



## Consultation

### General Authorisation

#### **Proposal to attach conditions in relation to the provision of Consumer References by Authorised Persons supplying Electronic Communications Services at a fixed location**

<b>Document No:</b>	<b>09/80</b>
<b>Date:</b>	<b>October 16<sup>th</sup>, 2009</b>

All responses to this consultation should be clearly marked:-  
“Reference: Submission re ComReg 09/80” as indicated above,  
and sent by post, facsimile, e-mail or on-line at [www.comreg.ie](http://www.comreg.ie)  
(current consultations), to arrive on or before 17.00, November  
13<sup>th</sup>, 2009 to:

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Please note ComReg will publish all respondents submissions  
with the Response to this Consultation, subject to the provisions  
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## **Contents**

1	Foreword .....	2
2	Executive Summary .....	3
3	Introduction .....	4
4	Proposed new conditions to further amend the General Authorisation .....	6
5	Reasoning for the proposed new conditions to further amend the General Authorisation .....	7
6	Legal Basis .....	11
7	Regulatory Impact assessment.....	14
7.1	ROLE OF THE REGULATORY IMPACT ASSESSMENT (RIA).....	14
7.2	RIA CONTEXT .....	15
7.3	IDENTIFICATION, DESCRIPTION AND PRELIMINARY ASSESSMENT OF THE REGULATORY OPTIONS .....	17
8	Submitting Comments.....	19
	Appendix A – Consultation Questions .....	20
	Appendix B – Proposed Definitions and Conditions .....	21

## **1 Foreword**

Freedom of choice in the provisioning of electronic communications services at a fixed location is important for both industry and consumers. It is a key driver in the development of a healthy and sustainable electronic communications market. In Ireland, a consumer's ability to switch electronic communications service provider is underpinned by industry-agreed processes. These processes facilitate switching for consumers. They can also offer a high degree of protection to consumers from unauthorised service switching.

In cases where the consumer wishes to switch between service providers, the process for services at a fixed location requires the consumer to furnish specific information to the gaining service provider which enables both the gaining and losing service providers to effect the switch.

To facilitate transition between providers of services at a fixed location while further enhancing consumer protection from unauthorised provisioning, ComReg believes it important that all necessary information is at the consumer's disposal and is available to the consumer when seeking to switch service provider. ComReg in this regard considers that consumers should be able to change provider easily when it is their wish to do so. ComReg considers it is essential for consumer protection to ensure that consumers can switch without being hindered by procedural obstacles or impediments. The existing processes for changing between service providers have been examined and ComReg considers that the area would benefit from amendment. Accordingly set out in this Consultation are the proposed requirements regarding the provision of information to consumers to facilitate the transition from one service provider to another. This Consultation also outlines the proposed manner in which consumers should be provided with access to this information. ComReg considers the proposed amendments will enhance consumer protection provisions by bringing them up to date with market developments.

The mechanism proposed by ComReg to implement requirements regarding provision of this information is by amendment of the General Authorisation. Consequently the proposals, if implemented, would apply to all operators authorised to provide electronic communications services at a fixed location in Ireland. ComReg believes that the proposals will enhance consumer protection and minimise a potential barrier to competition between service providers.

ComReg invites responses to this consultation from operators, consumers and all those affected either directly or indirectly by the changes to the conditions of the General Authorisation as proposed in this consultation. In the light of responses to this consultation, ComReg will issue a Response to Consultation outlining its conclusions and may issue a Decision, having carefully considered all submissions in relation to the proposed conditions.

Views are sought by Friday 13th November 2009.

**John Doherty**  
**Chairperson**

**16<sup>th</sup> October 2009**

## 2 Executive Summary

This document opens a public consultation on whether it is necessary and appropriate to add further conditions to the General Authorisation in order to further enhance consumer protections in relation to the supply of Electronic Communications Services.

The proposed conditions attempt to ensure that a consumer is not prevented (or unduly obstructed) in effecting a switch between service providers<sup>1</sup> providing fixed communications services or changing such services, because they cannot readily access certain switching information or *Consumer References*<sup>2</sup>. ComReg also considers the proposed requirements will further enhance the power of *Consumer References* as a consumer protection against unauthorised provisioning (or “slamming”<sup>3</sup>) while ensuring ease of switching between service providers.

It is understood that, for the purposes of switching or changing service, *Consumer References* (which are unique to the consumer) must be provided by the consumer to the “gaining operator” in order to facilitate the change or switch. The switching process for mobile communications services is quite different and, for this reason, it is envisaged that mobile communications service providers will not be affected by the proposed conditions. However ComReg is seeking the views of interested parties in respect of mobile<sup>4</sup>.

It has been highlighted to ComReg that essential *Consumer References* are not always in the possession of consumers (of Electronic Communications Services at a fixed location) or are not made readily available to them when requested. Therefore ComReg is consulting on a proposal for the mandatory provision of *Consumer References* on all consumer invoices or bills for consumers of Electronic Communications Services at a fixed location.

