



Commission for
Communications Regulation

Consultation:

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 12/70

and should be sent by post, facsimile or e-mail to arrive on or before 30 July 2012, 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 Introduction

- 1 The National Directory Database (the "**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 information for telephone directories and directory enquiry services. In addition, following the entry into force of the European Communities (Electronic Communications Networks and Services) Data Protection and Privacy) Regulations 2011 ("**the Data and Privacy Regulations**"), the NDD continues to be the basis for the "opt-out" register for direct marketing purposes.¹
- 2 The Commission is now conducting a brief consultation to do with the maintenance and the management of the NDD from 1 July 2012. Eircom currently manages the NDD and the collation of information from all undertakings that assign telephone numbers to subscribers.

¹ 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.

2 Reasons for proposed direction

- 1 Historically, Eircom, in its capacity as the universal service provider (the “**USP**”), was obliged by law to maintain the NDD.² Since the coming into force of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011 (“**the Universal Service Regulations**”) a USP designated as such under the Universal Service Regulations, cannot be mandated to maintain the NDD merely by virtue of being the USP.³
- 2 However, the Commission now has the power to require an undertaking to maintain the NDD in accordance with Regulation 19 (4) of the Universal Service Regulations.
- 3 Given the various functions of the NDD, it is critical that it continues to be maintained in its current form.
- 4 In light of the above, the Commission is now conducting a brief consultation to do with the maintenance and the management of the NDD from 1 July 2012. Eircom currently manages the NDD and the collation of information from all undertakings that assign telephone numbers to subscribers.
- 5 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, by virtue of its being the USP in the State. Eircom also provides directory information held in the NDD to other directory enquiry service providers under a Directory Information Licence Agreement.
- 6 Furthermore, following the entry into force of the Data Protection and Privacy Regulations, the NDD continues to be the basis for the “opt-out” register for direct marketing purposes. The “opt-out” register is the means by which subscribers express their preference not to be contacted by telephone by direct marketing companies (by “opting out”). In addition, Eircom provides this information in a CD format to the direct marketing industry under the Direct Marketing Licence Agreement.

² Because of a provision in the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2003.

³ However, the current USP, Eircom, was designated as such pursuant to the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2003. Accordingly, Eircom remains legally obliged to maintain the NDD in its capacity as the USP, until such time as its designation under the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2003 lapses, i.e. on 31 June 2012. The Commission has the power to require an undertaking to maintain the NDD after 31 June 2012, pursuant to the Universal Service Regulations.

- 7 Eircom has successfully managed the NDD to date. 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, the Commission believes that Eircom is currently best placed to continue to maintain and manage the NDD on the same basis as it currently does.
- 8 The Commission also consulted on who should be the universal service provider in the State from 1 July 2012. Some respondents to that consultation suggested that a tendering procedure should be conducted in relation to the appointment of an undertaking to operate the Directory services and the NDD. However, the Commission is of the view that it is not practical, at this time, to issue a tender for the maintenance of the NDD.
- 9 Should the Commission not direct an undertaking to maintain and operate the NDD, it would create legal and commercial uncertainty for stakeholders⁴ and may jeopardise other obligations on undertakings and other entities in relation to the NDD and also affect the rights of consumers.
- 10 The likely impacts of specifying or not specifying Eircom to be the undertaking to maintain the NDD are considered further in section 3 of this consultation.
- 11 In view of the above factors, it is the Commission's proposal to direct Eircom to continue to manage and maintain the NDD until 30 June 2014, under Regulation 19 and Regulation 30 of the Universal Service Regulations.

Q. 1 Do you agree/disagree that Eircom should be required, pursuant to the Universal Service Regulations, to continue to manage and maintain the NDD until 30 June 2014?

Please provide detailed reasons and supporting evidence for your view.

⁴ Including: undertakings, subscribers, directory enquiry service providers, direct marketing companies, and the Office of Data Protection Commissioner.

3 Draft Regulatory Impact Assessment (“RIA”)

3.1 Role of the RIA

- 12 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.
- 13 The Commission’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, the Commission takes account of the RIA Guidelines,⁵ adopted under the Government’s *Better Regulation* programme.
- 14 Section 13 (1) of the Communications Regulation Act 2002, as amended, requires the Commission to comply with certain Ministerial Policy Directions. Policy Direction 6 of February 2003 requires that before deciding to impose regulatory obligations on undertakings the Commission 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, the Commission 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.
- 15 In conducting RIA, the Commission takes into account the six principles of *Better Regulation*. These are:
1. Necessity.
 2. Effectiveness.
 3. Proportionality.
 4. Transparency.

⁵See: http://www.taoiseach.gov.ie/eng/Publications/Publications_2011/Revised_RIA_Guidelines_June_2009.pdf

5. Accountability.
 6. Consistency.
- 16 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, the Commission 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.

