



Commission for
Communications Regulation

Submissions to Consultation

General Authorisation: Proposal to attach conditions in relation to telecommunications service disruption minimisation

Submissions received from respondents

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Contents

1	Alto
2	BT Ireland
3	Cable & Wireless
4	eircom
5	Imagine
6	Meteor
7	O2
8	Vodafone

1 Alto

ALTO – Alternative Operators in the Communications Market

Response to Consultation

Reference: Submission re ComReg 07/45

General Authorisation

Proposal to attach conditions in relation to Telecommunications service disruption minimisation

ALTO broadly welcomes the proposals and has the following comment in relation to question 1

The text states

“The Authorised Person shall notify the Commission immediately if it is of the view that there is a reasonable possibility that it may.....”

In view of the fact that organisations may advise ComReg as a matter of course if there are commercial issues that could lead to cessation of services, the test for notification should be raised from “possibility” to “probability”. In this way organisations can only notify when matters are reaching a critical point.

The general principle should be that commercial issues should be solved between commercial entities without ComReg becoming involved and being at risk of being a lever in negotiations.

2 BT Ireland



BT Response to ComReg Consultation 07/45

General Authorisations

Proposal to attach conditions in relation to telecommunications disruption minimisation

24 July 2007

1. Introduction

BT welcomes this timely consultation by ComReg and agrees with the points raised and the proposed conditions.

With regards to the specific questions raised by ComReg our response is as below.

2. Proposed Conditions

Q.1 Do you agree with the text of the conditions proposed for attachment to the General Authorisation? If not, please indicate which of the proposed conditions you do not agree with and why.

Response 1. It is our opinion that an operator that has notified as having SMP in a particular market should have additional obligations placed on them by virtue of the bottleneck services that they provide to OAOs. We believe that this is particularly relevant in the fixed market.

For example we would suggest that a fixed operator with SMP should, in addition to the obligations proposed, be required to publish their "Disruption Minimisation Plan" on their public web site and be required to update it from time to time. In addition OAOs should have the right to be able to make

representations regarding any such plans to the operator concerned and ComReg seeking changes and improvements as appropriate.

In addition to the above, we would propose that the SMP operators Disruption Minimisation Plan should include a rolling daily update and notification of developments in the event of industrial action or any other event.

Q.2. Do you agree that the text of the condition 14.5 proposed for attachment to the General Authorisation can be classified as a condition providing for 'Interoperability of services and interconnection of networks in conformity with the Access Regulations'?

Response 2. BT agrees.

Q.3. Do you agree that the text of conditions 18.2-18.10 proposed for attachment to the General Authorisation can be classified as conditions providing for 'Consumer protection rules specific to the electronic communications sector including conditions in conformity with the Universal Service Regulations'?

Response 3. BT agrees.

Q.4 Do you agree that the text of the conditions proposed for attachment to the General Authorisation are objectively justified, non-discriminatory, proportionate and transparent?

Response 4. BT agrees.

Q. 5 In your view do the conditions proposed for attachment to the General Authorisation constitute Specific Obligations, or conditions which are applicable to undertakings by virtue of other laws?

Response 5. It is our opinion that other laws do not adequately cover this matter and therefore the proposed conditions are warranted.

Q.6 Respondents are requested to provide views on whether the proposed specifications are proportionate and justified and offer views on other factors (if any) ComReg should consider in completing its Regulatory Impact Assessment.

Response 6. As set out above in our response to question 1 it is BT's opinion that while the proposed specifications are proportionate and justified they do not go far enough for a fixed operator with SMP.

end

3 Cable & Wireless

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**WHOLESALE DIVISION
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ABBAY STREET
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IRELAND**

Cable&Wireless

12 September 2007

Dear Sir / Madam

Reference: Submission re ComReg 07/45"

Cable&Wireless is one of the world's leading international communications companies. It operates through two standalone business units - Europe, Asia & US and International.

The Europe, Asia & US business unit provides enterprise and carrier solutions to the largest users of telecommunications services across the UK, US, Ireland, continental Europe and Asia, and wholesale broadband services in the UK. With experience of delivering connectivity to 153 countries - and an intention to be the first customer-defined communications services business - the focus is on delivering customers a service experience that is second to none.

Cable&Wireless welcomes the opportunity to respond to Comreg's proposal to attach conditions in relation to telecommunications service disruption minimisation. We are in broad agreement with Comreg's aim to provide high levels of consumer protection in this matter and strongly endorse the need to ensure a stable telecommunications infrastructure across Ireland. Cable&Wireless does however have some concerns regarding the detail of how these proposals are to be implemented.

'Reasonable Endeavours'

Cable&Wireless would welcome some further clarity and guidance as to what Comreg regards as being 'reasonable'. The terms used by Comreg throughout are imprecise and whilst we appreciate the need for Comreg to ensure they do not fetter their discretion we believe that the publication of clear guidelines, possibly on the Comreg website, would be beneficial to industry's understanding. This information should also provide a clear indication of the steps that Comreg would take once they are made aware of potential disruption by the Authorised Person.

Appendix B

Cable&Wireless supports the communication requirements listed in Appendix B. We believe these represent a reasonable list of steps to realise Comreg's objective of consumer protection.

Cable&Wireless however has grave reservations concerning the Contingency and Customer Contracts sections of Appendix B. We reject the idea that it is appropriate for Comreg to dictate the commercial relationship between operators.

From a purely practical perspective, as a wholesale network, Cable&Wireless is entirely unable to accommodate the retail customers of our resellers. If, for example, a reseller with tens of thousands of end-users were to cease trading the Cable&Wireless billing system would not be able to accommodate these additional customers. Cable&Wireless in addition would not hold any of the billing details or customer details. The sheer volume is such that our billing solution is unlikely to cope with the numbers involved even if we were able to obtain the details. Whilst we understand the sentiment behind Comreg's proposal it is entirely unworkable in practice for a non-residential wholesale company to take on large numbers of residential customers.

A commercial perspective gives us similar cause for concern. Payment terms offered to resellers may be anything up to 60 days. In the case of a larger reseller this could mean that by the time the decision is taken to disconnect the reseller they may owe the wholesale carrier anywhere up to and in excess of 1 million euros. It is totally disproportionate to expect the wholesale carrier to incur further substantial costs on behalf of the failed operator.

