



Commission for
Communications Regulation

Management and Maintenance of the National Directory Database

Consultation

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Additional Information

All responses to this consultation should be clearly marked:

Submissions to ComReg 15/16

and should be sent by post, facsimile or e-mail to arrive on or before 20th March 2015, to:

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Please note ComReg will publish all respondents' submissions with the Response to this Consultation, subject to the provisions of ComReg's guidelines on the treatment of confidential information – ComReg 05/24.

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1 Executive Summary

- 1 The National Directory Database ("NDD") is a comprehensive record of all subscribers of publicly available telephone services in the State who have not refused to have their details recorded in it. The function of the NDD is primarily to facilitate the compilation of and access to information for telephone directories and directory enquiry services. In addition, following the entry into force of the Data and Privacy Regulations¹, the NDD continues to be the basis for the operation of the "opt-out" register for direct marketing purposes.
- 2 The Commission for Communications Regulation ("ComReg") consulted on the management and maintenance of the NDD in May 2014 as set out in ComReg 14/36².
- 3 ComReg decided that an undertaking should be required to maintain and operate the NDD under Regulation 19(4) of the Universal Service Regulations³. Consequently, ComReg decision D06/14⁴ directed Eircom to manage and maintain the NDD until end June 2015.
- 4 In consultation 14/36, Undertakings were asked to express an interest in management and maintenance of the NDD. In its submission to the consultation, BT said that it would be interested in exploring the possibility of providing the NDD, but BT's submission lacked the necessary detail that ComReg would need to evaluate BT's interest. In order to allow BT a period to provide ComReg with information of the necessary detail, ComReg decided to direct Eircom to continue to maintain the NDD until 30 June 2015, under Regulation 19 and Regulation 30 of the Universal Service Regulations.
- 5 BT has since confirmed to ComReg that it does not wish to pursue an interest in managing and maintaining the NDD.
- 6 Therefore, in light of the above ComReg is now consulting on whether the period of the current direction should be extended by three years, until the end of June 2018.

¹ S.I. No 336 of 2011, the European Communities (Electronic Communications Networks and Services) Data Protection and Privacy) Regulations 2011

² ComReg Consultation: 14/36 - Management and Maintenance of the National Directory Database http://www.comreg.ie/_fileupload/publications/ComReg1436.pdf

³ The European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011 ("the Universal Service Regulations").

⁴ Contained in Response to Consultation 14/67 "Management and Maintenance of the National Directory Database", dated 01/07/14.

2 Background

- 7 The NDD lists over 2 million numbers of which over 1 million are opted out of receiving direct marketing calls.⁵
- 8 The NDD also holds details of consumer preferences for listing their telephone numbers. These are:
 - Listed: Details (name, address, telephone number) are listed in the telephone directory and with Directory Enquiries,
 - Unlisted : Listed with Directory Enquiries only, i.e. not in the phonebook,
 - Ex-Directory: Details not listed the phone book or with Directory Enquiries.
- 9 In accordance with Regulation 19(2) of the Universal Service Regulations, undertakings that assign numbers to subscribers must supply the NDD with the relevant subscriber information.
- 10 In accordance with Regulation 19(4) of the Universal Service Regulations, the undertaking maintaining the NDD must provide access to the information on terms that are fair, objective, cost oriented and non-discriminatory.

2.1 Eircom's Obligations

- 11 Eircom, in its capacity as the universal service provider, was obliged by law to maintain the NDD.⁶ Since the coming into force of the Universal Service Regulations a universal service provider designated as such under the 2011 Regulations, cannot be mandated to maintain the NDD *merely* by virtue of being the universal service provider.
- 12 There is a specific power for ComReg under Regulation 19(4) of the Universal Service Regulations to require an undertaking to maintain the NDD.

⁵ Mobile telephone numbers are automatically protected pursuant to certain provisions in the European Communities (Electronic Communications Networks and Services) Data Protection and Privacy) Regulations 2011 against unsolicited communications.