The remainder of this Consultation is set out as follows: - Section 3 contains the Introduction. Section 4 sets out the wording of the proposed conditions. Section 5 sets out in more detail ComReg’s reasoning for each of the proposed conditions. Section 5 also sets out the consultation questions and asks interested parties *inter alia* if they agree with the text of the proposed conditions. Section 6 sets out the Legal Basis for the proposed amendments and Section 7 sets out the Regulatory Impact Assessment. ComReg’s preliminary conclusion is that significant benefits may accrue to consumers from the proposed conditions. However, as elsewhere in this Consultation document, ComReg asks all interested parties to express their views. Section 8 contains the procedure by which comments from interested parties are to be submitted. Appendix A contains, again for ease of reference, a list of the questions asked in the consultation and Appendix B contains the proposed conditions.

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<sup>1</sup> Which also refers to an Operator or, as under the General Authorisation, an “Authorised Person”.

<sup>2</sup> Defined in Section 4 of this consultation.

<sup>3</sup> “Slamming” is a term particular to the electronic communications industry and refers to the practice of changing a consumer’s chosen service provider without the consumer’s consent. It can be further noted that the “unauthorised provisioning” of services where not requested became a criminal offence reflecting the seriousness of such practices.

<sup>4</sup> And should respondents consider there is a case for the mobile market to be included, it is considered that an amendment could be made to the definition of Consumer References (as now proposed) to either make express reference to mobile or to delete the reference to fixed operators so that it is applicable to all Authorised Persons.

### 3 Introduction

On the 25<sup>th</sup> July 2003 the legal basis for the provision of electronic communications networks and services changed in Ireland as four sets of Regulations came into operation for the purpose of giving effect to certain European Directives. A significant change to the resulting regulatory framework was that licenses to provide relevant networks and services were replaced by an authorisation regime. Any service provider/operator (or “Authorised Person”) can avail of a ‘General Authorisation’ to provide a network or service provided they conform to certain general conditions set out in the transposing legislation. On 25<sup>th</sup> July 2003 ComReg issued a document setting out conditions associated with the General Authorisation<sup>5</sup>. ComReg can amend the General Authorisation pursuant to regulations 8 and 15 of the Authorisation Regulations<sup>6</sup>.

On 5<sup>th</sup> November 2008 ComReg amended the conditions for the first time<sup>7</sup> in relation to the cessation of services. ComReg Decision 04/08 amended ComReg Document 03/81, the revised version of which is now ComReg Document 03/81, R1.

ComReg now considers it appropriate to consult on the proposed inclusion of further conditions to the General Authorisation in order to further enhance consumer protections in relation to the supply of Electronic Communications Services.

*Consumer References*, (i.e. some form of identification code or number, but as more particularly set out in Section 4<sup>8</sup> ) are assigned to consumer accounts by an operator (who may or may not also be the direct provider of services to the consumer). These *Consumer References* are unique to the consumer and access to them has been deemed necessary when switching between service providers (of fixed line services). ComReg is now proposing to make it a requirement of the General Authorisation that these *Consumer References* are easily accessible by a consumer. ComReg believes that the proposal will strengthen consumer protection by increasing transparency for consumers in the switching process and by empowering them with key information such that they can easily change service provider should they so wish.

*Consumer References* are information that a consumer would need should they decide to switch between service providers for the supply of Electronic Communications Services at a fixed location. For the purpose of this consultation, the term *Consumer References* will refer to all essential information required by consumers of Electronic Communications Services at a fixed location should they wish to switch between service providers supplying those services. For the avoidance of doubt it is believed these would include those detailed in the agreed Industry Process Manuals.

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<sup>5</sup> General Authorisation, Conditions for the provision of Electronic Communications Networks and Services Document No: 03/81, dated 25 July, 2003

<sup>6</sup> European Communities (Electronic Communications Networks and Services (Authorisation) Regulations S.I. No.306 of 2003

<sup>7</sup> See ComReg Decision 04/08, ComReg document 08/87 which amended Condition 18 to provide for cessation of services.

<sup>8</sup> Note it is proposed to define Consumer References as “any number, letter, code or reference (or combination of these and any variation thereof from time to time) designating, pertaining to, identifying or associated with a consumer, a consumer account(s), or service(s), which is necessary for the purposes of the consumer efficiently changing services or efficiently switching from one Authorised Person supplying Electronic Communications Services at a fixed location to another Authorised Person supplying such services. Consumer References includes, but is not limited to Universal Account Number(s) (UAN(s)), Circuit reference Numbers (CRN(s)) or Calling Line identifier (CLI(s))”.

**Proposal to attach conditions in relation to the provision of Consumer References by Authorised Persons supplying Electronic Communications Services at a fixed location**

While some service providers providing Electronic Communications Services at a fixed location already make *Consumer References* readily available to their consumers, it has been notified to ComReg that not all do. ComReg is concerned about this and also at the possibility of differences in the standards employed between service providers. ComReg understands that some service providers independently decide what information is made available to their consumers and what form the communication of this information should take. This information may or may not include all necessary *Consumer References*.

