Meteor Mobile Communications Ltd response to ERG public consultation on a draft Common Position on symmetry of mobile/fixed call termination rates

Introduction

Meteor Mobile Communications Ltd (Meteor) welcomes the opportunity to comment on draft European Regulatory Group (ERG) Common Position on symmetry of mobile/fixed call termination rates. Meteor is the 3rd player on the Irish mobile market. Meteor launched the commercial provision of its mobile services in February 2001. As at end September 2007, Meteor has achieved subscriber share of 18.4% relative to Vodafone (44.9%) and O2 (33.1%). Hutchison 3G (trading as '3') is the 4th entrant and has a share of 3.6%.

Meteor has read with interest the views of the ERG set out in the draft Common Position on this very important topic. As a mobile operator our comments are focussed on the 'Mobile part' of the draft paper. We also offer some views in this response to the question of the extent that the emergence of embryonic fixed / mobile converged retail services should influence regulatory policy in respect of MTRs.

Mobile part

M1: Do you agree with the general principle promoting symmetry: "*Termination rates should normally be symmetric*"?

Asymmetric mobile termination rates have been a feature of national regulatory landscapes for a number of years. We welcome the ERG's initiative to establish a principled framework. As is acknowledged in the draft Common Position there are a number of exogenous factors (largely arising from regulatory decisions), including date of market entry, that may justify asymmetric mobile termination rates for newer entrants relative to the early entrants in the market. We would acknowledge that symmetry in mobile termination rates should be achieved over time as the impact of exogenous factors, including time of market entry are eroded. However we do not agree with the use of the word 'normally' in the expression of this principle. This tends to suggest that mobile markets have achieved a steady state where the impact of all exogenous factors has been redressed. Consequently the principle is better expressed that "*Asymmetric termination rates may be objectively justified for later market entrants due to exogenous factors. As the impact of exogenous factors diminishes, termination rates should tend towards symmetry over time*".

Exception to take into account exogenous factors, not related to a late entrance:

M2: Do you agree with the exception to take into account exogenous cost differences: "*asymmetry is only acceptable to take into account exogenous factors, outside the control of operators*"? The only example, which is not related to a late entrance, identified by ERG is cost differences due to spectrum licence holdings. Can you identify other exogenous factors?

Meteor agrees that exogenous cost factors such as differences in spectrum licence holdings can be taken into account. Differences in spectrum licence holdings (including where relevant differences in obligations attached to the spectrum authorisations) and time of market entry are the most significant exogenous factors.

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M3: Do you agree with the following principle: "*Assuming that cost differences due to different spectrum allocations are properly evaluated, they may justify an asymmetry*"?

Meteor agrees with this principle and offers the following comments in respect of evaluating the cost differences.

The propagation characteristics of mobile spectrum vary by frequency allocation. In the context of providing coverage, radio signals in lower spectrum frequencies (such as the 900MHz band) travel further relative to higher frequencies (such as 1800MHz and 2100MHz). This means that cell sites transmitting at 900MHz cover a wider area. It is acknowledged that rolling-out a coverage network at 900MHz is more cost effective as a lower number of cells are required to cover a defined area.

The cost differences arising can be modelled using network planning tools to quantify the number of cell sites required to provide coverage in a defined area. The key question that arises is what should be the defined area for the purpose of this assessment. It may be appropriate for the area to be defined to provide full national coverage. This is consistent with the commercial imperative for new entrants to rapidly achieve equivalent coverage with the established operators in order to attract customers. However establishing the defined area must also be informed by the terms on which new entrant spectrum authorisations have been awarded. Spectrum authorisations typically establish minimum coverage requirements (in terms of %population and/or %geographic coverage within the national area). Spectrum authorisations may also confer market entry assistance rights on the new entrant. In recent years, for new entrants using 2100MHz spectrum, this has typically taken the form of guaranteed rights to access national roaming services for the provision of 2G voice and data services. Where a new entrant has been granted rights to national roaming it does not face the same commercial imperative to rapidly roll-out its own network to achieve full national coverage (i.e. national coverage is rapidly achieved through national roaming). Rather its roll-out activities are primarily determined by minimum coverage obligations.

