



An Coimisiún um  
**Rialáil Cumarsáide**  
Commission for  
**Communications Regulation**

# Management and Maintenance of the National Directory Database

## Consultation

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**An Coimisiún um Rialáil Cumarsáide**  
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## Additional Information

**All responses to this consultation should be clearly marked:**

**“Submission to ComReg 18/91”**

**and sent by post, facsimile, e-mail or online at [www.comreg.ie](http://www.comreg.ie) (current consultations) to arrive on, or before, 5pm on Monday 12 November 2018.**

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## Redacted Information

Please note that this Consultation document is a non-confidential version. Redacted text is highlighted by ☞.

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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 e-Privacy Regulations<sup>1</sup>, the NDD continues to be the basis for the operation of the "opt-out" register for direct marketing purposes.
- 2 ComReg has the power to direct an undertaking to manage and maintain the NDD under Regulations 19 and 30 of European Communities (Electronic Communications Networks and Services) Regulations 2011, ("**the Regulations**")<sup>2</sup>.
- 3 Information Notice 18/22<sup>3</sup> extended an invitation to all undertakings who are interested in managing and maintaining the NDD to express their interest in doing so.
- 4 ComReg received one expression of interest from PortingXS, a Dutch company which currently provides a fixed number portability ("FNP") solution in Ireland. PortingXS is an authorised undertaking in Ireland<sup>4</sup>. Subsequently, detailed information was provided to ComReg by PortingXS, such as its competence and expertise to manage and maintain the NDD, a project plan of how it will manage the migration from the existing NDD and a proposal for the management and maintenance of the NDD going forward.
- 5 Eir, who currently manages and maintains the NDD, did not put forward an expression of interest in continuing to offer the service.
- 6 Following a consultation process, in June 2018 ComReg directed Eir, as the existing undertaking directed to maintain and manage the NDD, to continue in that capacity for an additional 9 month period<sup>5</sup>. The direction for a period of 9 months was to allow:

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<sup>1</sup> European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (S.I. No. 336 of 2011), ("e-Privacy Regulations")

<sup>2</sup> European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011 (S.I. No. 337 of 2011).

<sup>3</sup> ComReg Document 18/22, "*National Directory Database ("NDD") Request for Expressions of Interest for Managing and Maintaining the NDD*", 22 March 2018.

<sup>4</sup> Porting XS are an "authorised undertaking" pursuant to Regulation 4 of the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011

<sup>5</sup> ComReg Document 18/56 and D07/18, "*Management and Maintenance of the National Directory Database*", 27 June 2018.

- ComReg to continue in its assessment as to whether the interested party or another undertaking should be required to manage the NDD, this should be completed by Q3 2018;
  - ComReg to consult and issue a response to consultation and decision in Q4 2018;
  - A further minimum period of three months to allow for a transition from the current manager of the NDD to the new manager should ComReg's assessment of the expression of interest result in another undertaking being directed to maintain and manage the NDD.<sup>6</sup>
- 7 ComReg has now completed its assessment of the information provided by PortingXS in order to determine the most appropriate undertaking to direct to maintain the NDD. The information assessed included:
- Aspects in relation to the company;
  - A project plan to migrate the existing data contained in the NDD to PortingXS;
  - A proposal to manage and maintain the NDD including but not limited to
    - its proposed approach to keeping a record of all subscribers of publicly available telephone services in the State and
    - its proposed approach to meeting all reasonable requests for access to any information contained in that record in an agreed format, on terms that are fair, objective, cost orientated and non-discriminatory, and
    - the terms and conditions as specified by the undertaking.
- 8 ComReg is now consulting on its preliminary view that PortingXS should be directed to manage and maintain the NDD from 1<sup>st</sup> April 2019 for a period of 3- 5 years.
- 9 ComReg looks forward to receiving responses from all stakeholders in relation to the proposals in this consultation. ComReg will review and fully take into account all of the responses it receives before coming to a final decision in respect of the management of the NDD from 1 April 2019.

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<sup>6</sup> The transition period will only be necessary if there is a new undertaking directed to manage and maintain the NDD. This transition period would be required to allow all undertakings who provide information to the NDD to implement any changes necessary.