⁶ Provision in the European Communities (Electronic Communications Networks and Services (Universal Service and Users' Rights) Regulations 2003.

- 13 This information is used for the collation of the printed telephone directory. Eircom is required to provide a printed telephone directory to subscribers, on an annual basis, as the universal service provider in the State⁷.
- 14 Eircom has established a *Directory Information Licence Agreement* (DILA) and a *Direct Marketing License Agreement* (DMLA) for the purposes of access by directory enquiry service providers and direct marketers to information held in the NDD.
- 15 The NDD continues to be the basis for the “opt-out” register for direct marketing purposes in accordance with the Data and Privacy Regulations. The “opt-out” register is the means by which subscribers express their preference not to be contacted by direct marketing companies (by so “opting out”).
- 16 Eircom has managed the NDD to date in an effective manner. Due to its ownership of the assets and systems supporting the NDD, its operational control over the NDD and the assets and systems supporting the NDD, and because of its unique experience in maintaining the NDD, ComReg is of the preliminary view that Eircom is currently best placed to continue to maintain and manage the NDD on the same basis as it currently does.
- 17 Eircom has advised that the total revenue derived from the operation of the NDD was €114,000 for 2013 and that it operated the NDD at a loss in 2013.
- 18 Eircom also recently completed a NDD IT infrastructure and upgrade project to ensure the database, operating system and hardware that support the NDD are adequate for a further period.

⁷ Under Regulations 4(1) and 7(1) of the Universal Service Regulations, see ComReg Response to Consultation 14/68 and Decision D07/14 “Provision of Directory of Subscribers- Universal Service: Scope and Designation”, 07/07/14

3 Consultation Issues

- 19 ComReg Decision 06/14, made pursuant to Regulations 19 and 30 of the Universal Service Regulations, set out that Eircom should maintain and manage the NDD, effective from July 2014 until 30th June 2015, and further to this Decision, Eircom currently manages the NDD and the collation of information from all undertakings that assign telephone numbers to subscribers.
- 20 ComReg is now conducting a consultation to require Eircom to maintain and operate the NDD from July 2015 for a three year period, in the absence of any interest from any other undertaking and the fact that it would create legal certainty for many stakeholders.⁸
- 21 In ComReg consultation 14/36 ComReg had asked “*Where no expressions of interest are received ComReg is of the view that Eircom should be directed to continue to maintain the NDD for a period of 4 years*”. As the expression of interest has been withdrawn, and no other such expression was received. ComReg is of the preliminary view that it is appropriate to require Eircom to continue to manage and maintain the NDD for the remainder of that 4 year period.

Q1. Do you agree that Eircom should be required, pursuant to Regulations 19 and 30 of the Universal Service Regulations, to continue to manage and maintain the NDD for the remainder of that 4 year period upon until 1 July 2018? Please provide detailed reasons and supporting evidence for your view.

22 As previously noted Eircom recently completed and invested in an NDD IT infrastructure and upgrade project. ComReg understands that the NDD processes and systems continue to function adequately and are fit for purpose since the 2014 upgrade. ComReg is of the preliminary view that the current NDD process and systems based on Eircom’s upgrade, function adequately and are fit for purpose.

Q2. Do you agree that in your experience of the current NDD process and systems based on the recent upgrade function adequately? Please provide detailed reasons and supporting recent evidence for your view.

Q3. Are there any further issues in respect to ComReg’s preliminary view that should be considered? Please provide detailed reasons and supporting recent evidence for your view.

⁸ Including: undertakings, subscribers, directory enquiry service providers, direct marketing companies, and the Office of Data Protection Commissioner.

