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**EXPLANATORY NOTES TO
REGULATION 46** H/2011 M

ON TELEPHONE NUMBER PORTABILITY

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1 LEGISLATION

The aim of this chapter is to give the reader of the regulation a general overview of the provisions this regulation is based on. The chapter also provides information on other relevant provisions concerning the regulation.

1.1 Legislative basis for the regulation

FICORA's technical regulations are based on the authorization to issue regulations referred to in the Communications Market Act (393/2003). The regulation normally includes imperative requirements only. If necessary, FICORA issues recommendations and guidelines related to the regulations.

FICORA's proposal for this regulation is based on Section 52 of the Communications Market Act (CMA) [1]. The Act, which entered into force on 25 July 2003 and implemented for its part the directives within the electronic communications sector adopted by the EC in February 2002, i.e. the Framework Directive, the Authorisation Directive, the Access Directive and the Universal Service Directive. The new communications directives adopted on the 25th November 2009 are implemented by an amendment to the Communications Market Act, entering into force on 25th May 2011. The Section 51 on telephone number portability was also change with this amendment.

According to Section 52 of the CMA, the Finnish Communications Regulatory Authority may issue technical orders on telephone number portability.

1.2 EC legislation

The regulation is related to the Directive 2009/136/EC of the European Parliament and of the Council adopted on 25th November 2009 on amending the Directive on universal service [2], for example. Article 30 of the amended Universal Service Directive includes the following provisions on number portability:

- 1. Member States shall ensure that all subscribers with numbers from the national telephone numbering plan who so request can retain their number(s) independently of the undertaking providing the service in accordance with the provisions of Part C of Annex I.*
- 2. National regulatory authorities shall ensure that pricing between operators and/or service providers related to the provision of number portability is cost-oriented, and that direct charges to subscribers, if any, do not act as a disincentive for subscribers against changing service provider.*
- 3. National regulatory authorities shall not impose retail tariffs for the porting of numbers in a manner that would distort competition, such as by setting specific or common retail tariffs.*
- 4. Porting of numbers and their subsequent activation shall be carried out within the shortest possible time. In any case, subscribers who have concluded an agreement to port a number to a new undertaking shall have that number activated within one working day.*

Without prejudice to the first subparagraph, competent national authorities may establish the global process of porting of numbers, taking into account national provisions on contracts, technical feasibility and the need to maintain continuity of service to the subscriber. In any event, loss of service during the process of porting shall not exceed one working day. Competent national authorities shall also take into account, where necessary, measures ensuring that subscribers are protected throughout the switching process and are not switched to another provider against their will.

Member States shall ensure that appropriate sanctions on undertakings are provided for, including an obligation to compensate subscribers in case of delay in porting or abuse of porting by them or on their behalf.

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5. Member States shall ensure that contracts concluded between consumers and undertakings providing electronic communications services do not mandate an initial commitment period that exceeds 24 months. Member States shall also ensure that undertakings offer users the possibility to subscribe to a contract with a maximum duration of 12 months.

6. Without prejudice to any minimum contractual period, Member States shall ensure that conditions and procedures for contract termination do not act as a disincentive against changing service provider.

1.3 Other relevant provisions

The regulation is related to Section 51 of the Communications Market Act, which includes provisions on the telecommunications operator's obligations concerning telephone number portability. According to subsection 1 of the provision, a telecommunications operator must ensure without delay that a user who has entered into an agreement with it may, if he or she wishes, retain his or her telephone number when changing his or her telecommunications operator. In the amendment to the Communications Market Act which enters into force on 25th May 2011, this section includes a requirement according to which a fixed-term communications service agreement related to the telephone number does not release telecom operators from their obligation to port the number.

In addition to the provisions of the Communications Market Act referred to above in paragraph 1.1, the regulation is related to the requirement on communications networks and services laid down in Section 129(15) of the Communications Market Act. This requirement states that FICORA's regulations may cover services provided for users.

The regulation is related to the FICORA regulation 32 [3] on numbering in a public telephone network which determines various number ranges and their purposes of use, for example subscriber number ranges, nationwide subscriber number ranges, nationwide service number ranges, service number ranges specific to a telecommunications area and to telecommunications operators, numbering ranges intended for premium rate service numbers etc.

