to level the playing field as between new entrants and incumbent operators and remove the issue of control of numbers as a barrier to entry/growth. For this reason it is essential that operation of the Irish MNP facility does not enable incumbent operators to raise the cost of switching. Therefore, it is necessary to ensure that incumbent operators are sufficiently incentivised to operate an efficient porting process and to limit associated costs.

The existing €20 per port charge

---

3. ComReg Document No. 07/17R, Irish Communications Market: Quarterly Key Data – March 2007
4. ComReg Document No. 07/21, Consultation on Number Portability in the Fixed and Mobile Sectors

As ComReg is aware, Vodafone, O2 and Meteor, when porting a number to each other, apply a €20 per port inter-operator charge. Despite H3GI making it abundantly clear that it has never agreed to pay this charge Vodafone, O2 and Meteor continue to invoice for this amount, which creates significant uncertainty as to H3GI's actual customer acquisition costs. These actions limit H3GI's ability to compete effectively and raise serious concerns under competition law. Therefore, the charge as it applies today is a critical aspect of any discussion regarding MNP charging principles. Despite this, the Consultation completely fails to address the current charge in any way.

In order to clarify the context in which H3GI is participating in this consultation process, we set out H3GI's position on the current €20 per port charge and the issues it raises from both a regulatory and competition perspective in a Confidential Annex to this response.

In summary, it is H3GI's view that there is no valid basis for the €20 per port charge sought to be imposed on H3GI by Vodafone, Meteor and O2. The assertion that the €20 per port charge was commercially agreed by the three operators in 2003 raises serious concerns under competition law irrespective of whether the charge was commercially agreed and/or 'approved' by ComReg under S.I. No. 308 of 2003 European Communities (Electronic Communications Networks and Services)(Universal Service and Users' Rights) Regulations 2003 (the "Universal Service Regulations"). Further, the ECJ has made clear its interpretation of the obligation of cost orientation as reflected in Regulation 26 of the Universal Service Regulations, thereby raising further questions in terms of past and present compliance with relevant regulatory obligations and statutory duties.

At a practical level, in the absence of any clarity with regard to the legality/enforceability of the current €20 per port inter-operator charge as sought to be levied on H3GI, H3GI has and continues to accrue €20 per customer, which represents a substantial part of its customer acquisition costs. This inevitably has the effect of softening H3GI's aggressive entry strategy, which could arguably be the intention of Vodafone, O2 and Meteor. Given the financial and commercial disruption that the continuing lack of certainty in respect of the current €20 per port charge is causing to operators including H3GI, it is not acceptable that the Consultation makes no mention of the current inter-operator charge sought to be levied by Vodafone, O2 and Meteor and the adverse effect that the charge has on H3GI's ability to compete and on competition in general.

Given the seriousness of the issues raised under both competition law and national regulatory provisions, H3GI believes that urgent action must be taken in order to satisfactorily resolve these matters.

Regulatory principles on cost recovery for MNP

In order to determine what charges, if any, should apply in future, three questions arise, which are:

1. What are the efficient costs associated with the porting process?

2. Who incurs those costs?

3. How should those costs be recovered i.e. from mobile customers who port or customers in general?

In terms of the first question, it is H3GI's view the current €20 per port charge vastly overstates the relevant costs of an efficient operator which, when properly calculated, we believe should be considerably lower e.g. under €0.50.

In relation to the second question, H3GI believes that these small costs are incurred both by the recipient and donor operator.

With regard to the third question, H3GI believes that ComReg's conclusion that only donor operators should be entitled to recover costs associated with porting, is fundamentally flawed. MNP is a benefit to the consumer not the recipient operator. It enables Irish consumers to transfer between competing operators while retaining the same number. New entrant operators "benefit" from a whole series of initiatives which facilitate competition including the protection offered by the regulatory framework and competition law, but his does not justify requiring the new entrant to pay an incumbent for the benefit of a level playing field. H3GI is entitled to a level playing field. The premise underlying ComReg's conclusion is flawed to the extent that its finding is predicated on the suggestion that H3GI has "caused" the donor operator to incur costs by competing with it. It is also the case that H3GI will "cause" the incumbents to lose market share and lower their prices – however this does not mean that incumbent operators should be compensated for the effect that increased competition has on their profitability. We note that the proposed approach would give Vodafone and O2 in particular, a windfall based on their legacy control of numbers, which is precisely the opposite effect that the introduction of MNP was meant to achieve.

On the grounds that the costs are low and incurred by both the donor and recipient operator, it is H3GI's position that these costs should be incorporated into the overall cost of doing business. This would eliminate the need for inter-operator charges and the associated risk that incumbent operators may over-state relevant costs (as we believe has happened in Ireland), which is explicitly identified as a risk by ComReg in section 4.1 of the Consultation. In this way, new entrant operators would not be penalised for entering the market later than the incumbent operators as they are at present and any arbitrary windfall gain to incumbent operators would be eliminated. This would in turn contribute to the creation of a level playing field and effective competition for Irish mobile customers and lower retail prices.

RESPONSE TO CONSULTATION QUESTIONS

The following responses to the questions raised in the Consultation are without prejudice to H3GI's view that by failing to address fundamental competition and regulatory issues associated with the current €20 per port charge, the Consultation is incomplete and lacks the rigor and detail required to provide certainty to the industry on the subject of MNP.

While recognising the Consultation relates to both fixed and mobile NP the following comments are provided in the context of the MNP only.

Q. 1. Do you agree that the above cost categories are appropriate to the development of costing rules for NP? Do you believe that the categories identified above are clear and unambiguous?

H3GI agrees that the cost categories as set out in section 4 of the Consultation are appropriate, clear and unambiguous. However, H3GI does not believe that the development of costing rules for MNP is required. We strongly believe that the current arrangements between Vodafone, O2 and Meteor with regard to a €20 per port charge have an anti-competitive effect (please see Confidential Annex) and that any charges based on the costs of porting out will continue to have such an effect going forward.

H3GI believes that porting costs should be borne by operators as a general cost of doing business as the costs are in fact small and any attempt to have those costs recovered from new entrants by incumbent's risks distorting competition as has happened to date.

Q. 2. Are there any other cost categories, which should be considered? Please state the reasons for your response.

On the basis that H3GI agrees with the four cost categories as set out in the Consultation, it has no further comment on the number of categories identified.

Q. 3. Do you agree with ComReg's proposed treatment of each of these types of cost? If so please provide reasons. If not please provide reasons and suggest alternatives.

In section 4.2 of the Consultation, ComReg splits the second category of cost concerning per-line enabling/transaction costs, into three types of cost, (a) – (c), and indicates its willingness to allow one of these sub-categories i.e. cost sub-category (a) to be recovered, specifically through the interconnection charges associated with number portability.

H3GI does not agree that sub-category (a), which covers the incremental administrative cost to the donor operator of exporting the number should be recoverable in the manner proposed. As noted above these costs should fall on operators as a general cost of doing business as the costs are in fact small and any attempt to have these costs recovered from new entrants by incumbents risks distorting competition as has happened to date.

H3GI's experience is that porting behaviour broadly follows competitive offerings, which are released into the marketplace. In order to retain or acquire customers, a mobile operator must factor in the effect of number portability being available to consumers. H3GI believes that the price changes, which have occurred since it launched full commercial services to consumers in July 2005, reflect an acknowledgement by operators of the importance of porting. We would therefore argue that porting is part of the everyday business costs of Irish mobile operators and thus associated costs should be internalised. By way of example, in Sweden, H3GI understands that all operators, other than the incumbent, have agreed to waive inter-operator porting charges.

Q. 4. Do you agree with ComReg's view that allowable costs for the purpose of the cost orientation obligation for NP should be those based on an efficient operator? Please state the reasons for your response.

Without prejudice to the foregoing, in specifying that operators should only charge for costs relating to the activity of porting an individual number, a discreet set of activities are being identified for potential charges. In terms of benchmarking such costs, H3GI agrees that the benchmark is that of the efficient operator, not the actual or potential costs which are incurred by any given party.

Q. 5. Do you agree that it may be appropriate for ComReg to use independent cost models - i.e. bottom up models in the determination of NP charges? Please state the reasons for your response.

It is H3GI's view that the costs of mobile number portability should be internalised by each operator. Another advantage to such an approach would be the avoidance of expensive and resource-intensive costing models.

Furthermore, the consumer and competitive benefits of the MNP system are felt by all consumers, and as such the process of developing costing models based on porting activity is redundant in that these wider benefits cannot easily be attributed to the porting system activities themselves.

Without prejudice to the foregoing, in the event that ComReg decides to proceed with a cost modelling exercise, H3GI would be happy to provide relevant information should it be required.

Q. 6. Do you believe that a different standard of efficiency should be applied to different operators? Please elaborate on your response.

Please see response to questions 4 and 5 above.

Q. 7. Do you agree with ComReg's view that the donor operator should be able to levy a NP charge which recovers the incremental administrative cost element of its per-line enabling/transaction costs from the recipient operator? Please state the reasons for your response.