## 2 Introduction

### 2.1 Purpose of the NDD

- 10 In accordance with Regulation 19(2) of the Regulations, undertakings that assign numbers to subscribers must supply the information to the NDD with the relevant subscriber details. These undertakings provide up-to date information to the NDD on a regular basis. Eir currently manages the NDD and therefore owns the assets and systems supporting the NDD.
- 11 The NDD lists just over 2 million (listed and unlisted) fixed numbers, of which over 1.5 million are opted out of receiving direct marketing calls. It also lists over 1.2 million mobile numbers (listed and unlisted), only a very small amount of which are opted in to direct marketing calls.<sup>7</sup>
- 12 In addition, the NDD also holds details of subscriber 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 in the phone book or with Directory Enquiries.
- 13 Furthermore, 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 direct marketing companies (by so “opting out”)<sup>8</sup>.
- 14 The information in the NDD may also be accessed for the collation of printed and online telephone directory(s) and for directory enquiry services in accordance with Regulation 19(4).

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<sup>7</sup> Mobile telephone numbers are automatically protected pursuant to certain provisions in the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 against unsolicited communications.

<sup>8</sup> Consumers can opt out of direct marketing by asking their telecoms service provider to place their number on the “do not call register.” Fixed line ex-directory numbers must be placed automatically on the “do not call register” by undertakings. Additionally Regulation 13 (6) of the e-Privacy Regulations automatically precludes unsolicited calls to mobile numbers and as such these numbers are already “opted out” by default.



## 2.2 Current Direction

- 15 There is a specific power for ComReg under Regulation 19(4) of the Regulations to require an undertaking to maintain the NDD. In accordance with Regulation 19(4), the undertaking maintaining the NDD must provide access to the information on terms that are fair, objective, cost oriented and non-discriminatory.
- 16 In accordance with Regulation 19(4), Eir currently provides directory information held in the NDD to directory enquiry service providers (“**SP’s**”) under a Directory Information Licence Agreement (“**DILA**”) for the purposes of access by directory enquiry SP’s. In addition, Eir provides information in a CD format to the direct marketing industry under the Direct Marketing Licence Agreement (“**DMLA**”).
- 17 Under the current direction (D07/18), Eir must *“meet all reasonable requests for access to any information contained in the NDD in an agreed format”*. The terms of access *“shall be fair, objective and cost orientated and non-discriminatory”, and “in accordance with such terms and conditions as may be specified by eir and approved by ComReg”*.
- 18 Eir was previously required to provide a printed telephone directory to subscribers, on an annual basis, by virtue of it being the designated Universal Service Provider (“**USP**”) for directories in the State. This designation expired in July 2018 and ComReg is currently consulting on the requirements in this regard.<sup>9</sup>
- 19 The total revenue derived from the operation of the NDD was €132k for 2017<sup>10</sup> and Eir operated the NDD at a small profit in 2017.
- 20 The number of DILA licences has remained at 4 since 2015, whereas the number DMLA licences has varied in the last number of years, numbering 32 in 2018. (See Table 1).

**Table 1: Number of Licences**

Number of Licensees		
Year	DMLA	DILA
<b>2015</b>	36	4
<b>2016</b>	30	4
<b>2017</b>	31	4
<b>2018</b>	32	4

- 21 The current prices charged by Eir under these agreements to access the information contained in the NDD are set out in section 3.2.6 below.

<sup>9</sup> ComReg Document 18/90, *“Provision of Directory of Subscribers Universal Service: Scope and designation”*, 10 October 2018.

<sup>10</sup> This includes payments from Eir’s 11811 directory enquiry service.

- 22 It is important to note that as this requirement is not a Universal Service Obligation there are no implications for Universal Service Funding.

## 2.3 Legal Basis

- 23 ComReg has the power to require an undertaking to maintain the NDD in accordance with Regulation 19 (4) of the Regulations.
- 24 Regulation 14 of the e-Privacy Regulations requires all undertakings to record a subscriber's telephone number in the NDD "do not call register" if the customer does not consent to unsolicited calls. The NDD is used as a direct marketing "opt-out" register, and is the mechanism used for collating the "do not call register" for the purpose of the e-Privacy Regulations.
- 25 While this is a discretionary power, if ComReg does not direct an undertaking to maintain and operate the NDD under Regulation 19(4), it would create legal and commercial uncertainty for stakeholders and may jeopardise other obligations on undertakings and other entities in relation to the NDD and also affect the rights of subscribers.
- 26 It is also important to recognise the legislative anomaly which ComReg has to be mindful of<sup>11</sup>. ComReg is currently in communication with the DCCAE and expect to have this anomaly resolved in due course.
- 27 Further details are set out in Annex 1.

