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3 Group response to BEREC's consultation on the draft report on best practices to facilitate switching.

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This paper contains the response of the **3** Group in Europe to BEREC's consultation on the draft report on best practices to facilitate switching.

The **3** Group is part of Hutchison Whampoa Limited's telecommunications division and includes the following operating companies in the EU: Hutchison 3G Austria GmbH, Hi3G Denmark ApS, Hutchison 3G Ireland Limited, H3G Spa (Italy), Hi3G Access AB (Sweden & Norway) and Hutchison 3G UK Limited (together, H3G).

The HWL telecommunications division, comprising the **3** Group, Hutchison Telecommunications International and Hutchison Telecommunications Hong Kong Holdings Limited, was the first global 3G operator, with licences in 10 countries[1]. Our 3G services were first rolled out in March 2003. The HWL Group had over 26.8 million 3G customers globally and over 17 million in Europe as of 30 March 2010.

Summary

The **3** Group welcomes BEREC's draft report on best practices to facilitate switching and would like to take the opportunity to raise some issues of particular concern to us related more specifically to switching between mobile providers and notably Mobile Number Portability ('MNP').

The **3** Group takes the view that making it easier for consumers to port their number when they switch operators can facilitate greater competition and entry in the market, leading to lower prices and a more operationally efficient industry.

In our view a well-functioning mobile switching process should allow for an MNP system comprising of the following elements:

- Near-instant porting and, in any event, porting within one working day
- The process of switching and porting should be Gaining-Provider-Led ('GPL')
- There should be no deterring factors for the customer. For example, no deterring fees at wholesale, no fees at retail level and no harmful or aggressive retention activities.
- Direct Routing of calls to ported numbers

The response will deal with each element in turn below.

Introduction

The **3** Group takes the view that making it easier for consumers to port their number when they switch operators can facilitate greater competition and entry in the market, leading to lower prices and a more operationally efficient industry. Without MNP, it would be impossible for new entrants to compete for

[1] Australia, Austria, Denmark, Hong Kong, Ireland, Italy, Macau, Norway, Sweden and the UK.

some customers (e.g., people who do not want to switch unless they can take their number with them), while competing for other consumers might involve increased marketing expenditures. Prices could be held above competitive levels by incumbent operators, and gaining market share would become more costly for new entrants due to the need to overcome the disincentive to switch. Moving from a lengthy or cumbersome number portability process to a much easier, shorter, stream-lined, consumer-friendly process has qualitatively similar effects as introducing MNP in the first place.

As the Commission stated on number portability in its 15th Progress Report on the Single European Electronic Communications Market for 2009[2] "The facility is one of the fundamental instruments reinforcing consumer choice. It enables the fostering of competition, in particular when new players enter the market."

Consumers want to be able to change mobile networks in order to get the best prices, new services and handsets. They also want to be able to keep their phone number when they do so.

We agree with BEREC's cost analysis, all the studies quoted suggest that reducing switching costs could have a significant effect on consumer welfare. These studies also show that MNP is an important dimension of switching costs, and that an efficient MNP system is an effective policy instrument in reducing these costs.

According to the UK's Office of Fair Trading ('OFT') discussion document on switching costs[3], entry can also be affected by switching costs. The OFT states that: "*Entry is obviously difficult in a mature market with high switching costs where most customers are already locked-in to a supplier".* The document goes on further in that dominant firms could create costs in order to raise barriers to entry. "*As switching costs can, under certain conditions, make markets more profitable, and can raise barriers to entry then it can be worthwhile for firms to create them…By raising barriers to entry, such switching costs can distort the competitive process when practiced by firms with market power".* The conclusion is clear, not only should regulators provide for an efficient MNP system, they should be alert to any deficiencies that allow incumbent operators to deter switching.

The existence of switching costs essentially means that in order to attract a customer away from his or her existing provider, additional marketing effort is required or the customer needs to be compensated (by a larger price differential between the incumbent and new provider). However, if such switching costs are excessively high, it may not be feasible for the competing provider to attract some customers.

