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Hutchison 3G UK Limited
Response to

Changes to the Mobile Number
Porting Process

Including notification of a proposed modification
to General Condition 18

NON-CONFIDENTIAL
Redactions indicated by “[X]”

13 May 2010

BASIC DETAILS**Consultation title:** Changes to the Mobile Number Porting Process**To (Ofcom contact):** Valeria Baiamonte at mnp.consultation@ofcom.org.uk**Name of respondent:** Jane Jellis**Representing:** Hutchison 3G UK Limited**Address:** Star House, 20 Grenfell Road, Maidenhead, SL6 1EH**CONFIDENTIALITY**

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts?

The following confidential information has been redacted in this response (indicated by "["]):

- 1. Data or other commercial information which is not public and business secrets or other commercially sensitive information.*
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If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

Yes.

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Jane Jellis

Signed (if hard copy)

1. Introduction

Three is extremely disappointed by Ofcom's latest proposal for changing the UK mobile number portability ("MNP") process, as set out in Ofcom's Statement and

Consultation regarding changes to the MNP process published on 1 April 2010 (the "April Statement"). We are dismayed that Ofcom have yet again deferred the issue of evaluating the costs and benefits of the faster recipient-led MNP system that UK consumers so clearly need.

Instead, Ofcom have chosen to favour a solution which does nothing to address consumers' real concerns about the MNP process, and the competition detriments it causes. The systematic flaws in the current MNP process are causing significant harm to consumers and competition, as we made clear in our response to Ofcom's Review of the MNP Process Consultation published 3 August 2009 (the "August MNP Consultation").

Whilst Three welcomes the opportunity to comment on Ofcom's proposed modifications to General Condition 18 ("GC18") and the proposed implementation period, Three has also taken this opportunity to comment more generally on Ofcom's handling of reform to the MNP process and the reasons why Ofcom's case for "Option D" does not stack up.

We also urge Ofcom, as a minimum pending adoption of a recipient-led solution, at least to go some way to addressing the real harm in the current system – that is gaming by operators of the PAC process to retain customers – by requiring operators operationally to segregate PAC provision from retention activity. Some of the features of the French MNP system could easily be incorporated into "Option D" to go some way to addressing this issue.

Finally, we urge Ofcom to deal swiftly with MNP reform through its consumer switching project.

We have responded specifically to the two questions asked by Ofcom in its consultation in section 5 below.

Three remains firmly of the view that only a move to a recipient-led MNP process, which would bring the UK in line with the rest of the EU Member States, will deliver the benefits to consumers that they want and deserve.

2. Ofcom's flawed decision to implement "Option D"

2.1. Ofcom's reasoning does not stack up

In summary, in its April Statement Ofcom decided to:

- a) retain the current donor-led arrangements but reduce the time taken to port numbers to one working day (i.e. implement Option D);
- b) require PACs to be issued either immediately over the phone or by SMS within two hours; and
- c) suspend consideration of moving to a recipient-led MNP porting process pending the outcome of its consumer switching work, which Ofcom plans to consult on this summer.

Three is extremely disappointed by Ofcom's decision in the April Statement to implement a move to one working day, donor-led porting.

Ofcom justifies its decision to mandate a move to Option D in two ways. Firstly, it says that this move is required to comply with the requirements of Article 30 of the revised EU Universal Service Directive ("Revised USD"), and that moving to Option D "is likely to be in line with the new EU requirements for porting to occur within one working day from the time the agreement to port a number to a new undertaking is made" (see para 3.136 of the April Statement). Secondly, it states that "virtually all respondents indicated some level of support for the changes proposed as part of

Option D” (see para 3.110 of the April Statement). Three is strongly of the view that neither justification withstands close scrutiny.

Ofcom knew when making its April Statement that it must take steps to ensure UK compliance with the requirements of the Revised USD before the deadline of 25 May 2011. Ofcom states in the April Statement that Option D is likely to be compliant with the revised USD. However, Three remains of the view that Option D is not sufficient to ensure the UK’s compliance with the Revised USD.

The Revised USD is quite clear that EU Member States must offer porting within the shortest possible time, and in any event, within one working day. Option D neither achieves one working day porting nor does it allow for porting within the shortest possible time. In fact, of the four options which Ofcom identified as “possible” and likely to produce a positive economic case over time, Ofcom chose to adopt the slowest option. Moreover it failed even to consider at this stage the option that would have resulted in the fastest porting experience for the customer. Ofcom, in our view, has erred in their reasoning and interpretation of the Revised USD.