## **4 Proposed new conditions to further amend the General Authorisation**

It is proposed that the text of the following definitions and conditions be added to the conditions associated with the General Authorisation:

*Consumer References mean, any number, letter, code or reference (or combination of these and any variation thereof from time to time) designating, pertaining to, identifying or associated with a consumer, a consumer account(s), or service(s), which is necessary for the purposes of the consumer efficiently changing services or efficiently switching from one Authorised Person supplying Electronic Communications Services at a fixed location to another Authorised Person supplying such services. Consumer References includes, but is not limited to Universal Account Number(s) (UAN(s)), Circuit reference Numbers (CRN(s)) or Calling Line identifier (CLI(s)).*

*Universal Account Number(s) (UAN(s)), means any number, letter, code or reference (or a combination of these) designating, pertaining to, identifying or associated with a consumer, a consumer account(s) or service(s), necessary for the purposes of a consumer switching from one Authorised Person to another.*

*Circuit Reference Numbers (CRN(s)), means a unique number sequence used to identify unbundled metallic paths.*

*Calling Line Identifiers (CLI(s)), means the facility that enables identification of the number from which a call originates by the recipient of the call.*

*18.6.1 Every Authorised Person that is the direct provider of Electronic Communications Services at a fixed location to a consumer, shall ensure as far as practicable, that all Consumer References are included on all consumer invoices or bills for such services, including those provided electronically. They shall be clearly presented and identified prominently.*

*18.6.2 Where an Authorised Person is not the direct provider of Electronic Communications Services at a fixed location to a consumer but has created, designated or allocated Consumer References pertaining to a consumer, or consumer account, or consumer service, it shall upon request and as soon as possible provide those Consumer References to the Authorised Person that is or will imminently be the direct provider of such services to the consumer, in order that that Authorised Person can meet its obligations under condition 18.6.1.*

## 5 Reasoning for the proposed new conditions to further amend the General Authorisation

The proposed conditions are intended to enhance consumer protection by ensuring that consumers of Electronic Communications Services at a fixed location are not prevented (or unduly obstructed) in switching between service providers supplying such services because they do not possess *Consumer References*. When a consumer first chooses and contracts to avail of certain products or services, *Consumer References* are assigned. Most order handling processes, for Electronic Communications Services at a fixed location, require a consumer to provide details of these *Consumer References* when submitting a request to switch service provider. Access to *Consumer References* is a means of validating the request and facilitates efficient switching while providing strong protection for consumers against unauthorised provisioning or “slamming”.

A consumer having ready access to these *Consumer References* should therefore be empowered to switch easily, should be more “self-sufficient” in this regard, and should be significantly protected from practices which aim to frustrate the consumer’s wishes.

ComReg considers that consumer protection also requires the existence of optimal market conditions which facilitate switching processes. Specifically, the proposed amendments contribute to this by ensuring that essential consumer information is made available to consumers and by imposing on service providers a general obligation to make that information available in an easily accessible form.

ComReg considers that a consumer who has made a decision to switch service providers (of Electronic Communications Services at a fixed location) must not be obstructed from doing so. For that reason it would seem to be essential to ensure that they can do so without being hindered by technical or process-related impediments. ComReg also is of the preliminary view that the proposed conditions will complement the existing role that *Consumer References* can play in the prevention of slamming.

ComReg’s preliminary proposal is to define *Consumer References* as including but not limited to: Universal Account Numbers (UANs), Eircom Account Numbers (EANs), Circuit Reference Numbers (CRNs), Calling Line Identifiers (CLIs).

ComReg’s intention is to ensure that consumers of Electronic Communications Services at a fixed location can easily obtain their *Consumer References* for the purposes of switching service provider or service. ComReg understands that difficulties have arisen when *Consumer References* have not been communicated or provided to consumers of Electronic Communications Services at a fixed location at all, or were provided in a way that was not readily accessible by them, or were provided without proper prominence or clarity, or were provided only once.



**Proposal to attach conditions in relation to the provision of Consumer References by Authorised Persons supplying Electronic Communications Services at a fixed location**

Furthermore, because these proposed conditions relate to the handling of unique consumer data, they fall within the scope and aim of the European directive on privacy and electronic communications.<sup>9</sup>

ComReg’s preliminary conclusion is that as the switching process for mobile communications services does not depend on the supply of essential *Consumer References* by the losing service provider or “losing operator”, this issue does not arise in relation to mobile communications services at this time. However ComReg is seeking the views of interested parties in respect of mobile.

ComReg is consulting on a proposal for the mandatory inclusion of the *Consumer References* on all consumer invoices or bills for Electronic Communications Services at a fixed location (electronically or on paper, depending on how the consumer is normally billed or communicated to) for new and existing consumers.

ComReg’s preliminary conclusion is that consumers will benefit from the proposed conditions and that the proposed conditions do not go beyond what is necessary to achieve the aim of consumer protection. Nonetheless ComReg would be obliged to hear from interested parties such as consumers, all those affected either directly or indirectly by the proposed conditions and particularly from service providers.