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<sup>11</sup> The current definition of "operator" in the e-Privacy Regulations needs to be precisely aligned with the entity that is required to maintain the NDD under Regulation 19(4) of the Regulations. This requires the Department to correct the definition of the word "operator" in the e-Privacy Regulations, in order for any ComReg Direction to an "undertaking" to be the operator of the NDD in accordance with Regulation 19 to be precisely aligned with it.

## 3 Consultation Issues

### 3.1 Need for NDD

28 Under Regulation 19 of the Regulations, ComReg has discretion as to whether or not to require an undertaking to maintain the NDD. Therefore, as a starting point ComReg must consider whether there continues to be a need for the NDD.

29 The NDD is currently used for a number of purposes, for example:

- the information is used for the collation of the printed telephone directory and there are also multiple providers of online directories;
- directory enquiry service providers use the information to provide their service;
- the direct marketing industry use the information and it continues to be the basis for the “opt-out” register for direct marketing purposes.

30 Absent an NDD;

- a number of regulatory requirements could not be fulfilled by undertakings;
- subscribers might lose their legal entitlements and protections under the Regulations in respect of directories/directory enquiries;
- subscribers might lose their legal entitlements and protections under the e-Privacy Regulations and be subjected to unsolicited direct marketing.

#### 3.1.1 ComReg’s Preliminary View

31 Given the various functions of the NDD, it is critical that it continues to be maintained in its current form. As set out above, absent an NDD some regulatory requirements could not be fulfilled and subscribers might lose some of their legal entitlements.

32 If ComReg decides not to direct an undertaking to maintain and operate the NDD, it would create legal uncertainty for stakeholders.<sup>12</sup> For example, absent an NDD, direct marketing companies may not be able to access the information they require to determine who they may and may not contact under the e-privacy regulations.

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<sup>12</sup> Including: undertakings, subscribers, directory enquiry service providers, direct marketing companies, and the Office of Data Protection Commissioner.

- 33 It is ComReg's view that in the absence of a direction it is not guaranteed that Eir would continue to manage and maintain the NDD. In this respect ComReg notes that following the publication of Information Notice 18/22 which extended an invitation to all undertakings to express an interest in managing and maintaining the NDD, Eir did not respond with any expression of interest.
- 34 ComReg is of the preliminary view there will be continued demand to access to the information contained in the NDD over the coming years and have considered if users' rights will be delivered absent a direction. However, crucially, without a direction there are no alternative ways in which stakeholders can access this information. A stakeholder's right to access this information will be ensured by directing an undertaking.
- 35 In light of the above factors, ComReg's preliminary view is to direct an undertaking to manage and maintain the NDD under Regulation 19 and Regulation 30 of the Regulations after March 2019.

Q. 1 Do you agree that there is a need for a NDD?

Q. 2 Do you agree that ComReg should require an undertaking pursuant to Regulation 19 and 30 of the Regulations, to manage and maintain the NDD after March 2019? Please provide detailed reasons and supporting evidence for your view.

## 3.2 Relevant Undertaking

- 36 As noted above, Information Notice 18/22 extended an invitation to all undertakings who are interested in maintaining the NDD to express their interest in doing so. PortingXS was the only undertaking to express an interest.
- 37 ComReg has undertaken an assessment of the expression of interest received in order to determine if it is the most appropriate undertaking to direct to maintain the NDD. The assessment included aspects in relation to the company as well as its proposal to manage and maintain the NDD. This included but was not limited to its proposed approach to keeping a record of all subscribers of publicly available telephone services in the State and meeting all reasonable requests for access to any information contained in that record. The evaluation also considered whether access to such requests would be provided in an agreed format, on terms that are fair, objective, cost orientated and non-discriminatory. It also considered the terms and conditions as proposed by PortingXS and which may be approved by ComReg in accordance with other relevant legislation. ComReg's overview of PortingXS are set out in sub-sections 3.2.1 to 3.2.6.