Cable&Wireless believes that any continuation of service would need to be provided upon an emergency basis and consequently we reserve the right to reject expensive calls to mobiles or premium rate services and to only provide a basic national and local call access.

Cable&Wireless fully supports Comreg's moves to empower consumers by providing them with information once disruption is unavoidable. However we believe that this is as far as Comreg's involvement should extend and we fully reject the proposed contractual obligations.

Yours faithfully

Justin Hornby
Regulatory Manager

4 eircom

3 September 2007

Wholesale Division
Commission for Communications Regulation
Irish Life Centre
Abbey Street
Dublin 1

Reference: Submission re ComReg 07/45

Dear Sirs,

We refer to the Consultation Paper - *General Authorisation – Proposals to attach conditions to telecommunications service disruption minimisation* - issued on 23 July 2007. This letter constitutes eircom's response to that consultation.

General Comments

eircom supports the objective of this policy initiative and believes it is appropriate that Authorised Operators take steps to ensure as far as possible that potential service disruption to consumers is minimised.

eircom considers, however, that a careful balance needs to be struck between the ability of operators to manage difficulties that arise in the course of business, on the one hand, and the dissemination of those difficulties, on the other, which could, of itself, compound the difficulties experienced and contribute to service disruption which might otherwise be avoided.

On this basis, while eircom supports the principles of the Proposed Conditions, we do not consider that they are proportionate or objectively justified and believe that they should be amended so that they focus on material issues of tangible concern.

We also note in relation to the disruption experienced in the market in late 2006 described in the Consultation that eircom behaved responsibly and reasonably in that case, notified ComReg at the earliest possible opportunity, and contributed enormously and effectively to minimising service disruption to consumers, points that are not reflected in the Consultation. The same is true of all situations over the past number of years where out of the ordinary efforts were required to ensure customers were not unnecessarily impacted by difficulties experienced by their service provider. eircom believes that ComReg should acknowledge eircom's role in this regard.

In respect of the services covered by the Proposed Conditions, ComReg should clarify what is meant by "publicly available electronic communications services".

Proposed Condition 14.5

eircom has no difficulty with the substance of the proposed Condition 14.5 and while eircom does not believe the measure concerned is necessarily a function of interconnection and interoperability as suggested by ComReg, we are happy to notify ComReg of the eventualities identified.

eircom suggests, however, that the standard of "reasonable possibility" is too low for purposes of the proposed Condition, and that the obligation to notify should only be triggered where there is a real and immediate prospect of services being terminated, suspended, etc. eircom does not, by way of example, agree that any operator should be required to notify ComReg before a notice to terminate issues.

Proposed Conditions 18.2 – 18.10

eircom has no difficulty with the principle that operators should have a disruption minimisation plan in place in the manner envisaged by Proposed Condition 18.3. However, the Proposed Condition is very broadly crafted and in eircom's view requires a materiality threshold as far as the scope of services covered and potential eventualities are concerned. It is also difficult to understand a requirement on one operator to have regard to the portfolio of retail services provided by another operator and this should be removed.

In relation to Proposed Condition 18.5, eircom again notes that the trigger for notification is too low and should be restated with reference a real and immediate prospect of services being terminated, suspended, etc

In eircom's view, Proposed Condition 18.7 is too broadly stated, and should properly include a materiality threshold such that only instances where substantial disruption is likely to follow should be captured by it.

The circumstances addressed by Proposed Conditions 18.8 and 18.9 do not in eircom's view involve service disruption in the manner described in the Consultation and while eircom has no difficulty informing ComReg where it proposes to withdraw a service, and would in ordinary course inform its customers of developments of this nature, eircom believes that the management of such instances can and should be left to the commercial judgement of the operator concerned.

Conclusion

eircom reiterates its support for the principle that operators take steps to ensure as far as possible that service disruption to consumers is minimised. For the reasons outlined above, however, eircom believes that the scope of Proposed Conditions should be reconsidered so that they focus on material issues of likely concern. Any provision beyond this is, in eircom's view, inconsistent with the requirements of the Authorisation Directive that conditions be objectively justified and proportionate.

eircom also notes that ComReg's ability to intervene where the issues contemplated by the Proposed Conditions arise is limited and the inclusion of the measures intended by the Proposed Conditions should not be taken to extend its powers in that regard.

We trust that the above is of assistance and are available to discuss these important issues further with you.

Sincerely,

Victoria Gerus
Head of Regulatory Strategy

5 Imagine

Q.1 Do you agree with the text of the conditions proposed for attachment to the General Authorisation? If not, please indicate which of the proposed conditions you do not agree with and why.

We do not agree with the conditions proposed or the text proposed.

The proposed 14.5 is far too broad a wording and therefore its application and effect is unclear. In its strictest sense, it is always possible to view a set of circumstances (voluntary or involuntary) that may arise that would give rise to a loss of service. If the intent behind this is to focus on those operators providing 'wholesale' services then that should be made explicitly clear. This then requires the definition of 'wholesale' but we can presume for the moment that it differentiates between an interconnected operator who is responsible for the provision of the retail (customer) service and one who is providing services to resellers. Overall, the proposed text is overly broad in scope, unclear as to whom it applies and fails to identify any reasonable circumstances in which it could be triggered. It could result in the farcical situation where every operator notifies, or is required to notify, of 'possible failure' or the equally farcical situation where it is a matter for each operator to determine whether some 'possible event' or other is or is not notifiable. In either case, neither the market nor the consumer will benefit. In actual fact, the market has been damaged.

Q.2. Do you agree that the text of the condition 14.5 proposed for attachment to the General Authorisation can be classified as a condition providing for 'Interoperability of services and interconnection of networks in conformity with the Access Regulations'?

This text cannot be classified as a condition providing for 'Interoperability of services and interconnection of networks in conformity with the Access Regulations'. The rationale outlined in the consultation document that the proposed condition is a condition that relates to interconnection of networks does not concord with the text as proposed. The proposed wording is far broader in scope, as is the underlying intent, and cannot be read to imply application only to the interconnection of physical networks. Indeed, notification which only applied where termination of a physical interconnect was likely is a significantly narrower scope than that allowed for in the proposed text. It is also unclear the extent under which circumstances such notifications could be made but any proposed alteration to the existing arrangements must make adequate provision for the protection of businesses from frivolous or malicious notifications for pure commercial advantage. Such behaviour would only further deepen scepticism with regard to the industry.