Besides this regulation FICORA has, together with the operators and the Consumer Agency, updated the Working Group Report on Procedures in Telephone Number Portability (Viestintävirasto 1/2011)¹. The report defines in more detail the process of porting. Special attention in the updated report has been paid to the requirements for the process in distance selling and to porting of numbers related to fixed-term agreements.

2 THE OBJECTIVE OF THE REGULATION AND THE CHANGES MADE TO IT

The aim of this chapter is to give the user of the regulation information on the objectives and aims of the regulation. This chapter also includes the most important changes made to the obligations and recommendations preceding the regulation.

2.1 The objective of the regulation

The regulation defines the telephone number portability obligation and the implementation of information service related to it as well as portable telephone numbers.

¹ Working Group Report: Procedures in telephone number portability (Viestintävirasto 1/2011, in Finnish): http://www.ficora.fi/attachments/suomiry/5xsrx3PbF/Tyoryhmaraportti_1_2011_Puhelinnumeron_siirrettävyyden_proseduurit.pdf and http://www.ficora.fi/attachments/suomiry/5xss1E5a5/Tyoryhmaraportin_1_2011_liite_siirrettävyyden_prosessit.pdf (appendix)

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2.2 Key changes and changes made in the past

The changes to the regulation are primarily made due to the amendment to Article 30 of the Universal Service Directive. The scope of application of the regulation has been extended in such a manner that the subscriber's right and the telecommunications operator's obligation to number portability are no longer dependent on whether the subscriber has a telephone service fulfilling the essential elements of a telephone subscriber connection. In principle all numbers can be ported, if an agreement in accordance with Section 67 of the Communications Market Act has been made of the provided communications service for which the number is used.

The Sections 2 and 3 in the formerly valid regulation have been combined in the new regulation as one section on the porting of fixed telephone network subscriber numbers. Therefore also the numbering of the other sections has changed.

The process of porting numbers has changed in such a manner that a fixed-term agreement no longer is an obstacle to number portability. In other words, a subscriber may port his or her number to another operator also in the middle of a fixed-term.

3 SECTION 1 SCOPE OF APPLICATION

Subsection 1 defines the regulation's scope of application. The regulation applies to telephone number portability in public telephone networks, i.e. telephone networks where communications is routed by telephone numbers in accordance with the International Telecommunication Union ITU's standard E.164. Below, the sections in question define in detail how number portability is applied to different numbers and number ranges.

The regulation's scope of application has been extended, in accordance with Article 30 of the Universal Service Directive, to apply all communications services offered in the public communications network with the help of numbers included in the national numbering plan of which an agreement in accordance with Section 67 of the Communications Market Act has been made. The provision of a service fulfilling the essential elements of a subscriber connection is no longer a prerequisite for number portability.

Section 51 of the Communications Market Act regarding telephone number portability is imperative legislation with regard to consumer and corporate customers. Thus, the provisions of this regulation, too, are applied to agreements made with consumer and corporate customers.

As before, pre-paid agreements are excluded from number portability if the subscriber is anonymous for the telecommunications operator that provides the service. If the pre-paid subscriber has registered himself or herself, and has been identified, the number can be ported in accordance with Section 51 of the Communications Market Act and this regulation.

The scope of application presented in the provision covers the obligations imposed on telecom operators which have been derived from the Directive and the Communications Market Act. On the other hand, the Directive, Act and Regulation do not prevent telecom operators from implementing number portability in other cases, too.

Subsection 2 defines what subscriber refers to in this regulation, because the terms subscriber and user mean different things in different provisions. In this regulation, as well as in the Act on the Protection of Privacy in Electronic Communications, subscriber refers to a legal person or a natural person who has entered into an agreement concerning the provision of a communications service or value added service. If, for example, an employee has entered an agreement and the communications service is used by the employee, the employer decides whether the number is ported.

