

Submissions to Consultation on the basis of the appropriate refunds subsequent to Specification 1 of ComReg Decision No. D05/07 from 30 November 2007



Commission for  
**Communications Regulation**

## Submissions received in relation to Consultation

### **Basis of the Appropriate Refunds subsequent to Specification 1 of ComReg Decision No. D05/07 from 30 November 2007**

#### **Submissions received from respondents**

<b>Document No:</b>	<b>09/37a</b>
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<b>Consultation:</b>	<b>08/66</b>
<b>Response to Consultation:</b>	<b>09/37</b>

ComReg 09/37a

Submissions to Consultation on the basis of the appropriate refunds subsequent to Specification 1 of ComReg Decision No. D05/07 from 30 November 2007

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**1 Vodafone Ireland Ltd.**

**Vodafone Response to Appropriate Refunds Subsequent to Specification 1 of ComReg Decision No 05/07 from 30 November 2007 to date of ComReg's final decision on a maximum charge(s)**

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

Vodafone does not consider that any of the options proposed above are appropriate. The issue of refunds in relation to mobile port charges should not, as a matter of law, proportionality or reasonableness, apply. The only charge that should pertain to the period up to ComReg's final decision is the prevailing industry charge of €20. The reasons for this are given in the response to Question 2.

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

It is Vodafone's view that ComReg has no power to make a direction in relation to refunds since such power is neither conferred on ComReg by Regulation 31 of the Universal Service Regulation nor by any of the other provisions identified by ComReg in 08/66. Indeed, at no point in 08/66 does ComReg refer to the power by which it is directing the refund obligations. Therefore it is Vodafone's opinion that ComReg's approach to refunds is unlawful, unreasonable and disproportionate.

Without prejudice to the above, where Vodafone makes clear its view on the legality and unreasonableness of refunds relating to port charges, if ComReg is still minded to mandate refunds for the stated period other than the current €20 charge then Vodafone believe it would be most appropriate to use the operators' own proposed charges. In Vodafone's case, this charge represents the current cost to Vodafone of porting out a number to a recipient operator.

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## **2 O2 Communications Ireland Ltd.**

The background is a solid blue color with a gradient. On the right side, there are several large, glossy, blue spheres that resemble bubbles or droplets, partially cut off by the edge of the frame. The largest one is at the top right, and a smaller one is below it.

$O_2$

Response to ComReg Document No. 08/66

Appropriate Refunds Subsequent to  
Specification<sup>1</sup> of ComReg Decision No  
05/07 from 30 November 2007 to date of  
ComReg's final decision on a maximum  
charge(s)

## **Response to Q1 & Q2**

O2 Ireland welcomes this opportunity to respond to ComReg's proposals for Number Porting (NP) refunds however, we are surprised by the consultation and the proposals put forward by ComReg as we believe that the Irish and EC legal and Regulatory framework does not provide ComReg with a basis for retroactively applying Number Porting charges.

Below we provide our comments in the context of MNP however the comments made are equally applicable to ComReg's proposals for Fixed Port Charges.

The impact of such retroactive application of MNP charges on O2's financial position would be significant. O2 believes that retroactive application of the MNP charges when set would be contrary to the general principles of law. In EC law, non-retroactivity is considered to be an element of the basic principle of legal certainty, according to which the application of the law to a specific situation must be predictable. The EC courts have confirmed this in many judgments.

If ComReg has a different view we would request that ComReg clearly states the basis on which it believes it is empowered to make such a decision.

In the absence of a legal basis for retroactive application of the NP charges O2 believes that ComReg must decide that;

1. No refunds are appropriate.
2. ComReg's imposed NP charges will apply to future porting activity from the date they are set.
3. Until such time as ComReg sets a new MNP charge, all operators wishing to avail of Mobile Number Porting must pay the currently applicable €20 charge.