No. H3GI rejects the contention that a donating operator has any costs in excess of those incurred by the recipient operator, or that some form of benefit passes. H3GI does not believe that the proposal put forward by ComReg is economically sound nor is it based on principles of cost causation or at least a correct interpretation of that principle. In short, it is consumers that benefit from porting not recipient operators, a fact specifically noted by the ECJ in *Mobistar* when it stated that:

> "Number portability is intended to remove the obstacles to consumers' freedom of choice particularly between mobile telephone operators and thus to ensure development of effective competition on the telephone services market."

Although ComReg bases its ultimate proposal for donor inter-operator charges on the conclusion that the recipient receives some benefit, that benefit is unspecified. Further, ComReg makes a number of conflicting statements in the Consultation as to where the benefit lies. For example, in section 1 of the Consultation, ComReg lists numerous benefits arising out of number portability for consumers including the elimination of the cost of informing others of a number change, facilitation of greater consumer choice etc. In section 4.1 of the Consultation, ComReg lists the competitive effects of number portability charges as follows:

> *"Excessive charges will distort the market as it will render unprofitable some customer acquisition which would otherwise be profitable. On the other hand, incumbent operators with a large market share are more likely to be net losers of ports and will consequently favour higher NP charges. <u>Incumbent operators who entered the market early when penetration rates were low did not have to pay out number portability charges to the same extent as new entrants, since a greater proportion of their new business would have been with customers who did not already have a mobile phone. Newer entrants do not have this advantage</u>."* (emphasis added)

Notwithstanding the statements made in sections 1 and 4.1, ComReg concludes that:

> *"...the donor operator should be allowed to levy a charge which recovers its allowable costs from the recipient operator. ComReg's reason for the levying of a charge by the donor operator is that they legitimately incur a cost in the porting of a number and <u>the receiving operator is provided with a benefit or a service</u>."* (emphasis added)

In section 4.2 of the Consultation, ComReg seeks to justify its proposal in the following terms:

> *"ComReg proposes that only the incremental administrative cost to the donor operator (category (a) above) should be recovered against other operators in the form of NP charges and charged on a per event basis. ComReg believes that this approach reflects the principle of cost causation in that a cost is incurred by the donor operator at the point of issuing a port order and the recipient operator who benefits from the transaction should then pay an appropriate charge."*

For reasons discussed below, H3GI wholly refutes any assertion that the porting process represents a benefit for a recipient operator. Porting is a benefit to consumers more generally and competition as a whole.

In the Consultation, ComReg acknowledges that:

> *"Number Portability is a regulatory obligation imposed on undertakings providing a publicly available telephone service. It provides that a subscriber can, upon request, retain his or her number independently of the undertaking providing the service."*[5]

ComReg has correctly identified that number portability is an obligation, which requires losing operators to facilitate a subscriber in retaining his/her number regardless of the particular operator he/she may choose to purchase services from. In H3GI's view, the donation of a mobile number is a regulatory obligation, not a commercial service for which the donating operator is entitled to charge competing operators. The obligation of number portability is based on the fact that neither the donor nor the recipient operator "owns" subscriber numbers and thus the only 'benefit' that exists relates to the fact that consumers can freely move between competing networks and services while retaining the same number. The mechanism through which this is achieved is the National Porting Database ("NPD"). When a subscriber wishes to switch between mobile operators, the donating operator and recipient operator interact with the NPD to facilitate the consumer's request. Ported numbers are then hosted on the NPD until such time as they are repatriated to the original number block holder i.e. where the subscriber no longer requires the number.

Therefore, while the terms "donor/donating" and "recipient/receiving" are useful in respect of understanding how a customer changes from one operator to another while retaining his/her number, they do not accurately capture the consumer-nature of the porting facility and its ultimate aim. As new entrants, Meteor and H3GI will always have a balance of 'ports in' when compared to the effective swapping of ports, which takes place between O2 and Vodafone and the gross 'ports out' from Vodafone and O2 to Meteor and H3GI. Therefore any charge based solely on the concept of 'porting out'/donating unduly penalises new entrants and smaller operators.

ComReg's view with regard to the benefit that number portability represents to recipient operators is based on a failure to acknowledge that a saturated market means that new entrants are net recipients of ports purely by reason of entering a market where the majority of potential customers are pre-existing mobile users as opposed to new customers.

Porting charges, like any other cost, will ultimately have to be spread across a new entrant's customer base through the retail prices it charges for services on its network. If this was acknowledged by ComReg then it would be apparent that in order to level the playing field and thereby promote effective competition, it is necessary to avoid loading additional costs on new entrants and onto those customers who choose to avail of new entrant mobile services.

5. Section 4.2, page 10 of the Consultation.

H3GI has carefully monitored the operation of MNP since its participation commenced in September 2005, including the theoretical costs associated with the provision of number portability as both a donating and a receiving operator. In doing so, H3GI has reviewed the actual costs incurred by it with regard to supporting number porting to the industry MNP database. H3GI has found that operators must make equal provision to donate and receive ports, while at the same time incurring equivalent or identical cost in processing each request, regardless of whether it relates to a 'port in' or 'port out'.

As noted above, H3GI believes that ComReg's conclusion that only donor operators should be entitled to recover costs associated with porting is fundamentally flawed. The contention that recipient operators benefit from MNP does not justify the payment as ComReg appears to suggest. New entrant operators "benefit" from a whole series of initiatives which facilitate competition including the protection offered by the regulatory framework and competition law itself but this does not justify requiring the new entrant to pay an incumbent for the benefit of a level playing field. H3GI and all current or potential new entrants to the mobile market are entitled to a level playing field.

On the grounds that the costs are low and incurred by both the donor and recipient operator, it is H3GI's position that these costs should be incorporated into the overall cost of doing business. This would eliminate the need for inter-operator charges and the associated risk that incumbent operators may over-state relevant costs (as we believe has happened in Ireland), which is explicitly identified as a risk by ComReg in section 4.1 of the Consultation.

Therefore, in line with the principle of distribution of benefits, benefits of MNP accrue to porting customers and mobile users in general through increased choice and greater competition. As noted in response to question 3 above, H3GI believes that operators should be required to internalise all three of the sub-categories of cost identified i.e. pay their own costs, on the basis that such would represent a greater incentive for efficiency on the part of operators and further, would eliminate the need for ComReg to pursue what is arguably a complex cost calculation exercise. In addition, such a framework would ensure that effective competition was safeguarded by limiting the benefits associated with an operator's historic position on the market when mobile penetration was low. In this way, new entrant operators would not be penalised for entering the market later than the incumbent operators as they are at present. It would also eliminate any arbitrary windfall gain to incumbent operators. This would in turn contribute to the creation of a level playing field and effective competition for Irish mobile customers and lower retail prices.

Q. 8. What are your views on pricing structures for NP? Please state the reasons for your response.

As noted above, H3GI is entirely opposed to inter-operator charges of the kind proposed.

H3GI notes that in 2003 four different categories of porting transaction were identified and that operators suggested different charges for a completed, rejected, reversed and cancelled porting transactions. Further detail on the suggested porting charges proposed by each operator for the different transaction types is set out below in the Confidential Annex.

Two alternative structures are suggested in the Consultation the first being *"a simple/single pricing structure for all types of processes..."* and the second a more complex structure whereby different charges would apply depending on the outcome of a particular porting transaction.

Without prejudice to H3GI's view that no inter-operator charge should apply to the porting process in the manner proposed by ComReg, H3GI does not believe that the costs associated with each transaction are sufficiently different to warrant separate charges. In the interest of limiting the costs associated with the overall running of the industry process as a whole, and on the assumption that ComReg progresses with the proposed donor charge, H3GI believes the simple approach would be most appropriate.

Q. 9. Do you agree with ComReg's proposal that that there should be no direct charge to retail subscribers for NP? Please state the reasons for your response.

In the first instance, it is unclear to H3GI whether the proposed prohibition would relate purely to donor operators (where the threat seems greatest) or to both donor and recipient operators.

H3GI agrees that it would be preferable that no direct charge be levied on retail subscribers for porting their numbers. Therefore, we would support a prohibition on donating operators imposing a porting charge on consumers switching. This is on the basis that such a charge would act as a deterrent to consumers wishing to move network, and would serve to inhibit competition as well as undermining the consumer benefits identified by ComReg in section 1 of the Consultation.

In the Consultation, the basis for ComReg's proposal in respect of retail number porting charges is stated as follows:

> "ComReg believes that NP charges to consumers increase the costs of switching operators and reduce competition in the market (contrary to Regulation 26 (3) of the Universal Services Regulation)."