Q.3. Do you agree that the text of conditions 18.2-18.10 proposed for attachment to the General Authorisation can be classified as conditions providing for 'Consumer protection rules specific to the electronic communications sector including conditions in conformity with the Universal Service Regulations'?

No. We do not agree that these proposed changes can be so classified. In actual fact, it merely points out the obvious – that a business should have a business continuity plan in place. This is standard practice in responsible businesses and it is unnecessary and inappropriate that ComReg should feel it should devote regulatory time and attention to the most obvious of requirements for any business. The most concerning element of this proposal is that copies of such plans should be

lodged with ComReg. It is not clear what the purpose of lodging such a plan with Comreg will be or what expertise ComReg has in examining any such plan.

Further, the proposal that Comreg may unilaterally notify customers and the market of a 'potential issue' essentially removes any opportunity for rectifying the situation that gave rise to the notification in the first instance. It is a self-fulfilling prophecy that will kill a business. Indeed, the very notion that such a 'notification' may come about is likely to give rise to a whole new industry of rumour and speculation not to mention the potential for malicious behaviour. The whole area of notification to ComReg and customers in advance of any situation arising is ill conceived and potentially very destabilising to the ordered management of the market.

Finally, the normal practice within this, and all other industries, is the orderly notification to customers of the withdrawal or termination of services. There are existing standards in place, including contractual obligations, that require reasonable notice and it is not necessary that further obligations be imposed.

Q.4 Do you agree that the text of the conditions proposed for attachment to the General Authorisation are objectively justified, non-discriminatory, proportionate and transparent?

The sentiment underlying the proposed changes is laudable but the specific changes proposed will not achieve the stated objective. They are discriminatory in that they classify all service providers in the market equally and not objectively justified since there has been no quantification of either the costs or benefits to be accrued as a result of this exercise. They represent a disproportionate response to a specific set of circumstances that arose last year. Indeed, what would be welcomed is a material attempt by ComReg to address the underlying issues that crystallised the failure last year rather than this attempt to lay responsibility at the door of the entire market for what was, in essence, a failure of regulation.

Q. 5 In your view do the conditions proposed for attachment to the General Authorisation constitute Specific Obligations, or conditions which are applicable to undertakings by virtue of other laws?

It is our view that the proposed conditions are fundamental to the normal ongoing responsible management of any business. Further, the existing legal obligations that are in place from Company Law are sufficient to deal with what are essentially reckless trading concerns that appear to underpin ComReg's concerns.

Q.6 Respondents are requested to provide views on whether the proposed specifications are proportionate and justified and offer views on other factors (if any) ComReg should consider in completing its Regulatory Impact Assessment.

ComReg have failed to address the issue of the impact on operators of the proposals. No quantification has been put forward of the cost impact either in capital or ongoing costs. There has been no consideration of the market impact of an operator making a notification to ComReg. The very fact that such notification has been made will damage all operators.

There is no basis provided to support ComReg's assertion that the impact on operators is "not likely to be high". There has been no quantification or detailed rationale provided for this critical element of the proposal. It is extremely surprising that ComReg feel it appropriate to seek the industry's view on material changes to the terms under which it operates without providing details on the estimated cost of compliance.

Should ComReg involve itself in the determination of when the business position of an operator requires public intervention it is placing itself and thereby the whole market, into a very delicate position.

6 Meteor



Meteor Mobile Communications Ltd.

General Authorisation

**Proposal to attach conditions in relation to
telecommunications service disruption minimisation
(ComReg 07/46)**

3rd September 2007

Introduction

Meteor welcomes this initiative by ComReg and the principle of ensuring that any Authorised Person will be obliged through their General Authorisation to ensure that a reasonable level of service continuity is provided to its customers. We perceive this as addressing a gap in regulation relating to those undertakings that are not obliged to provide the level of consumer protection that already exists through licences that carry service obligations, such as the mobile telecoms licences.

With regard to the specific conditions Meteor has identified a general requirement to differentiate between a voluntary decision to cease to provide a service that is pursuant to contract and one that is in breach of contract and may come without warning. We also note that a service provider that decides to withdraw a service which is offered to end users is obliged through its contracts with consumers to notify customers one month in advance, in accordance with the regulations¹.

In the case of Wholesale services, parties seeking wholesale services will put in place clauses that ensure continuity of supply in which case no commercially minded wholesale provider would voluntarily withdraw service in a way that would breach such an agreement given the litigation that would ensue. Therefore any regulation designed to address such an unlikely event could be deemed unnecessary.

Meteor considers it reasonable for ComReg to be notified in the case of withdrawal of Service by a wholesale supplier due to circumstance beyond its control as this is likely to occur at short notice. However it should be notifying on behalf of all of its immediate customers and not on behalf of the retail customers of any other undertakings. It should remain the responsibility of the undertakings supplying the retail services that depend on this wholesale input to notify ComReg, should this withdrawal in turn result in an impact on their retail customers particularly because the wholesale provider will not have full, if any visibility of the impact on consumers.

In general we consider the number of new conditions to be excessive and recommend that those that overlap the key proposed conditions 14.5 and 18.5 should be deleted. We also consider there to be some unnecessary overlap with the Universal Services and Use Rights Regulations.

Meteor has also made a number of suggestions in relation to the regulatory impact assessment which we believe should be broader in relation to the costs that should be considered and the number of options under review.

¹ Regulation 17.4 of SI No 308/2003 – European Communities (Electronic Communications Networks and Services) (Universal Services and User Rights) Regulations 2003

Response to Consultation Questions

Q.1 Do you agree with the text of the conditions proposed for attachment to the General Authorisation? If not, please indicate which of the proposed conditions you do not agree with and why.

In response to this question we have addressed each condition in turn.

Condition 14.5 The Authorised Person shall notify the Commission immediately if it is of the view that there is a reasonable possibility that it may in the foreseeable future cease (whether voluntarily or involuntarily) to provide on a wholesale basis an electronic communications network or an electronic communications service (ECS) or that its actions may result in a substantial number of consumers' access to publicly available electronic communications services being terminated, suspended or restricted.

