



Commission for  
**Communications Regulation**

# **Management and Maintenance of the National Directory Database**

## **Response to Consultation and Decision**

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D06/14

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# 1. Executive Summary

- 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.<sup>1</sup> Eircom currently manages the NDD and the collation of information from all undertakings that assign telephone numbers to subscribers.
- 2 As this requirement on Eircom expires at the end of June 2014, ComReg conducted a consultation in respect of the need for the ongoing maintenance and management of the NDD<sup>2</sup>. This consultation sought the views from interested parties in relation to a number of proposals made by ComReg regarding requiring an Undertaking to manage the NDD from 1 July 2014.
- 3 ComReg received five responses to the consultation, the respondents were:
  - Alternative Operators in the Communications Market ("ALTO")
  - BT Communications Ireland Ltd. ("BT")
  - Conduit
  - Eircom Group ("Eircom")
  - UPC Communications Ireland Limited ("UPC")
- 4 Following consideration of these responses, ComReg has decided that if it does not direct an undertaking to maintain and operate the NDD under Regulation 19(4) of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011 ("the Universal Service Regulations"), this would create legal and commercial uncertainty for stakeholders<sup>3</sup> and may jeopardise other obligations on undertakings and other entities in relation to the NDD and, in addition, it could also affect the rights of consumers.

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<sup>1</sup> 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.

<sup>2</sup> ComReg document 14/36

<sup>3</sup> Including: undertakings, subscribers, directory enquiry service providers, direct marketing companies, and the Office of Data Protection Commissioner.

- 5 As such, ComReg has decided that an undertaking should be required to continue to maintain the NDD.
- 6 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. Therefore, in light of BT's submission and as the legislative matter, regarding the definition of 'operator' in the Data and Privacy Regulations, has yet to be resolved, ComReg has 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.
- 7 The direction of 12 months will allow BT to provide further detail, if it so wishes, and for ComReg to assess whether or not Eircom or BT should be required to manage the NDD going forward, from 1 July 2015.

## 2. Background

- 8 The NDD lists over 2 million numbers of which over 1 million are opted out of receiving direct marketing calls.<sup>4</sup>
- 9 The NDD also holds details of consumer preferences for listing their telephone numbers. These are:
  - a. Listed: Details (name, address, telephone number) are listed in the telephone directory and with Directory Enquiries
  - b. Unlisted : Listed with Directory Enquiries only, i.e. not in the phonebook
  - c. Ex-Directory: Details not listed the phone book or with Directory Enquiries.
- 10 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. These undertakings provide up to date information to the NDD on a regular basis.
- 11 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.
- 12 Given the various functions of the NDD, ComReg is of the view that it is critical that it continues to be maintained. In this regard, ComReg now has the power to require an undertaking to maintain the NDD in accordance with Regulation 19(4) of the Universal Service Regulations.

### 2.1 Eircom's Obligations

- 13 Eircom is currently obliged by law to maintain the NDD<sup>5</sup>. Since the coming into force of the Universal Service Regulations a USP designated, with respect to Regulation 4 of the Universal Service Regulations, is not automatically mandated to maintain the NDD, merely by virtue of being the USP.<sup>6</sup>

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<sup>4</sup> 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.

<sup>5</sup> Because of a provision in the European Communities (Electronic Communications Networks and Services (Universal Service and Users' Rights) Regulations 2003.

<sup>6</sup> However, Eircom was designated as such pursuant to the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2003 and accordingly, Eircom remained 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 lapsed, i.e. on 30 June 2012.

- 14 Eircom provides directory information held in the NDD to other directory enquiry service providers.
- 15 Furthermore, following the entry into force of the Data and Privacy Regulations, the NDD continues to be the basis for the “opt-out” register for direct marketing purposes and all undertakings that assign telephone numbers to subscribers are required to provide this required information to Eircom. 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.
- 16 In this context, 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.
- 17 As set out in the Consultation, the number of DILA licences has remained at five since 2011, whereas the number DMLA licences has varied in the last number of years, numbering 41 in 2013. (See Table 1).