- 38 ComReg has also considered which undertaking is best placed, going forward to manage and maintain the NDD in the future, as set out in section 3.2.7.

### 3.2.1 Experience

- 39 PortingXS is a Dutch number portability solutions supplier and service provider with active operations in over 20 countries. It also provides NDD services in the Netherlands and Belgium.
- 40 In the Netherlands, PortingXS provides over 20 parties with its solution for Directory Information Services. PortingXS has operated the Dutch solution since 2012. [REDACTED]
- 41 PortingXS also has experience in managing “Robinson Lists” i.e. lists of those who do not wish to receive marketing communications.
- 42 In January 2017, the Industry Oversight Committee on FNP in Ireland awarded the FNP database contract to PortingXS.
- 43 PortingXS, therefore, has experience in managing large databases. Its relevant experience includes; extensive number portability database management, together with NDD and directory services management.
- 44 Details of the team who will manage the project in the event it is directed to manage and maintain the NDD were provided by PortingXS to ComReg. This identified the dedicated project manager, as well as the key personnel who will assist the project manager in their role, together with their relevant experience.
- 45 Having considered all of the information provided, ComReg is satisfied that PortingXS has sufficient relevant experience to be a suitable candidate for consideration to manage and maintain the NDD.

### 3.2.2 Understanding and Approach

- 46 ComReg considered whether PortingXS demonstrated a comprehensive understanding of the requirements of the undertaking directed to manage and maintain the NDD.

- 47 ComReg is of the view PortingXS demonstrated a good understanding of the requirements of the NDD and of the objectives and tasks required for this project. PortingXS outlined the data to be included in the NDD including direct marketing preferences and how they propose Service Providers would update their data. In addition PortingXS outlined how information would be provided to Direct Marketing (“**DM**”) Companies and Directory Enquiry Service Providers. PortingXS demonstrated that it understands the need to ensure they accurately migrate all existing records onto the new NDD.
- 48 In addition PortingXS outlined its systems processes and planned security standards which together with periodic cyber security tests are designed to ensure the integrity of the data. Further details are set out in section 3.2.4 below.
- 49 Furthermore PortingXS demonstrated an appropriate understanding of GDPR<sup>13</sup> as well as the requirement to provide the Data Protection Commission (“**DPC**”) with information. PortingXS committed to providing reports to DPC and ComReg where necessary.
- 50 The proposal outlined the type of agreements which PortingXS would enter into with service providers. PortingXS noted that agreements with service providers and directory inquiry service providers (“**DISP**”) would be based on those currently agreed between these parties and Eir.
- 51 PortingXS outlined that it would implement a solution which would require minimal changes to the processes currently used by undertakings in providing information to the NDD. Furthermore PortingXS indicated that any changes to how service providers currently interact with the NDD will be minimised.
- 52 PortingXS proposed that any necessary changes would result in more efficient maintenance of the NDD. PortingXS also expressed its desire to move away from CD’s which are currently in use in some instances.
- 53 In terms of direct marketing companies, who are currently provided with approximately 1-2 CD updates per month depending on their agreement with Eir, PortingXS propose to move this closer to real time updates. In order to ensure DM companies are regularly updating their databases, PortingXS will consider how best to ensure DMs obtain the most updated information. One proposed solution is a notification email which would inform DM companies of the need to update their data. However, ultimately it is the responsibility of the DM to ensure the data it is using is up to date.

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<sup>13</sup> General Data Protection Regulation



- 54 PortingXS's proposal stated that its quality process aims to ensure data in the NDD is of sufficient quality. In addition to setting out processes such as incident, change and capacity management, PortingXS set out service specifications in its proposal.
- 55 ComReg is of the preliminary view PortingXS demonstrated an in-depth knowledge and understanding of the NDD requirements. In addition, it is satisfied that the approach as set out by PortingXS will not require significant system or process changes by service providers or users of the data.

### 3.2.3 Service Level Agreements

- 56 PortingXS set out proposed Service Level Agreements ("**SLA**"). In terms of continuity, ComReg noted a commitment of no more than 2 outages in excess of 60 mins per month. SLAs will need to be agreed in the future should PortingXS be the undertaking directed by ComReg to manage and maintain the NDD. PortingXS states that it will guarantee the same levels as in place for the FNP solution.