This simplistic rationale is surprising given that ComReg is proposing to impose a new regulatory requirement on operators with regard to inter-operator charging. As acknowledged by the ECJ in *Mobistar*, where an inter-operator charge applies this will ultimately be passed on to customers either directly or indirectly[6]. H3GI agrees with ComReg that NP charges to consumers increase the costs of switching operators and reduce competition. However, H3GI would argue that this effect exists regardless of whether a charge is imposed directly or not. The real issue therefore is whether only those availing of porting should meet these costs or whether all mobile customers should share the costs associated with what is a facility which

6. *"The set-up costs represent a large part of the costs which may be passed on directly or indirectly by the recipient operator to the subscriber who wishes to make use of the portability facility for his mobile number."* C-438/04 *Mobistar SA v Institut Belge des Services Postaux et des Telecommunications* [2006] ECR I-0000 paragraph 28.

improves competition in the mobile sector and therefore benefits consumers as a whole. H3GI believes it should be the latter.

ComReg's suggestion that there should be no retail charge would appear to be based on the unstated assumption that the costs per port are low and the benefits to competition so high that no amount of customer switching and porting would be inefficient. If ComReg's assumption is correct, H3GI believes it makes it even clearer that there should be no inter-operator charging.

While H3GI agrees that prohibiting donor operators from levying direct charges on consumers for porting may be appropriate, we are of the view that the underlying rationale for this proposal as set out in the Consultation is equally applicable to the proposed inter-operator charges and should be further considered by ComReg.

Q. 10. Respondents are requested to provide views on whether the proposed specifications are proportionate and justified and offer view on other factors (if any) ComReg should consider in completing its Regulatory Impact Assessment.

H3GI does not believe that the draft specification of itself achieves anything substantive in that it clearly requires further action by ComReg under either Regulation 26(2) or Regulation 31 of the Universal Service Regulations, in order to determine (a) the actual charge and (b) the committed timelines in respect of setting new MNP rates.

Other factors which H3GI believes ComReg should have regard to are set out in the introduction to this response and attached Confidential Annex.

In terms of H3GI's view on ComReg's RIA, we regard the exercise as wholly deficient for the reasons stated in the responses to questions 3-9 above.

CONCLUDING REMARKS

On page 15 of the Consultation under the heading 'Preliminary Conclusions', ComReg states that it:

> "…is of the view that its approach will provide greater certainty in the market place, increase levels of transparency in NP charging and be more equitable."

Given the comments made above in the introduction, the responses to specific questions posed, and the attached Confidential Annex, H3GI refutes the validity of this conclusion.

With regard to the current €20 per port charge, H3GI finds it wholly unacceptable that the Consultation fails to address the issues raised to date. Given the considerable period of time that ComReg has had to resolve the matter to date, H3GI is of the view that an urgent investigation into issues associated with regulatory compliance and competition law is required by the appropriate competent authority.

In relation to the subject matter of the Consultation i.e. MNP charges in the future, H3GI believes that the fundamental flaws in ComReg's reasoning and the proposed approach are such that serious distortions to competition will result if ComReg proceeds as planned. As a result, H3GI believes that further analysis by ComReg and consultation with stakeholders is required before a definitive position can or should be adopted on this matter.

4 Meteor Mobile Communications

Meteor Mobile Communications Ltd.

Response to the ComReg Consultation Paper on Number Portability in the Fixed and Mobile Sectors

Reference: Submission re ComReg 07/21

25 May 2007

Meteor welcomes the opportunity to comment on ComReg's proposals in respect of the applicable principles for wholesale and retail Number Portability (NP) charges in the fixed and mobile sectors. As a mobile operator, our comments are focussed on ComReg's proposals in the context of Full Mobile Number Portability (FMNP).

Meteor strongly agrees with ComReg's view, expressed in section 1 of the consultation paper that "*number portability is essential to maximise the benefits of a competitive telecommunications market*". Indeed as ComReg is aware Meteor was a driving force in the implementation of FMNP in Ireland. ComReg and industry can be proud of the Irish FMNP solution as it is amongst the most efficient in the world allowing subscribers to port their number in as little as two hours. FMNP delivers benefits to all mobile consumers through increased competition irrespective of whether a particular individual avails of the FMNP service.

The consultation paper discusses two broad principles, namely;

- What are operators entitled to charge each other at the wholesale level for processing a number port?
- What, if anything, should retail customers pay to retain their number of they move supplier?

Meteor broadly agrees with the proposed specifications which we discuss in more detail, below, in response to the consultation questions. We assume that ComReg is establishing these principles in advance of conducting a review of wholesale FMNP inter-operator charges. In Meteor's view such a review is long overdue and we feel that the consultation does not go far enough in respect of existing FMNP porting charge issues.

The current wholesale FMNP porting charge is €20. This mobile industry standard charge level was established at the launch of MNP, July 2003, following a less than satisfactory negotiation process from Meteor's perspective. At that time ComReg (ODTR) was unwilling to intervene in the determination of porting charges and Meteor was obliged to accept the wholesale porting charge level of €20 imposed by O2 and Vodafone.

While it is welcome that ComReg has now decided to specify the basis upon which it would determine wholesale FMNP charges, the legislation it is interpreting has been in force since July 2003. Why is it only now that ComReg appears to be willing to intervene in the determination of wholesale FMNP porting charges?

Meteor is strongly of the view that if, following a review of wholesale FMNP charges, it is established that a lower charge level should apply then this will be clear evidence that the charges imposed on Meteor by Vodafone and O2 since 2003 are excessive, abusive, in breach of the regulations and anti-competitive. If, as we expect, the review demonstrates that Vodafone and o2 have over-recovered their relevant costs then retrospective adjustments must be made for the period from July 2003.

CONFIDENTIAL SECTION:

1. **Do you agree with ComReg's proposed treatment of each of these types of cost? If so please provide reasons. If not please provide reasons and suggest alternatives.**

Essentially ComReg is proposing that only the incremental variable per line enabling / transaction costs should be recoverable in the NP charge. Meteor agrees with ComReg's proposed approach in the context of setting FMNP transaction charges going forward but not for the same reasons expressed by ComReg.

Meteor fully supports ComReg's view that network related 'general system provisioning costs' "*should not form part of the NP charge*". Implementing and maintaining network and systems to enable FMNP is a condition of market entry and can be regarded as a cost of doing business.

In our view there is a reasonable economic argument to suggest that the system set-up and support costs of enabling the administration of porting transactions should be reflected in the transaction charge. This is because the magnitude of the those costs is directly influenced by the agreed industry process that is defined. Looking across Europe and beyond, differing national solutions to administering Mobile Number Portability (MNP) have been deployed. These range from highly manually intensive processes (for example the first MNP solution deployed in the UK) with low fixed costs relative to variable costs, to highly automated solutions such as that adopted in Ireland which exhibit comparatively high fixed costs and low variable costs.

We consider the FMNP solution to be fully efficient however we cannot predict how technology and the FMNP process will evolve. In order to ensure that the administrative transaction charges set the correct economic incentives they must in principle appropriately capture relevant fixed and variable costs.

As ComReg highlights in the consultation, including fixed cost elements in the transaction charge could introduce a degree of instability in pricing as the costs are by definition fixed but the transaction volumes are not. Consequently the inclusion of fixed costs may necessitate periodic review and retrospective adjustment of transaction charges. As we have already highlighted such a review of FMNP charges is long overdue.

CONFIDENTIAL SECTION:

CONFIDENTIAL SECTION:

There is clear evidence to suggest that Vodafone and O2 have over recovered relevant costs and this situation must be addressed through retrospective adjustment.

Looking forward and recognising the over recovery of cost by those operators we believe there is a clear argument that FMNP charges should be set on the basis that, in respect of 'per-line enabling / transaction costs', the incremental administrative cost to the donor operator of exporting the number is the only relevant consideration and may be recovered against recipient operators in the form of per event NP charges.

ComReg proposes that the 'central database reference costs' should be treated in the same manner as 'general system set-up costs'. Our views on how these administrative costs should be considered are set-out above.

Meteor agrees that 'ongoing routing costs' should continue to be addressed in accordance with existing interconnect charging principles.

2. **Do you agree with ComReg's view that allowable costs for the purpose of the cost orientation obligation for NP should be those based on an efficient operator? Please state the reasons for your response**.

ComReg proposes, page 9 of the consultation paper, that "*allowable costs…should be based on those of an efficient operator…based on the assumption that a fully efficient NP process is in place*"

Meteor considers the current FMNP solution to be one of the most efficient solutions in the world. Consequently we are agreeable to the efficient operator principle. However as a matter of principle we do not agree that NP charges in isolation are an appropriate vehicle to incentivise migration to a different NP system or approach which is perceived to be more efficient in the absence of a detailed cost benefit analysis and industry feasibility study.

3. **Do you agree that it may be appropriate for ComReg to use independent cost models - i.e. bottom up models in the determination of NP charges? Please state the reasons for your view**

Meteor does not consider it necessary or administratively efficient for ComReg to use independent bottom-up models to assess FMNP charges. There should be no question that the FMNP solution is efficient. We believe it would be more appropriate for ComReg request MSPs to provide per transaction cost estimates based on their current internal processes. ComReg should then be able to form a view as to the efficient level of FMNP charges from assessment and comparison of the MSP cost estimates under the same industry process. The fact that ComReg will have access to five FMNP cost estimates (Meteor, O2, Vodafone, H3G, and Tesco) should allow for healthy debate.