Meteor believes that it is reasonable to require an entity to notify ComReg when it decides to voluntarily cease an ECS in a manner that is in breach of its contractual obligations towards its customers or becomes aware that it may involuntarily cease services, resulting in a substantial number of consumers being denied access. Provisions already exist in wholesale agreements for the wholesale supplier to notify its customers in such circumstances and while this may trigger subsequent notifications from the affected retailers, it would be appropriate nonetheless for ComReg to be notified by the wholesaler directly. In this instance ComReg would be alerted to the fact that a number of retailers are likely to be affected, otherwise ComReg may only be reasonably expected to realise this as the piecemeal notifications of the affected retail providers are received.

However where the wholesaler voluntarily ceases to provide an ECS in a manner that is consistent with its contracts and therefore likely to be subject to a minimum notice period, the affected customers should have ample opportunity to notify ComReg about any impact this may have on end consumers. Such a cessation is likely to impact on just one of its wholesale customers, for example in the case of termination of service due to non-payment. In this case there should not be any need for a notification from the wholesaler particularly as it is not for the wholesale provider to speculate on the impact of its decision on the retail provider.

Condition 18.2 The Authorised Person must at all times use all reasonable endeavours to ensure any disruption to the publicly available electronic communications services provided to consumers is minimised and continuous provision of publicly available electronic communications services to consumers is maintained.

Meteor agrees that Authorised Person should use reasonable endeavours to minimise disruption to customers, however further clarification is needed with respect to what is reasonable in context of 'continuous provision'. For example if a party fails to pay for services consumed the Authorised Person cannot be expected to provide continuous supply.

In a competitive market it is logical to expect some market exit, as a result of poor business planning or inefficient market entry for example. In the Smart Judgement Justice Kelly considered such factors and stated; "I get the impression that Smart is a company whose ambitions outstripped its abilities. It set about making up for that deficit by a policy of bluff, bluster and threat. It did not work." While this Judgement was in relation to a 3G Licence award it highlights the fact that the business decisions of a company can impact its ability to provide services to customers. It would be disproportionate to require wholesale suppliers to continue to supply a service in the event of failure to pay on the part of the customer.

Condition 18.3 The Authorised Person shall have in place an effective plan to ensure that, in the event of the Authorised Person ceasing (whether voluntarily or involuntarily) to provide on a retail or wholesale basis an electronic communications network or an electronic communications service, any disruption to the publicly available electronic communications services provided to consumers is minimised (the 'Disruption Minimisation Plan'). The Authorised Person shall take all appropriate steps to ensure its Disruption Minimisation Plan is viable and shall maintain the Disruption Minimisation Plan to reflect the ongoing portfolio of services offered by the Authorised Person and any retail providers of electronic communications services to which it supplies wholesale electronic communications networks or electronic communications services. The Authorised Person must lodge an up-to-date copy of the Disruption Minimisation Plan with the Commission.

In a competitive environment it is important for an operator to minimise service disruption to its customers. Failure to provide a good and reliable quality of service will result in customers migrating to another provider. This is why operators already maintain Business Continuity Plans.

We do not believe that there is an objective justification for these plans to be lodged with ComReg particularly as the plans will necessarily be highly commercially sensitive. Furthermore it must be assumed that ComReg will undertake an assessment of 'Disruption Minimisation Plans' otherwise the lodging of the plan is somewhat meaningless. However this in turn gives rise to concern that the proposed obligation will create a barrier to new market entry. New entrants are by nature more risky ventures and would necessarily be subject to a higher level of scrutiny.

Meteor could accept an obligation that operators need to maintain a Business Continuity Plan (BCP) however this can only reflect the services offered by the undertaking in question. It would not be reasonable or practical for this to reflect the service of the retailers that they supply, as proposed in the consultation document.

Condition 18.4 The Authorised Person must implement its Disruption Minimisation Plan in appropriate circumstances.

The proposed condition 18.4 is superfluous and should be assumed under 18.2. The implementation of a BCP would be primary among any reasonable endeavours to ensure disruption is minimised.

18.5 The Authorised Person shall notify the Commission immediately if it is of the view that there is a reasonable possibility that it may in the foreseeable future cease (whether voluntarily or involuntarily) to provide an electronic communications network or an electronic communications service to consumers or that its actions may result in a substantial number of consumers' access to publicly available electronic communications services being terminated, suspended or restricted.

As highlighted in response to the equivalent condition proposed for wholesalers (Condition 14.5), this condition should be limited to either a decision to voluntarily cease an ECS in a manner that is in breach of its contractual obligations or to it becoming aware that it may involuntarily cease services, resulting in a substantial number of consumers being denied access. Clarification as to the relevant circumstances for notification is needed. Taking mobile services for example, a mobile operator can not be expected to notify ComReg every time inclement weather is expected on the basis that radio signals from one or more bases stations may be impacted.

Condition 18.6 When the Authorised Person receives a notification that could result in termination of publicly available electronic communications services to consumers (e.g. a notice of termination of a contract related to the provision of an electronic communications network or service), it shall notify the Commission immediately and use all reasonable endeavours to ensure that disruption to consumers is minimised and continuous provision of publicly available electronic communications service to consumers is maintained.

While Meteor considers the proposed condition 18.6 to be acceptable in principle, it would appear to be redundant as condition 18.5 already caters for such a scenario. Similarly the latter part of this condition duplicates the proposed condition 18.2.

Condition 18.7 An Authorised Person that takes any action (including issuing a notice of termination of a contract to another provider of an electronic communications service or network) that could result in termination, suspension or restriction of publicly available electronic communications services to consumers shall simultaneously notify the Commission of the action.

As outlined above, with the exception of a withdrawal of service that is involuntary or in breach of contract it should be the responsibility of the party offering the retail service to notify ComReg. Requiring the wholesale provider to notify ComReg would at best result in a duplication of roles as both the wholesale provider and the retail provider would be required to notify ComReg in this instance. Furthermore this could result in a false alarm being raised as the wholesale provider is unlikely to have any visibility of any alternative or contingency measures that the retail provider may have in place. The retail provider is best placed to determine the potential impact on its customers. Therefore ComReg should rely on 18.5 and delete 18.7.

Condition 18.8 An Authorised Person shall notify the Commission no later than 10 days in advance of withdrawing any electronic communications service(s) or access to its electronic communications networks including if this withdrawal is pursuant to contract, except in cases where the action is urgently required in respect of ensuring network integrity or safety of life.

