



Response to the consultation on ComReg's Strategy to Promote Over-the-Air Provisioning

Commission for Communications Regulation (ComReg)

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Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission

Introduction

The Competition and Consumer Protection Commission (CCPC) welcomes the opportunity to respond to the consultation on the *ComReg Strategy to Promote Over-the-Air Provisioning*. This consultation concerns the concept of Over-The-Air (OTA) Provisioning, which the European Electronic Communication Code requires is promoted by each Member State¹, to further facilitate switching provider. This gives discretion to regulatory authorities to define which switching processes use OTA. As part of their Electronic Communications Strategy Statement, ComReg set out an intention to commission an expert study in 2021 to support the development of a strategy for OTA provisioning, and to develop an action plan to promote OTA provisioning.²

We provide comments below about the potential benefits to consumers of the measures proposed, and further considerations that could enhance the effectiveness of the measures proposed. Our remarks will focus closely on the eSIM concept and the differences it could make to the switching process for the consumer in mobile.

We recognise the concept of the eSIM, as outlined in the consultation document and supporting report, *Strategies to Promote Over-the-Air Provisioning*, will remove the need for a SIM card to be replaced physically in a mobile phone, which can cause delays in the switching experience, especially when it has to be delivered to the consumer. At present the physical card must be removed and replaced in device, with the number ported, which can create delays of up to 3 weeks to the process. The eSIM would retain these details on the device, enabling more seamless switching between providers, via QR code scan and download of the new details, or downloading an app in which the switching process could be undertaken. Removing the need for a physical card to be in the device could also enable consumers to practically retain multiple packages with different providers on the one eSIM, which at present they could only do by swapping different physical cards in and out of their mobile and losing functionality.

ComReg's proposals to require fully digital 'over the air' (OTA) journeys for consumer mobile within 12 months of published responses to this consultation, and to develop guidance on OTA provisioning is welcomed by the CCPC. We note that this requirement for fully digital over the air journeys for consumer mobile would be supported by ComReg developing guidance on OTA provisioning, issuing new guidelines on minimum contractual conditions, conducting information gathering on eSIM adoption and activation, and launching an awareness campaign promoting eSIM to industry and consumers.

Consumer engagement

The CCPC will publish a report on pricing practices across 12 essential markets, including mobile phones, in 2022. The Pricing Practices project involves the Communications,

¹ [Directive \(EU\) 2018/1972](#).

² [ComReg, 'Electronic Communications Strategy Statement 2021 to 2023'](#).

Finance, Insurance, and Energy sectors, including the market for consumer contracts and packages in mobile. The scope of the project is to analyse consumer experiences where they are receiving different prices or terms for the same/very similar product or service, and/or where the presentation of pricing could cause consumer detriment or negatively impact the consumer achieving positive outcomes in the market. The project team will explore pricing strategies that target consumer behaviour or biases, as well as direct deployment of price discrimination, in these 12 markets.

Through a comprehensive review of literature, and relevant policy making internationally, the CCPC has formed an internal map of relevant potentially active pricing strategies domestically. A survey of 1,850 consumers has also provided the CCPC with insight into how consumers locate information about pricing and use their knowledge of pricing in engaging with the market. Findings from the CCPC's survey have indicated that nearly 20% of mobile phone consumers are holding the product in a bundle, and information online is the prominent information source for most consumers engaging with the market. However, the number of consumers who find out information about mobile products via offline methods, such as via telephone, is still significant, with over a quarter of consumers having done so. The CCPC also found that those consumers who had fallen out of their initial contract periods, and had entered a rolling contract/out of contract status, were shopping around at significantly lower rates than those in a contract, and were significantly less likely to say they would shop around within the next two years.

Switching and Competition

Increasing the speed and ease of a switching process can enable consumers to explore better deals, and for competition to function more effectively, potentially enhancing the ability of new or smaller providers to gain market share from established operators. We note that the supporting technical report by WIK³ finds that OTA switching would increase support for the consumer right to switch and port, and could increase switching and competition, saving consumers money through improved competition and lower activation fees.

