



Commission for  
**Communications Regulation**

## Consultation Paper

### **Consultation on the Cost Orientation Obligation in Providing Number Information to the National Directory Database**

<b>Document No:</b>	<b>06/46</b>
<b>Date:</b>	<b>4<sup>th</sup> September 2006</b>

All responses to this consultation should be clearly marked:-  
“Reference: Submission re ComReg 06/46” 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 5pm, 2<sup>nd</sup> October  
2006.

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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 Introduction

A directory of subscribers and a directory enquiry service constitute essential access tools for publicly available telephone services and are provided for as part of the universal service. All telephone end users require the availability of comprehensive directories and directory enquiry services. The National Directory Database ('NDD') has been in operation since 1999 and compiles subscriber information from all telephone service providers which is then used for the provision of directories and directory enquiry services. The Commission for Communications Regulation ('ComReg') is responsible for the regulation of the Irish telecommunications sector and included in this remit is the regulation of the NDD. The NDD is provided by eircom as the designated Universal Service provider in Ireland<sup>1</sup>.

Following a complaint received by ComReg from an interested party and a recent interpretation of the relevant obligations by the European Court of Justice<sup>2</sup>, ComReg is via this consultation, initiating a process to review the current charges for the provision of 'relevant information' by operators to the NDD to ensure they are 'cost oriented', in accordance with the obligation in Regulation 21(2) of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2003<sup>3</sup> ('The Universal Service Regulations').

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<sup>1</sup> Decision Notice 'The Future Provision of Telephony Services Under Universal Service Obligations', Document 06/32, published on 25<sup>th</sup> July 2006

<sup>2</sup> Case C-109/03 KPN Telecom BV v onafhankelijke Post en Telecommunicatie Autoriteit, ECJ judgment of 25th November 2004, referred to as the "Denda" case.

<sup>3</sup> S.I. No 308 of 2003 which transposed Directive 2002/22/EC of the European Parliament and the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services.

## 2 Overview of the National Directory Database

The NDD is a 'record of all subscribers of publicly available telephone services in the State, including those with fixed, personal and mobile numbers, who have not refused to be included in that record'<sup>4</sup>. In ComReg document 06/32, eircom were designated as the Universal Service Provider ('USP') and as such the designated undertaking responsible for the NDD. This designation will remain in place until 30 June, 2010, unless otherwise amended by ComReg. eircom had earlier been designated with responsibility from July 2003<sup>5</sup>. Decision 2.5(a) of ComReg document 06/32 states that as the USP, eircom shall 'Subject to Regulation 14 of the European Communities (Electronic Communications Networks and Services)(Data Protection and Privacy) Regulations 2003, keep a record (to be known as the National Directory Database) of all subscribers of publicly available telephone services in the State, including those with fixed, personal and mobile numbers, who have not refused to be included in that record, and allow access to any information contained in such record to any other such undertaking or any person in accordance with terms and conditions approved by ComReg'.

Currently there are 77 telephone number assigners<sup>6</sup> in Ireland who are required to meet all reasonable requests to make available relevant information for the purposes of the NDD<sup>7</sup>. Operators send information to the NDD on a nightly basis (Mon-Fri) either via ISDN or leased line.

The NDD currently includes information in relation to those subscribers with listed<sup>8</sup> and unlisted<sup>9</sup> numbers. No information in relation to those subscribers who have ex-directory numbers is included. A direction was issued on 30 June 2006 by ComReg and an associated Enforcement Notice by the Data Protection Commissioner instructing all operators that all ex-directory customer numbers (but not information about ex-directory subscribers e.g. name or address) must be included in the NDD by 31 October 2006. This

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<sup>4</sup> As defined in Regulation 4(3) of the Universal Service Regulations

<sup>5</sup> Decision Notice 'The Future Framework for the Regulation of Universal Service in the Irish Telecommunications Market, Provision of Telephony Service to Users', Decision Notice No D17/03, Document 03/87, published on the 25<sup>th</sup> July 2003

<sup>6</sup> ComReg is responsible for managing the National Numbering Scheme and in this capacity it generally makes allocations and reservations of numbering capacity from the scheme to notified network operators, who each sub-allocate individual numbers to service providers and end users.

