

Digicel

The Bigger, Better Network.

**Digicel's reply to ECTEL's Consultation on Policy
Recommendations for the Adoption of Number Portability in
ECTEL States**

August 3, 2011

The succeeding comments are not exhaustive and Digicel's decision not to respond to any particular issue raised in the Consultation Document or any party does not necessarily represent agreement, in whole or in part with ECTEL and the Commission on these issues; nor does any position taken by Digicel in this document mean a waiver of any sort of Digicel's rights in any way. Digicel expressly reserves all its rights.

Any questions or remarks that may arise as a result of these comments by Digicel may be addressed to: -

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Introduction

In our response we first set out a number of concerns we have with respect to the process that has been adopted with respect to number portability and the fact that ECTEL is consulting merely on how and not whether number portability should be implemented.

We are also concerned about the lack of research that has been undertaken. Digicel would not contemplate making a commercial investment based on the level of analysis in ECTEL's document. We believe that such a significant regulatory decision should not be made without a comparable level of analysis.

Further, we have found that ECTEL's document is not balanced. On the one hand, it looks almost entirely at the potential pros of number portability and plays these up as much as possible; and the other hand, it pays scant attention to the cons and generally plays these down. Consequently, we have felt compelled to put forward the other side of the argument to the extent possible within the time available. Number portability is not a one way street with all gains and no pain.

Despite all of the above, ECTEL should not read in to our response that Digicel is opposed in principle to number portability provided it passes a cost benefit test. At this time however we find it difficult to imagine such a cost benefit could be passed especially in respect of mobile numbers.

Overall Policy Considerations

Digicel recognises that ECTEL wishes to act in the best interests of consumers and the economy and that it has laid out its document on number portability with that aim in mind. There may have been some vocal representations on the issue of number portability from a number of people within ECTEL circles. We ask the Authority to consider the extent to which those representations would reflect the desire for number portability across the full range of network services available, and within the wider population of ECTEL countries, if customers knew the level of costs that would consequently be passed on to them. If the costs were not recovered by way of an upfront charge (which the Authority does not want it seems), then they would have to be recovered in some other manner as operators have to recover their costs in some way shape or form.

It is also the case that best practice regulation requires cost benefit analyses to be undertaken before considering any regulatory intervention, but there has been no such analysis here. This should be an insurmountable barrier to any further work on the implementation portability in our view.

Consulting Fairly

Before dealing with the specifics of the Authority's consultation document we should first of all like to make reference to the ITU's principles of regulation as specified in the ITU's *Telecommunications Regulation Handbook* and Organisation of Caribbean Utility Regulators' (OOCUR's) paper on *The Fundamental's of Consultation in Utility Regulation*.

The ITU Handbook states

"Regulators must take in to account various viewpoints and interests, including economic, social and political objectives. This balance should be reflected in the institutional structure and in the system of checks and balances."

Further, under section 12(2) of the Telecommunications Act in the respective countries there is a duty to consult licencees. ECTEL is bound by that duty. This means in our view that ECTEL must abide by strict procedural requirements and is meant to act in accordance with the principals of natural justice and impartiality.

Additionally, and as OOCUR states in its *Fundamentals of Consultation* document:

"Where there is a statutory duty to consult persons affected, this must genuinely be done, and reasonable opportunity for comment must be given. Where a proposal or scheme is required to be published it must be accurately described ...it is imperative that the procedure laid down in the relevant statutes should be properly observed¹."

The OCCUR document continues by explaining that this means among other things that regulators

"must approach consultation with an open mind and be ready to change"

" Consultation includes listening to what stakeholders have to say and considering the responses, real dialoguing must be genuine and not a sham"

All of this is even more important in a highly competitive privately financed sector (and arguably no longer utility service of telecoms) compared to monopoly industries in the Caribbean such as electricity and water provision.