### 3.2.4 Security

- 57 As set out above, PortingXS proposed that the NDD system will be protected via a Firewall and maintained to the latest security standards. These security standards are subject to cyber security penetration tests that will be executed periodically.
- 58 PortingXS states that access to the NDD system will only be possible via strict user management and all data is password protected and Service Provider interactions with the database will be restricted to accessing their own data only and they will not have any access to any data belonging to any other Service Provider.
- 59 PortingXS state that their systems are audited on a yearly basis. The security plan provided by PortingXS details the processes and mechanisms that are in place to ensure security.
- 60 ComReg is of the preliminary view that the standards which PortingXS have proposed appear adequate for an undertaking directed to manage and maintain the NDD, however ComReg will undertake a further review if PortingXS is directed to manage the NDD.

### 3.2.5 Timelines

- 61 In line with ComReg 18/56 which extended the current direction on Eir for a period of 9 months which includes a 3 month transition period, PortingXS set out an implementation plan in its proposal.

- 62 ComReg notes that it is likely that engagement will be required with service providers, DISP and DM companies. Although it is unlikely this will be resource intensive, ComReg is of the view that it should coordinate this to mitigate the risk of delay. ComReg will provide assistance in order to ensure industry engage with PortingXS in a timely and constructive fashion should PortingXS be directed to manage and maintain the NDD.
- 63 As per our previous NDD decision<sup>14</sup>, ComReg intends to issue a decision in Q4 of 2018.
- 64 ComReg notes that a three month transition timeline may be the minimum required and that current direction expires on 31st March. However, ComReg will endeavour to work with all stakeholders to ensure all timelines are met. In the event PortingXS are directed to manage and maintain the NDD and the transition has not fully complete by 31<sup>st</sup> March when the current direction elapses, ComReg will need to ensure that Eir continues to maintain the NDD until such time as the PortingXS system is fully functional.

### 3.2.6 Prices, Costs and Revenues

- 65 In accordance with Regulation 19(4), the undertaking maintaining the NDD must provide access to the information on terms that are cost oriented.
- 66 PortingXS set out its proposed prices together with the expected costs and revenues.

#### Costs

- 67 PortingXS provided a detailed breakdown of both the ongoing and set-up costs. While the expected set-up costs are [REDACTED] the annual ongoing costs are [REDACTED]%. ComReg notes that while the set up costs (incurred in the first year) are higher than average costs currently claimed by Eir; the costs in subsequent years are lower than Eir's current costs.<sup>15</sup>

#### Prices

- 68 The table below shows a comparison of the licencing pricing structure proposed by PortingXS versus those currently charged by Eir. The prices outlined are based on the assumption that the number of licences purchased are in line with currently volumes for both DMLA and DILA. In all instances, PortingXS has proposed licence charges below those currently charged by Eir.

#### Table 2: Prices

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<sup>14</sup> ComReg Document 18/56 and D07/18

<sup>15</sup> The total revenue derived from the operation of the NDD was €132k for 2017 and Eir operated the NDD at a small profit in 2017.

Prices by licence type		Eir	PortingXS	% Change
<b>DMLA</b>				
<b>Multi Use</b>				
Bi Weekly Update	26 CDs per year	1,640	1,200	-26.8%
Four weekly update	13 CDs per year	1,540	1,200	-22.1%
<b>Single Use</b>				
Bi Weekly Update	26 CDs per year	730	600	-17.8%
Four weekly update	13 CDs per year	630	600	-4.8%
Price per update CD	beyond licensed volume	42.5		
<b>Directory Enquiry Service</b>				
Minimum Fee Per Annum		14200	12750	-10.2%
Flat Charge for nightly update per annum		11000	10000	-9.1%

69 PortingXS indicated that licensees would pay once yearly for the service. In addition they noted that in the event of an increase or decrease in the number of licences which has an impact of more than [redacted] % on the yearly profit they retain the right to adjust prices for each contract.