<b>Number of Licensees</b>		
<b>Year</b>	<b>DMLA</b>	<b>DILA</b>
<b>2011</b>	44	5
<b>2012</b>	39	5
<b>2013</b>	41	5

**Table 1: Number of Licences**

- 18 Tables 2 and 3 below detail the current prices that Eircom charges under these agreements to access the information contained in the NDD.

<b>DMLA Pricing</b>			
<b>Multi-use licence fee</b>	<b>Detail</b>	<b>€ (ex VAT)</b>	<b>Frequency</b>
Biweekly updates	26CDs	1,640	Per Annum
Four-weekly updates	13 CDs	1,540	Per Annum
<b>Single-use licence fee</b>	<b>Detail</b>	<b>€ (ex VAT)</b>	
Biweekly updates	26CDs	730	Per Annum
Four-weekly updates	13 CDs	630	Per Annum
Price per update CD	Beyond licensed volume	42.5	Per CD

**Table 2: Pricing for Direct Marketing Licences**

<b>DILA Pricing</b>	
Directory Enquiry Services	€ ( ex VAT)
Minimum fee per annum	14,200
Flat charge for nightly update per annum	11,000

**Table 3: Pricing for Directory Enquiries**

- 19 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.
- 20 In addition, Eircom recently commenced an NDD IT infrastructure and upgrade project. The database, operating system and hardware that support the NDD had reached the point where in order to guarantee support of the database, even until end June 2014, it was deemed necessary to upgrade this infrastructure. Eircom has advised that the cost of the project in financial terms will be approximately €140,000.

## 2.2 Legislative matters

- 21 The definition of “operator” in the Data and Privacy Regulations is currently aligned with the entity designated in respect of USO directory services but not the entity directed to maintain the NDD.
- 22 ComReg considers that the functions of the “operator” in the Data and Privacy Regulations to be dependent on the maintenance of the NDD and *not* on the role of any USP that provides a subscriber directory and therefore the current definition of “operator” in the Data and Privacy Regulations will require amendment.
- 23 ComReg is in consultation with the Department of Communications, Energy and Natural Resources on this matter and understands that it can be resolved in a timely manner.



## 3. Respondents views and ComReg's position

### 3.1 Directing an undertaking to maintain the NDD

24 The Commission's consultation 14/36 asked the following question:

Q. 1 Do you agree that an undertaking should be required, pursuant to Regulations 19 and 30 of the Regulations, to continue to manage and maintain the NDD? Please provide detailed reasons and supporting evidence for your view.

### 3.2 Respondents' Views

25 All five respondents agreed that an undertaking should be required to manage and maintain the NDD.

26 ALTO agreed that an undertaking should be required, pursuant to Regulations 19 and 30 of the Regulations, to continue to manage and maintain the NDD.

27 BT noted that it agreed that an undertaking should be required, pursuant to Regulations 19 and 30 of the Regulations, to manage and maintain the NDD. BT also considers that a central store of numbers is preferred to support the requirement for an opt-out register.

28 Conduit noted that the most significant practical issue of not directing an undertaking would be the time and effort required by any undertaking having to approach every other undertaking which assigns telephone numbers in order to obtain directory data from them. It is of the view that it should not be assumed that this would be an easy and straightforward process, particularly because of the need to agree the "*format on terms that are fair, objective, cost oriented and non-discriminatory*". Such a process is likely to require a significant degree of bilateral negotiation, which, at best, will take a significant amount of time and, at worst, may require regulatory intervention to resolve, if terms cannot otherwise be mutually agreed.

29 Conduit also noted that the issue of legal certainty is also potentially important. For example, if ComReg did not direct an undertaking to maintain and operate the NDD under Regulation 19(4), it is not clear to Conduit what would be the status of the remaining provisions of Regulation 19. Conduit assumes that undertakings which assign telephone numbers would still be required to make that information available, but there would be no equivalent NDD which would collate all of that data. As such, there would either be a series of databases or, more likely, no single database, which acted as a central repository of that data.