It is ComReg’s preliminary view that the text of the proposed conditions consists of consumer protection rules specific to the electronic communications sector and would have the direct consequence of promoting consumer welfare. The proposals, if adopted, would contribute to increased competition without having negative consequences for any group of consumers. It is ComReg’s preliminary view that the conditions are included in conformity with the Universal Service Regulations and/or could be justified as personal data and privacy protection specific to the electronic communications sector. ComReg considers the proposed conditions are transparent and the obligations are clear. However ComReg would be obliged if interested parties could consider, in this regard, the following Questions 1 to 3:

**Q. 1. Do you agree with the text of the conditions (and the proposed defined terms<sup>10</sup>) now proposed for attachment to the General Authorisation? If not, please indicate which of the proposed definitions and/or conditions you do not agree with and why.**

<sup>9</sup> Pursuant to Directive 97/66/EC, since revoked and replaced by Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), as implemented in Ireland by European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003, S.I No 535 of 2003.

<sup>10</sup> Consumer References, UAN, CRN and CLI.

**Q. 2. Do you agree that the conditions should apply to Authorised Persons providing Electronic Communications Services at a fixed location only and/or should the proposed conditions apply to Authorised Persons operating mobile terrestrial networks<sup>11</sup>? Do you agree that the reference to “Electronic Communications Services at a fixed location” is clear? If not, please indicate which of the proposed definitions and/or conditions you do not agree with and why.**

**Q. 3. Bearing in mind the legal basis<sup>12</sup> for the amendments do you agree that the text of conditions proposed for attachment to the General Authorisation can be classified as conditions providing for ‘Consumer protection rules specific to the electronic communications sector including conditions in conformity with the Universal Service Regulations’ and/or “Personal data and privacy protection specific to the electronic communications sector”?**

In addition, it is ComReg’s preliminary view that the conditions now proposed for attachment to the General Authorisation are objectively justified, non-discriminatory, proportionate and transparent for the reasons already set out throughout this consultation and for the reasons further set out at Section 7 “Regulatory Impact Assessment (RIA)”. However ComReg would be obliged if interested parties could consider, in this regard, the following Question 4 (and a later question on the RIA posed under Section 7):

**Q. 4. Do you agree that the text of the conditions proposed for attachment to the General Authorisation are objectively justified, non-discriminatory, proportionate and transparent?**

Also ComReg does not consider the proposed conditions are specific obligations for the purposes of Regulation 8 (4) of the Authorisation Regulations. It can be noted that specific obligations are defined in the Framework Regulations as “obligations that may be imposed by the Regulator on an undertaking under Regulations 6(1), 6(2), 6(3), 7 and 9 of the Access Regulations and Regulations 13, 14, 15 and 16 of the Universal Service Regulations, and on those designated under Regulation 7 of

<sup>11</sup> The reference to mobile terrestrial networks is also taken from the definition of ECN as set out in General Authorisation ComReg document 03/81 R1.

<sup>12</sup> See Section 6 “Legal Basis”

**Proposal to attach conditions in relation to the provision of Consumer References by Authorised Persons supplying Electronic Communications Services at a fixed location**

the Universal Service Regulations to carry out the obligations referred to in that Regulation”. Accordingly it is ComReg’s view that the proposed conditions cannot be considered specific obligations. Neither Regulations 7, 13 to 16 of the Universal Service Regulations nor Regulations 6, 7 or 9 of the Access Regulations provide for the imposition of obligations that expressly relate to *Consumer References* as now contemplated by the proposed conditions. Further, it is ComReg’s preliminary view that the conditions are not applicable to undertakings by virtue of any other law and specifically that the suggested conditions do not appear to be unnecessary by reason of the enactment of, for example, the Data Protection Acts 1988-2003 or the Consumer Protection Act 2007. However again ComReg would be obliged to hear from interested parties and asks that they consider the following question, Question 5 in this regard:

**Q. 5. In your view, do the conditions proposed for attachment to the General Authorisation constitute specific obligations, or conditions which are applicable to Authorised Persons by virtue of other laws?**

Finally it is ComReg’s preliminary view that three months would be an adequate timescale for operators to implement any changes required to come into compliance with the proposed amendments, however the views of interested parties are again sought:

**Q. 6. Do you agree that three months would be an adequate timescale to implement any changes required to come into compliance with the proposed amendments? If not please indicate your reasons?**

## 6 Legal Basis

The procedure for attaching Conditions to the General Authorisation is established by Regulations 8 and 15 of the Authorisation Regulations. In particular, note that:

(i) Any Conditions attached to the General Authorisation may only be of the type set out in Part A of the Schedule to the Authorisation Regulations. Of particular relevance in this instance is Paragraph 8 of Part A of the Schedule to the Authorisation Regulations, which provides for Conditions providing for ‘*Consumer protection rules specific to the electronic communications sector including Conditions in conformity with the Universal Service Regulations*’ and Paragraph 7 of Part A of the Schedule to the Authorisation Regulations, which provides for Conditions providing for ‘*Personal data and privacy protection specific to the electronic communications sector in conformity with Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector*’<sup>13</sup>.