4 SECTIONS 2-9 OTHER OBLIGATIONS

Section 2 Porting of fixed telephone network subscriber numbers

Reasons

The section gives provisions on the portability of subscriber numbers within a numbering area and nationwide subscriber numbers. Subscriber numbers specific to a numbering area can be ported within the numbering area.

Application

The numbers referred to in the provision are nationwide subscriber numbers allocated to the numbering of the fixed telephone network as well as subscriber numbers allocated by numbering areas.

All nationwide subscriber numbers fall within the scope of portability. According to the numbering regulation 32 O/2010 M, numbers beginning with 0101 - 0109, 0201, 02021, 02024 - 02029, 0203 - 0208, 02090 - 02097, 029, 0301 - 0309, 039, 071, 073 and currently-used nationwide subscriber numbers beginning with 075 are nationwide subscriber numbers. According to the numbering regulation, new number series beginning with 075 are not granted to telecommunications operators to be used as nationwide subscriber number series.

Because the same subscriber number can be used in different numbering areas, the number cannot be ported from one numbering area to another. If mobile or VoIP services are provided in geographic subscriber numbers, these numbers fall within the scope of the fixed number portability in the numbering in question.

Section 3 Nationwide service number portability

Reasons

The section defines which nationwide service numbers fall within the scope of portability.

Application

All nationwide service numbers fall within the scope of portability except for televoting numbers. According to the numbering regulation 32 O/2010 M, numbers beginning with 116, 0100, 0200, 02020, 02022, 02023, 02098, 02099, 0300, 0600, 0601, 0602, 0606, 0700, 0707, 0708, 07099 or 0800 are nationwide service numbers.

Numbers beginning with 070071 - 070079, which have been defined as televoting numbers in the numbering regulation, have still been excluded from portability in order to manage and ensure the technical functionality of the telephone network in televoting situations.

Section 4 Mobile network number portability

Reasons

The section includes provisions on the portability of mobile network subscriber numbers.

Application

According to subsection 1, number portability applies to mobile network subscriber numbers for which the calling party uses a nationwide mobile network area code. If fixed network numbers specific to a numbering area are used in the mobile network, they pertain to the portability of subscriber numbers numbering area's subscriber number, as laid down in Section 2.

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According to subsection 2, other numbers than voice service numbers related to the same service have been excluded from portability for technical reasons, unless a separate agreement has been made on them. Examples of additional numbers belonging to the same service number excluded from portability are numbers of an answering service specific to the subscription or telefax numbers.

Section 5 Master systemReasons

The regulation gives provisions on a database of ported numbers used by telecommunications operators to exchange information on number portability.

The section includes a definition of the purpose of use of the master system as well as the telecommunications operators obliged to maintain it. The maintenance obligation applies to telecommunications operators with the portability obligation. The maintenance obligation is based on the technical implementation of number portability and procedure, of which FICORA may give regulations.

Application

Telecommunications operators in the mobile network founded the master system as number portability extended to cover mobile numbers. At first, the master system was only used for porting mobile subscriber numbers, but the obligation to use the master system has gradually extended and has since 31 March 2006 been applied to the portability of all number types.

Section 6 Information exchange between telecommunications operatorsReasons

The Section gives provisions on information exchange between telecommunications operators. Information exchange is a prerequisite for the entire number portability. The Section also gives provisions on the so-called one-stop shop principle, according to which the porting request made by the recipient operator also functions as the notice of termination for the donor operator. This means that the subscriber does not have to give a separate notice of termination to the donor operator.

Application

According to subsection 1, the obligation to use the master system related to information exchange of telephone number portability applies to all telecommunications operators and all ported numbers. Thus the number portability process is accelerated and the quality and fluency of service is improved. The experience from the portability on the basis of the master system prove that the system also considerably boosts the detection of various fault and disturbance situations and improves, for its part, the quality of service experienced by the customer.

Subsection 2 includes an informative statement on the implementation of the functionality of portability, and to ensure that the porting request also functions as a notice of termination for the donor operator. Number portability requires that the subscriber and the recipient operator have entered into an agreement and the old agreement with the donor operator has been terminated. Telecommunications operators have jointly agreed on a procedure, which has been included in the regulation. According to it, the recipient operator also acts as an authorized representative for terminating the agreement on behalf of the subscriber as it submits the request to port the number to the donor operator. The subscriber does not have to give a separate termination notification to the donor operator.