Meteor therefore believes that the defined area should be established by reference to the minimum network coverage obligations established in the spectrum licence when market entry assistance measures, such as national roaming, have been conferred on the new entrant.

Transitory exception to take into a significantly late entrance:

M4: Do you agree with the following principle: "*If the level of competition in the mobile retail market asks for measures which create incentives for new network level entry or measures that strengthen the position of small new entrants, substantial differences in the date of market entry can justify an asymmetry for a transitory period*"?

Meteor agrees with the principle that date of market entry can justify an asymmetry for a transitory period. As is highlighted in the draft Common Position paper a newer entrant does not benefit from comparable economies of scale and efficiency relative to the established players as it has fewer customers and hence lower network utilisation. This means that the average per unit network cost of a newer entrant will be higher than the earlier entrants and the so-called 'efficient' operator. The estimation of an 'efficient' operator's per unit network cost is based on network utilisation assuming 1/n (where n = the number of players in the market) share of the market. The use of the term 'efficient' operator is emotive in this context. In a 4 player market the 'efficient' operator share will

be 25%. To suggest that a newer entrant is inefficient because it has a lower market share than 25% and that an earlier entrant (e.g. with a market share in excess of 40%) is super efficient is simply wrong. The fact that an earlier entrant with a high market share has a higher network utilisation and hence lower per unit network cost, is a direct product of the first mover advantage conferred upon it by the timing of market entry and the subsequent sequence of additional market entry determined by the national regulator.

The principle is presented in the present tense but applies equally to regulatory decisions that have already occurred to encourage market entry. Thus were national regulators have taken decisions to encourage market entry at the network level there is justification for a period of asymmetry. National factors are very pertinent when considering how long this transitory period should be as we discuss further in our response to question M7.

The principle as expressed, and more generally the draft Common Position paper, does not fully address the issue of asymmetric termination rates in the national mobile market. The focus of the ERG has been on network level market entry and no consideration appears to have been given as to how the termination rates of Mobile Virtual Network Operators (MVNOs) should be treated. MVNOs that have been allocated their own mobile number range can differentiate their mobile termination rates relative to the host mobile network operator and other market players. This can lead to the establishment of asymmetric termination rates. For example, Tesco Mobile, an Irish MVNO has established mobile termination rates that are the highest in Ireland. There seems little justification for any significant differentiation between the host mobile network operator's mobile termination rates and those of the MVNO in terms of cost orientation particularly if, as is the case in some MVNO relationships, the host mobile network operator has a direct interest in the venture. The principles in respect asymmetric termination rates and their application to MVNOs must be clarified.

M5: Do you agree with the principle of keeping the level of asymmetry "*reasonable*"?

Meteor agrees with the principle that the level of asymmetry should be 'reasonable'. However our interpretation of what may constitute 'reasonable' appears to differ from that of the ERG. The draft Common Position discusses 'reasonableness' at page 80 et seq. Here the concept of cost-based mobile termination rates being considered 'unreasonable' is introduced. Meteor does not agree that cost-based mobile termination rates can be considered 'unreasonable'. Article 13 of the Access Directive specifically allows national regulators to impose obligations for cost orientation of prices on Significant Market Power operator. The regulatory framework does not require that Significant Market Power operators should provide a service at a loss.