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### **3 Hutchinson 3G Ireland Ltd.**





## ANNEX 2 – CONSULTATION QUESTIONS TO COMREG 08/66

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

Option A (A MNP charge of €2.05) is the most appropriate. Option B (The charges proposed by operators) would not be in accordance with regulation 26 of the European Communities (Electronic Communications Networks and Services)(Universal Service and Users’ Rights) Regulations, 2003 and ComReg Doc. No. 07/98 “*Response to Consultation & Specification on Number Portability in the Fixed and Mobile Sectors*”, and Option C (Allowing the operators to bilaterally agree on the refunds due to each other from 30 November 2007) would lead to inter-operator disputes that would have to be resolved by ComReg. H3GI’s comments are without prejudice and in addition to:

1. Its response to ComReg Consultation Doc. No. 07/21 “*Consultation on Number Portability in the Fixed and Mobile Sectors*” dated 25 May 2007;
2. Its letter to ComReg dated 25 March 2008; and
3. Its pricing submission to ComReg dated 25 March 2008.

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

Please see the answer to question 1.

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#### **4 Meteor Mobile Communications Ltd.**



**Response to Consultation and Draft Direction on:  
Number porting: Appropriate Refunds Subsequent to  
Specification 1 of ComReg Decision No 05/07 from 30  
November 2007 to date of ComReg's final decision on a  
maximum Charge (s)**

**Document No: 08/66  
15 August 2008**

**19 September 2008**

## **Introduction**

Meteor Mobile Communications Ltd. (Meteor) welcomes the opportunity to respond to ComReg's Consultation and Draft Direction on appropriate refunds in respect to number porting charges.

As evidenced in Meteor's submission to ComReg's Consultation Paper on Number Portability in the Fixed and Mobile Sectors, 25 May 2007, (Doc: 07/21) and ComReg's Request for Pricing Submission – Number Portability, 29 February 2008 (Doc: 08/09), Meteor would contend that the charges arbitrarily imposed for full mobile number portability (FMNP) since 2003, are excessive, abusive, in breach of regulation and anti-competitive.

Meteor would argue, therefore, that regulatory intervention to establish firstly an appropriate mechanism to determine allowable recoverable costs and secondly to establish an appropriate cross industry charge has been long over due. The delay in its proposal and imposition has adversely impacted one operator in the market in particular (Meteor) and ensured its exposure to excessive and abusive costs. Meteor welcomes, therefore, the long-overdue intervention proposed by the regulator.

In assessing the appropriate basis for determining the refunds due to operators in the intervening period, from allowable costs set out in ComReg's specification of 30 November to the date of ComReg's final decision on the number porting charges, the regulator considers that a number of options should be consulted upon:

- Refunds based on ComReg's proposed charges
- Refunds based on operator proposed charges
- Refunds managed by operators

**Q1. Do you consider Option A, Option B, or Option C to be the most appropriate option in determining the refunds from the period of 1 November 2007 to the date of ComReg's final decision on a fixed and mobile number porting charge(s)? Please state the reasons for your response.**

Meteor considers that the Draft Directions contained in Consultation 08/65 reflect the requirements of the Specifications issued in November 2007, and Option A (i.e. refunds based on ComReg's determined charges), provides an appropriate basis on which to apply refunds in the period since the effective date of Decision D5/07.

Since the introduction of FMNP, Meteor has repeatedly requested the regulator to intervene within this market to establish an appropriate mechanism to determine allowable recoverable costs and secondly to establish an appropriate cross industry charge. This long overdue action has finally been taken.

Decision No: DO5/07, 30 November 2007, determined two specifications in respect to allowable costs for the pricing of interconnection related to the provision of number portability.

1. That allowable costs are limited to the incremental administrative cost to the donor operator of per-line enabling/ transaction costs, based on a fully efficient number porting process, and
2. That there shall be no direct charges to subscribers for number portability.

Both specifications were issued under Regulation 26(2) of the Universal Service Regulations. The specifications were also issued having regard to section 26(3) of the Universal Service Regulation and sections 10 and 12 of the Communications Regulation Act, 2002.

It is clear, therefore, that operators within the market were aware, from 30 November 2007, of allowable costs as determined within Decision DO5/07 for FMNP.

**Q2. Respondents are requested to provide views on whether the proposed directions are proportionate and justified and offer views on other factors (if any) ComReg should consider in completing its Regulatory Impact Assessment**

For reasons as outlined above, Meteor is of the opinion that Option A is the appropriate approach in circumstances where the methodology for calculating the relevant charge for FNMP has been in place since 30 November 2007.

Meteor does not accept that it is proportionate or justified for refunds to be applied on the basis of operator supplied costs, where ComReg has disallowed elements of those costs as being inconsistent with the terms of the applicable Directions.