In the light of these facts and duties we are compelled to question the manner in which ECTEL has launched this consultation and indeed how it has come about that ECTEL has launched a consultation at this time which merely asks for comments on how number portability should be implemented. The

¹ (H.W.R. Wade & C.F Forsyth, Administrative Law, page 229)

correct starting point, and as stated in previous ECTEL documentation on this matter, is whether number portability passes a cost benefit test which justifies implementation in any form in any ECTEL countries. The consultation document could tackle first whether, and then how, but not how alone.

The document is extremely one sided. It reads in some respects like a manifesto and not a consultation document at all, and focuses on every possible benefit that could be imagined or might be possible with respect to number portability, presents opinions as facts (without looking at things on the other side of the coin) and makes sweeping and extreme statements.

Keeping an Open Mind

ECTEL is required to keep an open mind in order to act fairly. But its opening statement indicates the opposite:

“

It is a well-established fact that the inability to keep one’s number when moving to a new telecommunications provider is a major disincentive to switch providers.

”

With this unsupported statement ECTEL seeks to undermine any debate about the appropriateness of number portability and attempts to focus things only on the “how” of number portability. For example, how many people in ECTEL countries have been asked the specific question “is the inability to keep a phone number a major disincentive to switch providers?” We suspect that it is a small number at best. The fact is that there is plenty of debate about whether it makes sense to introduce number portability at all in smaller countries even for example based on direct advice from consultants hired to advise regulators in the region . We have a direct and recent example of this in the Caribbean; in Jamaica where this was done. We attach documents from that consultant for your perusal. Furthermore, we presume that ECTEL would not believe that a customer with two mobile numbers with different providers is particularly interested in number portability? ECTEL has not made a case to support its aggressive opening statement.

It is unusual for ECTEL to characterize its own statement, in its attempt to support the imposition of number portability in some smaller countries, as a “rebuttal”:

*“Of increasingly special note is the imposition by regulatory authorities of NP in small jurisdictions like Luxembourg, Jersey and Malta, which represents the strongest possible **rebuttal** [our emphasis] to potential arguments that NP is impractical in small markets.”*

There should be no “rebuttal” in this document. This document is meant to be a consultation. It is not meant to set out the case by a prosecuting or a defence attorney. It underlines that ECTEL’s mind is closed either mostly or entirely to alternative points of view in terms of whether number portability should be implemented at all or in particular forms.

We note at this time that all the countries mentioned are still several times larger than ECTEL countries other than in Jersey. However in Jersey number portability arguably has been a failure in terms of the number of ports that have taken place (based on the first year's statistics).

We do not believe that ECTEL would normally wish to place itself in a position where it consults only on how to implement a policy and not on whether the policy is to be introduced. But ECTEL is nonetheless doing exactly that. Everyone with an interest in telecommunications services in ECTEL countries, including business and residential consumers, present and prospective investors will have to take note of this approach. Confidence may be restored if this process recommences with a balanced consultation document which looks at the pros and cons of number portability.

Further examples of the extreme statements made in the document which underline that there is no consultation taking place here on the 'whether' of number portability include:

*"Globally, the number of countries which have imposed or adopted NP is growing **exponentially**..." [our emphasis]*

There are less than 200 countries in the entire world, so the number of countries adopting it cannot rise exponentially. We notice that the Authority does not provide an actual count of countries who have introduced portability. Four smaller countries are mentioned as indicators that number portability will work in ECTEL countries. However the fact that number portability has been introduced is no indication that it has been a success. In terms of the countries that the Authority specifies, and based on the information that is available, the take up was 5% during the first year of operation in Jersey, 6% in Iceland, less than 5% for the first year in Malta rising to a peak of 13% but has fallen from this level based on the latest data available. A 5% take up rate would not justify the cost of implementation in small countries in our view. The only country with a comparable population to ECTEL countries is Jersey – the others all have populations hundreds of per cent greater. Consequently, based on the information we have to hand, number portability has arguably failed in the only country mentioned in the entire ECTEL consultation which is comparable to ECTEL countries.