4. **Do you believe that a different standard of efficiency should be applied to different operators? Please elaborate on your response.**

Meteor agrees that scale effects are unlikely to be significant in respect of the variable costs of processing FMNP transactions. Consequently wholesale FMNP porting charges should be set at a standard industry rate.

5. **Do you agree with ComReg's view that the donor operator should be able to levy a NP charge, which recovers the incremental administrative cost element of its per-line enabling/transaction costs from the recipient operator? Please state the reasons for your response.**

Meteor acknowledges that there are economic arguments to suggest that it is efficient for charges to be levied by the donor operator in respect of administering the transfer of numbers. As we highlight above forward looking FMNP charges should be set on the basis of the variable costs of processing mobile number porting transactions.

6. **What are your views on pricing structures for NP? Please state the reasons for your response.**

FMNP porting charges currently apply in respect of successfully completed ports. In principle the current charge reflects recovery of the costs associated with different outcomes (completed ports, rejected ports, reversed ports and cancelled ports). Meteor believes that FMNP charges should continue to be applied on the basis of completed ports. In our experience the vast majority of porting transactions, and hence variable cost driver, are completed ports. In the 12 month period to March 2007 95% of Meteor porting transactions were completed ports.

7. **Do you agree with ComReg's proposal that that there should be no direct charge to retail subscribers for NP? Please state the reasons for your response**

As ComReg is aware mobile subscribers are not currently charged by donor MSPs in the form of a retail charge when porting their number away to another operator. Meteor agrees that this approach is equitable, pro-competitive and should be maintained going forward.

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

Meteor agrees with draft Specification 1 relating to the allowable costs for the wholesale pricing of FMNP charges. Meteor agrees in principle with draft Specification 2 but considers that the specification should be clarified to state that there should be no direct charges to subscribers by the donor operator.

5 eircom Ltd.

eircom Ltd.

Response to ComReg Doc. 07/21

Consultation on Number Portability in the Fixed and Mobile Sectors

25 May 2007

DOCUMENT CONTROL

Document name	eircom Ltd. Response to Consultation on Number Portability
Document Owner	eircom Regulatory Strategy
Last updated	*Final 25th May 2007*
Status	Non Confidential

Please note that for the purposes of the Freedom of Information Acts, 1997 and 2003, and indeed generally, information supplied by eircom to you may contain commercially sensitive information consisting of financial, commercial, technical or other information whose disclosure to a third party could result in financial loss to eircom, or could prejudice the competitive position of eircom in the conduct of its business, or could otherwise prejudice the conduct or outcome of contractual or other negotiations to which eircom is a party.

Accordingly, you are requested to contact a member of eircom's Regulatory Operations where there is a request by any party to have access to records which may contain any of the information herein, and not to furnish any information before eircom has had an opportunity to consider the matter.

TABLE OF CONTENTS

EXECUTIVE SUMMARY

- eircom believes that number portability is an important tool of customer choice whereby subscribers are given the possibility to keep their existing phone numbers when changing operator.

- As number portability has become available, eircom notes the positive impact this facility has created by exerting competitive pressures on both mobile and fixed markets.

- *Universal Service Regulations*, 2003 state that number portability charges should not "act as a disincentive for the use of these facilities." It does not state that there should no charges or switching costs for the gaining network operator.

- The nature of costs to be recovered from the porting charges raised on the gaining operator should be determined by applying the six well established cost recovery principles – and not by applying an irrelevant precedent from the interconnect market.

- The option to charge the migrating customer is a matter for the gaining operator. The losing operator should recover all the efficiently incurred cost of exporting the customer from the charge levied on the gaining operator.

- ComReg should establish objective standards to define the cost and benefit of the proposed measures. It is a statutory duty upon ComReg to conduct full cost/benefit analysis in its RIA.

GENERAL REMARKS

Cost Recovery Principles

eircom reminds ComReg of the six well-established principles of cost recovery principles advocated by the Independent Regulators Group[1] for a national regulatory authority (NRA) to consider when developing or implementing a cost recovery mechanism namely:

1. Cost Causation
2. Distribution of Benefits
3. Effective Competition
4. Cost Minimisation
5. Reciprocity
6. Practicability

eircom draws ComReg's attention to the relevant paragraph:

Regulation 26(2) of the *Universal Service Regulations*, 2003:

> "The Regulator may specify obligations for compliance by an undertaking to which paragraph (1) relates for the purpose of ensuring that pricing for interconnection related to the provision of number portability as provided for in paragraph (1) is cost oriented and that direct charges to subscribers, if any, do not act as a disincentive for the use of these facilities."

Any precedent drawn from the particular implementation of cost orientation for CPS order handling charges which is a service mandated under the Interconnection Regulations has no relevance to the charges for number porting services at issue here.

The ComReg proposal that only the short-term variable costs of porting transactions should be recovered is incorrect for a number of reasons:

- the precedent for this proposal is CPS transaction charges in the Interconnect Markets where systems costs can be recovered from conveyance charges. There is no mechanism here for recovering system costs after the customer has migrated;
- the proposal encourages inefficiency as automating a manual process will immediately result in lower charges without a mechanism to recover any IT investment;
- implementation of this proposal in the mobile market characterised by considerable automation and high volumes will lead to a charge that may be so low as not to justify the billing cost – and certainly below the resulting opportunity cost of unauthorised porting activity;
- consistent application of the six principles listed above must lead to the finding that the general systems costs of an efficient IT solution used to automate number porting services should be recovered from the transaction charges.

[1] IRG PLEN (03) 38, "Principles of Implementation and Best Practice regarding cost recovery principles as decided by the Independent Regulators Group," 24 September 2003.

RESPONSE TO CONSULTATION QUESTIONS

Q. 1. Do you agree that the above cost categories are appropriate to the development of costing rules for NP? Do you believe that the categories identified above are clear and unambiguous?

ComReg 07/21 “Consultation on Number Portability in the Fixed and Mobile Sectors” covers three quite distinct services each with individual characteristics:

- mobile numbers ported between mobile networks,
- geographic numbers ported between fixed networks, and
- non-geographic numbers ported between fixed networks.

The three services are characterised by different stages of development, different volumes and different cost drivers. While the aspiration by ComReg to establish a consistent basis for the setting of cost oriented prices for transaction charges is to be welcomed, the differences between the services covered by the consultation will necessitate different treatments of cost in pricing decisions.

In the first instance the volume of porting between mobile networks is in excess of 30,000 transactions per month and is supported by an industry funded database solution. The cost of implementing and operating this solution – both for the industry and for each operator – is largely independent of volumes. The only truly variable cost for this solution is the cost of manual intervention in entering order details and the cost of the small minority of exceptions that require subsequent manual intervention.

In the case of geographic numbers ported between fixed networks the volumes are much smaller and the product is considerably more complex. The porting of single fixed numbers is amenable to considerable automation but volumes to date have been too small to justify the investment. The porting of multiple numbers when ISDN BRA, FRA, or PRA services move networks is considerably more complex involving manual intervention by wholesale order processing and network staffs.

ComReg identifies four categories of costs associated with number porting services:

- general System provisioning costs
- per-line enabling or transaction costs
- central database reference costs
- on-going routing costs.

ComReg proposes only to allow type two costs – and then only those of the donor operator – to be recovered from the charges for exporting numbers.

There are six well-established principles for cost recovery from prices charged for mandated wholesale services namely:

1. Cost Causation
2. Distribution of Benefits
3. Effective Competition
4. Cost Minimisation
5. Reciprocity
6. Practicability

ComReg would do well to return to these principles rather than draw from the irrelevant precedents of transaction charges for other services offered in different markets due to obligations arising from separate regulations.

1. Cost Causation

This principle states that the party causing the cost at the margin should be required to contribute towards that cost. The gaining operator by winning the customer on condition that the customer retain their number clearly causes the losing operator the costs of implementing the porting activities associated with migrating that number to the recipient network. This principle applies both to the fixed and variable costs of the porting service. Where the gaining operator initiates an aggressive marketing campaign that causes a step increase in porting activity from other operators, those operators using a manual process will consider the business case for an automated solution. Thus the action of the gaining operator may cause the losing operator to change the structure of his costs – albeit with the higher volumes giving a lower unit costs. The proposal by ComReg that prices be set only to recover the short-term variable costs distorts the application of this principle to pricing.

2. Distribution of Benefits

The benefits of the number porting service all accrue to the recipient network or to the customer of that network. Since it is not proposed that the donor network should levy a charge on the defecting customer the donor network only has the option to charge the gaining network.