Three also believes that in the April Statement, Ofcom have overstated the level of support amongst respondents for Option D. At some points in the April Statement, Ofcom states that “all respondents showed some level of support for Option D...” (see for example, para 1.11), whilst in other places, Ofcom have tempered this to, “virtually all respondents indicated some level of support for the changes proposed as part of Option D...” (see for example, para 3.110). However, as can be seen from our response to the August MNP Consultation, Three positively argued against Option D. Consumer Focus did the same, and Cable and Wireless questioned whether Option D would comply with EU requirements.

Additionally, when reviewing each of the non-confidential responses to Ofcom’s August MNP Consultation¹, the supposed high level of support that Ofcom indicated exists for Option D is not apparent. In fact, as Ofcom itself has since acknowledged, at least 10 respondents demonstrated a high-level of support for a recipient-led MNP system, including Three, C&W and Consumer Focus. Only the four MNOs, Virgin and BT favoured retaining a donor-led system. Of those, Vodafone and Orange were against any change, so cannot be said even to favour Option D.

By stating that all respondents supported Option D to some extent, Ofcom is clearly misrepresenting the scope and content of the responses that it has received, in order to make it appear that Option D is supported across the industry. This is evidently not the case.

2.2. Ofcom’s failure to address flaws inherent in the current MNP system

Three’s concerns regarding the systematic flaws of the current donor-led system were explained in depth in our response to the MNP Porting Consultation. In summary, Three believes these flaws are as follows:

- **Donor operators have little incentive to make the porting process work:** The donor-led 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.
- **Policing burden:** Any form of donor-led system requires strong policing by Ofcom to make it work. However, an approach which regulates itself is much more consistent with Ofcom’s legal duties.

¹ Available at: http://www.ofcom.org.uk/consult/condocs/gc18_mnp/responses

- **Speed of porting:** Donor-led porting can never be as fast as recipient-led, because it consists of a two-stage process. Any system which requires consumers to actively obtain a PAC rather than empowering their new operator to activate the port on their behalf will always be prone to delays.
- **“hassle-factor”:** The consumer has to manage the process, and ask their current network for permission for what is effectively theirs by right. Ofcom’s research shows that the majority of customers understandably want to avoid this.
- **Sub-optimal competitive effects:** Operators will continue to target their best deals at the small number of customers who are considering switching, or are savvy enough to play the system, rather than offer better all round deals to the whole market. Competition will continue to operate at a sub-optimal level rather than to the benefit of all consumers. This is a particular concern within the context of market consolidation where it becomes ever more important to promote effective competition.
- **The system is inherently complex and causes a barrier to porting:** A donor-led system requires operators to deliver complex messages to consumers, which are prone to cause confusion and misunderstanding, especially to vulnerable consumers. This confusion is likely to be a barrier to porting in some instances.
- **Unwanted save activity:** The opportunity for unwanted save activity remains. However, Ofcom’s research shows that many customers do not value save activity when they request a PAC, they simply want to leave.

We fail to see how simply shortening the time within which operators must issue a PAC to 2 hours and shortening the porting time to 1 working day actually does anything to address any of these elements of harm.

2.3. The failures in Ofcom’s CBA analysis

In the August MNP Consultation, Ofcom identified two recipient-led options as possibilities, and stated that it would initiate a comprehensive exercise, with the support of external consultants, to explore the costs and benefits of implementing a recipient-led MNP system. In our view, Ofcom have had more than adequate time to undertake such a study, but have chosen not to, resulting in additional delay and further harm to consumers.

Ofcom have failed to address this issue by only focussing on the donor-led options in its CBA analysis in the April Statement. Despite identifying in the August MNP Consultation various workstreams to enable it to quantify the benefits of a recipient-led process, as far as we can tell, few, if any of these, have actually been progressed by Ofcom.

It is entirely unsatisfactory that Ofcom have allowed the timetable set out in the August MNP Consultation to slip – just as Three feared it would. Ofcom have had ample opportunity to address these issues to date, and we fail to understand why Ofcom have not been able to progress the CBA for recipient-led porting. Ofcom state that “there are a number of issues that need to be considered in relation to the MNP process, particularly in assessing whether a recipient- or a donor-led process is more appropriate. It is apparent that we would need to gather further evidence and these

issues need to be considered in depth before completing an assessment on whether moving to a recipient-led process is justified.” (Para 2.28 of the April Statement).

However, this is an area that Ofcom have been looking at for a long time. Three simply cannot understand why Ofcom have been unable to complete this work by now. In Three’s view, this failure to act has caused unreasonable and unacceptable delay.

3. Segregation of PAC provision from retention activity

Whilst Three continues to be of the view that only a recipient-led porting system can fully address the harm caused to consumers by the current MNP process, we are disappointed that Ofcom have entirely discounted any consideration of a process which would segregate PAC provision from retention activity, i.e. by mandating that operators provide a separate PAC request phone line where save activity is prohibited.