Meteor has already outlined its objection to any requirement for a wholesale supplier to notify ComReg of an impending withdrawal of service pursuant to contract. Such an encroachment on wholesalers' commercial operations has not been objectively justified and is not proportionate given the parallel obligations that are proposed for retailers to notify ComReg. In any case, a requirement to notify ComReg no later than 10 days in advance of withdrawing service could result in such notice being provided long after any notice given by affected retailers, who would be required to notify ComReg immediately in accordance with the proposed condition 18.5. Therefore Meteor calls for the deletion of this proposed condition.

Condition 18.9 In the event that an Authorised Person decides to withdraw a type of publicly available electronic communications service from consumers it shall notify the Commission immediately and its own consumers as soon as is practicable.

Condition 18.9 has far reaching implications for any services offered by ECS. A general requirement to notify in advance of withdrawing service is likely to impact commercially sensitive initiatives by service providers and impinges upon their commercial freedom. In accordance with Regulation 17(4) of the Universal Services & User Rights Regulations², undertakings are required to notify customers of any modification to the conditions of the contract for that service. This encompasses a withdrawal of a service. Meteor does not consider the more onerous obligations proposed in condition 18.9 to be proportionate nor do we do consider this proposal to address the concerns outlined by ComReg in the consultation document. Meteor therefore calls for the deletion of this proposed condition.

² SI No 308/2003 – European Communities (Electronic Communications Networks and Services) (Universal Services and User Rights) Regulations 2003

Condition 18.10 Where the Commission forms the view that there is an imminent possibility that publicly available electronic communications services to consumers may be disrupted, the Authorised Person will, upon request from the Commission, provide the Commission with any information which the Commission considers is required to facilitate the process of minimising disruption of consumers publicly available electronic communications services.

Notwithstanding Meteors objection to conditions applying to removal of service in line with contractual obligations, Meteor supports this proposed condition in principle as it would apply to all other circumstances of service withdrawal. There is a requirement for the condition to be more specific in relation to the circumstances under which ComReg may exercise these powers. While it may be ComReg's intention to specify how it has formed its view and the specific circumstances of concern, Meteor believes that ComReg should state this as part of the condition. Provision should also be made in the condition for the Authorised Person to satisfactorily dispel the concern. It would be disproportionate to oblige the automatic provision of all requested information, therefore this condition should be reworded to reflect the requirement that 'sufficient' information be provided to ComReg to facilitate the process of minimising disruption.

Q.2. Do you agree that the text of the condition 14.5 proposed for attachment to the General Authorisation can be classified as a condition providing for 'Interoperability of services and interconnection of networks in conformity with the Access Regulations'?

While this relates ultimately to the protection of end users, it would appear appropriate as a condition providing for 'Interoperability of services and interconnection of networks in conformity with the Access Regulations'. This is not withstanding our concerns in relation to the broad application of these measures and aspects of the text itself.

Q.3. Do you agree that the text of conditions 18.2-18.10 proposed for attachment to the General Authorisation can be classified as conditions providing for 'Consumer protection rules specific to the electronic communications sector including conditions in conformity with the Universal Service Regulations'?

Meteor agrees that the proposed conditions 18.2-18.10 can be class as conditions providing for 'Consumer protection rules specific to the electronic communications sector'. This is not withstanding our concerns in relation to the broad application of these measures. In particular we do not consider the proposed condition 18.9 to conform with the Universal Service Regulations.

Q.4 Do you agree that the text of the conditions proposed for attachment to the General Authorisation are objectively justified, non-discriminatory, proportionate and transparent?

As outlined above we do not believe that the conditions proposed are objectively justified and proportionate in all instances.

Q. 5 In your view do the conditions proposed for attachment to the General Authorisation constitute Specific Obligations, or conditions which are applicable to undertakings by virtue of other laws?

Meteor has already highlighted the proposed condition 18.9 as one which would override Regulation 17(4) of SI308 while also being more onerous than this existing regulation. With regard to the other proposed measures Meteor does not believe that the conditions proposed are Specific Obligations or conditions which are applicable to undertakings by virtue of other laws. That is not to say that Meteor considers these to be justified and we have clearly identified the proposed conditions we considered to be unwarranted in this response.

Q.6 Respondents are requested to provide views on whether the proposed specifications are proportionate and justified and offer views on other factors (if any) ComReg should consider in completing its Regulatory Impact Assessment (RIA).

As outlined in response to the previous questions we do not believe that the conditions proposed are proportionate and justified in all instances. Meteor has identified the following factors which should be taken into consideration when completing the RIA:

- The RIA needs to consider the impact on new entrants of the proposed requirement to supply a Disruption Minimisation Plan in addition to the standard notification requirement. The administration costs for ComReg also need to be considered.
- If despite the reservations outlined above, ComReg is still considering conditions 14.5, 18.7 and 18.8 for Wholesale service providers in the case of withdrawal of service pursuant to contract, it must take into account in the RIA:
 - The cost of requiring two parties to notify in terms of administration and possible complications and confusion that may arise due to dual notification.
 - The costs of false alarms both in terms of administration and possible damage to the reputation of Retail providers if wholesale providers alert ComReg even where there is no impact to consumers.
- Given the reservations outlined above Meteor urges ComReg to consider a broader range of options with at least one additional option that includes a selection of the proposed conditions e.g. those relating to involuntary termination and voluntary termination that would be in breach of contract to the exclusion of the withdrawal of service pursuant to contract.

In response to the recent consultation on RIA³ ComReg stated that effective use of an RIA required the identification of the full range of options available to it. Here ComReg also committed to keep the scope of the RIA open to revision. This should encompass the addition of new or various combinations of options.

³ ComReg 07/56 ComReg's approach to Regulatory Impact Assessment - Response to Consultation and Guidelines

paragraph 2.6, 07/56)

7 O2

The background is a solid blue color with several glossy, spherical objects of varying sizes. One large sphere is in the top right corner, and a smaller one is in the middle right. The spheres have highlights and shadows, giving them a three-dimensional appearance.

