

Hutchison 3G Ireland Limited
Registered office

3rd Floor
One Clarendon Row,
Dublin 2, Ireland

Registered Number: 316982
Place of Registration: Republic of Ireland



Three.ie

Competition and Consumer Policy Section,
Department of Jobs, Enterprise and Innovation,
Earlsfort Centre,
Lower Hatch Street,
Dublin 2.

By Courier & [Email: bridget.cosgrave@djei.ie](mailto:bridget.cosgrave@djei.ie)

Date: 09 November 2012

[REDACTED]

Re: Consultation on Article 19 (Fees for the Use of Means of Payment) and (Article 22 (Additional Payments) of Directive 2011/83/EU on Consumer Rights

Dear Sirs,

I refer to the above matter. Please find the response of Hutchison 3G Ireland Limited ("H3GI") as follows:

1. Are you aware of direct payment charges applied to consumer transactions by traders other than those listed in Box 1? If so, please give details.

H3GI has an administration charge of €4.57 to customers who do not pay their monthly bill via direct debit. This charge is very clearly communicated to customers at all times and guidance is given in the help and support section of the website ([http://ask3.three.ie/srvs/cgi-bin/webisapi.d11/./?new_kb=ROIWebportal,ts=ROIWeb,t=CaseDoc.tem,case=obj\(2293\),varset=username=ROIWeb:ROIWebUser](http://ask3.three.ie/srvs/cgi-bin/webisapi.d11/./?new_kb=ROIWebportal,ts=ROIWeb,t=CaseDoc.tem,case=obj(2293),varset=username=ROIWeb:ROIWebUser)). (Please see Annex 1 below.)

2. Are you aware of administration, service, booking or handling charges in the passenger transport or other sectors (other than those referred to in paragraph 28) that are avoidable by the use of a specified method of payment? If so, please give details?

Please see answer to Q.1 above.

3. Should a provision along the lines proposed in paragraph 36 be included in the Regulations to give effect to Article 19 in order to encompass the payment-related charges applied by some airlines and ferry companies? If not, why not?

H3GI submits that a charge however described that is avoidable where a specified payment instrument is used shall be regarded as a fee for the use of a means of payment for the purpose of the Regulations may go further than the intention of Article 19 of the Directive. H3GI feels that given the potential far reaching impact on businesses the Department should issue draft

Directors
Robert Finnegan: Irish
Canning Fok: British
Frank Sixt: Canadian
Robert Eckert: U.S.A
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Regulations and consult in relation to the Regulations. This will allow interested parties to provide more a considered response based on the proposed legal text to be implemented. In particular H3GI is concerned to review the Regulations that define what "charges are to be regarded as fees in respect of the use of a given means of payment". We note that the Department acknowledges that this concept requires further consideration and clarification. It is also very important that interested parties, and in particular traders, have an opportunity to review and respond on draft Regulations in relation to what constitutes a "direct" cost that may be included as part of a payment fee. Certainty in relation to the scope of these key definitions is vital for businesses in terms of its business planning.

4. Should consideration be given to adopting a provision similar to Article 23(1) of the Air Services Regulation for sea carriers and/or other sectors. If so, which other sectors should be covered? If the provision should not be extended in this way, why not?

N/A

5. Are you aware of administration, service, booking, or handling charges not avoidable by the use of a specified payment method (other than those referred to in paragraphs 41-43) that apply to event tickets or in other sectors? If so, please give details.

N/A

6. Should a provision along the lines proposed in paragraph 46 be included in the Regulations to give effect to Article 19 in order to encompass the charges applicable to tickets for entertainment and other events? If not, why not?

N/A

7. Are the figures on the costs of payment to traders cited in paragraphs 57 and 60 broadly accurate?

Information on these costs would be welcomed in responses to this consultation and will be treated in confidence.

[Redacted]

[Redacted]

[Redacted]



8. Do you agree that only costs arising directly from the use of a given means of payment should be taken into account in determining the 'cost borne by the trader' for the purposes of Article 19. If not, what other costs should be taken into account in your view?

H3GI submits that further guidance is required as to what exactly are "costs arising directly from the use of a particular means of payment." The Department has given guidance in the consultation on costs relating to the processing of card payments but does not elaborate in relation to other methods of payments.

H3GI also notes the Ofcom Guidance Note on Unfair terms in Contracts for Communication Services allows for the inclusion of costs associated with non direct debit charges.

Specifically non direct debit charges and standard form terms in contracts for the supply of goods and services between sellers and buyers must comply with the Unfair Terms in Consumer Contracts Regulations 1999. Communication Services allows for the inclusion of costs associated with non direct debit charge. Ofcom recognises that the method of payment might affect how promptly customers pay and so in some circumstances may be fair to recover as part of the non-Direct Debit charge costs associated with chasing late payment, such as reminder letters/bills (provided these costs are not being recovered by a specific late payment charges).²

9. Are you aware of cases where traders seek extra payment in addition to the payment agreed for their main contractual obligation without seeking the consumer's express consent? If so, please give details.