We appreciate the ERG's concerns that establishing a cost-based tariff for a new entrant (particularly in the earlier years) could result in extremely high levels of termination rate relative to the prevailing rates of the earlier entrants. Indeed it may not be in the new entrant's commercial interest to set its termination rates at the cost level as this may discourage callers to its network and undermine its overall market position. In the context of what might be considered 'reasonable' the paper presents a stylised illustration suggesting that the asymmetry in year 1 of a new entrant's operation should be capped at 50% and decline linearly to 0% over a five year period (pages 80-83). Meteor agrees with the underlying rationale of the analysis i.e. the level of asymmetry will decline as the new entrant's network utilisation increases, and hence unit cost decreases. However the example presented

suffers from over-simplification and cannot be used in such a theoretical way to inform national policy decisions.

a) The asymmetry factor in early years cannot be capped at below cost levels unless compensatory upward adjustments are made to the asymmetry factor in later years

The simulation using the Romanian model (presented on page 80 in figure 18) suggests that the unit cost of a new entrant with a low market share could be a factor of 2.5 times higher than an operator with 33% market share. While we have not attempted to verify the figures presented in figure 18, Meteor would agree that the general shape of the unit cost curve is consistent with what we would expect. Capping the asymmetry factor at a below cost level will result in the operator under-recovering its cost. The impact of this loss should be recognised when setting a forward looking glide-path.

b) The glide-path to symmetry should bear a relationship to predicted cost behaviour

The illustration presents a linear glide-path over five years. Assuming that the principle of cost orientation is to be followed such a glide-path may not have a direct relationship to predicted cost behaviour. Other forms of glide-path may be appropriate, such as an accelerating glide-path whereby the annual rate of attrition increases over the period of the price control.

c) The transition period must be realistic

The illustration assumes that a new entrant (in a 4 player market) can achieve a market share of 21% within 5 years. We do not consider this to be realistic.

The ERG's illustrative analysis assumes that new entrants can compete head-on with the established earlier entrants immediately from launch and achieve an 8% market share in the first year of launch. It took Meteor over 3.5 years from launch to achieve a subscriber share of 8%. This is because it takes time for a new entrant to establish its market presence. New entrants need national coverage before they can start to effectively compete against the firmly established early entrants. In the absence of regulatory assistance in the form of national roaming, the provision of national coverage requires a rapid network roll-out which will take a number of years and at a higher cost relative to the earlier entrants who have had the luxury of rolling-out their networks in a more organic fashion over a much longer time period. Meteor was not in a position to market national coverage to prospective customers until 2004. Further during the early years of Meteor's market entry the barriers to customer switching remained high. Mobile Number Portability (MNP) is an important enabler for customer switching. Consequently the barrier to customer switching remained high until MNP was implemented at the end of July 2003.

The reality of the practical challenges facing a new entrant such as Meteor must be recognised when considering transition periods.

d) The point at which comparable economies of scale and efficiency must be objectively justified

The ERG illustrative analysis makes an assumption (which we note is clearly stated as an assumption in the paper) that the per unit network cost of the new entrant and the earlier entrants are 'similar' at this stage. If the 'efficient operator' approach is to be applied then the end-point for asymmetry should be estimated on predictions of new entrants reasonably a proportionate market share. For example the comparable point should be achieving a 25% share (assuming a four player market) unless there is a clear and objective demonstration that costs will converge earlier.

M6: Do you agree with the fact that an initial level should be accompanied by a glide path towards symmetry?

Meteor agrees with this principle. It is in the interest of all parties to promote predicability. Meteor has agreed a glide-path with ComReg that will see our average mobile termination rate fall to 7.99 cpm from 1 January 2012. At the same time ComReg agreed glide-paths with Vodafone and O2 which will also see their average mobile termination rate declining to the same level (albeit with a gentler glide-path). Thus, once fully implemented there will be symmetry between the average mobile termination rates of Meteor and the earlier entrants. The agreement of glide-paths removes regulatory uncertainty and allows us to focus on continuing to drive competition to the benefit of consumers in the Irish market.