4 Draft Regulatory Impact Assessment (“RIA”)

4.1 Role of the RIA

- 23 A 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 or not a proposed regulation is likely to have the desired impact. The RIA should also in certain cases suggest whether regulation is or is not appropriate. The RIA is a structured approach to the development of policy, and analyses the impact of regulatory options on different stakeholders.
- 24 ComReg’s approach to RIA is set out in the Guidelines published in August 2007, Commission Document No. 07/56 & 07/56a. In conducting this RIA, ComReg takes account of the RIA Guidelines,⁹ adopted under the Government’s *Better Regulation* programme.
- 25 Section 13 (1) of the Communications Regulation Act 2002, as amended, requires ComReg to comply with certain Ministerial Policy Directions. Policy Direction 6 of February 2003 requires that before deciding to impose regulatory obligations on undertakings ComReg must 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 also has regard to the fact that regulation by way of issuing decisions e.g. imposing obligations or specifying requirements can be quite different to regulation that arises by the enactment of primary or secondary legislation.
- 26 In conducting RIA, ComReg takes into account the six principles of *Better Regulation*. These are:
1. Necessity.
 2. Effectiveness.
 3. Proportionality.
 4. Transparency.
 5. Accountability.

⁹See: http://www.taoiseach.gov.ie/eng/Publications/Publications_2011/Revised_RIA_Guidelines_June_2009.pdf

6. Consistency.

- 27 To ensure that a RIA is proportionate and not overly burdensome, a common sense approach is taken. As decisions are likely to vary in terms of their impact, and if after initial investigation a decision appears to have relatively low impact, ComReg would expect to carry out a less exhaustive RIA. 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. This approach will be adopted when necessary.

4.2 Policy Issues

Purpose of the NDD

- 28 The Universal Service Regulations provide that all undertakings providing publicly available telephone services must ensure that their subscribers have the right without charge, to have an entry in a printed directory and/or a directory enquiry service.
- 29 Eircom as the USP in the State¹⁰ is legally obliged to ensure that a comprehensive printed directory of subscribers (based upon data maintained on the NDD) is made available to all subscribers, free of charge, and that it is updated at least once a year. For this purpose, Eircom receives stores and maintains relevant subscriber data electronically. The relevant subscriber data is obtained and recorded by Eircom in the NDD, without charge to undertakings¹¹ and the NDD is updated nightly. The NDD is therefore, a central, up to date and reliable source of data relating to subscribers who have consented to their details being recorded on it.
- 30 The E-Privacy Regulations also require all undertakings to record a subscriber's telephone number in the NDD "*do not call register*" if the customer requests, (fixed line ex-directory numbers must be placed automatically on the "*do not call register*" by undertakings). The NDD is used as a direct marketing "*opt-out*" register. The NDD is the mechanism used for collating the "*do not call register*" for the purpose of the Data and Privacy Regulations. Consumers can opt out of direct marketing by asking their telecoms service provider to place their number on the "*do not call register*."
- 31 Therefore, the Universal Service Regulations and the Data and Privacy Regulations require the NDD to be in place.

¹⁰ See ComReg decision D07/14.

¹¹ Commission Document No. 07/20.

32 The NDD is a valuable and convenient resource for directory enquiry service providers. Subscriber names and telephone numbers are key inputs for their businesses and Eircom (who is currently responsible for maintaining the NDD) provides directory enquiry service providers with this information from a central and convenient source.

Issue

33 Since the coming into force of the Universal Service Regulations in 2011, a USP designated as such there under, cannot be mandated to maintain the NDD merely by virtue of being the USP.

34 However, ComReg now has the power to require an undertaking to maintain the NDD in accordance with Regulation 19 (4) of the Universal Service Regulations. That undertaking may still be the USP, but the USP cannot be obliged to maintain the NDD *in its particular capacity as the USP*, rather it would be obliged in its capacity as an *undertaking*, like any other undertaking.

35 Without the NDD, a number of regulatory requirements could not be fulfilled by undertakings. Residential consumers and businesses might lose their legal entitlements and protections under the Universal Service Regulations in respect of directories/directory enquiries and unsolicited direct marketing.