(ii) The attachment of Conditions to the General Authorisation must be objectively justified and must be non-discriminatory, proportionate and transparent (Regulation 8 (2) of the Authorisation Regulations).

(iii) ComReg may not attach as a Condition to the General Authorisation any Specific Obligations that it may impose on an undertaking, nor any Conditions which are applicable to undertakings by virtue of other laws (Regulation 8(4) of the Authorisation Regulations).

(iv) In the specification of Conditions in the General Authorisation, ComReg will have regard to the criteria and procedures for imposing Specific Obligations (Regulation 8(5) of the Authorisation Regulations).

(v) The procedure for amending Conditions in the General Authorisation is described in Regulation 15 of the Authorisation Regulations. Regulation 15(1) of the Authorisation Regulations provides that; ‘The Regulator may amend the rights, Conditions and procedures concerning the general authorisation, licences and rights of use for numbers provided that any such amendments may only be made in objectively justified cases and in a proportionate manner.’ (The Regulator refers to ComReg).

Regulation 8, “Conditions attached to general authorisation”, of the Authorisation Regulations provides that:

*8. (1) The Regulator shall, as soon as practicable after the commencement of these Regulations, specify conditions to be attached to a general authorisation as are listed in Part A of the Schedule. The Regulator may specify that certain conditions*

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<sup>13</sup> Pursuant to Directive 97/66/EC, since revoked and replaced by Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), as implemented in Ireland by European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003, S.I No 535 of 2003.

*may not apply to undertakings of such class or type as may be specified by the Regulator.*

*(2) Any attachment of conditions to the general authorisation or non-application of conditions to undertakings of such class or description as may be specified by the Regulator under paragraph (1) shall be objectively justified in relation to the electronic communications network or service concerned and shall be non-discriminatory, proportionate and transparent.*

*(3) An authorised undertaking shall comply with the conditions attaching to the general authorisation applicable to it.*

*(4) The Regulator shall not attach as a condition to the general authorisation any specific obligations that it may impose on an undertaking nor any conditions which are applicable to undertakings by virtue of other law.*

*(5) The criteria and procedures for imposing any specific obligations referred to in paragraph (4) shall be referred to by the Regulator in the specification of conditions referred to in paragraph (1).*

*(6) The Regulator shall ensure that where a requirement is specified as a condition of a licence such a requirement shall not be specified as a condition of the general authorisation in respect of the services or networks concerned.*

*(7) An undertaking that fails to comply with a condition attached to its general authorisation commits an offence.*

*(8) An offence under this Regulation is triable either summarily or on indictment.*

*(9) In proceedings for an offence under paragraph (7), it is a defence to establish that—*

*(a) reasonable steps were taken to comply with the relevant condition, or*

*(b) it was not possible for that condition to be complied with.*

*(10) An undertaking found guilty of an offence under paragraph (7) is liable on conviction—*

*(a) if the offence is tried summarily, to a fine not exceeding €5,000, or*

*(b) if the offence is tried on indictment and the undertaking is a body corporate, to a fine not exceeding—*

*(i) €5,000,000,*

*or*

*(ii) if 10 per cent of the turnover of the undertaking is greater than that amount, an amount equal to that percentage, or*

*(c) if the offence is tried on indictment and the undertaking is a natural person, to a fine not exceeding €500,000.*

*(11) If, after being convicted of an offence under paragraph (7), an undertaking continues to fail to comply with the relevant condition, the undertaking commits a further offence on each day or part of a day during which the failure continues.*

*(12) An undertaking found guilty of an offence under paragraph (11) is liable on conviction for the offence—*

*(a) if tried summarily, to a fine not exceeding €500 for each day or part of a day during which the failure continues, subject to a maximum of €5,000, or*

*(b) if tried on indictment, to a fine not exceeding €5,000 for each day or part of a day during which the failure continues.*

**Proposal to attach conditions in relation to the provision of Consumer References by Authorised Persons supplying Electronic Communications Services at a fixed location**

Regulation 15, “Amendment of rights and obligation”, of the Authorisation Regulations provides that:

*15. (1) The Regulator may amend the rights, conditions and procedures concerning the general authorisation, licences and rights of use for numbers provided that any such amendments may only be made in objectively justified cases and in a proportionate manner.*

*(2) A road authority may amend the conditions of a consent under section 53 of the Act of 2002 provided that such amendments may only be made in objectively justified cases and in a proportionate manner.*

*(3) A planning authority (within the meaning of the Act of 2000) may amend the conditions of a licence under section 254 of the Act of 2000 for the establishment of overground electronic communications infrastructure and any associated physical infrastructure provided that such amendment may only be made in objectively justified cases and in a proportionate manner.*

*(4) Before making any amendment under this Regulation the Regulator, a road authority or a planning authority, as the case may be, shall –*

*(a) give notice in such manner as it considers appropriate of its intention, inviting interested parties, including users and consumers, to make representations on the proposed amendments within such period (not, except in exceptional circumstances, being less than 28 days from the date of the notice) as may be specified in the notice, and*

*(b) have regard to any representations made to it pursuant to subparagraph (a).*

## 7 Regulatory Impact assessment

### 7.1 Role of the Regulatory Impact Assessment (RIA)

A Regulatory Impact Assessment (RIA) is an analysis of the likely effect of a proposed new regulation or regulatory change. The RIA should help identify regulatory options, and should establish whether proposed regulation is likely to have the desired impact. The RIA is a structured approach to the development of policy, and analyses the impact of regulatory options on different stakeholders.