The situation in respect of the 4th player in Ireland is not clear and is currently subject to an ongoing consultation published by ComReg on 8 January 2008 ("Market Analysis - Wholesale voice call termination on Hutchison 3G Ireland's mobile network, document 08/06). The national consultation proposes that H3G should be subject, inter alia, to a price control remedy in respect of its mobile termination rates. The proposed price control is constructed such that H3G will be required to make reductions to its average mobile termination rate from the earlier of its achievement of 5% market share or two years from the date of the remedy Decision. Once triggered H3G will be required to reduce its average mobile termination rate to 7.99 cpm within five years from the date of the remedy Decision in accordance with a glide-path yet to be established. If implemented the price control remedy would result in H3G's average mobile termination rate starting to converge towards 7.99 cpm and achieving that level within two years after the other mobile operators.

Meteor is supportive of the overall effect of the proposed price control encouraging H3G's average mobile termination rate towards symmetry albeit up to two years after the same price point has been achieved by the other players. However we question the validity of applying a trigger within the price control. This does not promote predictability or certainty in the market. H3G entered the Irish mobile market on more advantageous terms relative to Meteor. It was granted rights to national roaming thereby allowing it to market full national coverage for voice services at the time of commercial launch and has access to a fully functioning and efficient MNP customer transfer process.

Meteor will of course be responding to the national consultation and we offer these views here to highlight that we agree with the ERG's principled position that glide-paths should be maintained to promote regulatory certainty and that the application of an ambiguous trigger mechanism appears contrary to this principle.

M7: Do you agree with the fact that national factors should be taken into account to evaluate the length of the transition period?

Meteor agrees that national factors should be taken into account to evaluate the length of the transition period. The market entry date for mobile network operators is fundamentally determined by the award of spectrum licences by national regulators. Spectrum licensing and mobile market entry has tended to happen on a sequential basis and according to a similar pattern, albeit with different timings, within Member States. The first mobile operators entered national markets in the mid 1980's with analogue mobile services and commenced provision of 2G (GSM) digital mobile services in the early 1990's typically with two players in the market establishing de facto duopolies. Recognising that competitive circumstances in national mobile markets were far from satisfactory under duopoly conditions national regulators decided to allocate further spectrum licences to invite one (and in some countries two) additional entrants into the market during the mid to late 1990's. Additional market entry was encouraged through the 3G licence award processes in the early 2000's.

It is notable that while the spectrum licensing process in Ireland has followed this general pattern issues with the award process have resulted in Meteor being one of the last 2G operators to enter a national mobile market within Europe. In line with other Member States ComReg undertook to award the third mobile licence in Ireland during the late 1990's in order to stimulate competition. Meteor was awarded a GSM spectrum licence in June 1998 being the highest ranked in the comparative selection competition for the licence. However the award process was subject to a legal challenge and consequently Meteor's market entry was delayed until February 2001. During the intervening period penetration in the Irish mobile market rose from approx. 20% (June 1998) to 70% (March 2001). The delays arising from issues with the licence award process resulted in Meteor missing the rapid growth phase of the mobile market.

Meteor entered a mobile market dominated by a duopoly of Vodafone and O2 and initially struggled to gain traction in the market due to high switching barriers (mobile number portability was not introduced in Ireland until July 2003) and negative consumer perceptions regarding service coverage as our network was rolled out. Irrespective of actual usage patterns mobile consumers place high importance on perceptions of national coverage in their choice of mobile provider. During 2002 and 2003 we continued to roll-out our network coverage and in 2004 we secured a commercially negotiated national roaming agreement providing service coverage in the rural areas along the Western Seaboard of Ireland. The combination of reduced barriers to switching in an increasingly saturated market, the ability to offer full national coverage to prospective customers, and our value for money tariffing approach to the market improved our traction in the market. It was only during 2004 that Meteor was able to start competing effectively with the established players in contrast to other late entrant operators licensed during the latter half of the 1990s.