1. Near-instant porting time and, in any event, no more than one working day

The **3** Group considers near-instant porting to be of paramount importance to consumer welfare and we regret the fact that BEREC does not include shorter switching processes in its draft list of best practices. The **3** Group agrees with the principle under Best Practice 1 that "*the overall switching process should be as quick and reliable as possible*" however this should be taken a step further. The intention of the European Commission when revising the relevant provision under Article 30(4) of the Citizen's Rights Directive[4] was to achieve MNP in the shortest possible delay and for the process to be

[2] http://ec.europa.eu/information_society/policy/ecomm/library/communications_reports/annualreports/15th/index_en.htm

[3] Switching cots, Economic Discussion Paper 5, Part One: Economic models and policy implications (April 2003). A report prepared for the Office of Fair Trading and the Department of Trade and Industry by National Economic Research Associates.

[4] Directive 2009/136/EC

completed within one day. In the **3** Group's view, the intention and objectives of the Commission for a shortening of the MNP process remain valid. In fact, in its press release[5] following the adoption of the telecoms package in December 2009 the European Commission identified first in its list of the 12 most important reforms of the new EU telecoms package the MNP provision under Article 30(4) stating:

> "*The following are the 12 most prominent reforms in the new package of rules for Europe's telecoms networks and services, as proposed by the European Commission in November 2007, politically agreed between the negotiators of the European Parliament, the Council of Telecoms Ministers and the Commission on 5 November and formally endorsed by the European Parliament at its third reading on 24 November 2009:*
>
> ***1. A right of European consumers to change, in 1 working day, fixed or mobile operator while keeping their old phone number*** *. Currently in the EU it takes on average 8.5 days for a mobile number and 7.5 days for a fixed number to be changed, with some customers facing a two to three week wait. In the future, consumers will be able to do this in 1 working day.*"

Near-instant porting is achievable and in some countries such a system has been in place for a long time and constitutes a well established European and international best practice. In many of the countries in which the **3** Group operates, for example Ireland, Hong Kong and Australia, and with the notable exception of the UK, the port lead times regularly achieved are within the same day, and well within the maximum time limits required in these countries.

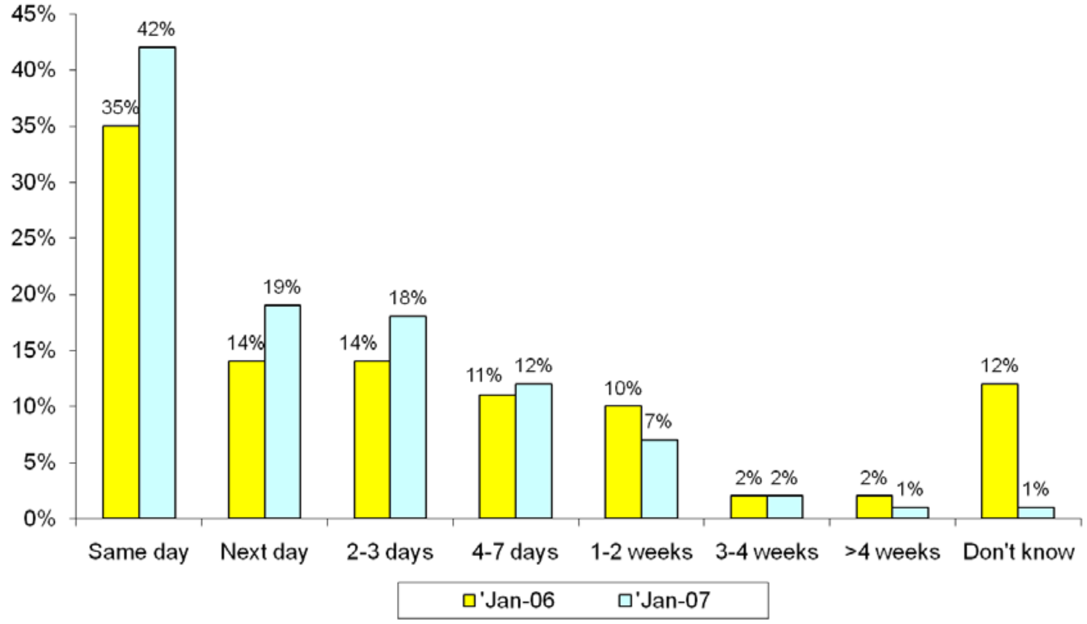
The table below illustrates this:

Table 1: Porting times achieved in countries where Hutchison Whampoa Limited has 3G operations

Country	Maximum Port Lead Time	Achieved Porting Time in Practice
Australia	2 days	2 hours
Austria	3 working days	4 hours (for technical handover)
Denmark	10 working days	36 hours
Hong Kong	2.5 days	2 hours
Ireland	2 hours (single line port), 1 working day (multi-line ports)	20 mins
Italy	5 working days	3.5 hours (for technical handover)
Sweden	3 working days	3 days
UK	4 working days	5 working days

5 http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/09/568&format=HTML&aged=0&language=EN&guiLanguage=en

Contrary to what the NRAs have submitted to the report, porting lead times are an important factor which a consumer will take into account when switching providers. Below are the results of a survey conducted in the UK where consumers were asked what they consider to be reasonable porting time:



Source: H3G-TNS UK Research

In fact our experience in Ireland shows that where near-instant porting is implemented customers are more inclined to port their number. Almost 1.93 million numbers have been ported since the launch of Mobile Number Portability (MNP) in June 2003. Over the last 12 months an average of 89,118 numbers has been ported each quarter.[6]

Although a centralised database system is preferable in order to achieve near-instant porting, from our experience in Austria and Italy, it is feasible for number portability to take place within one day with a decentralised database.

The fact that there are decentralised databases does not prevent porting to be completed in 24 hours. The database is updated once a day and with effective coordination between the parties this can be easily achieved within a few hours. In Italy for example, MNP databases are aligned automatically every day by all operators (mobile and fixed); the update takes place early in the morning, in order to reduce impact on customers.

Furthermore, there are no contractual reasons to prevent one day porting that cannot be overcome. For example, concerning the residual customer credit, in particular in Italy, this is returned to customers after the MNP cut-off since the correct amount to be returned cannot be calculated before; we cannot therefore see any dependency between the residual credit and the MNP time-frame either (the duration of the MNP procedure).Today it is done by way of bank transfer or by cheque. There are also discussions underway for establishing an online transfer of the credit which will speed up the process even more.

[6] Irish Communications Market, Quarterly Key Data Report Doc No: 10/43
http://www.comreg.ie/_fileupload/publications/ComReg1043.pdf

There are no significant technical issues preventing portability from taking place within a few hours or one day. Our experience tells us that with effective coordination between the parties near-instant MNP is very easily achievable without any significant costs falling on the operators.

We urge BEREC to include this in the list of best practices and to provide guidance as to the implementation of Article 30 (4) of the new Citizen's Rights Directive which takes into account the initial intentions of the European Commission for an effective switching process in the shortest possible delay and in any case not exceeding one day.

2. The process of porting should be Gaining-Provider-Led ('GPL')

The **3** Group agrees with the principle under Best Practice 1 which states that "*the facilitation of switching between service providers should be managed by the new service provider as the primary contact point, where possible*". Our experience shows that consumers in GPL countries are enjoying the benefits of easier switching and enhanced competition offered by this system. The problem still remains in the UK however where the process continues to be Losing – Provider – Led ('LPL'). We are aware of no European jurisdiction or other major economy which requires its mobile consumers to contact their current network for permission to move their number to a new network. This is also recognized in the draft report under Best Practice 1 where one of the principles states that "*consumer involvement should be no more than necessary in order to ensure that the burden of switching is not unduly onerous*" and that "*the switching process should be seamless and invisible to the consumer*".

The LPL system is heavily reliant on regulation to force donor operators to do the right thing by consumers. It requires them to work against their commercial best interests and therefore offers little incentive for them to make the porting process work. Furthermore, it is the consumer that has to manage the process, and ask their current network for permission. Ofcom's research has shown that the majority of customers understandably want to avoid this.

LPL porting can never be as fast as GPL, because for example in the UK, it consists of a two-stage process. Any system which requires consumers actively to obtain permission from their current provider (in the UK in the form of a Porting Authorization Code, or PAC) rather than empowering their new operator to activate the port on their behalf will always be prone to delays.

The two-stage LPL process in the UK works as follows:

• The customer must request a PAC from their existing mobile operator ("Stage 1").