To name some other countries - in Ecuador the take up was less than 0.5% of the subscriber base. By this we mean less than 0.5% of the subscriber base ported their number in the first year² in spite of the fact that subscribers were able to port their numbers twice a year at no charge. Peru implemented MNP in January 2010 but in the first year there was less than 0.4% take up³.

Nonetheless we do of course invite the Authority to put any information it may have forward for example with respect to the number of ports that have taken place in subsequent years in Jersey, or any information at all about the take up of portability in any country comparable to ECTEL countries.

² Source: Supertel, Regulator for Ecuador, Nov 2010

³ Source: Global Mobile Daily 31st Jan, 2011

The majority of the customers in Jersey would therefore probably have been better off by letting operators invest the money consumed by number portability in other activities –this is especially the case for mobile customers. We are sure nonetheless that there are a number of customers who are happy with portability in Jersey – high volume fixed line customers. The question is whether the costs of implementation, as high as they are due to a lack of economies of scale, would be justified for that number of fixed line customers.

We will speculate that the total costs of all sorts for all operators, of setting up and running a central database system in terms of technical implementation maintenance, staffing costs, including management time spent on working between operators and the Authority for a period of 5 years is in the order of US\$2.5m for a place like St Kitts & Nevis. Admittedly this is something of a “finger in the air” figure since no actual assessment has been made. If 5% of the entire population (for argument’s sake) ported their fixed or mobile number every year that would equate to a cost of about EC\$450 per port allowing for a 5 year equipment write off period. Would that money not deliver more for consumers in St Kitts and Nevis if used to provide offers or to deliver better quality of service, or if used to invest in new products and services? These are kinds of the questions that we think the Authority must ponder over first.

With reference to the costs of a centralised database if shared between different countries another extreme and unsupported statement is made:

“

*If this option is pursued, the initial start-up costs are reduced significantly, making it **incredibly** [our emphasis] attractive*

“

ECTEL provides absolutely no evidence that it knows or has sought advice on the actual costs of implementing and running portability systems and operations in ECTEL countries and allowing for all costs and disadvantages associated. In fact, the majority of the very significant costs are not saved by the kind of shared approach mentioned. This is because the majority of the costs are incurred within each operator’s network and operations and are not determined by the cost of the central database (which is itself a very significant cost), nor are they therefore determined by the number of countries using a single central database.

Genesis

We note the sensible language in ECTEL’s earlier 2005 numbering plan where it discusses number portability. In that document ECTEL states:

"

This is a complicated issue, which will require an analysis of the cost benefit analysis of each type of number portability and will be the subject of further analysis and consultation.

"

Digicel absolutely agreed and continues to agree that a cost benefit analysis should be undertaken before considering the implementation of number portability. ECTEL was clear about this before but has not undertaken any cost benefit analysis since that time to the best of our knowledge. In spite of this ECTEL is now consulting merely on how to implement portability as ECTEL's latest document states:

"

The purpose of this consultation is to set out the broad parameters that will guide the implementation of Number Portability....

"

From the perspective of customers and operators, number portability has in some ways the characteristics of a stealth tax. It is easy to talk of distinct things that have been done with the tax, but since it is much harder to measure the overall damage to the economy, and there is often no desire to look do so by those forcing it through, the tax passes through the institutional process.

Whether and to What Extent Portability Discourages Switching

We agree of course that some customers will be discouraged from switching if they cannot take their number with them. The question is however, what kind of customers, how many are they are involved, and does the cost of meeting those customers' needs in one respect justify the cost and disadvantages associated with implementing a cross industry number portability system, and setting up all the associated ongoing operations.

In our opinion, it is untrue to suggest that the lack of availability of porting is a major disincentive to switch for the majority of customers. Most telecoms customers in ECTEL customers use mobile phones to communicate. For some and perhaps many mobile customers number portability may be no disincentive at all to switching providers, and for many others it may be only a minor disincentive.

It is nowadays extremely easy to move contact details between mobile phones and communicate this en masse to your contacts by text, social media, email, messenger services and so on. Lack of mobile number portability does not necessarily represent a particular barrier therefore.