O₂

Response to Consultation Document 07/46

General Authorisation

Proposal to attach conditions in relation to
telecommunications service disruption minimisation

3rd September 2007

General Comments

O2 Ireland is supportive of ComReg's primary objective in the proposed amendment to the General Authorisation – to allow for some mitigation of major and unexpected hardship to consumers resulting from the termination and cessation of communications services. ComReg must however take into account that both retail and wholesale services change on an ongoing basis as amendments are made, new technology emerges, and market conditions change. Many of these are "value added" services and are not core to providing consumers with essential connectivity. The change and withdrawal of these services is already managed by operators and service providers in order to minimise consumer disruption.

The amendments to the General Authorisation that are proposed in document 07/45 are too broad in scope and unnecessarily intervene in a number of day-to-day activities of operators and service providers. As a consequence, the new conditions are disproportionate and go beyond what is permitted under the Authorisation Regulations¹ and Directive².

O2 believes the proposed text should be amended in order to provide the desired protection for consumers, while avoiding intervening in day-to-day operational activities. Specific comments are given below in response to the consultation questions. The main amendment suggested is that the new requirement should be limited to wholesale products and services that are subject to regulation consequent to a finding of significant market power under Regulation 25 of the Framework Regulations³. The requirement would be proportionate and justified in these markets, and would also capture the situations where termination of service could have a major impact on consumers.

Response to Questions

Q.1 Do you agree with the text of the conditions proposed for attachment to the General Authorisation? If not, please indicate which of the proposed conditions you do not agree with and why.

O2 does not agree with the proposed text and anticipates the following difficulties:

¹ Regulation 8 of the Authorisation Regulations (306 of 2003)

² Article 8 of the Authorisation Directive 2002/20/EC

³

14.5 and 18.5 The text is too broad and all encompassing. It would cover almost all value-added services, including Premium Rate services as drafted. O2 would recommend changing the text such that only regulated products and services are within scope.

Without prejudice to the above position, at the very least, the first part of this condition should be amended to a "probability" of cessation and a fixed time should be included e.g. 10 working days. The second part should also be amended as it currently covers access to all electronic communication services, including value-added services.

18.2 This condition would appear to be un-necessary. It is a normal practice for service providers to do whatever they reasonably can to maintain connectivity for consumers

18.3 As previously stated, this condition is too broad in scope. ComReg should narrow the requirement to products and services regulated following a finding of SMP.

18.6 This condition would appear to cover the cessation and change of services on a day-to-day basis, including value-added services.

18.7 and 18.8 These would seem to cover all cessation, including termination or cessation of service to individual customers.

18.9 This condition seems to cover all types of service, including value added services.

Q.2. Do you agree that the text of the condition 14.5 proposed for attachment to the General Authorisation can be classified as a condition providing for 'Interoperability of services and interconnection of networks in conformity with the Access Regulations'?

The draft condition is significantly broader in scope than interconnection and interoperability – it would cover value added services as drafted, however the withdrawal of a value-added service does not affect essential interoperability.

Q.3. Do you agree that the text of conditions 18.2-18.10 proposed for attachment to the General Authorisation can be classified as conditions providing for 'Consumer protection rules specific to the electronic communications sector including conditions in conformity with the Universal Service Regulations'?

See answer to Q.4.

Q.4 Do you agree that the text of the conditions proposed for attachment to the General Authorisation are objectively justified, non-discriminatory, proportionate and transparent?

While O2 agrees with ComReg's aim, which is to mitigate consumer disruption, the scope of the conditions are excessively broad and as a consequence are not proportionate or justified as required under Article 6 of the Authorisation directive.

Q. 5 In your view do the conditions proposed for attachment to the General Authorisation constitute Specific Obligations, or conditions which are applicable to undertakings by virtue of other laws?

The new conditions would also seem to overlap with protection that is already covered by general consumer protection legislation, and falls within the remit of the National Consumer Agency. In the Electronic Communications sector, Regulation 17 of the Universal Service Regulations⁴ provides for protection of consumers through the terms of contracts. This specifically covers the terms for termination of services.

Q.6 Respondents are requested to provide views on whether the proposed specifications are proportionate and justified and offer views on other factors (if any) ComReg should consider in completing its Regulatory Impact Assessment.

Further to the responses above, O2 believes ComReg should narrow the scope of these new conditions to cover only products and services regulated following a finding of significant market power under Regulation 25 of the Framework Regulations. This should be included as one of the options in ComReg's Impact Assessment. O2 believes it would provide the best balance between proportionate intervention and protection consumers from the most significant ill-consequences of termination of service.

⁴ SI 308 of 2003

8 Vodafone



Vodafone Response to the ComReg Consultation: General Authorisation – Proposal to attach conditions in relation to telecommunications service disruption minimisation

Introduction

Vodafone welcomes the opportunity to respond to this consultation on the proposal to attach to the General Authorisation conditions in relation to telecoms service disruption minimisation. While it is important that the incidence of service disruption for customers of telecommunications services is minimised, and the impact limited where it occurs, Vodafone does not believe that ComReg has effectively established that its proposed approach to minimise service disruption as set out in the present consultation is appropriate and proportionate.

The Regulatory Impact Assessment (RIA) carried out as part of ComReg's decision making process omits consideration of a number of factors relevant to the assessment of whether the benefits of attaching the proposed additional conditions to the General Authorisation exceed the costs. The RIA conducted so far is also too narrow in scope and fails to analyse the full range of feasible regulatory options available. Vodafone contends that even where it was found, on the basis of a RIA taking account of all relevant factors, that regulation is preferable to the status quo, options other than ComReg's proposal are likely to offer equivalent or greater benefits with regard to service disruption minimisation, while imposing a lower regulatory burden on operators. Vodafone's views in relation to these matters and the details of the conditions proposed by ComReg are set out fully in response to the consultation questions below.

Response to Consultation Questions

Q1. Do you agree with the text of the conditions proposed for attachment to the General Authorisation? If not, please indicate which of the proposed conditions you do not agree with and why.

Vodafone does not consider, for reasons set out in response to subsequent consultation questions, that ComReg has effectively established that the proposed conditions are objectively justified or proportionate to impose on operators. The proposed regulatory intervention is in Vodafone's view unduly prescriptive in nature and it is not clear that it would provide incremental benefits to consumers over possible alternative options such as self-regulation or industry initiatives facilitated by ComReg. In addition Vodafone questions the appropriateness of including requirements to address service disruption concerns in the General Authorisation, where they will be imposed on all licensed operators, when there are clear objective differences between different types of operators in terms of exposure to the risk of service disruption. Alternative regulatory options that focus more specifically on those segments of the market most likely to be affected by negative consumer perceptions regarding reliability of service provision may be more efficient and proportionate.