• Once the PAC has been issued, the customer must give it to their new operator to initiate the port ("Stage 2").

The current UK timeframes are: a) for Stage 1, the PAC must be issued within two working days; and b) for Stage 2, the donor operator must port the number within two business days of receiving the recipient operator's request. Therefore, under the current UK system, it can take a minimum of four working days to port a number, assuming that the customer gives their PAC immediately to their new operator.

The current system in the UK suffers from even further delays. It relies on complicated messages being communicated to customers in a manner which is ripe for confusion and on occasion leads to misinformation. It facilitates save activity which the majority of customers do not welcome. It forces customers to speak to their donor network, highlighting that they intend to leave the network. This provides the donor operator with an opportunity to engage in retention activity.

This LPL process has an effect on competition, since incumbent operators may engage in targeted marketing and retention activities that the entrant operators might not be able to replicate. In addition, the current process allows a significant period of time and significant potential for customer retention activity that is not welfare-enhancing, but is competition-reducing; and importantly, potential switching customers may not have information available to them on options to port. In effect the current MNP system in the UK limits switching and disincentivises providers from putting their best deals into the market. It provides significant opportunities for the donor operator to engage in aggressive save activity and build in delays. Ultimately, it is the consumer who loses out under the LPL system.

The consultation document identifies some of the ways in which the losing operator can frustrate the porting process: "LPs deliberately failing to provide authorization codes to other suppliers, or failing to act appropriately, following a request to transfer away; customers being discouraged from switching through the threat of penalties, sanctions and debt recovery action; or LPs failing to share relevant data with the GP."

Furthermore, the LPL process provides no incentive to potential gaining operators to publicise the porting process to their customers, because of the risk of retention activity.

LPL also has the effect that operators target their best deals at the small number of customers who are considering switching, rather than offer better all round deals to the whole market. Competition therefore operates at a sub-optimal level rather than to the benefit of all consumers.

Furthermore, in our view GPL porting carries less, not more, risk. Mobile slamming and mis-selling have much more to do with the sales process, than with the porting process. Mobile slamming or fraud is no greater a risk under a GPL system than under a LPL system. 'Slamming' has been a problem in the UK where porting has been LPL and takes 5 days but it is not the case in other countries where porting is GPL and takes 1 day. GPL porting is robust against mis-selling or 'slamming' as is the case for example in Ireland.

Operators in Ireland for example run strict identity verifications therefore eliminating any risks. In particular:

> In store - The customer signs a customer authorisation form (CAF) and produces identification (e.g. by producing a copy of a recent bill showing the mobile phone number and details to verify that they own the mobile phone number in question). The request goes to the TRIPS (MNP) system where it verifies the details of the registered customer. If not registered then the customers' identification would suffice, the retail agent texts or calls the number to verify that the person requesting the port is (i) the owner of the number and (ii) has the mobile phone number in their possession.
>
> Online – The customer sends a request to port. The customer care team contact the customer to carry out the porting process as per the in store process. They also call the customer on their old number to ensure possession / ownership etc.
>
> By Telephone – The customer calls and requests to port and the above procedure is carried out.

The **3** Group does not agree that there is necessarily a trade off between an effective porting process and protecting consumers from mis-selling and slamming activity. Both are possible if appropriate procedures are put in place.

Taking into account all the above, we urge BEREC to recommend the GPL process as the preferred MNP process in its final report on best practices in switching.

3. Deterring Practices

Wholesale fees and/ or retail porting fees

The Commission stated in its 15th Progress Report on the Single European Electronic Communications Market for 2009 that "The task of the national regulators is to make sure the wholesale pricing is cost oriented and that retail prices do not act as disincentives to the take-up of number portability."

Wholesale inter-operator charges, in the countries where the **3** Group operates, have been significantly reduced in the past years following intervention by the responsible NRA. In Ireland the inter-operator cost used to be €20. ComReg took a decision on 29 January 2009 to reduce it to €2.05 (the decision came into effect on 24 June 2009). This shows that the actual costs of inter-operator switching are very low and any charge above that constitutes pure profit on behalf of the companies charging it that cannot be justified. Similarly in Denmark, the inter-operator charge was reduced to €4.03 in 2008. In Austria, the inter-operator charge of €8.20 was reduced to €3.33. Only **3** Austria levies this charge because other operators impose a retail porting fee on the consumer while **3** Austria doesn't.