Those in charge of ECTEL should not presuppose, if this is the case, that a desire to hold on to numbers as expressed by those within the circle of ECTEL's elevated decision makers, or by a vocal minority, is in any way indicative of consumers' general desire to do so. Number portability may be a "nice to have" for many, but they certainly, on average, would prefer not to pay the cost of implementing and maintaining number portability if they were informed of the cost (which ultimately must be passed on to them one way or another) and the associated disadvantage in terms of less call destinations and therefore tariff transparency.

Asking people in a survey whether they want a new service without explaining the associated costs will glean only one answer. However, if a balanced question is put to them with an explanation of the background, then we suspect overall there would be a very different response.

Furthermore, a significant number of mobile customers may have two or more phones as they are such cheap items these days. Those customers presumably have zero interest in number portability. Does ECTEL know how many customers are involved here? ECTEL makes no reference to this in its document.

From our perspective the best case for number portability may be made in the case of high volume fixed business lines. But even in this case absolutely no market research has been carried out other than, based on what is described, a questionnaire of unknown size and statistical soundness put to SMEs only in 2008 and out of context with no explanation of the costs they must bear. That cannot be relied on.

Cost Benefit Analysis

Since no cost benefit analysis has been undertaken a crucial step has been missed out as a part of ECTEL's analysis. ECTEL is going down a particular path without knowing whether or not it is on the road (overall) to harming consumers and the economy.

We think that we may be broadly on the same page with ECTEL in that relatively speaking the potential for net benefits lie on a continuum for the following groups where the chances are highest (on average for each group) with respect to persons using fixed business lines, followed by those with fixed residential lines, followed by those with business mobiles, and finally followed by those with residential mobiles. Within the mobile side we would agree that relatively speaking there is on average likely to be more of a chance relatively speaking of a demand on the post-paid side than the pre-paid side. Further, operationally and practically speaking, if ECTEL goes ahead with mobile number portability regardless of Digicel's concerns at this time, then a split between post-paid and pre-paid customers may be a better option until we see what is happening in the market place.

ECTEL refers to the survey of SMEs undertaken in 2008 in terms of what it says is the level of demand for portability. We would agree that businesses are more likely to get value out of portability of fixed line numbers since there will be high volumes of traffic going to some numbers. Businesses are more likely

to want to bear the associated additional costs that would have to be recovered from them in some shape or form (via overall call charges for example if not a cost per port).

Even in the case of these customers we would have to know whether implementing a number portability just for fixed business lines in relatively small countries did make economic sense.

The only way of making that assessment is by netting any costs from any benefits. This is an exercise which has not been undertaken. There is for example not a single figure in ECTEL's document related to the establishment cost and ongoing running costs across the industry of number portability which have to be recovered from customers. Nor is there a proper consideration of what this might be in terms of the potential disadvantage of not knowing the price of the call they are making. There is no discussion of the former, and stating that the costs should not be recovered from customers by way of an upfront charge is no answer to this. The costs have to be recovered somehow. As for customer confusion there is passing mention of this, but it seems to be glossed over based on absolutely no market research in to what consumers actually think in respect of this issue.

ECTEL should therefore, if it wants to follow regulatory best practice, undertake a cost benefit analysis before it proceeds on the road to number portability. Simply put, if costs outweigh the benefits it will harm consumers to implement portability.

We note in passing that Digicel has encountered opposition in some quarters to any need for a cost benefit analysis in the ECTEL region. We are sometimes asked, without further explanation, why it is necessary? But from our perspective the question is how can it not be necessary? No ex ante regulation should be undertaken without a cost benefit analysis. This is absolutely vital as otherwise either the industry could be crippled by inappropriate regulatory interventions and/or consumers will have to pay the price either literally in terms of charges, or implicitly due to the damage that will have been done to investors and therefore in terms of network coverage, quality of service and product delivery.

ECTEL's Specific Questions

Notwithstanding our concerns and objections above and our belief that ECTEL must first consult in what we consider a balanced and open minded fashion on whether number portability is justified in any form in ECTEL countries below we address ECTEL's specific questions.