36 Given the various functions of the NDD, it is critical that it continues to be maintained.

4.3 Policy Options

37 The ComReg has considered the options available to it to ensure that the NDD is maintained in its current form.

38 **Option 1:** Not to specify an undertaking to maintain the NDD.

39 **Option 2:** Specify Eircom, to maintain the NDD for the remainder of the 4 year period to 2018.

Assessment of Options

Option 1

40 ComReg has considered the impact if it were to forebear from specifying an undertaking to maintain the NDD.

41 If ComReg does not direct an undertaking, in this case Eircom, to maintain and operate the NDD, it would create legal uncertainty for stakeholders and may jeopardise other obligations and rights of undertakings and other entities in relation to the NDD and in turn, affect the rights of consumers.

Consumers

- 42 ComReg is of the view that if no undertaking is specified to continue to maintain the NDD, consumers' rights (*viz.* directories and opting out of direct marketing) would be seriously jeopardised. In ComReg's view, this scenario must be avoided.

Industry

- 43 In accordance with Regulation 19 of the Universal Service Regulations, subscriber details are made available by undertakings, recorded and maintained by the undertaking that maintains the NDD. In addition, the undertaking that maintains the NDD must provide access to that information in accordance with specific terms and conditions. If there is no undertaking specified to maintain the NDD, this will create legal and commercial uncertainty about who must provide access to the NDD and the terms of the access specified in Regulation 19 (4) of the Universal Service Regulations.

Competition

- 44 ComReg considers that by not specifying an undertaking, to maintain the NDD and to provide access to it for third parties, could result in directory enquiry service providers being deprived of access to the NDD. Eircom would have exclusive access and being able to unilaterally set terms and conditions of access to it. This could result in Eircom having an unfair competitive advantage in the market; with the result that competition could be seriously damaged or lessened.

Option 2

- 45 ComReg has considered the impact of requiring an undertaking to maintain the NDD.
- 46 ComReg is of the preliminary view that this is the most appropriate and justified, option at this time, as it is the only way to ensure that the related rights and obligations can be guaranteed.
- 47 In addition, ComReg has considered which undertaking it should specify and it is of the preliminary view that to specify Eircom as the undertaking to continue to maintain the NDD, is the most appropriate, justified, and proportionate option at this time.
- 48 If the NDD is maintained in its current form by Eircom it will mean that there is no change to the *status quo*.

Consumers

49 ComReg is of the view that the preferred option to facilitate the associated consumer rights (in respect of directory entries and opting out of direct marketing (the Data and Privacy Regulations)) is for ComReg to specify an undertaking to maintain the NDD. In addition, in order to avoid any risks in relation to the continuity of operation and indeed, the integrity of the data in the NDD, ComReg is of the preliminary view that Eircom should continue to maintain the NDD.

Industry

50 Subscriber details are obtained from undertakings and recorded by the undertaking that maintains the NDD, without charge to undertakings. In addition, the undertaking that maintains the NDD must allow access to the information in accordance with specific terms. Undertakings provide nightly updates to the NDD in relation to their consumer's directory preferences. Undertakings also provide, on an annual basis, details of their customers who wish to have their telephone number listed in the telephone directory.

51 By ensuring the maintenance of the NDD by a specified undertaking, industry and direct marketers will not need to obtain information from each telecoms service provider individually. While undertakings are legally obliged to provide this information, the directory enquiry service providers do not obtain it in this manner. It is more convenient and less costly for them and undertakings to obtain the information from the one, centralised source that is the NDD.

52 Requiring Eircom to continue maintain the NDD would preserve the *status quo* and continuity and clearly have a positive impact on the industry.

53 ComReg understands that the costs to Eircom of maintaining the NDD are covered by the licence fees (Directory Information Licence Agreement/Direct Marketing Licence Agreement).¹²

Competition

54 ComReg is not aware of any competition issues arising by specifying Eircom to continue to manage the NDD. In addition, ComReg has observed from responses by industry to previous consultations by ComReg, that the majority of telecoms service providers are supportive of the NDD and its functions and the continued maintenance and operation of the NDD by Eircom.