In most countries in which the **3** Group operates, retail fees to the customer for porting have been removed or, if they exist, they are not passed on to the customer. In Austria however, a retail porting fee exists and all operators except **3** Austria charge the customer €19 (in practice this cost is borne by **3** Austria and is not passed to the consumer). The €19 fee is made up of €15 porting fee and €4 for porting information. Regrettably, the NRA stated that it has no responsibility over the charge to customers following a Court ruling.

The **3** Group supports BEREC's conclusion that wholesale and retail porting charges can deter switching and that national regulators should ensure such costs do not act as a deterrent to an efficient switching process and effective competition.

Retention activity

BEREC rightly identifies on page 59 of the report the key concerns regarding retention activities on the part of the losing provider. As noted above, retention activity can be confusing and unwelcome to customers, it deters operators from using the porting process and it allows the losing operator to target price reductions rather than making generalised offers, thus reducing price competition. The latter is particularly a problem where the losing operator can use customer records to tempt back customers in the process of porting (or even former customers) with individualised offers. It has been pointed out in section 2 of the response, the LPL process is more vulnerable to aggressive retention activity and provides no incentive to operators to publicise the porting process to their customers, because of the risk of retention activity.

In some countries retention activity is banned altogether. For example in Ireland, as per the Industry agreed MNP Code of Practice, the losing provider is not permitted to try and win back the customer during the MNP process. Similarly, retention activity has been banned in Italy. In Italy, the MNP procedure was launched in 2002. The reaction of the incumbent operators was to begin retention activities based on the personal data of customers held by them. The regulatory framework forbid the use of the data for purposes that were different from executing MNP - i.e. for making commercial offers to the customer. However, technical procedures and commercial agreements left the possibility to exercise retention. The procedure of request and validation by the donor operator lasted three working days which gave the opportunity to the donor operator to exercise aggressive retention activity and as a result have the customer cancel the MNP request.

Notwithstanding the number of litigations among operators arising from this, the NRA did not intervene to stop the retention activity. All operators in Italy were exercising retention activity, with the exception of **3** Italy.

At the end of 2008, when the new Italian MNP regulatory framework was in place, following pressure by the new virtual operators, the NRA decided that an MNP request cannot be canceled by the customer. At the same time the technical procedure was shortened in order to eliminate the long wait between request and validation. As a consequence the NRA obliged all operators to stop their retention activity. This was challenged by the incumbent operators and following a long judicial procedure the decision of the NRA was validated.

Other deterring practices

In Austria the calling party hears the name of the recipient network operator to indicate that he is calling a number that has been ported. This in our experience deters porting. This has been mainly a business customer issue. In the early stage of mobile communication mostly business customers used mobile phones. This in effect gave Mobilkom, the former incumbent operator in Austria, a strong first-mover advantage. Mobilkom has still a marked share of more than 70% in the business customer segment. This issue remains unresolved in Austria despite efforts from **3** Austria and the other mobile operators in the Austrian market.

Due to the calling party hearing this message, business customers are concerned that after porting their number from Mobilkom to another operator – e.g. to the price leader – they may suffer reputational harm which therefore deters them from porting their number.

A message to indicate that the customer is calling a ported number might be justified where there is differentiation between on-net and off-net calls (although it assumes customers are familiar with number ranges). In Ireland a beep tone is required as a cost transparency measure to highlight to the calling party that they are calling an off-net number and as such would be charged more. In Austria however this is not the case as there is no such differentiation in on-net and off-net prices.

Of course, as BEREC's consultation document identifies, the practice of differential on-net/ off-net pricing can deter switching. As practiced by large incumbent operators this can become an anti-competitive practice when it cannot be replicated by smaller operators, as is the case when mobile termination rates are set at high (above cost) levels.

4. Direct routing of calls to ported numbers

In all countries where the **3** Group operates in Europe routing of calls to ported numbers is done directly, with the exception of the UK. In the UK the practice is for calls to ported numbers to be tromboned via the donor network, whereby the call is always routed first to the operator holding the original number allocation and then forwarded to the recipient operator.