All answers below are subject to the caveats above.

1) ECTEL invites comments on its recommendation to adopt a framework focused on provider portability in the short term.

We agree.

2) ECTEL invites comments on its recommendation to implement NP for fixed-to-fixed and post-paid mobile-to-mobile services.

We disagree for the reasons set out above. Until properly researched and consulted upon there should be no move to number portability. A thorough cost benefit analysis is an absolute necessity before imposing multi-million dollar portability costs on countries with small populations.

3) ECTEL invites comments on its recommendation to defer the implementation of pre-paid NP pending further investigation and study.

We agree.

4) ECTEL invites comments on centralized databases versus peer-to-peer options for NP.

Please see our answer to question 5.

5) ECTEL invites comments on the most appropriate technical solution and related costs for implementing NP in ECTEL states.

At this time we feel that it is too soon to advocate a particular technical solution. While for example central database solutions do have certain technical advantages, the issue of cost, based on the small customer base across which the cost of any portability solution must be spread in ECTEL countries, looms large in the equation. The industry would need to assess the costs of the different technical solutions in our view before moving in the direction of one technical approach or another.

6) ECTEL invites comments on participating in regional NP solutions for providers in ECTEL states.

This seems like a possibility subject to a feasibility test. Of course, in the event for example that a central database solution were shared for ECTEL countries, a natural disaster could stop all porting from taking place for a while. Whereas a single shared piece of critical infrastructure for voice calls may create a risk for national security, communication and commerce, a failure of number portability infrastructure as suggested by ECTEL, for a week or two may not be critical. However, ECTEL would have to bear that in mind because a failure could lead to a great deal of customer dissatisfaction and complaint nonetheless.

7) ECTEL invites comments on the issue of technology neutral options for implementing NP in ECTEL states

This would require an in depth technical assessment and the analysis of the options available and we are unable to undertake that within the timeframe of the consultation.

8) ECTEL invites comments on the need to provide NP solutions capable of facilitating the transmission of SMS and other non-call related signalling.

We think that it would be highly confusing for customers to be able to make voice calls but not send eg SMS messages. Therefore if any portability solution is implemented it would have to enable messaging. We note however that this highlights once again the costs involved. The more forms of services that are required to work in a ported environment, the more expensive things become. This speaks to the importance and absolute necessity of a cost benefit analysis before considering mandating portability in a mobile environment.

9) ECTEL invites comments on the proposal to undertake a further consultation focused solely on the technical solutions proposed by providers responding to the current consultation.

In some manner or other there will have to be an in depth analysis of the technical options available and consideration of which, if any, are possible ways forward. A technical consultation is one necessity but apart from this the industry would have to come together to discuss what might be possible.

10) ECTEL invites comments on the time period proposed to implement a request to port a number.

From our own reading we believe that Hong Kong has had one of the better implementations in terms of number portability times. The time frame for portability there is 48 hours. We think that this may be optimal and we do not see how a 48 hour time frame could discourage customers.

Networks suffer outages of various sorts, IT systems can fail, and there can be misunderstandings in instructions all of which would knock time frames back. Furthermore, if the industry implements the technology there will inevitably be teething problems co-ordinating the networks in the first few months; therefore if customers expect a 24 hour timeframe, it seems possible that this could lead to unnecessary frustration on too many occasions as the deadline will be missed.

Consequently we think that a 48 hour time frame should be the most ambitious target initially. If, after the system has bedded in, all parties including ECTEL, agreed it was feasible and desirable based on customer feedback, the industry could then look perhaps to a 24 hour time frame. The benefit of some initial experience with people and systems is needed first before considering whether a shorter timeframe is sensible or necessary.

11) ECTEL invites comments on whether the implementation costs of NP should be placed on providers.

We think that what the Authority is asking here is whether there should be an upfront charge for porting. We presume that this is meant when the Authority states:

“ Costs of implementing NP should not be imposed on users under any conditions”.