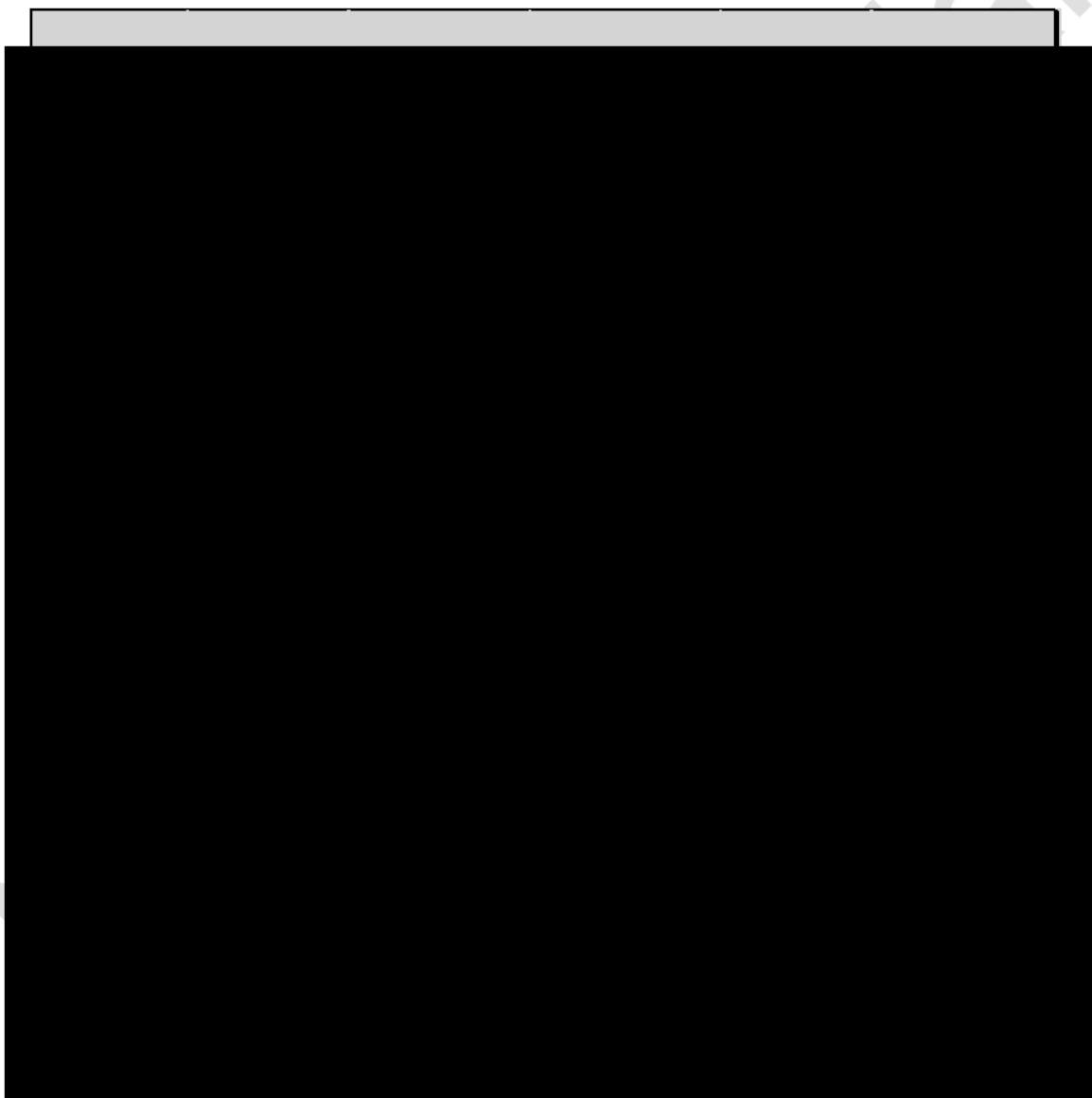
70 The following table summarises the PortingXS prices in the event of a change in the number of DILA users.

**Table 3: PortingXS Proposed Prices DILA [redacted]**

71 As can be seen from the above, if the number of DILA decrease, PortingXS intend to implement a price increase. The price increase will only serve to maintain its total revenue (and consequently profit). However in the event of an increase in the number of DILA, while it is proposed to decrease the prices for Licensees, PortingXS would also benefit from an increase in total revenue. ComReg notes the number of DILA has remained constant since 2014.