<sup>7</sup> Regulation 21(2) states that 'An undertaking that assigns telephone numbers to subscribers shall meet all reasonable requests to make available, for the purpose of the provision of publicly available directory inquiry services, directories and the record referred to in Regulation 4(4), the relevant information in an agreed format on terms that are fair, objective, cost oriented and non-discriminatory'

<sup>8</sup> Numbers which will appear in printed directories and which will be accessible through directory enquiries

<sup>9</sup> Numbers which will be accessible through directory enquiries but will not appear in printed directories

will allow ex-directory numbers to be included in the marketing opt-out extract as provided for by the Data Protection and Privacy Regulations.<sup>10</sup>

The current charge from an operator to the NDD, for the provision of information to the NDD is €0.0762 per number. ComReg's understanding is that this is charged on a per quarter basis regardless of updates or changes to information from the previous quarter and that the operators invoice the NDD on a quarterly basis.

ComReg is of the view that it is now appropriate to review this charge to ensure that it complies with the cost orientation obligation contained in Regulation 21(2) of the Universal Service Regulations.

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<sup>10</sup> European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003, S.I. No 535 of 2003

### 3 Overview of the cost orientation obligation

Under Regulation 21(2) of the Universal Service Regulations, all telephone number assigners are obliged to ‘meet all reasonable requests to make available, for the purposes of the provision of publicly available directory inquiry services, directories and the record referred to in Regulation 4(4), the *relevant information* in an agreed format on terms that are fair, objective, *cost oriented* and non-discriminatory’ (emphasis added). The NDD is ‘the record referred to in Regulation 4(4)’<sup>11</sup>.

ComReg considers that ‘relevant information’ in this context means the name and address, including postcode (if appropriate), of listed and unlisted subscribers (but not ex-directory subscribers), together with any telephone numbers allocated to them by the entity concerned.

This interpretation is consistent with the interpretation given by the European Court of Justice (‘ECJ’) to this phrase in the context of the ruling in ‘Denda’<sup>12</sup>.

In interpreting cost orientation, ComReg is guided by the interpretation given by the ECJ in Denda, in which it interpreted ‘fair, cost oriented and non-discriminatory’ to mean, with regard to data which the supplier is bound to make available to third parties (i.e. the relevant information), ‘*only the costs of actually making those data available to third parties may be invoiced*’ (i.e. incremental costs) not the ‘*costs relating to the compilation of those data*’. In particular the ECJ emphasised that compilation, or allocation of the basic data relating to subscribers ‘*unlike the costs incurred in making them available to third parties, must in any event be borne by the supplier of a voice telephony service and are already included in the costs and revenue of such a service*’. In those circumstances, passing the costs associated with compiling or allocating data on to persons requesting access to the data would result in an excessive and unwarranted offset of the costs in question.

In summary, ComReg considers that ‘relevant information’ must be provided to third parties (including the NDD) on a cost oriented basis. The charge for providing relevant information required under Regulation 21 of the Universal Service Regulations should only cover the cost of making the data available to third parties (i.e. incremental costs) and not the costs of compiling and maintaining this information, which are already included in the costs and revenue of the service and therefore should be incurred by the individual operators.

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<sup>11</sup> Note that the NDD is the record referred to in Regulation 4(3) and not Regulation 4(4). No record is referred to in Regulation 4(4) and therefore this seems to be an obvious typographical error and should be interpreted as such.

<sup>12</sup> Case C-109/03 KPN Telecom BV v onafhankelijke Post en Telecommunicatie Autoriteit, ECJ judgment of 25th November 2004.

#### **4 Purpose of the consultation**

The aim of this consultation is to assess the current charge for provision of relevant information to the NDD. If ComReg comes to the view that it is not ‘cost oriented’ (using the interpretation outlined above), and if the costs are similar for each operator, ComReg proposes to direct operators to charge a specific rate for the provision of relevant information to the NDD going forward. This direction will be as a further specification of the obligation to make the relevant information available on a cost oriented basis. Setting such a charge would facilitate stability in the market and ensure that operators are compliant with their regulatory obligations (as outlined above).

