

eir

Provision of Directory of Subscribers

Universal Service: Scope and designation

ComReg Document 18/85

Response to Consultation and Draft Decision



9 November 2018

DOCUMENT CONTROL

Document name	eir response to ComReg 18/90
Document Owner	eir
Status	Non-confidential

The comments submitted in response to this consultation document are those of Eircom Limited and Meteor Mobile Communications Limited (trading as 'eir' and 'open eir'), collectively referred to as 'eir Group' or 'eir'.

Executive summary

1. eir welcomes the opportunity to comment on ComReg's market analysis and preliminary conclusions. In this submission:
 - (i) eir does not agree that there is a continued need to apply a USO. In eir's view there are sufficient alternatives available that render the printed directory obsolete and unnecessary. In light of ComReg's own market research, it is entirely disproportionate to impose a printed directory USO.
 - (ii) In the event that ComReg decides to proceed with the designation, eir recognises that the opt-in model would at least provide for slightly more efficient outcomes than the status quo by providing a regime whereby the number of users with a potential need for a printed directory could more accurately be identified. However it will likely be expensive to operate and therefore entirely inefficient.
 - (iii) With regard to the timelines, eir considers that those proposed will not allow sufficient time for implementation. It is eir's firm view that the proposed deadlines for collecting opt-ins, printing and distributing printed directories be moved out by 6 months.
 - (iv) Where ComReg decides to proceed with the imposition of a USO for printed directories, eir is of the view that the USP(s) should have the flexibility to impose a distribution charge for the transit of a printed phonebook directory to the primary place of residence or business of an end-user upon request. This will help reduce the costs of the inefficient universal service obligation.
 - (v) eir considers that ComReg should, in the interest of fairness, commit to an interim review in 2019, when the level of actual demand for printed directories becomes apparent.
 - (vi) ComReg has failed to meet the requirements for '*an efficient, objective, transparent and non-discriminatory designation mechanism*'. There is no objective justification to impose the printed directory USO on eir.

RESPONSE TO CONSULTATION QUESTIONS

Q. 1 Do you agree with ComReg's preliminary view that there is a continued need to apply a USO to ensure availability and affordability of a directory of subscribers' service in the short term? Please provide evidence and reasons to support your views.

2. eir does not agree that there is a continued need to apply a USO to ensure the availability and affordability of a directory of subscribers' service in the short term. In short, there is no requirement to provide a printed directory. The manner in which end-users source phone numbers has changed considerably over the last number of years. It is eir's view that the primary format for the directory should be electronic, provided in the form of an online directory.
3. Online directories for business and consumer searches are already widely available. There are also commercial directory enquiry services that can be accessed from any fixed or mobile phone in the State. Online and DQ databases are updated daily and are therefore more accurate and up to date than a printed directory. In eir's view there are sufficient alternatives available that render the printed directory obsolete and unnecessary.
4. ComReg states that "*eir has existing expertise and experience in the preparation of the source data for printing, and in proofing the printed directory of subscribers*".¹ eir notes that the printed directory USO has been discharged through an outsource supply arrangement for many years. In this manner eir was merely the manager of an out-source supply contract and does not have any unique capability or experience in this regard. eir does not have existing expertise in the preparation of the source data for printing, this was done by the outsourced supplier. eir does not have existing experience in proofing the printed directory of subscribers rather quality control was undertaken by the outsourced supplier.
5. All operators have procurement functions and it is obvious from the consultation document that ComReg also has the necessary skills to manage a tender process to select an entity or entities to print and distribute printed directories as evidenced by the activities undertaken by ComReg outlined in paragraph 129. eir does not consider there is any objective justification for a printed directory USO designation to be imposed on it over any other operator in the market, including the operator managing the NDD, who are equally capable of awarding procurement contracts, or indeed over ComReg managing this itself if it genuinely believes there is a need for printed directories. To purely consider eir in relation to this matter is a breach of ComReg's legal

¹ Paragraph 132, ComReg 18/90

obligations to act in an objective, proportionate and non-discriminatory manner. It is also unfairly distorting the market by imposing additional costs on eir that other operators simply do not have to bear, in particular in circumstances where ComReg continues to refuse to recognise that the USO is already a significant unfair burden on eir.