55 In light of the above, ComReg is of the preliminary view that it is appropriate, justified and proportionate that ComReg specifies Eircom to be the undertaking required to continue to maintain the NDD.

¹² Commission Document No. 10/46.

5 Draft Decision

1. This Decision and Decision Instrument, made by the Commission for Communications Regulation (“ComReg”), relates to the maintenance and management of the National Directory Database (“NDD”) and is made:

- i. Having regard to sections 10 and 12 of the Communications Regulation Act 2002 as amended (“the Act of 2002”);
- ii. Having regard to the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011;
- iii. Pursuant to the functions and powers conferred upon ComReg under and by virtue of Regulations 19 and 30 of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011 (“the Regulations”);
- iv. Having taken account of the representations of interested parties submitted in response to ComReg document [-] and
- v. Having regard to the analysis and reasoning set out in ComReg document [-].

2. Decision

2.1 Eircom Limited and its subsidiaries, and any undertaking which it owns or controls and any undertaking which owns or controls it and its successors and assigns (“Eircom”) shall maintain the NDD for a period of 3 years.

2.2 Eircom shall meet all reasonable requests for access to any information contained in the NDD in an agreed format.

2.3 The terms of access to the NDD shall be fair, objective, and cost orientated and non-discriminatory.

2.4 The terms of access to the NDD shall otherwise be in accordance with such terms and conditions as may be specified by Eircom and approved by ComReg in advance of the implementation of any such terms and conditions and such approval shall be obtained in writing.

3. Statutory Powers Not Affected

Nothing in this direction shall operate to limit ComReg in the exercise and performance of its statutory functions, powers and duties under any primary or secondary legislation (in force prior to or after the effective date of this direction) from time to time as the occasion may require.

4. Maintenance of Obligations

If any section, clause or provision or portion thereof contained in this direction is found to be invalid or prohibited by the Constitution, by any other law or judged by a court to be unlawful, void or unenforceable, that section, clause or provision or portion thereof shall, to the extent required, be severed from this direction and rendered ineffective as far as possible without modifying the remaining section(s), clause(s) or provision(s) or portion

thereof of this direction and shall not in any way affect the validity or enforcement of this direction.

5. Effective Date and Duration

5.1 This Decision shall be effective from [-].

5.2 This Decision shall remain in force from the effective date until 30 June 2018.

KEVIN O'BRIEN
CHAIRPERSON
THE COMMISSION FOR COMMUNICATIONS REGULATION
THE X DAY OF Month 201X

6 List of Questions

- 56 Q1. Do you agree that Eircom should be required, pursuant to Regulations 19 and 30 of the Regulations, to continue to manage and maintain the NDD for the remainder of that 4 year period upon until 1 July 2018? Please provide detailed reasons and supporting evidence for your view.
- 57 Q2. Do you agree that the current NDD process and systems based on the recent upgrade function adequately? Please provide detailed reasons and supporting recent evidence for your view.
- 58 Q3. Are there any further issues in respect to ComReg's preliminary view that should be considered? Please provide detailed reasons and supporting recent evidence for your view.

7 Submitting Comments

- 59 The consultation period will run from 17th February 2015 to 20th March 2015. Responses must be submitted in written form. If responses are submitted electronically, they must also be unprotected so as to facilitate online publication.
- 60 It is sometimes necessary for respondents to provide confidential information in their submissions. Confidential information must be clearly identified as such. ComReg will publish all of the responses it receives to this consultation, subject to its guidelines on the treatment of confidential information.
- 61 ComReg has considered the factors set out in its consultation procedures¹³ that would justify a period for consultation that is shorter than four weeks and ComReg is satisfied that two weeks is an appropriate and adequate period for this consultation.

¹³ Commission Document 11/34