72 The following table outlines the PortingXS price changes following an increase/decrease in the number of multi-use or single use DMLA.

**Table 4: PortingXS Proposed Prices DMLA** [\[><\]](#)



73 As can be seen from the above, PortingXS do not intend to change the price unless there is an increase of 5 or more multi-use licences or an increase of 10 or more single use licences.



- 74 In line with the approach to a decrease in the number of DILA, while PortingXS will implement a price increase once this level of licence decreases is reached, the price increase will only serve to maintain the total revenue. However, in the event of an increase of 5 or more multi-use (10 or more single-use) DILA, while the prices proposed will decrease for licensees, PortingXS would also benefit from an increase in total revenue.
- 75 In this respect, ComReg notes the number of DILA has not changed significantly since 2015.
- 76 The proposed prices based on the current number of licences for both DMLA and DILA are lower than those currently charged by Eir. ComReg notes that there is a risk of a licence price increase should the number of licensees decrease. However, this risk would exist regardless of the undertaking directed to manage and maintain the NDD. Under current and previous NDD directions *“The terms of access to the NDD shall otherwise be in accordance with such terms and conditions as may be specified by eir and approved by ComReg in advance of the implementation of any such terms and conditions and such approval shall be obtained in writing”*.

### Revenues

- 77 In order to ensure that the proposal adhered to the cost-orientation requirement, PortingXS were also asked to provide detailed revenue forecasts for DMLA & DILA for each of the three years 2019-2021, and details of how this forecast revenue compared to the cost information already provided.
- 78 Revenues are attained from both DMLA and DILA fees. PortingXS have in all instances proposed fees which are lower than those currently charged by Eir, and have in determining their expected profit, assumed the number of licences in each category remains the same over the 3 year forecast period.
- 79 PortingXS have estimated a profit of [REDACTED] over the three year period based on current licence numbers.
- 80 ComReg is satisfied that the proposed prices are in accordance with Regulation 19(4).

### 3.2.7 ComReg’s Preliminary View

- 81 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, to date Eir has managed the NDD and has done so in an effective manner.

- 82 However, as set out above, Eir did not respond to ComReg's invitation to express an interest in managing and maintaining the NDD in the future. Furthermore, in its response to Consultation 18/45<sup>16</sup> Eir did not indicate that it was interested in continuing to manage and maintain the NDD. Absent a regulatory obligation to do so it is not guaranteed that Eir would continue to manage and maintain the NDD.
- 83 Having considered the Proposal as provided by PortingXS, together with additional information provided, and for the reasons set out in sections 3.2.1 to 3.2.6 above, ComReg is of the preliminary view that PortingXS should be required pursuant to Regulations 19 and 30 of the Regulations, to manage and maintain the NDD from 1 April 2019.
- 84 As set out above, PortingXS outlined that it would implement a solution which would require minimal changes to the processes currently used by service providers in providing information to the NDD. Furthermore PortingXS indicated that changes to how service providers, DMLA and DILA currently interact with the NDD will be minimised.
- 85 ComReg is therefore of the preliminary view that service providers who currently provide information to the NDD should not experience any significant additional costs resulting from a change in the NDD manager from Eir to PortingXS. ComReg expects that undertakings will liaise with PortingXS during the transition phase in order to ensure continuity of the NDD. This will require resourcing from the service providers however, ComReg does not anticipate that this would require more than 10 days. As Eir are the currently managers of the NDD it may require slightly more days resourcing during the transition phase.
- 86 ComReg is the preliminary view that DMLA and DILA holders who currently use the information in the NDD should also not experience any significant additional costs resulting from a change in the NDD manager from Eir to PortingXS. ComReg expects that licence holders would liaise with PortingXS during the transition phase in order to ensure continuity of access to the information contained in the NDD. This will require resourcing, however it is not expected that this will require more than 10 working days.

Q. 3 Do you agree that PortingXS as the sole undertaking who expressed an interest in managing and maintaining the NDD should be required, pursuant to Regulations 19 and 30 of the Regulations, to do so? Please provide detailed reasons and supporting evidence for your view.

<sup>16</sup> ComReg Document 18/45 "Management and Maintenance of the National Directory Database", 1 June 2018



Q. 4 Do you agree with ComReg's preliminary view that a change in the undertaking required to manage and maintain the NDD would have minimal impact on stakeholders? Please provide detailed reasons and supporting evidence for your view.