6. With regard to the market research and ComReg's views of related trends in particular, eir has a number of comments.
7. ComReg in reference to Figure 12 in the Consultation states that the number of residential fixed line single play voice only subscriptions for 2017 is "*an indication of the cohort of the residential population who may be reliant on a printed directory, as they may have no internet access*".² However, no evidence is provided to support this contention. It is not necessarily the case that this can be taken as an accurate indicator for the sub-segment of the population who are reliant on a printed directory. This metric does not capture those end-users who buy their fixed broadband connection from a separate service provider to their fixed line provider or those who have a mobile or satellite broadband connection. In fact, according to the market research commissioned by ComReg, only 2% of respondents are landline only users.
8. ComReg notes that according to the market research, "*approximately 1 in 4 (26% and 23% respectively) ask friends/family and/or use their local printed phonebook directory*"³ when looking for an individual's phone number. eir notes that the 23% referenced represents total mentions i.e. those respondents who mentioned printed directories in any capacity rather than such being their first preference for or even exclusive means of sourcing phone numbers. Perhaps more telling is the frequency of use parameter. Of the 22.7% that ever use a local area printed directory to source an individual's number, only 16% use this method more often than once a month and 6% use this method once a month. In overall terms, this represents 3.6% and 1.4% of all respondents respectively.
9. In addition, when asked what action they would take if the phonebook were no longer available of the 29.7% who use the phonebook to access personal or business phone numbers, 81% indicated that they would use an alternative means including using the internet, their smartphone or eir's online phonebook, asking friends, colleagues or relatives and calling or texting directory enquiries. Of the remaining respondents, 2% stated that they would order the phone book directly from another supplier if available while 17% stated they did not know, they

² Paragraph 67, ComReg 18/90

³ Paragraph 70, ComReg 18/90

would do none of these or provided another alternative.⁴ This represents 0.5% and 5% of all respondents respectively.

10. In light of ComReg's own market research, it is entirely disproportionate to impose a printed directory USO.

Q. 2 Do you agree with ComReg's preliminary view that imposing a USO requiring a USP to provide a printed phonebook directory under the same obligations in place hitherto may be sub-optimum compared to alternative approaches? Please give evidence and reasons to support your view.

11. eir agrees that imposing a USO requiring a USP to provide a printed phonebook directory under the same obligations in place hitherto would be sub-optimal. However, eir also considers that an alternative approach in the sense of an adapted but continued USO is sub-optimal given the true level of demand for such a service, as evidenced by ComReg's own market research, and the costs associated with the provision.
12. In fact ComReg itself states that *"where imposing a USO, ComReg will bear in mind possible costs of a solution to providing access to a directory of subscribers in the short term, with the benefits to end-users of any continued provision"*.⁵
13. ComReg also states that its *"objective for this review, amongst other things, is to ensure that any USO measure is implemented in an effective manner, minimising the potential costs and disruption the USP(s) and to end-users. ComReg is cognisant that any USO solution, if required, is not more burdensome than necessary"*.⁶
14. Historically the provision of the printed directory had been possible on a commercially viable basis as sufficient advertising revenue was generated to offset the costs of producing and distributing the printed directory. Prior to the previous designation, a persistent decline in print advertising spend, reflective of market trends and the declining relevance of the printed directory, had meant that it was no longer possible to provide the printed directory within normal commercial standards.

⁴ Slide 14, ComReg 18/90a

⁵ Paragraph 96, ComReg 18/90

⁶ Paragraph 127, ComReg 18/90

15. As noted by ComReg, the printing and distribution of eir's printed phonebook directory was outsourced by eir in June 2016 to FCR Media Ltd (FCR). FCR subsequently entered examinership.

Q. 3 Do you agree with ComReg's preliminary view to designate a USP and impose a USO to provide a printed directory of subscribers, upon request by an end-user? Please provide reasons to support your views.