- ComReg's approach to RIA is set out in the Guidelines published in August 2007, in ComReg Document No. 07/56 & 07/56a. In conducting the RIA, ComReg will take into account the RIA Guidelines<sup>14</sup>, adopted under the Government's Better Regulation programme. Section 13(1) of the Communications Regulation Act 2002, as amended, requires ComReg to comply with Ministerial directions issued. Policy Direction 6 of February 2003 requires that ComReg before deciding to impose regulatory obligations on undertakings shall conduct a RIA in accordance with European and International best practice and otherwise in accordance with measures that may be adopted under the Government's Better Regulation programme.
- In conducting the RIA ComReg will, as stated, have regard to the RIA Guidelines, (while recognising that regulation by way of issuing decisions e.g. imposing obligations or specifying requirements may be different to regulation exclusively by way of enacting primary or secondary legislation). In conducting RIAs ComReg takes into account the six principles of Better Regulation - necessity, effectiveness, proportionality, transparency, accountability and consistency. To ensure that a RIA is proportionate and does not become overly burdensome, a common sense approach will be taken towards a RIA. As decisions are likely to vary in terms of their impact, if after initial investigation a decision appears to have relatively low impact, then ComReg would expect to carry out a lighter RIA in respect of those decisions.
- In determining the impacts of the various regulatory options, current best practice appears to recognise that full cost benefit analysis would only arise where it would be proportionate, or in exceptional cases where robust, detailed and independently verifiable data is available. Such comprehensive review will be taken when necessary.
- ComReg is of the preliminary opinion that proposed amendments to the General Authorisation are appropriate, proportionate and justified given the need for consumer protection and the promotion of competition in this area.
- ComReg throughout this consultation document has set out the reasons why, in its preliminary assessment, it considers that there is a need for the proposed amendments.

#### Preliminary assessment of the Regulatory Options

- ComReg is of the initial view that there are two options. Option 1 would be to do nothing and maintain the status quo. Option 2 is to amend conditions to the General

<sup>14</sup> See "RIA Guidelines: How to conduct a Regulatory Impact Analysis", October 2005, [www.betterregulation.ie](http://www.betterregulation.ie)

Authorisation as explained throughout the consultation document and as now further justified.

Section 7.2 sets out ComReg's preliminary views on the potential regulatory impact of the proposed amendments on industry. ComReg, however, would be obliged to hear from interested parties in this regard in order to complete its impact assessment.

## **7.2 RIA Context**

Service providers have raised with ComReg the issue of incorrect or absent essential *Consumer References* obstructing or preventing consumers of Electronic Communications Services at a fixed location when attempting to switch service providers or service. The presentation of *Consumer References* such as CLIs, UANs, and/or CRNs is not consistent across the industry nor always presented in the clearest manner for consumers. ComReg is concerned that difficulties for consumers could arise in ascertaining their *Consumer References* for the purposes of switching between service providers.

ComReg is of the preliminary view that mandating the supply of *Consumer References* by service providers of Electronic Communications Services (at a fixed location) is both reasonable and proportionate and adheres to its functions. ComReg considers it is also in accordance with its statutory objectives to protect consumers and promote competition pursuant to the Communications Regulations Act 2002.

ComReg considers the conditions being proposed are relatively simple and require the essential *Consumer References* (e.g. CLIs, UANs, and/or CRNs) to be placed on all consumer invoices and bills for Electronic Communications Services at a fixed location. In terms of regulatory options, they are reduced to requiring *Consumer References* to be placed on all consumer invoices and bills for Electronic Communications Services at a fixed location or not having such a requirement.

ComReg is of the preliminary view that if the condition is enforced then the direct costs are very limited. All operators providing Electronic Communications Services at a fixed location have invested in billing systems, and ComReg is of the initial view that the conditions do not require major changes to these. It simply requires that within the actual billing communication format, there is a direct and clear reference to the *Consumer References*. This should not require any significant changes to billing systems or any unreasonable costs to be incurred. Any (minor) costs of changing the bill are also likely to be one-off, as once bills automatically produce the *Consumer References* then no further costs need to be incurred.