In order to facilitate ComReg in reviewing the current charge, ComReg asks that all number assigners answer the following questions.

**Q.1 How do you send the relevant information to the NDD and how often do you send it?**

**Q.2 What is the incremental cost (see guidance in section 3) to your organisation of providing the relevant information to the NDD? In your response please provide a detailed cost submission.**

**Q.3 The current charge is on a per number basis, do you feel that this is an appropriate charging mechanism? If not, please suggest an alternative method (including a detailed cost submission).**

## 5 Next Steps

ComReg will review all responses received and based on these will decide whether a change to current charges for provision of the relevant information to the NDD is necessary.

If ComReg mandates a change to the current method of charging for provision of relevant information to the NDD, this may have an impact on the cost base of the NDD itself and as a result the charges for services offered by the NDD to third parties. Currently charges to third parties are set out in the Directory Information Licence Agreement and this agreement must be approved by the Regulator (as the 'terms and conditions' referred to in Regulation 4(3) of the Universal Service Regulations). ComReg will review these terms and conditions if any change to the NDD's cost base arises on foot of the current exercise.



## 6 Submitting Comments

The consultation period will run from 4<sup>th</sup> September 2006 to 2<sup>nd</sup> October 2006 during which the Commission welcomes written comments on any of the issues raised in this paper.

Having analysed and considered the comments received, ComReg will make a decision on an appropriate cost oriented charge for provision of information to the NDD. If appropriate, ComReg will issue a direction stating the new charge which will become effective from the effective date of the direction.

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 paper 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 – Legislation

S.I. No. 308 of 2003 European Communities (Electronic Communications Networks and Services)(Universal Service and Users' Rights) Regulations 2003:

Regulation 4(1) states that 'A designated undertaking shall ensure, based on data provided to it in accordance with paragraph (3) –

- a) That a comprehensive directory of subscribers is made available to all end-users in a form approved of by the Regulator, whether printed or electronic or both, and is updated at least once in each year, or
- b) That a comprehensive telephone directory inquiry service is made available to all end-users, including users of public pay telephones'.

Regulation 4(2) states that 'A directory or directory inquiry service referred to in paragraph (1) shall comprise, subject to Regulation 8 of the of the European Communities (Data Protection and Privacy in Telecommunications) Regulations 2002 (S.I. No. 192 of 2002) all subscribers of publicly available telephone services in the state including those with fixed, mobile and personal numbers, who have not refused to be included in such directories'.

Regulation 4(3) states that 'A designated undertaking shall, subject to Regulation 10 of the European Communities (Data Protection and Privacy in Telecommunications) Regulations 2002 (S.I. No 192 of 2002) keep a record (to be known as the National Directory Database) of all subscribers of publicly available telephone services in the state, including those with fixed, personal and mobile numbers, who have not refused to be included in that record, and allow access to any information contained in such record to any other such undertaking or any person in accordance with such terms and conditions as may be specified by it and approved by the regulator'.

Regulation 4(4) states that ' A designated undertaking shall for the purposes of this Regulation apply the principle of non-discrimination to the treatment of information that has been provided to it by other undertakings or which it has in its possession or under its control'.

Regulation 21(1) states that 'An undertaking providing a publicly available telephone service shall ensure that its subscribers have the right, without charge, to have an entry in a directory as provided for in Regulation 4(1), and a directory enquiry service as provided for in Regulation 4(2)'.

Regulation 21(2) states that 'An undertaking that assigns telephone numbers to subscribers shall meet all reasonable requests to make available, for the purpose of the provision of publicly available directory inquiry services, directories and the record referred to in Regulation 4(4), the relevant information in an agreed format on terms that are fair, objective, cost oriented and non-discriminatory'.

## Appendix B – Consultation Questions

**Q.1 How do you send the relevant information to the NDD and how often do you send it?**

**Q.2 What is the incremental cost (see guidance in section 3) to your organisation of providing the relevant information to the NDD? In your response please provide a detailed cost submission.**

**Q.3 The current charge is on a per number basis, do you feel that this is an appropriate charging mechanism? If not, please suggest an alternative method (including a detailed cost submission).**