3. Effective Competition

This principle requires that the recovery of costs from the charges for wholesale and interconnect services should be such as not to stifle the operation of competition between service providers and network operators. This principle should also be interpreted that such charging should support orderly and sustainable competition. If, for instance, the ComReg proposal that only short-term variable costs of the porting activity could be recovered from porting transaction charges were applied to the fully automated solution operating in the mobile market, the result could be a very low transaction charge. Indeed the charge could be so low that operators could decide that billing arrangements to collect the charge were impractical. Under these circumstances porting that is costless to the gaining operator would encourage sales practices such as slamming – where the risk that the slammed customer will revert to their original network has little or no cost. There is an optimum level of porting charge that sends the correct economic signal to the gaining operator – and losing operator – such that spurious ports are avoided. Particularly in the case of fully automated porting solutions this charge will be above the short-term variable cost of the individual port.

4. Cost Minimisation

This principle requires that the charging mechanism should be such as to minimise the total costs of the service. The ComReg proposal that the only costs that can be recovered from the transaction charges are the short-term variable costs can have the effect of encouraging network operators to sustain a manual solution with higher short-term variable costs rather than move to an automated solution. This is because the ComReg proposal on cost recovery would disallow the fixed costs of investing in the IT platform to support automation – and the volume independent costs of supporting and maintaining such a platform. So a network operator seeing an increasing demand for outward ports would delay such an investment -–even where such an investment would reduce unit costs because he knows that automation will lead to a price reduction that will not allow him to recover the cost of the IT investment.

So the proposal to allocate only the short-term variable costs of the service to the charge for transactions has the effect of increasing the cost of the service by providing no incentive for operators to automate the service even where transaction volumes justify automation.

5. Reciprocity

This principle of reciprocity applies neatly to number porting in that all networks both gain and lose numbers – and each operator in any one market should apply a single level of charge. In the fixed market the porting process is largely manual and eircom's costs probably provide the best surrogate for all donor networks. However if eircom moved to an automated solution with lower variable (but higher fixed) costs – and the price reduced to a level only to recover variable costs – then the charge would no longer recover the costs incurred by other donor networks. Once again the strain on the operation of the agreed principle arises out of the misguided proposal that only short-term variable costs be recovered from the transaction revenues.

6. Practicability

This principle requires that cost recovery from transaction prices considers issues of efficient implementation and avoids unnecessary complexity. So the principle would indicate that the number of separate charges be the minimum number not to encourage inefficient behaviour. An example is the issue of whether a separate charge is required for failed ports caused by incorrect information provided by the gaining operator. Such a charge will give the operator an added incentive to ensure that the correct information is provided. However the gaining operator already has the incentive to provide correct information has he cannot provide service to the migrating customer until transfer is complete. So practicability would indicate that a single charge that recovers the average cost of processing faulty information from each successful port is supported by this principle.

Each decision in pricing structure is often a balance between several of the principles. When eircom reviewed the number of rejected GNP orders, we found that the number represents a high proportion of the successful ports. In the interests of not penalising the efficient network operators who provide correct information, eircom proposes to maintain a separate charge for orders failing validation.

Q. 2. Are there any other cost categories, which should be considered? Please state the reasons for your response.

If the price were set on the basis simply of the short-term variable costs of the activities required to implement each port and network operators all have chosen to automate the porting process then a low price will result. As discussed above, under the cost recovery principle "Effective Competition", too low a price for porting transactions will actually lead to undesirable sales practices. The potential cost to the industry of encouraging such practices by setting switching costs for gaining operators too low should be considered when setting porting charges.

Q. 3. Do you agree with ComReg's proposed treatment of each of these types of cost? If so please provide reasons. If not please provide reasons and suggest alternatives.

No. The ComReg treatment of costs proposed in this consultation draws on the precedent established in setting cost oriented prices for mandatory transaction services imposed on eircom arising out of analyses of the interconnection markets. The obligation to provide number porting services applies to all network operators – operators of both fixed and mobile networks – and arises out of obligations under the Universal Service Directive. The precedent is not relevant and the approach to the treatment of costs is faulty.

Particularly in the mobile market where large-scale automation has already been implemented the short-term variable costs of the transactions associated with each port are small. The price for mobile number porting charged across the mobile industry recovers the transaction costs and makes a substantial contribution to the system costs. Indeed it is likely that the volume of mobile numbers ported taken together with the high level of the charge means that Mobile operators have recovered all of the capital costs of the automation initiative from the porting charge revenues. For this reason it may well now be appropriate to move to a level of charge for mobile number porting that only recovers the short-term variable costs of the porting service plus the ongoing operating and maintenance costs of the automated solution.

In the case of the fixed networks there has been no large-scale automation of porting services so system costs are low and variable transaction costs relatively high. The proposal by ComReg to disallow any recovery of future investments in automating the porting services from transaction charges merely ensures that no network operator will invest in more efficient porting processes - even if this investment resulted in a lower unit cost. So the proposal to limit cost recovery to short-term variable transaction costs does not encourage efficiency.

The ComReg precedent for limiting cost recovery from transaction charges to short-term variable costs is largely based on the CPS service imposed on eircom arising out of the SMP designation in the interconnection markets. eircom prices for interconnection conveyance services include recovery of the “general system provisioning costs” of CPS transaction services. Where a line is connected to the CPS service eircom charges the gaining operator for the conveyance of calls from that line – and so that traffic makes a direct contribution to those system costs. However when a number is ported all the traffic associated with that line is lost to the network so there is no opportunity to recover the system costs from the traffic.

Q. 4. Do you agree with ComReg’s view that allowable costs for the purpose of the cost orientation obligation for NP should be those based on an efficient operator? Please state the reasons for your response.

If all of the costs of implementing a porting service are to be recovered from the transaction charge then the efficient operator principle might apply.

Q. 5. Do you agree that it may be appropriate for ComReg to use independent cost models - i.e. bottom up models in the determination of NP charges? Please state the reasons for your

No. The service is simple enough that an industry agreed model can be used

Q. 6. Do you believe that a different standard of efficiency should be applied to different operators? Please elaborate on your response.

No. The eircom charges should apply to the fixed network operators and the agreed industry level to all mobile operators.

Q. 7. Do you agree with ComReg’s view that the donor operator should be able to levy a NP charge, which recovers the incremental administrative cost element of its per-line enabling/transaction costs from the recipient operator? Please state the reasons for your response.

No. The reasons why this level of cost recovery is insufficient are detailed in response to questions 1, 2, and 3 above.

Q. 8. What are your views on pricing structures for NP? Please state the reasons for your response.

A single charge at the correct price level for Mobile Number Portability is sufficient. The information required to port numbers is very limited with low likelihood of attempted ports failing validation.

In the case of GNP on fixed networks a range of charges are required. The high level of porting orders failing validation of almost 50% indicates the continuing requirement for a separate charge. Indeed the current level of the charge is probably not providing a sufficient incentive for operators to get porting details right first time. However the current price structure for the successful porting of geographic numbers between fixed networks is overly complex – comprising separate charges for immediate ports and a number of delayed port options with separate levels depending on the number of CLI's ported. This review should take the opportunity to simplify the charging structure by withdrawing charges for services that are largely unused.

For instance in the last year there have been no instances of the “2 Day Deferred Port” so eircom proposes that this service be withdrawn in the interests of simplifying the services and the price structure. Similarly as well as single CLI's there are four categories of multiple CLI ports and there are very small numbers of orders processed under two of these categories. Single CLI'' are generally associated with migrating PSTN service, 3 – 100 associated with migrating ISDN-BRA, and > 100 associated with migrating ISDN FRA/PRA services. Therefore eircom proposes to simplify the structure so that there are three levels of charge per CLI – one for PSTN (single CLI), one for ISDN BRA (2-100 CLI), and one for ISDN FRA/PRA (>100 CLI).

Q. 9. Do you agree with ComReg's proposal that that there should be no direct charge to retail subscribers for NP? Please state the reasons for your response

eircom agrees that the losing operator cannot charge the migrating customer as this would restrict competition. In any case the porting charges levied on the gaining operator should recover all the efficiently incurred costs of the losing operator.

Whether the gaining operator chooses to recover the transaction charge from a separate retail charge is a matter of retail price policy. If they do not implement a separate charge they will simply treat the transaction charge paid to the losing operator as a cost-of-sale to be recovered from other service revenues

Q. 10. Respondents are requested to provide views on whether the proposed specifications are proportionate and justified and offer view on other factors (if any) ComReg should consider in completing its Regulatory Impact Assessment.

ComReg should establish objective standards to define the cost and benefit of the proposed measures. It is a statutory duty upon ComReg to a conduct full cost/benefit analysis.

ComReg should have considered the well-established principles for cost recovery advocated by the independent Regulators Group[2] when developing or implementing a cost recovery mechanism. These established principles of cost recovery have formed the basis of eircom's submission.