- 30 Eircom advised that it considers that there are efficiency benefits for all industry players if there is a centralised database for the management of directory numbers. Eircom also observed that the maintenance of the NDD by way of a direction on an undertaking provides legal and regulatory certainty in terms of how the NDD is to be managed and the setting of licence fees.
- 31 Eircom stated that it is in the process of refreshing the NDD operating software and hardware. This upgrade will replicate the existing NDD processes and outputs, for example the primary format to provide information to DMLA licensees will continue to be via CD. Eircom stated that it may be appropriate within the current consultation process for ComReg to consider, with stakeholders, whether a broader review of the scope and operation of the NDD is required.
- 32 UPC also agreed that an undertaking should be required, pursuant to Regulation 19 and 30 of the Regulations, to continue to manage and maintain the NDD. It was of the view that in addition to the use of the NDD by directory enquiry service providers and the direct marketing industry, the NDD is used for collation of the printed telephone directory. Maintaining the NDD obligation is sensible where ComReg intend to maintain a telephone directory USO obligation.

### 3.3 ComReg's Position

- 33 Having considered the views of respondents, it is ComReg's final view that an undertaking should be directed to manage and maintain the NDD.
- 34 If ComReg did not direct an undertaking to manage and maintain the NDD it would create legal uncertainty for stakeholders.<sup>7</sup>
- 35 This would create a situation where record of subscriber numbers would not be secure and may, for example, be open to exploitation; subscribers would not be able to reliably access a directory enquiry service and may receive unwanted contacts from direct marketing companies as the subscriber's wishes would not be recorded.
- 36 ComReg has, therefore, decided to direct an undertaking to manage and maintain the NDD.

### 3.4 The period of the Requirement

- 37 ComReg's second consultation question had several parts regarding the duration of any future Requirement; they were as follows:

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<sup>7</sup> Including: undertakings, subscribers, directory enquiry service providers, direct marketing companies, and the Office of Data Protection Commissioner.

- Q.2 Do you agree that if no expressions of interest are received, Eircom should be required, pursuant to Regulations 19 and 30 of the Regulations, to continue to manage and maintain the NDD for a period of 4 years? Please provide detailed reasons and supporting evidence for your view.
- 2.a. Please advise at this time if you, as an undertaking, wish to express an interest in management and maintenance of the NDD, in accordance with Regulation 19, in the future? Please provide outline details of your capability and proposals.
- 2.b. Do you agree that if expressions of interest are received that Eircom should be required, pursuant to Regulations 19 and 30 of the Regulations, to continue to manage and maintain the NDD for a period of 6 months to 1 year to allow time for consideration of the expressions of interest and to address the legislative matter? Please provide detailed reasons and supporting evidence for your view.

### 3.5 Respondents' Views

- 38 Conduit considers that directing Eircom for a 4 year period would provide regulatory certainty for undertakings. UPC agreed that Eircom is currently best placed to manage and maintain the NDD.
- 39 ALTO does not agree with a 4 year direction, but rather a rolling 12-18 month direction.
- 40 Eircom did not comment directly on either part of these questions, but noted that it was concerned that the process proposed to determine which undertaking should bear the regulatory burden was unfair. Eircom considers that it should not have to bear the burden as a result of having borne it in the past. However, Eircom noted that it had no objection to continuing in the role in managing and maintaining the NDD as long as it is allowed to recover its reasonable costs.
- 41 BT objected to the direction of Eircom for 4 years as it claims that there is *"regulatory uncertainty as to how the service will be offered and priced"*.
- 42 Further, in its submission BT signalled that it is interested in exploring the viability of operating the NDD facility. BT commented that it currently operates an internal NDD which is mirrored on the facility provided by Eircom.
- 43 In the context of other possible providers, ALTO noted Portco Limited and its role in providing the numbering and portability database.

### 3.6 ComReg's Position

- 44 ComReg notes BT's indication that it would be interested in exploring providing the NDD, however, while noting BT's comments regarding quality and price controls, BT has not provided sufficient details of its capability and proposals in relation to its ability to potentially manage and maintain the NDD.
- 45 This meant that BT's submission was not detailed enough so as to allow ComReg to evaluate the viability and appropriateness of BT's proposal.
- 46 BT is the only respondent other than Eircom to have indicated an interest in taking on the role of maintaining and managing the NDD.
- 47 Therefore, in light of BT's submission ComReg is of the view that it may not be appropriate, at this time, to direct Eircom with the obligation of maintaining and managing the NDD for a further 4 years.
- 48 ComReg has decided that Eircom should be directed to maintain and manage the NDD for one year in order to allow BT to make a further submission, if it so wishes, and to include the necessary details so as to allow ComReg to assess its BT's proposal's viability and appropriateness.
- 49 This time will also accommodate a transition period should there be any changes in respect of the NDD or if BT were to be directed to provide the NDD following the initial 1 year period. Finally, this period will also enable the legislative anomaly to be addressed.
- 50 ComReg also notes that Portco Limited does not have any current role in relation to numbering and portability databases.