Proposed Notification and Information Conditions

Notwithstanding Vodafone's concerns regarding the proportionality and appropriateness of attaching the proposed conditions to the General Authorisation, we would like to make a number of points in relation to the conditions set out in Section 3 of the consultation document. An important issue is the definition of disruption to electronic communications services as used by ComReg in

the text of the proposed conditions. Although the text of the proposed condition 14.5 appears to contemplate a permanent cessation of service or at least longer term service disruption such as occurred to 40,000 Smart Telecom customers in late 2006, Vodafone considers that it is necessary for ComReg to provide clarity on whether the proposed conditions apply solely to long term service disruptions and permanent cessation of service, or whether they also apply to short term restrictions on service availability for reasons such as essential scheduled maintenance.

With regard to the proposed condition 18.9, Vodafone does not believe that it is necessary to include a requirement for an authorised operator to notify its customers where it decides to withdraw a type of electronic communications service as notification is already required under existing regulations. Where an authorised operator decides to withdraw a type of communications service that it provides, this would constitute a material modification of the terms of the contract with those customers to which the service was being provided and would have to comply with the notification requirements prescribed by the Universal Services and User's Rights Regulations 2003. Existing mechanisms in the market allowing customers to switch to other operators providing the service should in general be sufficient to ensure that continuity of service to affected customers can be preserved in light of the notice period required by the Universal Services Regulations. Competing operators will have a strong commercial incentive to facilitate, to the fullest extent possible, switching of customers from an operator withdrawing service.

If it is concluded in ComReg's final decision that it is appropriate and proportionate to attach conditions to the General Authorisation to address service disruption concerns then the proposed condition 18.10 should be amended to the effect that the authorised operator should provide information to the regulator only where ComReg has objective grounds to believe that there is an imminent possibility of service disruption. Vodafone considers that it is not sufficient for ComReg to request information from authorised operators merely where it is of the view that there is an imminent possibility of service disruption. It is appropriate that ComReg should have some objective basis for such an opinion prior to making information requests under this condition. In addition to a requirement for reasonable grounds for requesting information, the proposed condition 18.10 should also be amended to allow only for reasonable information requests given likely difficulties around providing proprietary information of third parties that was supplied to the operator on a confidential basis.

Proposed Disruption Minimisation Plan Condition

Vodafone has concerns regarding the proposed requirement to lodge a Disruption Minimisation Plan with ComReg (draft condition 18.3) of the nature indicated by the guidance in Annex B. It must be emphasised that in light of the strong commercial incentives to ensure continuity of service for our customers, we have already devoted significant resources to putting in place comprehensive business continuity and disaster recovery plans that are designed to minimise service disruption even in extreme circumstances and consider these to adhere to the highest standards. Although Vodafone acknowledges that ComReg's guidance is only indicative and not intended to be exhaustive, some of its elements are impractical in a commercial environment. In particular Vodafone considers that it would both unrealistic and disproportionate, as envisioned by ComReg in the Customer Contracts section, to expect operators to conclude agreements with competitors for novation of contracts on identical terms and conditions (including tariffs) in the event of their failure. It is hardly tenable, for example, for a wholesale provider to make an open-ended commitment to take on the customers of a re-seller in the event of the latter's cessation of service, on identical terms and conditions, when if service disruption occurs the terms and conditions themselves could be sub-commercial and a factor behind the re-seller exiting the market.

More generally, Vodafone would object to any requirements in the proposed Disruption Minimisation Plan that would require the modification or amendment of existing wholesale and retail contracts, at least prior to the time of their currently scheduled renewal. For wholesale contracts managerial resources would have to be heavily committed to contract renegotiations to the detriment of other activities. With regard to retail contracts, the inclusion of provisions permitting other operators to provide service on identical terms in the event of cessation of service, or for novation of contracts, would constitute material changes to contracts. Such material changes would likely require operators both to incur the costs of notifying all affected customers, and to bear risks associated with customers taking the opportunity to terminate their contracts early even in the case where the proposed contract amendments are not to their detriment. This would be unduly burdensome for all operators in the market.

Q2. Do you agree that the text of the condition 14.5 proposed for attachment to the General Authorisation can be classified as a condition providing for ‘Interoperability of services and interconnection of networks in conformity with the Access Regulations’?

Q3. Do you agree that the text of conditions 18.2-18.10 proposed for attachment to the General Authorisation can be classified as conditions providing for ‘Consumer protection rules specific to the electronics communications sector including conditions in conformity with the Universal Service Regulations’?

Q4. Do you agree that the text of the conditions proposed for attachment to the General Authorisation are objectively justified, non-discriminatory, proportionate and transparent?

Vodafone agrees that the text of the conditions proposed for attachment to the General Authorisation are non-discriminatory, as they would apply equally to all authorised operators. The proposed conditions also adhere to the principle of transparency. Vodafone contends however that the RIA conducted as part of the current consultation process does not clearly establish that the proposal to address service disruption concerns through changes to the General Authorisation is either objectively justified or proportionate. Vodafone considers that ComReg’s assessment of its current proposed regulation solely against the option of doing nothing is too narrow in scope. The RIA fails to consider all the available feasible regulatory options and further does not sufficiently account for either the costs that would be incurred by operators or the probability of service disruption occurring. Vodafone’s views in relation to these issues are set out more fully in the response to question 6.

As set out in the response to question 1, even in the context of a comprehensive RIA concluding that ComReg’s proposed option is optimal, a number of changes to the current proposed terms can be made to make it a more proportionate regulation to apply to authorised operators.

Q5. In your view do the conditions proposed for attachment to the General Authorisation constitute Specific Obligations, or conditions which are applicable to undertakings by virtue of other laws?

Q6. Respondents are requested to provide views on whether the proposed specifications are proportionate and justified and offer views on other factors (if any) ComReg should consider in completing its Regulatory Impact Assessment.