RIAs form a key part of best practice policy making, which is reflected in ComReg's statutory duty to conduct them. They provide a way of considering different options for regulation and then selecting the best option. RIAs provide a framework for weighing up the costs and benefits of removing regulation, as well as analysing other options. They help to identify any possible

[2] IRG PLEN (03) 38, “Principles of Implementation and Best Practice regarding cost recovery principles as decided by the Independent Regulators Group,” 24 September 2003.

side effects or hidden costs associated with regulation and to quantify the likely costs of compliance on the individual citizen or business.

eircom have previously expressed, in more detail, its views on ComReg's conduct of RIAs in its submission to ComReg Doc. 06/69. eircom refers ComReg to this previous submission.

6 Tesco Mobile Ireland

Tesco Mobile Ireland's Response to ComReg's Consultation on Number Portability in the Fixed and Mobile Sectors (ComReg 07/21)

Summary

Tesco Mobile Ireland (TMI) recognises the importance that mobile number portability (MNP) plays in the ongoing development of a competitive market in mobile communications. MNP enables customers to migrate their custom between mobile operators in a seamless manner thus allowing customers to avail themselves easily of the most attractive services and prices in the marketplace.

TMI agrees with ComReg's analysis at paragraph 4.1 of the differential impact that high porting charges will have on new operators when compared to incumbents. In particular, TMI agrees with ComReg's statement that 'the [MNP porting] charge should be set at a competitive level so as to provide the correct incentive for the use of the facility.'

Porting charges should be based only on those costs which are directly incremental in the administration of the number portability processes to the transfer of a customer from one network to another.

Q. 1. Do you agree that the above cost categories are appropriate to the development of costing rules for NP? Do you believe that the categories identified above are clear and unambiguous?

TMI does agree with ComReg's four broad categories of cost, namely, general system provisioning costs, per line enabling / transaction costs, central database reference costs, and ongoing routing costs. Of these cost categories, only per line enabling / transaction costs should be included in the setting of porting charges.

It is worth noting that there are other cost categories which ComReg is correct in dismissing as not relevant to number porting charges. Specifically this would include any unrecovered handset subsidy costs by the donor operator, bad debt suffered by the donor operator, and other marketing costs incurred by the donor operator.

Q. 2. Are there any other cost categories, which should be considered? Please state the reasons for your response.

There are no other cost categories which should be considered in this context. NP charges should be based on costs which are directly incurred as a result of specific porting activities. A good question to ask is what additional costs has the donor operator incurred as a result of an incremental porting customer.

Costs which are incurred to meet general obligations should not be included in the porting charge. Even if there were no ports taking place, operators would still be required to provide for a number portability process with its general system provisioning costs and central database reference costs.

Interconnect costs would be entailed where the customer moved operators without taking his/her number. The fact that the customer has ported with the original number makes no incremental difference to the interconnect cost.

Q. 3. Do you agree with ComReg's proposed treatment of each of these types of cost? If so please provide reasons. If not please provide reasons and suggest alternatives.

TMI does agree with ComReg's proposed treatment of each of the cost types. Using the test question outlined in our response to Question 2, ComReg's analysis is correct.

The only incremental cost which should be recovered is that caused to the donor operator as a result of an incremental porting customer. Costs which would be included in this cost category are specific customer care activities related directly to porting.

Q. 4. Do you agree with ComReg's view that allowable costs for the purpose of the cost orientation obligation for NP should be those based on an efficient operator? Please state the reasons for your response.

TMI agrees that the costs used in computing the NP charge should be those of an efficient operator. Inefficient operators should not be entitled to reclaim their additional costs from other operators.

In any case, the prime costs which should be included in these calculations are the costs of handling a customer's request to port. These costs are largely automated using similar processes. Any customer care costs will be based on similar amounts of time with people employed at essentially identical pay rates. There should be little difference in the true underlying cost rates.

Rather than inefficient cost structures, operators may be tempted to use inefficiency as a ruse for including other costs which are not appropriate to NP charges e.g. accommodation overheads, other staff costs, which should not be included in any case.

Q. 5. Do you agree that it may be appropriate for ComReg to use independent cost models - i.e. bottom up models in the determination of NP charges? Please state the reasons for your response.

Given the nature of the incremental costs which should be included, it is appropriate to use a bottom up model to determine the NP charges.

Q. 6. Do you believe that a different standard of efficiency should be applied to different operators? Please elaborate on your response.

As explicated at Question 4, the underlying costs between operators should be very similar. Different efficiency standards are likely to obscure other issues rather than measure true efficiency variances.

Q. 7. Do you agree with ComReg's view that the donor operator should be able to levy a NP charge which recovers the incremental administrative cost element of its per-line enabling / transaction costs from the recipient operator? Please state the reasons for your response.

TMI agrees that the donor operator should be able to levy a NP charge. Such a charge does need to be based solely upon the incremental costs that an additional porting customer places upon the donor operator. It is the administration costs related directly to the porting request that should be included and not any marketing costs, bad debt recovery, handset subsidies, acquisition costs etc.

The recipient operator is causing these incremental administrative charges to be incurred by the donor operator. On this basis, the recipient operator should pay a levy. TMI does not object to this principle.

Q. 8. What are your views on pricing structures for NP? Please state the reasons for your response.

ComReg is correct to identify that in the long run the two pricing structures, flat rate or two tier, should even out. It is though important to consider the incentives that the donor and recipient operator face.

If there is a flat rate charge the recipient operator might be less careful to ensure that the porting was successful first time as the recipient operator would not be penalised by an increased NP levy. This would be a small motivation as the recipient operator would face a disgruntled customer who may question the benefit of moving and will be delayed in spending money with the recipient operator. It is unlikely that it would be in the interest of the recipient operator to go down this route.

On the other hand, if there was a two tier structure it might well be in the donor operator’s interest to complicate the porting process to induce a higher proportion of failures. The donor operator would benefit from a higher porting levy, a customer who stays on the donor network for longer, and a customer who may think that the recipient operator is ineffective in arranging porting. These are all plausible reasonings but unfortunately provide for customer detriment.

TMI is of the strong view that there should be one standard charge for all mobile operators. This will ensure that the right incentives are in place to ensure porting is carried out effectively and efficiently by both the donor operator and the recipient operator. The customer will benefit from aligning the incentives in this manner.

Q. 9. Do you agree with ComReg’s proposal that that there should be no direct charge to retail subscribers for NP? Please state the reasons for your response.

Customers should be encouraged to port their numbers. This aids migration between operators and thus encourages competition with its long term benefits to consumers.

Given this approach it is sensible that there should be no direct charge to retail subscribers for number portability. The porting process should from a customer perspective by easy and straightforward. Customers should not feel constrained by a charge which might inhibit their decision to port their number.

In the long run, of course, all customers will pay for the NP systems and processes through other charges. Number portability brings benefits to all customers, whether ported or not, in the form of lower prices and enhanced benefits. It is therefore entirely appropriate that all customers should bear the cost rather than just those porting.

Q. 10. Respondents are requested to provide views on whether the proposed specifications are proportionate and justified and offer view on other factors (if any) ComReg should consider in completing its Regulatory Impact Assessment.

Tesco Mobile Ireland agrees that it is helpful to the running of a competitive market for the MNP charges to be set based on costs which are directly related to incremental ports. The costs used in determining the charge should be set on the costs incurred by an efficient operator.

TMI is also of the view that a standard charge across all mobile operators for MNP porting will aid the smooth working of this aspect of the marketplace. ComReg could usefully add this benefit to its consideration of the regulatory impact assessment.

As an alternative option, the case should also be considered to doing away with the porting charge altogether. As the charge reduces from its current level of €20 there will come a point at which it is not worth raising the charge, particularly on a net basis. ComReg should consider at what cost level removing the porting charge would be sensible. It should also consider whether this point has now been reached or when it will occur in the future.

Tesco Mobile Ireland

25 May 2007

7 BT Communications Ireland Ltd.

BT Response to ComReg Consultation 07/21 – Number Portability in the Fixed and Mobile Sectors

25th May 2007

Introduction

BT welcomes the opportunity to comment on the updating and improvements to regulation to reflect the changing environment. BT understands from the Regulatory Impact Assessment at the end of the consultation that the aim of this consultation was to clarify the regulatory cost rules and retail charging.

BT has commented to all the questions but has focused on the questions regarding the model and efficient operators. In particular BT has raised the point that an efficient operator maybe different for an incumbent or a large player compared to that of a new entrant or low volume player. BT has some concerns that ComReg maybe attempting to 'shoe-horn' all operators into the same model and to set a single porting price. BT does not consider that such an action would be possible. For example, eircom the incumbent fixed line player has only recently (January 07) automated their porting process and with the volumes being a lot lower for other fixed line players economic automation maybe some time away.

In addition to the comments BT has provided some additional comments at the end of its response. In particular BT does not understand why the eircom automated porting price is still so high at over 10 euro whereas other countries such as the UK have achieved a port price as low as 71 cents. Such high prices act as a barrier to services such as LLU as they act as a barrier to entry to the market.

The format of BTs response is governed by answering the ComReg questions.