## 4. Final Regulatory Impact Assessment (“RIA”)

### 4.1 Role of the RIA

- 51 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.
- 52 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,<sup>8</sup> adopted under the Government’s *Better Regulation* programme.
- 53 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.
- 54 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.
  6. Consistency.

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<sup>8</sup>See: [http://www.taoiseach.gov.ie/eng/Publications/Publications\\_2011/Revised\\_RIA\\_Guidelines\\_June\\_2009.pdf](http://www.taoiseach.gov.ie/eng/Publications/Publications_2011/Revised_RIA_Guidelines_June_2009.pdf)

- 55 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

### 4.2.1 Purpose of the NDD

- 56 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.
- 57 Eircom receives, stores and maintains relevant subscriber data electronically. The technical specifications and protocols in relation to the arrangements are overseen by ComReg. The relevant subscriber data is obtained and recorded by Eircom in the NDD, without charge to undertakings<sup>9</sup> 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.
- 58 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*."
- 59 Therefore, the Universal Service Regulations and the Data and Privacy Regulations require the NDD to be in place and the Universal Service Regulations give ComReg the discretion to require an undertaking to manage the NDD.

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<sup>9</sup> ComReg Document No. 07/20.

60 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.

#### 4.2.2 Issue

61 Since the coming into force of the Universal Service Regulations in 2011, a USP designated as such thereunder, is not automatically mandated to maintain the NDD merely by virtue of being the USP.

62 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.

63 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 and Data Privacy Regulations, in respect of directories/directory enquiries and unsolicited direct marketing.

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

### 4.3 Policy Options

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

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

**Option 2:** Specify Eircom for a short period i.e. 1 year to allow ComReg to consider BT's indication of interest to maintain the NDD, to allow for the legislative matter to be addressed and provide for a transition period to a new undertaking, as relevant.

### 4.4 Assessment of Options

#### 4.4.1 Option 1

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

- 67 If ComReg 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**

- 68 ComReg 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 ComReg's view, this scenario must be avoided.

### **Industry**

- 69 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**

- 70 ComReg 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 and it would also mean that Eircom would have exclusive access and would be able to unilaterally set terms and conditions for 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.

#### **4.4.2 Option 2**

- 71 ComReg received an indication of an interest from BT in managing and maintaining the NDD in the future. However the submission received from BT did not include sufficient details that ComReg would require to evaluate it.
- 72 ComReg has considered the impact of requiring Eircom to maintain the NDD in the context that BT has indicated interest in managing and maintaining the NDD in the future.



- 73 ComReg is of the view that Eircom has successfully managed the NDD to date and also notes that Eircom has not objected to continuing to maintain the NDD so long as it can recover its associated costs. ComReg notes that access which is cost oriented is provided for in the Regulations and the terms and conditions for access must be approved by ComReg.
- 74 ComReg is of the view that in these circumstances to direct Eircom as the undertaking to maintain the NDD for a period of one year, is the most appropriate, justified, and proportionate option at this time.

## 5. Decision Instrument

### STATUTORY FUNCTIONS AND POWERS GIVING RISE TO 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 (“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 No. 14/36 and
- v. Having regard to the analysis and reasoning set out in ComReg document No. 14/67.

### 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 ad its successors and assigns ( “Eircom”) shall maintain the NDD for a period of 1 year.
- 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 1 July 2014.

5.2 This Decision shall remain in force from the effective date until for a period of 1 year.

KEVIN O'BRIEN

CHAIRPERSON

THE COMMISSION FOR COMMUNICATIONS REGULATION

THE 1 DAY OF JULY 2014