H3GI notes that the consultation makes reference to premium rate telecommunication services in this regard. This is governed by the Communications Regulations (Premium Rate Services and Electronic Communications Infrastructure) Act 2010 and the Communications Regulation (Licensing of Premium Rate Services) Regulations 2012 . Therefore there would not be a requirement to regulate these services further.

10. Are you aware of cases where traders use default payment options, such as pre-ticked boxes, which the consumer is required to reject in order to avoid having to make a payment in addition to that agreed for the main contractual obligation? If so, please give details.

¹ At para. 63 of the Consultation.

² At paragraph 42 of the Ofcom Guidance on Unfair Terms in Contracts for Communications

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N/A

11. Should Article 19 and/or Article 22 be applied to all of the sectors excluded from the scope of the Consumer Rights Directive other than financial services? If not, why not?

N/A

12. Should off-premises transactions below €50 be subject to Articles 19 and 22. If not, why not?

N/A

13. Should Article 19 and/or Article 22 be subject to both criminal and civil enforcement? If not, why not?

The NCA already has the appropriate powers to use both civil and criminal enforcement for consumer law.

14. Should the National Consumer Agency be empowered to apply for prohibition orders in respect of breaches of Articles 19 and 22 in the District Court as well as the Circuit Court? If not, why not?

No. H3GI believes that considering the serious implications for businesses both in terms of impact on revenues and on changes to billing and other systems, these orders should be issued by at a minimum, the Circuit Court.

15. Should consumers be given a private right of redress for payment charges in breach of Article 19 and additional payments in breach of Article 22. If not, why not?

Yes but it is assumed that they would have a right of redress pursuant to their contract. Furthermore consumers have a right of redress pursuant to the Consumer Protection Act 2007. Therefore it is not entirely necessary for a further right of redress.

16. Should a reversal of the burden of proof along the lines proposed in paragraphs 81-82 apply in civil and criminal proceedings involving breaches of Articles 19 and 22? If not, why not?

Yes for civil offences. As it is stated in the consultation³ the effect of conviction on the liberty and reputation of the person on trial places limits on the extent to which the burden of proof can be reversed in criminal proceedings.

³ At para 83 of the consultation

Directors
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Overall H3GI considers that Article 19 and Article 22 of the Directive will have very significant implications for traders, particularly in respect of business and billing. H3GI proposes that the Department carries out a consultation on the draft Regulations proposed to give effect to the provisions of Article 19 and Article 22 and that further guidance is made available by the Department in determining what costs will qualify to determine "the cost borne by the trader"⁴.

Yours sincerely,

Aisling Fair
REGULATORY AFFAIRS MANAGER

⁴ At para 63 of the consultation

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Annex 1

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Tweets

Home Shop Price Plans

Services

Business Help & Support

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How can I pay my bill?

There are plenty of easy ways to pay. Check them out here. By Direct Debit

Paying by direct debit is the best way to pay your bill. It's fast, hassle free and saves you €57 a month in admin fees. Your direct debit will be attempted on the payment due date which is printed on the first page of your bill, at the bottom.

How to set up a direct debit

Post Office

Pop into your local Post Office with a copy of your bill. They will scan the barcode on the front of the bill and you can pay over the counter. It's that easy! Payment will reflect on your Three account the next working day.

Tip: Paying every month by direct debit will save you €57 a month in admin fees.

Take the hassle out of bill-paying with MyBills.ie

Say hello to the **new** from An Post - the quick, clever way to pay your bill from the comfort of your home. All you need is a debit card and your Three account number (beginning Bxxxxxxx) from the front of your bill.

Use a Laser, Credit or Debit Card

You can pay by calling 1600 940 534 using a valid laser, credit or debit card. If it's not your own card, just make sure the card holder is present to authorise it. Payment is usually processed straight away.

Tip: Paying every month by direct debit will save you €57 a month in admin fees.

By Cheque or Bank Draft

You can also pay by cheque or bank draft, made payable to H30 Ireland Ltd. Payments should be sent to 3 Payment Centre, PO Box 10171 Dublin 2. Please be sure to write your Three account number on the back of your payment. Remember, payments can take up to 5 working days from receipt to process.

Tip: Paying every month by direct debit will save you €57 a month in admin fees.

By Internet or Telephone Banking

Set up a bill payment with your bank using these details:

Sort Code **99-02-31**

2 Account Number **00319301**

3 Your Three account number (see front of bill) as a reference

Please allow 1 working day for the payment to be processed to your Three account.

Tip: Paying every month by direct debit will save you €57 a month in admin fees.

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