Cost Categories

Q. 1. Do you agree that the above cost categories are appropriate to the development of costing rules for NP? Do you believe that the categories identified above are clear and unambiguous?

BT Response
BT considers that the cost categories are correct and these align with the current costs within the industry.

Q. 2 Are there any other cost categories, which should be considered? Please state the reasons for your response.

BT Response
The only other cost is the cost of failures where porting fails, however this cost would be absorbed into the existing cost types.

Q. 3. Do you agree with ComReg's proposed treatment of each of these types of cost? If so please provide reasons. If not please provide reasons and suggest alternatives.

BT Response
BT generally agrees with ComReg's proposed treatment of the cost categories. With reference to the Per-line / Transaction costs BT believes that ComReg need to acknowledge that porting volumes have been low for some fixed line operators and thus an efficient operator model for low volumes would be a manual solution. This imbalance due to volumes will mean some operators will have lower system provisioning costs and higher transaction costs.

Cost Model

Q. 4. Do you agree with ComReg's view that allowable costs for the purpose of the cost orientation obligation for NP should be those based on an efficient operator? Please state the reasons for your response.

BT Response
BT agrees with ComRegs view of allowable costs, however, it is not clear in the ComReg proposal what is the definition of an efficient operator model and what would an efficient operator model look like. For example, an efficient operator for an incumbent dealing with higher volumes would be different to an efficient operator model for a new entrant with very low volumes. A key element of this discussion is when it is economic to automate. Clearly if the costs of automation at not recoverable in a reasonable period then an efficient operator would not automate. BT notes that eircom has only recently automated GNP themselves (new system introduced in January 07) hence if the fixed line incumbent has only just automated; it will clearly be a long time before others follow suit. This situation means that any model should not be seeking to introduce price reciprocity at this time.

BT does not agree that there is one model that fits all. An efficient operator needs to be defined in terms of the operators' size and volume of business.

Q. 5. Do you agree that it may be appropriate for ComReg to use independent cost models - i.e. bottom up models in the determination of NP charges? Please state the reasons for your response.

BT Response
BT agrees that there could be independent cost models that more accurately reflect the different situations of different operators. BT would be extremely concerned if ComReg attempted to 'shoe horn' all operators into a single model for a single solution. Such an approach would clearly be aimed at setting prices and ultimately could see some operators loosing money. BT considers that such a situation could lead operator to under recover reasonable costs and that would be unacceptable.

Q. 6. Do you believe that a different standard of efficiency should be applied to different operators? Please elaborate on your response.

BT Response
BT strongly believes that a different efficient operator model should be applied to different categories of players, which could take inputs such as porting volumes as an input to deciding the categories.

Donor Operator Charges

Q. 7. Do you agree with ComReg's view that the donor operator should be able to levy a NP charge which recovers the incremental administrative cost element of its per-line enabling/transaction costs from the recipient operator? Please state the reasons for your response.

BT Response
Under the principles of cost causation the recipient operator has caused work to be conducted in the donor operator hence it is reasonable that the donor operator should recover its reasonable costs.

What type of charging structure should be implemented?

Q. 8. What are your views on pricing structures for NP? Please state the reasons for your response

BT Response

BT agrees with ComRegs proposal to have a single charge that addresses both successful and unsuccessful porting attempts as this saves billing complexity and complex billing verification. However, BT does believe that the charges for block moves should be different to singleton moves to address the additional work involved such as verifying the lists are correct.

Retail Number Porting Charges

Q. 9. Do you agree with ComReg's proposal that that there should be no direct charge to retail subscribers for NP? Please state the reasons for your response

BT Response
BT agrees with the existing regulatory policy on non-charging for number portability at the retail layer and thus agrees with the ComReg proposal in this consultation. BT understands that this is a European Directive requirement and ComReg may not have the power to support charging retail customers.

Regulatory Impact Assessment

Q. 10. Respondents are requested to provide views on whether the proposed specifications are proportionate and justified and offer view on other factors (if any) ComReg should consider in completing its Regulatory Impact Assessment.

BT Response
It is not obvious that this consultation was needed as the consultation appears to re-iterate what BT already understands to be the regulations and ComReg could have constructed cost models without consulting.

As regards the regulatory options BT considers option 2 to be the most appropriate in that the gaining operator received the benefit and so should pay the costs.

Other

Reference Section 6 – Draft Specification

Specification 1 – If ComReg are going to specify allowable costs it should define the terms it uses in its specification. Provided that low volume manual and higher volume automated operators can reside within the definition of an efficient operator then we are ok.

Eircom GNP pricing

BT considers that following the automation of GNP by eircom in January the porting price did not reduce by as much as was expected for ports on an automated system. For example the price in the UK is 49 pence (=approx 71cents) yet the eircom price is over 10 euro. It is not clear why the eircom price is still so high. Having such a high porting price has a detrimental impact to the provision costs of other products such as LLU as porting is a component of many order types.

End

8 ALTO

alto

alternative operators in the communications market

Consultation on Number Portability (07/21)

Submission to ComReg Consultation Process

25 May 2007

13 Lower Pembroke Street Dublin 2, Ireland | T: +353 1 678 8336 | F: +353 1 678 8331 | info@alto.ie | www.alto.ie

Consultation on Number Portability in the Fixed and Mobile Sectors

Introduction

Number Portability ('NP') is a facility which allows subscribers to retain their existing fixed or mobile number when moving between network operators. Number portability is essential to maximise the benefits of a competitive telecommunications market as it reduces switching costs. ALTO members share ComReg's view that if NP charges are at an excessive level, this will have a greater impact on smaller and new entrant operators as they are likely to be net recipients of ports. Excessive charges will distort the market as it will render unprofitable some customer acquisition which would otherwise be profitable.

In this consultation paper ComReg tells us that it is proposing to utilise its power pursuant to Regulation 26(2) of the Universal Service Regulations to specify a particular aspect of the obligation of cost orientation in relation to pricing for interconnection related to the provision of NP. Additionally, ComReg is consulting on the possibility of mandating that retail customers do not have to pay directly to port their numbers if they change supplier.

It is not clear to ALTO members why ComReg is seeking to utilise its power under the Universal Service Regulations at this time. The Regulations have been in force in Ireland since July 2003. In addition, we are not aware of any major developments in the market which would generate a clear need for regulatory action.

ComReg seems to place significant emphasis on a ruling from the European Court of Justice (from July 2006) in the 'Mobistar' case. The consultation paper does not explain clearly what this ruling means for number portability cost issues in Ireland and why it should generate an imperative for the regulator to act at this time.

In addition, ComReg does not seem to be making any changes to its policy on how number operability costs are allocated – this policy was set in two earlier ComReg decisions ('Introducing Number Portability in Ireland' D1/99 and 'Decision Notice on Fixed Interconnection Charging Mechanisms' D14/03). ALTO and its members supported the policies set by ComReg in those earlier consultations – see, for example, our response to the 2003 consultation paper
http://www.alto.ie/media/docs/Ix_charging_cons_Mar03.pdf

In the final section of the consultation paper ComReg states that "on foot of any revised framework, ComReg will formally request operators to justify their existing NP charges."

ALTO members would appreciate if ComReg would outline clearly why this consultation has been brought forward and what changes, if any, it makes to the number portability charging landscape. If requests are to be made to operators and additional data is to be gathered (and we do not see any need for such action) this should be carried out in the simplest and most flexible manner possible. ComReg should be particularly aware of the heavy burden already placed on smaller operators by on-going demands for data from ComReg.

Notwithstanding our comments above, we will support the main proposals made by ComReg in the consultation, as these align closely with the existing regulatory policy on number portability charging.

Given the broader changes happening with technologies, and the increasing complexity of operators' systems and processes, it appears to be an opportune time to raise some issues of principle with regards to the management of the various directory services, of which NP is a significant element.

It is important to ensure a consistency of approach across all the databases that operators are obliged to interface with; the GNP Database, the Mobile Number Database, the NDD, the Payphone Database, Enum database, the generic LLU information set, and, more essentially, with the concentration of market power in eircom, the Unified Gateway operated by eircom.

This consistency should facilitate;

1. Ease of use of the systems – this issue concerns the terms of access to the systems and the data schemas for data interchange. As an example, Eircom's Unified Gateway, to which all operators can connect, uses a simple, structured, and modern web-services-based interface. Currently all the other systems outlined above are a hodge podge of antiquated technologies and these should move to a model similar to that of eircom's UG. Of course, legacy systems interface methods should continue to be supported for a period of time.

2. Ease of Reporting and Financial Certainty – this issue concerns costs, which should be charged on a transactional basis with minimum set-up elements.

3. Clear statement of requirements for the provision of such services that they are:

   - Reliable. The service provider's services depend on complex technology that ought to be designed to deliver reliability consistent with telecommunications industry standards. They must commit to deliver high quality services meeting numerous service levels, such as system availability, response times for help desk inquiries and billing accuracy, consistent with telecommunications industry standards.