Although some service providers providing Electronic Communications Services at a fixed location currently place *Consumer References* on their bills this could change with a significant impact on the competitive dynamic in the market place. ComReg thinks it likely that if one operator was to change its behaviour in this regard it would increase the incentives for other operators to follow suit. Placing this as a condition of the General Authorisation will ensure that no one operator is able to induce the industry to move back to a different norm that will increase the cost of switching and, hence, undermine the competitive dynamic of the market.



As against this, ComReg is of the initial view that the benefits are likely to be significant and long-lasting. While the *Consumer References* will not in themselves lower prices, they will enable consumers to switch more easily. Due to the proposed amendments, consumers contacting a potential new supplier of Electronic Communications Services at a fixed location should more easily be able to access their essential *Consumer References*. The amendments will promote consumer protection by ensuring that consumers do not face unreasonable difficulties when seeking to switch between service providers while continuing to provide significant protection against unauthorised provisioning or “slamming”.

ComReg considers that overall consumer protection would also be enhanced by potential reductions in the cost of switching. Economic analysis generally predicts that reducing switching-costs can significantly increase competition and lead to lower prices for consumers.<sup>15</sup> There are a number of reasons for this, which include (i) people who were likely to switch anyway will be able to do so at a lower cost, (ii) a reduction in switching costs should have an effect on supply and demand conditions in the market and act to reduce any remaining market power. This effect can be particularly strong in a market where there is one relatively large operator with a high market share.

Economic analysis generally shows that in markets with switching costs, firms with larger market shares can charge higher prices than their rivals. Firms with large numbers of ‘locked-in’ customers are able to increase their prices to these customers, rather than lowering their prices to attract new and/or uncommitted customers. Switching costs in such circumstances may also act as a barrier to expansion or entry and thereby strengthen any positions of market power.

On the other hand, there is also extensive economic analysis on the pro-competitive or benign aspects of switching costs. It can be argued that in certain circumstances switching costs may be beneficial to consumer welfare. Common examples of this arise in growing markets where switching costs have the effect of increasing competition or in markets for innovative and experience goods.

ComReg has considered the above views in the context of this Consultation. In particular, ComReg studied a consultation prepared by NERA<sup>16</sup> for the Office of Fair Trading (“OFT”) in 2003 which provides insightful analysis and examination of several case studies to assess the impact of switching costs on a variety of markets. The exposition in this document reinforced ComReg’s view that lowering switching costs in the context of the current consultation would lead to increased consumer welfare.

While numbers are only indicative, if easier access to essential *Consumer References* leads to increased switching which in turn leads even to a 0.5% fall in the price of fixed-line services (assuming an estimate that the average household spends around €49 per month on such services, which is a reasonably conservative estimate

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15 There is a considerable literature on the effect of switching costs on competition and consumer welfare. For a summary, see Klemperer, (1995), p 536, “Competition where consumers have switching costs: an overview with applications to Industrial Organisation, Macroeconomics and International Trade”, *Review of Economic Studies*, pp 515-539. He says “...switching costs generally raise prices and create deadweight losses of the usual kind in a closed oligopoly”. He argues that such costs can limit entry, and concludes that policymakers should promote activities that reduce consumer switching costs.

16 “Switching Costs” by Mark Williams, Atilano Jorge Padilla, Ciara McSorley More details at <http://www.nera.com/>

according to Household Budget Survey (HBS) data inflated to 2008 prices), this would result in a gain to each household of €2.88 a year. When one considers there are around 1.7 million consumers, this could result in consumer benefit of around €4.34 million to the domestic sector alone every year. We can expect a similar effect in relation to the business sector, particularly the small business sector which may have many of the same difficulties in switching as households do. These benefits are substantially higher than the costs of placing the essential consumer references on bills, which is in most cases already being done.

### **7.3 Identification, description and preliminary assessment of the Regulatory Options**

ComReg is of the initial view that there are two options. Option 1 would be to do nothing and maintain the status quo. Option 2 is to impose the obligations on Authorised Persons (supplying services at a fixed location) for the reasons set out above and as explained throughout the consultation document.

ComReg's intention is to ensure that consumers of Electronic Communications Services at a fixed location can easily obtain their *Consumer References* for the purposes of switching. The use of *Consumer References* promotes consumer protection by *inter alia* facilitating efficient switching between providers, while at the same time, continuing to provide significant protection against "slamming". However, ComReg understands that difficulties have arisen when *Consumer References* have not been communicated or provided to the consumer at all, or were provided in a way that was not readily accessible by them, or were provided without proper prominence or clarity. It has also been brought to ComReg's attention that the *Consumer References* are not always made readily available to consumers when requested.

ComReg is of the initial view that mandating service providers supplying Electronic Communications Services at a fixed location to provide easy access to essential *Consumer References* for individual consumers is both reasonable and proportionate and adheres to its functions. ComReg is required to encourage and where appropriate ensure adequate access and interconnection to promote efficiency, sustainable competition and give the maximum benefit to end users.