Vodafone considers that it has not been conclusively established by ComReg in its Regulatory Impact Assessment (RIA) that the proposed specifications are proportionate, justified, and the minimum necessary to achieve the identified objectives. The RIA fails to assess the full range of potential options to address the issue of possible service disruption, analysing ComReg's proposed approach only against the 'do nothing' scenario. By considering only two options the RIA omits to consider the relative merits of other approaches such as self-regulatory or voluntary industry co-ordinated options in which ComReg could have a role as facilitator. These alternatives may have lower costs and at least equivalent benefits to the proposed amendments to the General Authorisation put forward by ComReg.

Notwithstanding the need for the analysis of additional feasible options in the RIA in order to definitively establish the optimal approach to addressing service disruption concerns, Vodafone considers that other factors also need to be considered in the impact assessment. In terms of the benefits of the proposed regulatory intervention, while the RIA correctly provides an indicative quantification of the losses that would arise in instances of service disruption, it fails to consider the key issue of the probability of such service disruption incidents actually occurring. The probability of occurrence of service disruption incidents must be considered, but the impact assessment should not be influenced by the case of serious loss of service that has recently occurred to automatically assume that there is a high probability of re-occurrence. While weighting the cost of service disruptions by their likely frequency of occurrence is not straightforward, an analysis of the nature of the past incident that has essentially triggered ComReg's proposed regulatory intervention would be of considerable value. If the loss of service to certain Smart Telecom customers in late 2006 was caused by a number of exceptional factors then it would have to be judged to be an isolated incident. The correspondingly low probability of occurrence in such a case may not justify even modest costs that would be incurred by a proposed regulatory intervention to address the problem. It must also be considered that the example of service disruption that has already occurred may have led market participants to change their processes and behaviour in a manner that makes it more unlikely that such incidents will occur in the future.

In quantifying the benefits of proposed regulatory intervention it is important to note that the 40,000 customers affected by the withdrawal of service by Smart Telecom is a very small proportion of the overall customer base, the overwhelming majority of whom have enjoyed continuity of service since deregulation of the telecoms sector was initiated. ComReg must take into account both the relatively low number of individuals affected, and the exceptional nature of the service disruption event that has actually occurred, in formulating a view on what regulatory action, if any, is required. ComReg should resist unwarranted pressure from third parties such as the media to over-regulate in response to well publicised but rare instances where customers, as in the aforementioned service disruption incident, have suffered significant inconvenience or loss.

It must be highlighted that an evaluation of the incremental benefit of any proposed regulatory intervention to address the issue of service disruption must take into account the significant

commercial incentives that currently exist for operators to seek to minimise the possibility of service disruption occurring, and to limit the impact to the greatest extent feasible were it to occur. This is particularly relevant for established vertically integrated operators that, by virtue of their major infrastructure investments, are committed to the long term provision of telecommunications services in the market. For Vodafone the risks to long term revenues and profitability from significant service disruption (due for example to resulting reputational damage and the adverse impact on customer perceptions of the operator's reliability) are so great that extensive measures are already in place to minimise such a possibility from a technical perspective. It is certain that other major operators have put similarly extensive contingency plans in place to address the risk. In light of this, at least with respect to the more established operators, it must be questioned whether regulatory intervention will add appreciably to the consumer protection that is already afforded by commercial incentives on operators to minimise the incidence, and impact, of service disruption.

The probability of service disruption caused by a large vertically integrated operator such as Vodafone permanently ceasing to provide service on a voluntary or involuntary basis must be considered to be negligible. An abrupt voluntary cessation of a service without any notice to customers would have no economic logic for any operator. It would be expected that where a decision to exit the market were made the exiting operator would have every incentive to sell on its customer base and operations intact to another operator, this would only be feasible where continuity of service was maintained. It is also very difficult to conceive of realistic circumstances where a major integrated operator or operators would be forced to cease service abruptly and involuntarily by a liquidity crisis or other financial difficulties.

Given the robust position held by established vertically integrated operators and the fact that the late 2006 service disruption incident involved an alternative operator, Smart Telecom, most of the consumer perception of a threat of service disruption as exists relates to the alternative operators. This view seems to be implicit in ComReg's assessment of the impact on competition of option 1 in section 6.4 of the RIA. This view is also evident in the guidance for the proposed Disruption Minimisation Plan in Appendix B which addresses contingency planning principally in terms of the nature of the agreement with the wholesale provider. Vodafone considers that it is therefore incumbent on ComReg, to consider regulatory options that focus more specifically on the alternative operators than the regulatory option of amendments to the General Authorisation currently being proposed. These alternative regulatory options should adhere to the principle of non-discrimination, and therefore would likely have to be voluntary in nature. The option, for example, of an industry forum facilitated by ComReg to progress the contractual and other changes necessary to assure consumers of continuity of service would satisfy this criterion. Alternative operators, those undertakings primarily affected by a lack of consumer confidence regarding their ability to ensure continuity of service, could be expected to fully participate in such an approach and undertake the main part of its work, commensurate with their strong commercial interest in effectively addressing consumer concerns around the reliability of the services they provide.

With regard to the costs of the regulatory option proposed by ComReg for authorised operators, Vodafone notes that the RIA inaccurately describes them as once-off in nature. The proposed condition 18.3 in Section 3.2 of the document states:

“The Authorised Person.... shall maintain the Disruption Minimisation Plan to reflect the ongoing portfolio of services offered by the Authorised Person.. .”

and:

“The Authorised Person must lodge an up-to-date copy of the Disruption Minimisation Plan with the Commission.”

This indicates that the proposed Disruption Minimisation Plan would have to be updated on an ongoing basis and the RIA should be adjusted accordingly to take account of this. Further, Vodafone notes that while the RIA concludes that the cost to the Authorised Provider of ComReg’s proposed regulatory approach is not likely to be high, the nature of these costs is not set out. However on the basis of the illustrative guidance set out by ComReg in Appendix B, there are a number of non-trivial costs of the proposed new regulations that can be readily identified such as the significant man hours that would be required to negotiate amendments to existing commercial contracts to make provision for the possible transfer of customers to another operator under certain circumstances. Amendments to customer contracts would require full notification of the entire customer base affected, requiring that costs be incurred in national advertising, written correspondence and other forms of communication. There is also the prospect that changes to customer contracts may provide a basis for customers to terminate their contracts even where the proposed changes would not affect them adversely, leading to costs for operators associated with increased churn. These costs should be explicitly incorporated in the RIA.