ComReg Doc: 08/65 outlines all costs and cost categories submitted by mobile operators. It should be noted that ComReg disallowed many of the cost categories and corresponding costs provided: the justification being that such costs were not in accordance with the 30 November 2007 Direction that only the incremental administrative cost of per-line enabling/ transaction costs based on a fully efficient number porting process, should be allowed. In it highly inappropriate, therefore, that such costs form the basis of refunds for any period since 30 November 2007.

In addition, Meteor does not see any basis for suggesting that refunds be managed by operators. If refunds reflecting regulatory requirements, consistent with the provisions of Decision D5/07 are appropriate, then ComReg should ensure that they are applied by all operators on the same terms.

The Direction provided by the regulator in November 2007 provided for costs to be limited to the incremental administrative cost of per-line enabling/ transaction costs. The Direction stipulated that costs determined on the above category should apply as from 30 November, and Meteor supports this position. Neither proceeding on the basis of operator supplied costs, nor allowing operators to manage the level of refund, are in accordance with the aforementioned Direction.

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## **5 Tesco Mobile Ireland**



Tesco Mobile Ireland  
3<sup>rd</sup> Floor  
Building 2  
Harbour Square  
Crofton Road  
Dun Laoghaire  
Co. Dublin

Caroline Jordan  
ComReg  
Abbey Court  
Irish Life Centre  
Lower Abbey Street  
Dublin 1

11 September 2008

Dear Caroline

**Reference: Submission re ComReg 08/66**

I refer to your consultation published on 15 August 2008 entitled *Consultation & draft direction on appropriate refunds subsequent to Specification 1 of ComReg Decision No 05/07 from 30 November 2007 to the date of ComReg's final decision on a maximum charge* with document number 08/66.

Tesco Mobile Ireland is of the view that ComReg's Option A should apply i.e. that refunds from 30 November 2007 to the date of the final decision on porting charges should be set using ComReg's proposed charge of €2.05. Option A will apply equally to all operators without any further debate. Since 30 November 2007 the higher porting out charge which has applied has clearly been above the appropriate cost base. Mobile operators should not be allowed to take these additional profits.

Option B would reward those operators who had argued for a higher price than provided for by ComReg's cost based approach. Operators who had aimed high would receive the direct benefit of higher revenue whereas those operators who had taken a reasonable approach would have much lower revenue and would probably have to make a net payment to those with a higher price. This would be a most unfortunate outcome of a regulatory intervention. The approach would also set an unfortunate precedent for future regulatory debates in that it would encourage all respondents to come in with a high price in the anticipation that this price might at least apply in the intermediate situation.



Option C has a high probability of leading to protracted disputes and varying charges. TMI has no appetite for such lengthy and hence costly procedures for no end benefit. As a small new entrant TMI could find itself in a difficult position with its larger competitors.

ComReg should take the simple, straightforward approach of stating that its proposed porting out charge of €2.05 applies from 30 November 2007. This will cut through any inter-operator disputes.

Regards

Julian Keeley  
Regulatory Manager

Mobile 089 411 2283

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## **6 Eircom Ltd.**

# **eircom Ltd.**

**Response to ComReg Doc. 08/66**

***Consultation & Draft Decision  
on  
Appropriate Refunds***

## DOCUMENT CONTROL

<b>Document name</b>	eircom Ltd. Response to ComReg Consultation Paper 08/66
<b>Document Owner</b>	eircom Regulatory Operations
<b>Last updated</b>	19 <sup>th</sup> September 2008
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## I. Introduction

The obligation to ensure Number Portability under Regulation 26(1) of the Universal Service Regulations applies to all providers of publicly available telephone services and is accordingly independent of any finding of significant market power (SMP). In this context, as it is clear from the judgments of the European Court of Justice in the *Mobistar* and *Arcor* cases, the obligation of cost orientation set out in Regulation 26(2) differs from the obligation of cost orientation imposed as a remedy in the context of a finding of SMP. It follows that any principles established regarding the payment of refunds in the area of Number Portability do not and cannot be considered to set any precedent with regard to the payment of refunds in the context of an obligation following a finding of SMP or in the area of interconnect obligations. eircom's comments in this submission should be understood in this context.