The tromboning or indirect routing of calls creates a technical dependency on the donor network, because all calls to ported numbers have to be first handled by the donor network before being passed to the recipient network. This can cause consumer detriment in the form of problems with the customer experience, because calls may fail to connect altogether, have a poor quality of service due to congestion on the donor network, or cause service interoperability issues where the donor does support a particular service offered by the recipient network, e.g. video calling (which was the case in the UK and meant that customers porting to **3** UK were unable to use the full range of services on offer).

Indirect routing also leads to transit costs being incurred inefficiently. In the UK, the holder of the number range levies a ‘conveyance charge’ on the recipient operator. This has been historically significantly above cost, meaning that the number range holder continues to earn profits from the customer even after the customer has ported away.This burden has meant that **3** UK, between its launch in 2003 and August 2009, made net out-payments of approximately £9.4m in donor conveyance charges to other MNOs. **3** UK calculates that it will continue to incur this net cost whilst the current level of DCC is in place, in excess of £650k per annum until all calls to ported mobile numbers are directly routed.

Indirect routing, therefore, places a disincentive on operators from promoting efficient number portability because they earn less or no revenue from customers who port under a direct routing arrangement for calls to ported numbers. This inefficiency is further exacerbated in the UK because the recipient receives the donor operators’ MTR and not its own. This has meant that **3** UK has received a lower than its regulated MTR on calls to its ported customers whereas the donors have received higher than their regulated MTRs on calls to their ported customers.

In essence, the incumbent mobile operators in the UK, as a group, continue to profit from the inadequacies of the existing MNP system including the receipt of donor operator MTRs which are higher than their own regulated MTRs, and a net in-flow of Donor Conveyance Charges (“DCC”) as a result of indirect routing.

Conclusion

A faster, more efficient porting process which provides positive incentives on operators to raise awareness of porting, will have the effect of increasing switching rates, and bring significant competitive benefits to the mobile market and to consumers. We urge BEREC to take the concerns raised in this response into account when drafting its final report on best practices to facilitate switching.

ANNEX - Answers to specific questions

Question 1 *(section 3): Are you satisfied with the typical switching time between service providers in the following services:*

a) Fixed telephony;

b) Mobile telephony;

The **3** Group takes the view that this should be further improved in light of the recent provisions contained in Article 30(4) of the Citizens' Rights Directive. Our experience tells us that porting in practice can be achieved well within the prescribed legal limits and certainly under one day. For more information please see section 1 in the main body of the response.

c) Internet access;

d) Bundles.

If not, please offer suggestions on how to speed up the switching time between service providers, whilst ensuring an adequate level of consumer safeguards.

Question 2 *(section 4): Do you agree that the obstacles to switching identified in the draft report are the most relevant to consumers? If not, please explain why.*

The **3** Group agrees with the obstacles identified but urges BEREC to also take into account the concerns raised in the response.

Question 3 *(section 4): Do you have experience and evidence of any other major obstacles faced by consumers in switching between service providers?*

Yes, please see main body of the response.

Question 4 (section 4): *Among the identified obstacles, which would you rate as the most significant in terms of their adverse impact on switching service providers and why?*

The obstacles raised in the main section of the response are those which are the most significant to the **3** Group.

Question 5 (section 4): *What are your views as to whether particular obstacles to switching are more relevant in a specific electronic communications services (e.g.fixed telephony, mobile telephony, Internet access or bundles)?*

The **3** Group operates in mobile telephony only therefore the concerns raised in this response are related to mobile switching.

Question 6 *(section 5): Do you agree with the best practice principles identified in the report? If not, please explain why.*

The **3** Group agrees with the best practices identified but urges BEREC to also take into account the elements raised in the response that in our view would lead to a better switching process and a better consumer experience. In particular, best practice porting procedures should include the following elements:

Near-instant porting and, in any event, porting within one working day

The process of switching and porting should be Gaining-Provider-Led (‘GPL’)

There should be no deterring factors for the customer. For example, no deterring fees at wholesale, no fees at retail level and no harmful or aggressive retention activities.

Direct Routing of calls to ported numbers

Question 7 *(section 5): Are there any other best practice principles you would like to be identified in this report?*

Yes, please see main body of the response and the response to question 6 above.