16. eir does not agree with ComReg's preliminary view to designate a USP and impose a USO to provide a printed directory of subscribers, upon request by an end-user. However, in the event that ComReg decides to proceed with the designation, eir recognises that this approach would at least provide for slightly more efficient outcomes than the status quo by providing a regime whereby the number of users with a potential need for a printed directory could more accurately be identified. However it will likely be expensive to operate and therefore entirely inefficient.
17. ComReg notes that in the previous opt-out mechanism, the *"number of end-users who registered to stop the delivery (opt-out) of the printed directory has been low"*.⁷ eir considers that this is largely due to end-user inertia rather than reflective of true demand and would expect the numbers registering under an opt-in regime to be much lower.
18. With regard to the timelines, eir considers that those proposed will not allow sufficient time for implementation. Given that ComReg has indicated that a final decision will be published in December of this year, undertaking a communications campaign from January 2019 with an expected provision period of April-July 2019 is not feasible. The designated undertaking or ComReg, whichever has responsibility for procuring print and distribution suppliers will have to run a tender process to identify preferred supplier(s) and to then enter into a supply agreement with the preferred supplier(s). This process will naturally take some time to complete and it is unreasonable to expect any party to be in a position to meet the proposed deadlines in the first half of 2019. Therefore it is eir's firm view that the proposed deadlines for collecting opt-ins, printing and distributing printed directories be moved out by 6 months.

⁷ Paragraph 47, ComReg 18/90

Q. 4 Do you agree with ComReg’s preliminary view that, should a directory of subscribers service USO be required, a requirement on a USP to provide a printed phonebook directory, on request and free-of-charge (i.e. including all printing, packaging and distribution costs) to the end–user would likely be most appropriate to help ensure availability and affordability of directory services?

19. eir does not agree with ComReg’s preliminary view that, should a directory of subscribers service USO be required, a requirement on a USP to provide a printed phonebook directory, on request and free-of-charge (i.e. including all printing, packaging and distribution costs) to the end–user would likely be most appropriate. At the very minimum, the USP should be allowed to recover the cost of distribution.

20. In addition, it would appear from Annex 1 detailing the information notice for the communications campaign that ComReg intends to allow for the distribution cost to be recovered. The information notice states as follows;

You may opt to have a [free] copy of the [USP] printed phonebook directory delivered to your home address or place of work [for a charge to cover distribution and you may pay the distribution charge, via any of the following mechanisms

- o Bank Order/Draft and*
- o Debit Card; and*
- o Credit Card; and*
- o Postal Money Order*

[USP] will advise you of the distribution charge before you are bound by your request for the printed phonebook directory]

Q. 5 Do you agree that (a) USP(s) should have the flexibility to impose a distribution charge for the transit of a printed phonebook directory to the primary place of residence or business of an end-user upon request) or (b) that the distribution of a printed phonebook directory should be free of charge to end-users who request a printed phonebook directory? Please provide reasons to support your views.

21. In the event that ComReg decides to proceed with the imposition of a USO for printed directories, eir is of the view that the USP(s) should have the flexibility to impose a distribution charge for the transit of a printed phonebook directory to the primary place of residence or



business of an end-user upon request. This will help reduce the costs of the inefficient universal service obligation.

Q. 6 If a USP(s) has discretion to impose a distribution charge for the transit of a printed phonebook directory to the primary place of residence or business of an end-user upon request, should this be subject to the parameters identified above? What other factors may be appropriate to consider in this regard? Please provide reasons to support your views.

22. eir notes the proposed parameters.

Q. 7 Do you agree or disagree with ComReg's preliminary view that the next designation period should run until the end of 2020, unless or until reviewed by ComReg? Please provide reasons to support your view.

23. In the first instance, eir does not agree that there should be any designation. However, where ComReg decides to proceed with the designation, eir considers that ComReg should, in the interest of fairness, commit to an interim review in 2019, when the level of actual demand for printed directories becomes apparent.

Q. 8 What do you consider amongst other things (e.g. level of end-user demand, distribution costs etc.) should be taken into consideration in any ComReg interim review?