ComReg seeks the views of interested parties in this regard and asks them to respond to the question below:

**Q. 7. Respondents are requested to provide views on whether the proposed conditions are proportionate and justified and offer views on other factors (if any) ComReg should consider in completing its Regulatory Impact Assessment.**

**Q. 8. If you wish to submit further comments in relation to the conditions proposed for attachment to the General Authorisation please do so here.**

## **8 Submitting Comments**

The consultation period will run from 16<sup>th</sup> October 2009 to 13<sup>th</sup> November 2009 during which ComReg welcomes written comments on any of the issues raised in this consultation.

Having analysed and considered the comments received, ComReg will publish a Response to Consultation in which it will summarise the responses to this consultation. ComReg may simultaneously publish a decision to make some or all of the proposed amendments to the General Authorisation.

All comments are welcome; however it would make the task of analysing responses easier if comments were referenced to the relevant question numbers from this document.

Please Note:

ComReg appreciates that many of the issues raised in this consultation may require respondents to provide confidential information if their comments are to be meaningful.

As it is ComReg's policy to make all responses available on its web-site and for inspection generally, respondents to consultations are requested to clearly identify confidential material and place confidential material in a separate annex to their response.

Such Information will be treated subject to the provisions of ComReg's guidelines on the treatment of confidential information – ComReg 05/24

## Appendix A – Consultation Questions

### List of Questions

***Q.1 Do you agree with the text of the conditions (and the proposed defined terms<sup>17</sup>) now proposed for attachment to the General Authorisation? If not, please indicate which of the proposed definitions and/or conditions you do not agree with and why.***

***Q.2 Do you agree that the conditions should apply to Authorised Persons providing Electronic Communications Services at a fixed location only and/or should the proposed conditions apply to those operating mobile terrestrial networks<sup>18</sup>? Do you agree that the reference to “Electronic Communications Services at a fixed location” is clear? If not, please indicate which of the proposed definitions and/or conditions you do not agree with and why.***

***Q.3 Bearing in mind the legal basis<sup>19</sup> for the amendments do you agree that the text of conditions proposed for attachment to the General Authorisation can be classified as conditions providing for ‘Consumer protection rules specific to the electronic communications sector including conditions in conformity with the Universal Service Regulations’ and/or “Personal data and privacy protection specific to the electronic communications sector”?***

***Q.4 Do you agree that the text of the conditions proposed for attachment to the General Authorisation are objectively justified, non-discriminatory, proportionate and transparent?***

***Q.5 In your view, do the conditions proposed for attachment to the General Authorisation constitute specific obligations, or conditions which are applicable to Authorised Persons by virtue of other laws?***

***Q. 6. Do you agree that three months would be an adequate timescale to implement any changes required to come into compliance with the proposed amendments? If not please indicate your reasons.***

***Q7. Respondents are requested to provide views on whether the proposed conditions are proportionate and justified and offer views on other factors (if any) ComReg should consider in completing its Regulatory Impact Assessment.***

***Q.8. If you wish to submit further comments in relation to the conditions proposed for attachment to the General Authorisation please do so here.***

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<sup>17</sup> Consumer References, UAN, CRN and CLI.

<sup>18</sup> The reference to mobile terrestrial networks is also taken from the definition of ECN as set out in General Authorisation ComReg document 03/81 R1

<sup>19</sup> See Section 6 “Legal Basis”

## **Appendix B – Proposed Definitions and Conditions**

It is proposed that the text of the following definitions and conditions be added to the conditions associated with the General Authorisation:

*Consumer References mean, any number, letter, code or reference (or combination of these and any variation thereof from time to time) designating, pertaining to, identifying or associated with a consumer, a consumer account(s), or service(s), which is necessary for the purposes of the consumer efficiently changing services or efficiently switching from one Authorised Person supplying Electronic Communications Services at a fixed location to another Authorised Person supplying such services. Consumer References includes, but is not limited to Universal Account Number(s) (UAN(s)), Circuit reference Numbers (CRN(s)) or Calling Line identifier (CLI(s)).*

*Universal Account Number(s) (UAN(s)), means any number, letter, code or reference (or a combination of these) designating, pertaining to, identifying or associated with a consumer, a consumer account(s) or service(s), necessary for the purposes of a consumer switching from one Authorised Person to another .*

*Circuit Reference Numbers (CRN(s)), means a unique number sequence used to identify unbundled metallic paths.*

*Calling Line Identifiers (CLI(s)), means the facility that enables identification of the number from which a call originates by the recipient of the call.*

*18.6.1 Every Authorised Person that is the direct provider of Electronic Communications Services at a fixed location to a consumer, shall ensure as far as practicable, that all Consumer References are included on all consumer invoices or bills for such services, including those provided electronically. They shall be clearly presented and identified prominently.*

*18.6.2 Where an Authorised Person is not the direct provider of Electronic Communications Services at a fixed location to a consumer but has created, designated or allocated Consumer References pertaining to a consumer, or consumer account, or consumer service, it shall upon request and as soon as possible provide those Consumer References to the Authorised Person that is or will imminently be the direct provider of such services to the consumer, in order that that Authorised Person can meet its obligations under condition 18.6.1.*