Speeding up the process of switching for the consumer is welcome, even as a standalone measure, however this will not improve the context for the consumer in terms of another key impediment to obtaining the best value in switching – comparison of different packages. This OTA measures should ideally be accompanied by other initiatives enabling the consumer to effectively compare providers, calculate their own usage patterns alongside offers, and have a clear idea of the total price they will be paying over a contract term. The CCPC notes that the introduction of periodic 'Best Tariff Advice' in the consumer's Contract Summary, by ComReg in regulatory guidance,⁴ will give consumers a

³ [WIK, 'Strategies to Promote Over-the-air Provisioning'.](#)

⁴ [ComReg, 'Regulatory Guidance on Title III: End-User Rights of the European Electronic Communications Code'.](#)

regular, comprehensive, comparison between different packages available from their existing provider, and in some cases they will be able to use this to move to a better value package with their own provider, or the prompting to compare price may trigger the consumer to switch. The exploration of initiatives that give consumers more accurate information when comparing packages offered by different providers (including being able to effectively map their own usage) would be welcome.

Making switching more user friendly should also be accompanied by other measures to tackle delays to switching experienced by consumers. One of the measures highlighted in the WIK report is the practice of handset locking, which the report suggests could add between 3 days and 3 weeks to the switching process, and statistics are quoted to support the assertion this is a prevalent practice in the Irish market. This has been highlighted by agencies such as the Australian Competition and Consumer Commission (ACCC) in Australia⁵ or The Office of Communications (Ofcom) in Britain, which have proposed measures to ban mobile companies from selling locked phones.⁶ The practice, by adding delays to the process, and making it more difficult for consumers to explore switching to other networks, can be detrimental to consumers comparing offers and the details of their current package price, and from potentially switching. This practice could have negative effects on competition, making it more difficult for growing or new providers to gain markets share via making offers to new consumers, and encouraging existing providers to pursue pricing practices based on rising prices for more inert consumers.

It is therefore recommended that ComReg explore further the concerns outlined in the supporting report that Handset Locking could diminish the potential benefits of eSIM, and explore the feasibility and effects of restricting or banning the practice.

We also note the suggestion in the WIK report that eSIMs could allow for the increased use by consumers of secondary contracts for specialised services such as calls/data roaming, additional services from different providers, or ensuring better network coverage. In practice, provision of services through a physical SIM can act as a barrier to consumers doing this, as the physical SIM cards would have to be swapped out of the phone when needed, or the consumer would have to acquire multiple devices. Removing the need for this could assist competition to develop in new areas, by giving consumers a wider range of options, and the ability to 'split' their packages. This in turn could increase competition for 'bolt-on' services such as roaming, which may at present be offered as part of a package, or as add ons to a contract through the consumer's existing provider, especially at the point of sale of a contract online. This may have the long term potential to change the way prices and services are offered to consumers in mobile.

⁵ [Australian Competition and Consumer Commission, 'ACCC Assessment of Competition Concerns Relating to e-SIMs'.](#)

⁶ [Ofcom, 'Making Sure Consumers Are Treated Fairly'.](#)

While this may have pro-competitive effects, it may also increase complexity, or the time needed, for consumers to find the best deal. It may also place a further premium on consumers being digitally engaged and finding information online. We particularly note that the WIK report references the potential for eSIM to reduce the number of physical stores or independent retailers selling phones. This may disadvantage those who prefer to find information via offline means, and find information and sign up in a physical store. The CCPC notes that ComReg plans to launch an awareness campaign promoting eSIMs to consumers, and gather information on eSIM adoption and activation. We recommend that in doing so ComReg carefully consider how to capture the needs of multiple groups of consumers, including those who may be less digitally engaged, to inform that activity.

ENDS