The porting request concerning a number related to a fixed-term subscription also acts as a notice of termination. By the porting request the agreement will be terminated at the end of the fixed

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term, irrespective of the date of the actual port. If the subscriber has a right to cancel the agreement or a right to terminate the fixed-term agreement before the end of the fixed term (e.g. tie-in sales), this shall be agreed between the subscriber and the donor operator separately

Section 7 Routing of calls

Reasons

The section gives provisions on direct routing as a main rule for routing calls between telecommunications operators. The section also determines how calls are routed in certain exceptional cases.

Application

There has been a gradual transfer to direct routing of calls. Since 31 March 2006, the rule has been applied to all traffic to the ported number. According to subsection 1, direct routing means that calls, short messages and multimedia messages to the ported number are routed directly to the telephone network whose subscriber the holder of the number is.

By way of direct routing, it is possible to avoid unnecessary routing of calls, short messages and multimedia messages through the network of the number's original holder telecommunications operator. This way problems in the interconnection traffic and invoicing between telecommunications operators can be avoided. Additional information on the routing of calls to a ported number are available from FICORA's publications:

- Matkapuhelinnumeron siirrettävyys, tekninen verkkototeutus (Viestintävirasto 10/2002) in Finnish.²
- Puhelinnumeron siirrettävyys, kiinteä puhelinverkko, tekninen verkkototeutus (Viestintävirasto 5/2004, muutettu 8.12.2008) in Finnish.³
- Tekstiviestit kiinteän puhelinverkon tilaajanumeroihin (Viestintävirasto 2/2009) in Finnish⁴

Subsections 2 through 5 determine in which part of the telephone network the call query is made and the routing number is created when a call is made to the ported number.

Section 8 Porting delivery time and loss of service

Reasons

According to the Communications Market Act, communications service agreements must include reference to the delivery time of the service. Furthermore, the Act states that the porting of numbers must be made without delay. This section includes provisions on the time caused by portability in addition to the telecommunications operator's normal delivery time, unless the subscriber and the telecom operator have agreed otherwise.

Application

Subsection 1 states that the porting time shall not exceed five working days in addition to the telecommunications operator's normal delivery time, unless the subscriber and the telecommunications operator have agreed otherwise.

It is not the intention of the section to regulate the delivery time of the communications service, but to regulate the additional time caused by number portability. For example, in the fixed telephone network, the delivery of a communications service may require the visit of an installer,

² http://www.ficora.fi/attachments/suomi_R_Y/1158858960280/Files/CurrentFile/Tyoryhmaraportti102002v2.Pdf

³ <http://www.ficora.fi/attachments/suomiry/5CZ7J3BQR/TRaportti052004.pdf> ja <http://www.ficora.fi/attachments/suomiry/5CZ7TCv7F/TRaportti052004liite08122008.pdf> (liite).

⁴ <http://www.ficora.fi/attachments/suomiry/5gLUHs1DF/TRaportti022009.pdf>

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and the installation work can be finished during the agreed delivery time. On the other hand, the delivery time of mobile services is relatively short and the additional time spent on porting may well be very close to the total delivery time of the service.

The objective of the regulation on the delivery time of porting is not to restrict the provisions on distance selling in the Consumer Protection Act. In case of distance selling, the delivery time may be extended by the requirement of making the agreement in writing referred to in Section 67 of the Communications Market Act as well as the consumer's right of withdrawal according to Section 6:15 of the Consumer Protection Act. The porting request cannot be sent to the donor operator until a service agreement has been made on the service in accordance with the Communications Market Act. Neither can the number be ported before the time period for withdrawal has expired or the consumer has given his or her consent to start the delivery. A consumer may give his or her consent for the delivery after receiving a personal distance selling confirmation in writing or in electronic format, which clearly stipulates that the consumer loses his or her right of withdrawal once the delivery has been started in accordance with the consent. Nevertheless, the actual porting may take place only after a written agreement has been made and the subscriber has been identified.