Consequently it would be inappropriate to try and define a common transition period for all European late entrant mobile operators or indeed a common period, referenced to market entry date, for later entrants within the national market. As we have highlighted in previous sections a range of factors should be considered including the date of entry, state of market maturity, fluidity of market (including timing of availability and efficiency of the MNP process), and significantly the market entry assistance (such as guaranteed national roaming) afforded to some later entrants.

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Transitory exception before MTRs are at cost, to limit distortions created by MTRs above costs:

M8: Do you agree that in specific market circumstances (MTRs tariffs are significantly above MTR costs, there are high traffic imbalances between mobile operators and benefits of a transitory asymmetry outweigh any short term disadvantage of doing so), a temporary asymmetry may limit competitive distortions?

Meteor considers there is merit in considering temporary asymmetry as a partial solution to competitive distortions. The promotion of on-net retail tariffs to create communities of users can be beneficial to new entrants in order to grow market share. Negative competitive distortions can arise when on-net retail tariffing is exploited by large operators in combination with high off-net retail tariffs to create negative network effects. The Irish market has not, as yet, in Meteor's view experienced negative competitive distortions arising from the retail tariffing practices of the two established operators. This is due in part to the growth in popularity of simplified price structures that have given rise to "any network" rates reducing the prevalence of on-net / off net distinctions. However this issue is something we are keeping under close review. The exploitation of the network effect can have disastrous consequences for a new entrant and national competition as dramatically demonstrated by the 2006 market exit of Vega from the Slovenian mobile market. The European Commission and national regulators should monitor this situation carefully.

M9: Do you agree that NRAs should first try to set MTRs at costs?

We assume this question is asked in the context of the potential effect of on-net retail rates on competition in the market as the regulatory framework requires cost orientation on SMP operators that have price control obligations. Clearly when estimating mobile operator costs consideration can be given to externality factors. If a competitive issue arises from the use of on-net pricing by a larger operator asymmetry may be considered as a partial and temporary solution while the root cause of the issue is addressed to facilitate an enduring solution.

Perspectives: Comments on symmetry between mobile termination rates of all countries and symmetry between fixed and mobile termination rates

The Mobile Part of the draft Common Position concludes with perspectives on symmetry between mobile termination rates of all countries and symmetry between fixed and mobile termination rates. Meteor's view on these perspectives is as follows.

Meteor does not believe that symmetry of mobile termination rates for all countries is practically feasible or can be objectively justified. The costs of deploying and operating a mobile network will vary significantly between Member States irrespective of the choice of cost model used for analysis. There are a range of factors that influence mobile network costs. These include the demographics of population distribution, the topography of the country and regulatory costs such as spectrum fees. For example compare Ireland and the Netherlands. The geographic area of Ireland is 70,000 sq. km with a population of 4.2 million. In contrast the Netherlands has an area of 42,000 sq. km and a population of 16.3 million. The cost of providing national coverage will naturally be higher in Ireland given the larger geographic area the lower aggregate usage (resulting from the population difference) and the significant less favourable topology of the rugged Irish landscape.

Nor do we believe that there is a practical or objective justification for pursuing a regulatory policy to promote symmetry between fixed and mobile termination rates (nationally or on a broader basis). The economics of mobile and fixed networks are fundamentally different in respect of the access part of the network. Fixed telephony is provided to a consumer over a physical line (or point to point wireless link) to a single network termination point. In contrast mobile services are not tied to a single network termination point and must be provided nationally. The manner in which capacity is managed in the access part of the networks is also different.

It has been stated in the consultation document that the expected outcome of any such exercise would be a justified difference between fixed and mobile termination rates. However this outcome does not need to be preceded by any new policy or approach by the NRAs. Provided that the principle of cost orientation is applied in both markets, NRAs should achieve the same objective. By applying the established Framework any difference between fixed and mobile termination rates at a national level (at the end of the justified glide paths) will by definition be due to the inherent difference between these two products. Therefore any move to pursue the proposed policy would be redundant and a waste of NRA resources.