In terms of who ultimately pays for portability the Authority must know that it is always and must be the customer. Providers have no other way of recovering their costs or to stay in business but to charge customers. If the cost of porting were not recovered by way of an upfront charge on porting it would have to be in another manner through for example call charges.

We ask the Authority to confirm that it is here referring to its desire to avoid a charge per port being levied on the porting customer.

In principle, if portability overall is a possibility, because it passes a cost benefit test, then best practice is we believe to retain a small charge per port. The small charge discourages inefficient porting. At the level of economic theory the charge would equate to the incremental cost of porting. We are not suggesting however going down the route of carrying out a full costing exercise, but instead simply putting in place a charge of a few dollars at most. Again the appropriate level could be researched if a market survey is undertaken.

12) ECTEL invites comments on whether providers should be required to contribute to the establishment and maintenance costs of a NP system or whether all providers should be required to bear their own costs.

We are not sure what is meant here. Unless there is a suggestion that the system will be paid for out of central government tax receipts then the providers will always pay for this and recover the costs

through whatever mechanism is open to them – by port charges or call charges for example. Providers would pay for the costs within their own network and share the costs of any central infrastructure.

13) ECTEL invites comments on how costs should be distributed between donor and recipient networks.

The recipient should pay the donor network (as for example in Australia, and picking one of the Authority's examples as in Malta) if there is no fee levied on the customer. The donor recipient would pay for the incremental cost of the port (we can elaborate on what this means at a later date when more time is available).

14) ECTEL invites comments on whether providers should be permitted to charge subscribers any kind of fee for porting their number.

Considering all things together, and the Authority's concern about not discouraging customers from porting, but also operator concerns about inefficient porting, the incremental porting cost could be split so that the porting customer pays half of this, and the recipient network pays the other half. This would help to avoid abuse whilst at the same time not discouraging efficient porting.

15) ECTEL invites comments on the process proposed for implementing NP and the associated conditions on providers.

Most of the policy approaches seem to make sense subject to the following:

1/ if the port is taking place within 48 hours or 24 hours we do not see how the customer can practically speaking be provided with an opportunity to withdraw a request for a port or to change their minds. When this kind of opportunity is normally envisaged the customer is normally given a week to ponder the decision, but by that stage the port would have taken place. In effect if the customer changes his mind then it becomes another port request.

We note that if there is a minimal charge to port, the customer should have given more consideration to the port request initially so an immediate port back request is less likely. If the customer is able to keep changing his mind every few days and is encouraged to do so by a zero charge, then he could be swapping networks continually and at the cost of other subscribers.

2/ the incremental cost of the port should be recovered, either directly from the customer, or from the customer and the recipient network combined.

16) ECTEL invites comments on the proposed deadline for implementing NP in ECTEL states.

Digicel has not contemplated the introduction in ECTEL states prior to this time since on the face of it the cost seemed likely to be exorbitant compared to any possible benefits. Therefore Digicel has not carried out any kind of business evaluation and we have difficulty suggesting a timetable at this time.

Based on a 2005 report by consultancy OVUM for MTN in South Africa which was produced having considered implementation timeframes in Australia, Germany, Hong Kong, Ireland, Netherlands and the UK the average implementation timeframe was about 18 months. In some places less time, but more in others. We have attached this report for your perusal.

17) ECTEL invites comments on the process of validation or authentication to be utilized to facilitate a port request by a recipient network.

Within the timeframe of the consultation Digicel has not been able to carry out the discussions necessary to come up with a framework for this. But in any event we would expect that the industry would be able to put documentation together in this respect and present it to the regulator for approval.

18) ECTEL invites comments on the requirements for informing customers of the circumstances in which ported numbers may attract new or different charges.

As for question 17 these are detailed operation matters and again we would expect the industry to arrive at a proposal themselves with the agreement of the Authority if portability was mandated.

19) ECTEL invites comments on any other issues that may be considered relevant to the consultation.

No further comments at this time.