Sending the porting request within the cancellation period defined in the distance selling provisions must not, in practice, prevent the user from using his or her right to cancel. Thus, consumers must be able to cancel number portability so that the notice of termination for the old agreement given with the porting request is also cancelled.

The porting time is calculated from the time the recipient telecommunications operator has, once it has approved the agreement, sent a request for porting, until the number is active in the new network. In practice, there have been no delays in the delivery of the new communications service due to the recipient operator not having sent the porting request without delay.

In the long run, the objective is to shorten the porting time. In this regulation, the porting time of five working days has been retained. According to FICORA, the majority of users have been satisfied with the current porting time, and consider the reliability of the notified porting time as more important than shortening the porting time.

According to subsection 2, number portability must be implemented in accordance with subsection 1 regardless of the communications service agreement type or the length of the term of notice. Thus, the porting time does not depend on whether the customer has a fixed-term agreement or an agreement valid until further notice, or what has been agreed with the customer on the term of notice of the agreement.

As far as number portability is concerned, the same rules are applied to fixed-term agreements as to agreements valid until further notice. A telecommunications operator cannot, therefore, discard a porting request solely on the basis of the agreement being made fixed-term, but the number must be ported within the time ordered in the regulation if the subscriber so wishes, and if the porting request fulfils other requirements set for it. The subscriber can agree with the recipient operator on a later delivery time. If the old agreement is a fixed-term agreement or the term of notice of corporate agreements is long, the subscriber can, for example, wish to have the number ported only after the agreement period or the term of notice ends. Also, in case of corporate agreements consisting of several numbers or numbering ranges, the exchange of service providers is typically a project and the delivery time is separately agreed upon.

It is utterly important that the subscriber changing service providers is aware of the terms of his or her agreement with the donor operator, so that he or she understands how number portability affects the old agreement and receives reliable information on the payment responsibilities related to the old agreement. On the basis of this information, the subscriber is able to decide whether he or she wants to have his or her number ported without delay or for example when the agreement period of the fixed-term agreement or the term of notice of an agreement valid until further notice ends.

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Subsection 2 regarding number portability shall be applied when the agreement aiming at number portability has been made with the recipient telecommunications operator on 25th May 2011 or later.

Section 9 Information serviceReasons

Section 51(5) of the Communications Market Act requires that a telecommunications operator in a telephone network must, for its part, ensure that users have access to a public, comprehensive and free-of-charge information service giving information on ported telephone numbers. The aim of the information service is to provide the user of the service with up-to-date information of which telecommunications operator the number belongs to. Thus the user can, in advance, find out what the cost of the call is.

Application

The obligation is restricted to concern a telecommunications operator operating in the telephone network. On the one hand, this means that the obligation only concerns telecommunications operators obliged to, or gives consent to, porting a telephone number to another telecommunications operator. On the other hand, every telecommunications operator operating in the telephone network does not need to arrange an information service, but the telecommunications operators obliged to do so can implement the service together. In addition, Section 52 of the Act gives FICORA an opportunity to give orders on arranging an information service for ported telephone numbers. On the basis of this, FICORA has ordered how the information service of ported number is arranged.

Subsection 1 states that a free-of-charge information service must be implemented at least as a voice service as a service number beginning with 0800. The use of a free-of-charge number beginning with 0800 is justified as a nationwide free service number series. In addition, telecommunications operators can offer an information service via text message or the internet.

In subsection 2, the obligation to provide an information service is directed to concern a telecommunications operator that has received the right of use for the numbering area from another telecommunications operator.

5 SECTION 10 TRANSITIONAL PROVISIONS AND ENTRY INTO FORCE

The regulation will enter into force on 25th May 2011. The regulation repeals the portability regulation issued on 6 March 2009. The regulation will remain in force until further notice. The regulation can be amended by a new regulation.

6 REFERENCES

[1] Communications Market Act (393/2003 incl. amendments, CMA), updated version:
<http://www.finlex.fi/en/laki/kaannokset/2003/en20030393.pdf>

[2] DIRECTIVE 2009/136/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws

[3] FICORA Regulation 32 on numbering in a public telephone network