3.2 Policy Issues

Purpose of the NDD

- 17 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.
- 18 Eircom as the USP in the State⁶ 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 technical specifications and protocols in relation to the arrangements are overseen by the Commission. The relevant subscriber data is obtained and recorded by Eircom in the NDD, without charge to undertakings⁷ 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.
- 19 The Data and 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*."

⁶ The Commission has commenced a consultation process in relation to the USP(s) from 1 July 2012.

⁷ Commission Document No. 07/20.

20 Therefore, the Universal Service Regulations and the Data and Privacy Regulations require the NDD to be in place.

21 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 them with this information from a central and convenient source.

Issue

22 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.

23 However, the Commission 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.

24 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.

25 Given the various functions of the NDD, it is critical that it continues to be maintained in its current form.

3.3 Policy Options

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

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

28 **Option 2:** Specify an undertaking to maintain the NDD.

Assessment of Options

Option 1

29 The Commission has considered the impact if it were to forebear from specifying an undertaking to maintain the NDD.

- 30 If the Commission does not direct an undertaking to maintain and operate the NDD, it would create legal uncertainty for stakeholders and may jeopardise other obligations on and rights of undertakings and other entities in relation to the NDD and in turn, affect the rights of consumers.

Consumers

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

Industry

- 32 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

- 33 The Commission considers that 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 having 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

- 34 The Commission has considered the impact of requiring an undertaking to maintain the NDD.
- 35 The Commission is of the preliminary view that this is the most appropriate, justified, and appropriate option at this time, as it is the only way to ensure that the related rights and obligations can be guaranteed.
- 36 In addition, the Commission has considered which undertaking it should specify and it is of the preliminary view that to specify Eircom as the undertaking to maintain the NDD, is the most appropriate, justified, and proportionate option at this time.

- 37 If the NDD is maintained in its current form by Eircom it will mean that there is no change to the *status quo*.

Consumers

- 38 The Commission 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 the Commission 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, the Commission is of the preliminary view that Eircom should continue to maintain the NDD.

Industry

- 39 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.
- 40 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.
- 41 Requiring Eircom to maintain the NDD would preserve the *status quo* and continuity and clearly have a positive impact on the industry.
- 42 The Commission believes that the administrative burden on all undertakings to ensure their consumer data is accurately recorded, would be costly and time consuming. As the NDD is already operational and as undertakings have access to the NDD to update their subscriber data, the Commission considers that the current systems for managing this data should be maintained to ensure regulatory certainty and continuity for undertakings and consumers. As Eircom currently manages the NDD for industry, the Commission considers that Eircom is best placed to continue to maintain the NDD.

The Commission understands that the costs to Eircom of maintaining the NDD are covered by the licence fees (Directory Information Licence Agreement/Direct Marketing Licence Agreement).⁸ However, if the NDD was to be maintained by *another* undertaking, there would clearly be costs to Eircom and all other undertakings to put in place new systems to maintain the NDD and to integrate/interact with the NDD to ensure their customers' preferences are up-to-date and accurately recorded by another undertaking.

Competition

- 43 The Commission is not aware of any competition issues arising by specifying Eircom to continue to manage the NDD. In addition, the Commission has observed from responses by industry to previous consultations by the Commission, that the majority of telecoms service providers were supportive of the NDD and its functions and the continued maintenance and operation of the NDD by Eircom.
- 44 In light of the above, the Commission is of the preliminary view that it is appropriate, justified and proportionate that the Commission specifies Eircom be the undertaking required to maintain the NDD.

⁸ Commission Document No. 10/46.

4 Submitting Comments

- 1 The consultation period will run from 29 June 2012 to 30 July 2012. Responses must be submitted in written form. If responses are submitted electronically, they must also be unprotected so as to facilitate online publication.
- 2 It is sometimes necessary for respondents to provide confidential information in their submissions. Confidential information must be clearly identified as such. The Commission will publish all of the responses it receives to this consultation, subject to its guidelines on the treatment of confidential information.⁹

⁹ ComReg document No. 05/24

5 Draft Direction

1 Definitions

In this direction:

“Act of 2002” means the Communications Regulation Act 2002;

“Commission” means the Commission for Communications Regulation;

“Eircom” means Eircom Limited;

“NDD” means the national directory database, being the 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; and

“Regulations” means the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011.

2 Statutory Basis for Direction

1. This direction is issued to Eircom by the Commission under Regulation 19 (4) and Regulation 30 of the Regulations and section 10 (1) (a) of the Act of 2002 and having regard to section 12 of the Act of 2002.

3 Direction

1. Eircom shall maintain the NDD until 30 June 2014.
2. Eircom shall meet all reasonable requests for access to any information contained in the NDD in an agreed format.
3. The terms of access to the NDD shall be fair, objective, and cost orientated and non-discriminatory.
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 the Commission.

4 Statutory Powers Not Affected

1. Nothing in this direction shall operate to limit the Commission 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.

5 Maintenance of Obligations

1. 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.

6 Effective Date

1. This direction shall be effective from the date of its publication.
2. This direction shall remain in force from the effective date until 30 June 2014.