- Neutral. Currently eircom controls the NDD, the mobile operators exert significant influence over the mobile number database. It is essential that these services be provided in a competitively neutral way to ensure that no one telecommunications service provider, telecommunications industry segment or technology or group of telecommunications customers is favored over any other.

4. Ideally an integrated and holistic clearing-house approach may need to be undertaken, possible including the merging of these datasets.

As a specific example, we understand that there are proposals to merge the number portability database for fixed and mobile. This proposal seems to make sense, however, some operators have been concerned with the way the mobile database has been managed and we would urge ComReg to ensure that all operators can get access on fair and reasonable terms as we have outlined here.

We urge ComReg to consider the points made here about the various directory/database services operating in the sector and to (i) develop an overall policy on the evolution of these systems, and (ii) adopt the principles we have suggested in influencing the development of these systems in future.

One final point we want to make in this Introduction concerns the role of Portco. This company was established by ComReg, with industry participation, to play a role in the management and development of number portability databases and systems. Portco has not played the active role that was envisaged for it and we believe that ComReg should consider what role, if any, this entity can play in future and take action accordingly.

Costs

In the consultation paper ComReg identifies four categories of number portability related costs:

- General system provisioning costs: These are once-off costs in modifying network and support systems to enable the use of number portability.
- Per-line enabling/Transaction costs: These are the operating and administrative costs of actually porting numbers.
- Central Database Reference Costs: These are costs incurred by operators which require the use of a central reference database for NP.

- Ongoing Routing Costs: This category of costs includes the cost of adding a routing prefix and the cost of any additional routing between networks that may be required when a call is being routed to a ported number.

The consultation paper then goes on to consider each of the four categories in detail. In each case it seems that the conclusion drawn and the policy proposed by ComReg is to maintain the status quo from the 1999 and 2003 decisions.

Q. 1. Do you agree that the above cost categories are appropriate to the development of costing rules for NP? Do you believe that the categories identified above are clear and unambiguous?

Q. 2. Are there any other cost categories, which should be considered? Please state the reasons for your response.

Q. 3. Do you agree with ComReg's proposed treatment of each of these types of cost? If so please provide reasons. If not please provide reasons and suggest alternatives.

ALTO believes that the cost categories outlined in the consultation paper are appropriate to the development of costing rules for number portability and are clear and unambiguous. We do not believe there are any other significant cost categories that should be considered in this context.

We agree with ComReg's proposed treatment of each of the cost categories:

1. General system provisioning costs / Central Reference Database Costs - ComReg considers that these costs should not form part of the NP charge and that each operator should pay their own costs. In the specific case of eircom, ComReg's view is that these costs should be spread across all network elements used in providing interconnected calls, including eircom's "self-interconnected" calls. This is consistent with current requirements. ALTO supports this view. Number portability is an integral part of operating in a competitive market, and so, operators should make their own networks and systems capable of supporting this functionality.

2. Per-line enabling/Transaction costs - ComReg proposes that only the incremental administrative cost to the donor operator should be recovered against other operators in the form of NP charges and charged on a per event basis. ALTO supports this position. Our view is that the donor operator is entitled to recover costs incurred in moving a customer and that the recipient, as the entity winning new business, should cover the donor's costs and its own

3. Ongoing Routing Costs - ComReg is of the view that it would be difficult to devise a mechanism to recover these costs as part of an up front charge and that it would be simplest to recover these using normal interconnection charging principles currently in place. ALTO shares this view and strongly supports the principle of greater simplicity in determining interconnect costs.

In summary, ALTO's position is that the current approach, where only the incremental administrative costs for the donor operator are recovered from the recipient, should remain in place.

Should the allowable costs be based on those of an efficient operator?

In the consultation paper, ComReg outlines its view that the operators' allowable costs for NP should be based on those of an efficient operator. According to ComReg this approach encourages efficiency, since only efficient operators will recover all their allowable costs and will not be penalised by their inefficient competitors.

Q. 4. Do you agree with ComReg's view that allowable costs for the purpose of the cost orientation obligation for NP should be those based on an efficient operator? Please state the reasons for your response.

Q. 5. Do you agree that it may be appropriate for ComReg to use independent cost models - i.e. bottom up models in the determination of NP charges? Please state the reasons for your response.

Q. 6. Do you believe that a different standard of efficiency should be applied to different operators? Please elaborate on your response.

ALTO supports the principle that allowable costs for determining number portability charges should be those based on an efficient operator. If this approach is not taken then OAOs, who are most likely to be winning new customers via NP, will suffer from inflated transaction charges and a barrier to market entry would be created.

With regard to the implementation of cost orientation for NP charges, we are concerned that OAOs could face the imposition of complex costing models by ComReg. Given the relatively low volumes involved and the apparent lack of complaints about the charges used by OAOs to date, we do not believe that OAOs should be required to provide large volumes of data to ComReg or that complex costing models should be imposed on smaller operators.

For eircom and other SMP operators, ALTO believes that bottom-up cost models are the most appropriate. These models would ensure that the full range of appreciates costs are applied and that inefficiencies in those organisations are not passed on to other operators.

Who should pay the Number Portability charges?

Q. 7. Do you agree with ComReg's view that the donor operator should be able to levy a NP charge which recovers the incremental administrative cost element of its per-line enabling/transaction costs from the recipient operator? Please state the reasons for your response.

ALTO shares ComReg's view that, in principle, the donor operator should be allowed to levy a charge which recovers its incremental administrative costs from the recipient operator. The donor operator is providing a service to the recipient and should recover its costs from that operator - otherwise the donor's own customers would have to bear an additional (and unreasonable) cost burden.

In practise, an incremental administrative cost may not arise where an operator has automated its processes for porting numbers. For example, as part of the on-going changes being made to LLU systems, eircom has moved to automate GNP processing. As is usual with such developments, the cost of an individual port has fallen and we believe that eircom's charges for GNP (and GLUMP) should fall further. Indeed, with a fully automated system in place for GNP, we are unclear as to what incremental administrative costs eircom can now be incurring. We urge ComReg to examine this issue with a view to reducing eircom's GNP charges to zero. ComReg should also look at how eircom can expand its GNP functionality to support automated processing for NGNP.

What type of charging structure should be implemented?

Q. 8. What are your views on pricing structures for NP? Please state the reasons for your response

In the consultation paper ComReg considers two possible charging methods for NP. One option is a charge based on a simple/single pricing structure for all types of processes, regardless of the level of activity involved or outcome. Another option is to have different charges depending on the outcome (i.e. one charge for a correct type of port and another charge for failed ported etc.).

ComReg states that it recognises that the two possible approaches have both advantages and disadvantages and considers that it would not be appropriate to set precise rules, but will look at the practicalities when it obtains more data. ALTO does not understand what ComReg means by this statement and is concerned that significant demands for data gathering might be made on smaller operators in a situation where there seems to be little need for such an exercise.

Given that this consultation seems to re-iterate much of the current body of regulatory policy on number portability costing, we are not clear that ComReg is seeking a mandate through the consultation process to undertake significant new work on number portability charges. We urge ComReg to clarify what steps it intends to take after this consultation and we would emphasise that further data requests to OAOs be avoided wherever possible.

On pricing structures, our view is that for eircom, as the dominant operator in the fixed-line market, a more detailed charging structure is appropriate. Eircom's current charging structure is set out in Service Schedules 301 (NGNP) and 303 (GNP) of the RIO Price List. Eircom's existing pricing structures are overly complex and should be simplified.

OAOs should have flexibility to choose their own structure and we would expect that most would use a simple charging structure with one or a small number of charges. If ComReg is determined to take action on pricing structures for all operators, then the issuing of guidance to OAOs (rather than a binding direction) would be the appropriate approach.

Retail Number Porting Charges

Q. 9. Do you agree with ComReg's proposal that that there should be no direct charge to retail subscribers for NP? Please state the reasons for your response

The current regulatory policy on number portability charging prohibits direct charging of consumers for number porting – we support this policy and we see no reason for a change.

Regulatory Impact Assessment

Q. 10. Respondents are requested to provide views on whether the proposed specifications are proportionate and justified and offer view on other factors (if any) ComReg should consider in completing its Regulatory Impact Assessment.

In the consultation document ComReg sets out the objectives of the consultation paper:

- to set out a clear interpretation of cost orientation for number portability
- to clearly identify who pays the number portability charge

The consultation goes on to identify the regulatory options and why ComReg has chosen its course of action. Given that this paper seems to simply re-iterate the existing regulatory policy on number portability and given that ComReg does not set out an imperative for issuing this document, we are forced to favour Option 1 – effectively, take no further action.

The final element of the Regulatory Impact Assessment is to identify and describe the regulatory options & the impact on stakeholders. The text as provided is reasonably clear, however, one important element is missing. The RIA fails to state clearly what further action ComReg plans to take and fails to consider what impact this could have on operators, particularly smaller operators. These issues must be considered by ComReg to achieve a full RIA in this case.