## II. Questions

**Q1 Do you consider Option A, Option B or Option C, to be the most appropriate option in determining the refunds from the period of 1 November 2007 to the date of ComReg's final decision on a fixed and mobile number porting charges(s)? Please state the reasons for your response.**

eircom's view is that Option A is the most appropriate approach to calculating refunds. Option A provides greater certainty and transparency and is less likely to result in inter-operator disputes.

**Q2 Respondents are requested to provide views on whether the proposed directions are proportionate and justified and offer views on other factors (if any) ComReg should consider in completing its Regulatory Impact Assessment**

eircom requests visibility of the Regulatory Impact Assessment that ComReg has carried out in this case.

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## **7 BT Communications Ireland Ltd.**



**BT Response to  
Number Porting: Appropriate Refunds Subsequent to  
Specification 1 of ComReg Decision No 05/07 from 30  
November 2007 to date of ComReg's final  
Decision on a maximum charge(s)**

**Reference Submission re ComReg 08/66**

## **1 Introduction**

BT notes the regulatory and legal basis for this consultative exercise and any decision resulting from it.

Our response to the questions raised is set out below.

## **2 Appropriate Refund subsequent to Specification 1 of ComReg Decision No 05/07**

We note three possible options have been put forward for consideration:

### **2.1 Option A: Refunds based on ComReg proposed charges**

ComReg has examined all submissions received by operators and considers the view that the number porting charges determined by it are in line with the specification in relation to the pricing of NP as set out in Specification 07/98. ComReg is of the view that the charges proposed by it reflect the specific costs set out in its specification of 30 November 2007. ComReg considers that in adopting ComReg's charges, there is greater certainty in the market place, a lesser possibility of inter-operator disputes and it increases the levels of transparency in NP charging. ComReg considers that this option should be consulted upon.

### **2.2 Option B: Refunds based on operator proposed charges**

In ComReg document no 08/65, ComReg analysed all of the costs submitted by the various operators and included a detailed table on the allowable and disallowed costs. ComReg's assessment of the operator submissions is that operators included a number of costs that should not be allowed as part of ComReg's specification and therefore these disallowed costs should not be recovered in the intervening period<sup>4</sup>.

However, some operators may be of the view that the charge(s) proposed by them, in

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line with Specification 1 of ComReg Decision no D05/07, are more relevant in the intervening period. Operators appeared to interpret, notwithstanding the particular wording of Specification 1, the cost orientation obligation in different ways and as a result a number of varying charges were proposed by each of them. Refunds based on the operator proposed charges may lead to inter-operator disputes which then may require resolution. ComReg considers this option should also be consulted upon, insofar as obligations under Regulation 26 and Specifications of 30 November 2007 (ComReg Decision no D05/07) could be met in full.

### **2.3 Option C: Refunds managed by operators**

ComReg has also considered the option of allowing the operators to bilaterally agree on the refunds due to each other from 30 November 2007 insofar as this could be undertaken while meeting in full their obligations under Regulation 26 and Specifications of 30 November 2007. This option allows operators to agree on number porting charges, in line with Specification 1 of 30 November 2007, without any interaction from ComReg. This option does not, at this stage, appear to require any direction from ComReg. It is ComReg's preliminary view however, that this option may lead to a number of varying porting charges which are potentially not compatible with the specification of cost orientation, in line with ComReg Decision no D05/07. In addition, the amounts due between the operators may vary quite significantly which in turn may lead to inter-operator disputes requiring resolution. ComReg considers that this option should also be consulted upon, insofar as obligations under Regulation 26 and Specifications of 30 November 2007 (ComReg Decision no D05/07) could be met in full.

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

**A.1. From a commercial perspective option C would be regarded as the most appropriate way forward. However, we note that this could and is likely to lead to disputes. We do not believe that ComReg's time is best placed in resolving disputes on number portability charges. Therefore on balance we believe that option A is the most appropriate under the circumstances.**

### **3. Draft Directions**

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



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**A.2. We have only concerned ourselves with fixed number portability and the draft direction in relation to option A. We do not agree with the proposed timescale of two months for refund. We believe that a minimum of three months is required.**

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## **8 Magnet Networks Ltd.**

**Magnet Networks response to 08/66.**

**Question 1.**

Option A is clearly the option that will open up the market to the greatest extent i.e. there is not arguments between carriers in relation to pricing which may prevent porting agreements being signed at all.

**Question 2.**

The proposed direction is reasonable.