24. eir considers that ComReg should also take the following into consideration in an interim review;

- The printing and packaging costs involved in fulfilling the obligation
- The proportionality of the obligations in light of the overall costs and the level of demand identified by the opt-in mechanism

Q. 9 Do you agree or disagree with ComReg's preliminary view that for the proposed next designation period, the required universal services should be designated for the entire State? Please provide reasons to support your view.

25. It is not possible to reach an informed view on the geographic scope of the designation without having further information about the actual level of demand for printed directories in each of the subscriber areas.

Q. 10 Do you agree or disagree with ComReg's proposal that where the legislative matter has not been addressed or where no expressions of interest are received, eir should continue to be the universal service provider for the on request printed directory of subscribers during the next designation period? Please provide reasons to support your view.

26. The definition of “operator” in the ePrivacy Regulations has no bearing on this consultation which exclusively relates to printed directories. Even if there were a “legislative matter” to be addressed as stated by ComReg (and, for the avoidance of doubt, eir is not acknowledging that there is such a legislative matter), eir does not agree that this is relevant to the decision as to the designation of an undertaking for the printed directory USO.
27. It is a clear requirement under EU law that *“When Member States designate undertakings in part or all of the national territory as having universal service obligations, they shall do so using an efficient, objective, transparent and non-discriminatory designation mechanism, whereby no undertaking is a priori excluded from being designated.”*⁸ [Emphasis added]
28. Therefore, in eir’s view, it would be unlawful to designate eir as the USP for printed directories at the exclusion of the consideration of others. eir does not consider that there is any impediment to other entities being designated as directory services USP. Even if one accepted (which we do not) that ComReg must blindly follow text in the Privacy Regulations, it is clear that ComReg has misunderstood the matter. The issue is that the definition of the NDD ‘operator’ is linked to the printed directory USP. However, we already have a situation where there is no designated printed directory USP and there is a designated manager of the NDD. It is inappropriate therefore for ComReg to infer that there is a legislative matter that is in any way relevant to the selection of an undertaking to be the printed directory USP. We also note that ComReg is consulting separately on proposals to designate PortingXS as the NDD manager so it is clear that ComReg itself does not consider that there is any material legislative matter.
29. ComReg’s proposed designation process that eir will be the de facto USP unless another entity expresses an interest in fulfilling the USO associated with directory services is not fair or non-discriminatory. The proposed mechanism is fundamentally flawed because it does not provide any indication to interested parties as to how they would be compensated in the event that a positive net cost is incurred by the USP for the provision of directory services. As noted already, eir has no unique skills regarding the printing and distribution of printed directories and as such there is no justification for ComReg to seek to impose the designation on eir. If, following

⁸ Article 8(2), USD 2009

consideration of responses to this consultation ComReg remains of the view that there is a need to designate an undertaking in respect of printed directories, ComReg must further consult on the designation mechanism ensuring that no undertaking is a priori excluded from being designated.

30. In this regard, ComReg's approach in respect of eir's application for universal service funding to date calls into serious question the ability of a USP to be compensated in the event that a net cost is incurred. Any rational entity is unlikely to express an interest in providing a loss making service without compensation.

Q. 11 Do you agree or disagree with ComReg's draft assessment of the impact of the proposed options? Please set out reasons for your answer.

31. eir does not agree with ComReg's draft assessment of the impact of the proposed options. The ultimate aim of a Regulatory Impact Assessment (RIA) should be to ensure that all measures are appropriate, proportionate and justified. As such it should include a detailed examination of costs, benefits and impacts on stakeholders as well as consideration of the use of alternatives to regulation.
32. The assessment completed is cursory in nature and does not fully quantify the perceived benefits associated with ComReg's proposals and whether these will outweigh the costs imposed on eir as well as on other end-users in the sense of diverted resources where such resources could be used to improve outcomes for all end-users.
33. The RIA is neither comprehensive nor thorough and merely represents a qualitative assessment. It does not sufficiently address relevant costs and benefits in a manner that identifies the potential burdens on business. The measure(s) chosen to address the issues identified should be the least intrusive means possible which places the minimum burden on business, so that the most effective remedy that best meets the objectives can be selected.