Ofcom recognises that aggressive save activity is causing harm to consumers. For example, Ofcom state in the April Statement that “PAC supply should not be dependent on the consumer listening to retention activity if they do not want to.” (para 3.66) Ofcom goes on to state that “where a customer makes it clear that they are not interested in listening to retention offers and are only requesting their PAC the operator should not engage any further in that retention activity and should provide the PAC” (para 3.66).

However, Ofcom appears to believe that the best way to tackle this harm is via increased compliance and enforcement programmes, rather than by mandating changes to the MNP system itself. For example, Ofcom state in the April Statement that they will “actively monitor providers’ compliance with the new requirements, as well as compliance with the requirement to provide PACs in a way that is ‘reasonable’” (para 3.68).

Rather than choosing to regulate by way of a heavy handed and costly enforcement programme, we urge Ofcom to mandate that each operator provides a dedicated phone line for PAC requests (prohibiting save activity), as an interim measure pending full consideration of the benefits of recipient-led porting.

Mandating a dedicated PAC request phone line could be achieved by simply amending Ofcom’s guidance on the operation of GC18. To minimise the risk of any potential abuse of such a system, GC18 should also specify that the dedicated PAC request line should be easily accessible to customers, and that MNOs should take necessary steps to bring its existence to the attention of all customers (e.g. through prominent display in stores, website etc.)

Three believes that such a move would be entirely consistent with Ofcom’s aim to require PACs to be issued either immediately over the phone or within a maximum of two hours by SMS. Additionally, this change could be done cheaply and has industry support e.g. from T-Mobile and O2, as Ofcom noted in the April Statement (para 3.63).

Whilst we recognise that such a requirement is not nearly as effective as a recipient-led MNP process, Three believes it still remains a much easier option for Ofcom to enforce than the current MNP process. We also note Ofcom’s duty to have regard to the desirability to promote and facilitate the development of effective forms of self-regulation². An interim solution which mandated a dedicated PAC provision phone line would be far more consistent with these duties than Ofcom’s current proposal.

² Communications Act 2003, section 3(4)(c)

At the very least, we would have expected Ofcom to give this option more detailed consideration as an interim solution which could have been adopted, pending the outcome of Ofcom's consumer switching project.

4. The future of the UK MNP process

4.1. The consumer switching project

Three does not see why there was any need to delay consideration of recipient-led options to the consumer switching process. The existing MNP review process was supposed to be considering recipient-led vs. donor-led porting. Moving this decision back into the wider migrations review means considerable further delay, and the opportunity for continued harm to be sustained by consumers, prior to any changes being implemented.

However, given that Ofcom have chosen this path we urge Ofcom's Consumer Affairs team to develop a detailed knowledge and understanding of the unique issues which affect mobile switching and porting, to inform the mobile-related aspects of the consumer switching project.

We are aware that certain concerns have been raised by other industry stakeholders about a move to a recipient-led system, and they have identified issues which they have claimed should prevent a move to a recipient-led process. However, all of these issues can be successfully dealt with or resolved, through simple measures. In our view none of these concerns hold any water, and are certainly not sufficient to prevent a move to a recipient-led process. Three looks forward to an open and wide-ranging analysis of the costs and benefits of moving to a recipient-led system, which we have been assured that Ofcom will be carrying out as part of its consumer switching project.

Genuine improvements to the porting system in the UK are now long overdue. Given the significant delays that have already occurred, 3UK urges Ofcom to maintain momentum and to act as quickly as possible to bring about much needed reform to the MNP system.

5. Responses to Consultation questions

Question 1: Do you have any comments on the wording of the proposed modifications to GC18 contained in Annex 8?

As noted in section 3 of our response above, Three believes that Ofcom should at this stage mandate that operators adopt a dedicated PAC request phone line as an interim solution, pending full consideration of recipient-led MNP by the consumer switching team. Further, GC18 should also specify that this line should be easily accessible to customers, and that MNOs should take such steps as are reasonably necessary to bring its existence to the attention of all customers (e.g. through prominent display in stores, website etc.)

Such a move would target the consumer harm currently caused by aggressive save activity and would be entirely consistent with Ofcom's aim to require PACs to be issued either immediately over the phone or within a maximum of two hours by SMS. It would also be far more consistent with Ofcom's duties regarding self-regulation, rather than pursuing endless enforcement and compliance programmes.

Question 2: Which implementation period do respondents consider achievable?

(a) six months from the publication of the final statement; or

(b) nine months from the publication of the final statement

Please give reasons, and provide evidence to support your view.

Three estimates that implementing the modifications to GC18, incorporating our proposal for a dedicated PAC request phone line, could be achieved within [3<] of Ofcom mandating such a step.

These timescales are based on our experience of the work involved in implementing the previous industry move from five day to two day, donor-led porting in 2007/2008, together with making the internal operational changes which would be required to establish a dedicated PAC provision phone line.