### 3.3 Relevant Time period

87 Historically, Eir, in its capacity as the universal service provider (the "USP"), was obliged by law to maintain the NDD. Since the coming into force of the Regulations a USP designated as such under the Regulations, cannot be mandated to maintain the NDD merely by virtue of being the USP. However, ComReg has the power to require an undertaking to maintain the NDD in accordance with Regulation 19 (4) of the Universal Service Regulations.

**Table 5: Previous Designations**

Period	Duration	Undertaking
October 2012-June 2014 <sup>17</sup>	20 months	Eir
July 2014- June 2015 <sup>18</sup>	1 year	Eir
July 2015- June 2018 <sup>19</sup>	3 years	Eir
July 2018-March 2019 <sup>20</sup>	9 months	Eir

88 A shorter period may be beneficial where a number of undertakings have expressed an interest in managing and maintaining the NDD or where the regulatory environment is uncertain. In this case neither of these issues arise.

89 However, where set-up costs are high, longer time periods are more cost-effective, as the costs can be recouped over a longer period.

<sup>17</sup> ComReg Document D10/12, "Response to Consultation – Management and Maintenance of the National Directory Database", 19 October 2012.

<sup>18</sup> In 2014 ComReg received an Expression of Interest from another undertaking, in order to allow time to fully assess this expression of interest, ComReg directed Eir to manage and maintain the NDD for a period of one year. (ComReg Document D06/14 "Management and Maintenance of the National Directory Database", 1 July 2014). The Expression of Interest was subsequently withdrawn

<sup>19</sup> ComReg Document D02/15 "Management and Maintenance of the National Directory Database", 18 May 2015

<sup>20</sup> ComReg Document D07/18 "Management and Maintenance of the National Directory Database", 27 June 2018

90 Furthermore, there are unlikely to be any changes in the near future to the current regulatory requirements in this regard and hence a longer direction period would give certainty to stakeholders. The coming into force of the new EECC<sup>21</sup> when transposed in Ireland in 2 years presents no difficulties in fixing the direction period for the management and maintenance of the NDD at the proposed 3-5 year period as the proposed final text for the new Directive does not set a time period. There is currently no other way in which this information can be accessed or provided to those who need it other than by a regulatory direction by ComReg. No other undertakings have expressed an interest in being directed.

91 Moreover a longer direction period would mean potentially less systems and process changes for stakeholders and therefore a more stable environment.

### 3.3.1 ComReg's Preliminary View

92 ComReg is of the view therefore that due to the set-up costs a longer direction period may be more beneficial.

93 A longer period should ensure the direction is met in a cost-effective manner and lead to certainty for stakeholders.

94 ComReg is of the view therefore that a period of 3-5 years is an appropriate and proportionate time period for which to direct an undertaking to manage and maintain the NDD.

Q. 5 In your view is 3-5 years the most appropriate time period for this direction? Please provide detailed reasons and supporting evidence for your view.

## 3.4 Existing Eir Licence Agreements

95 ComReg is aware that a change in the company directed to manage and maintain the NDD will impact those who currently have paid for licence agreements with Eir. ComReg is of the view that where agreements between Eir and licensees are due to expire between now and 31 March 2019, that if Eir bill these licensees in advance that Eir could consider charging the licensees a reduced (pro rata) fee.

96 Furthermore, ComReg is of the view that where agreements between Eir and licensees are due to expire post the move to a new NDD manager that Eir would reimburse any fees paid in advance by these licensees, for periods beyond the go live date, (i.e. on a pro rata basis).

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<sup>21</sup> European Electronic Communications Code

### 3.4.1 ComReg's Preliminary View

97 If ComReg direct PortingXS to manage and maintain the NDD, ComReg expects that Eir would reimburse licensees who have paid fees for periods beyond the go live date.

Q. 6 Do you agree that in the event PortingXS is directed to manage and maintain the NDD that Eir should reimburse licensees if fees have been paid for access to the information for periods beyond the go live date? Please provide detailed reasons and supporting evidence for your view.

Non-Confidential

## 4 Draft RIA

### 4.1 Role of the RIA

- 98 A RIA is an analysis of the likely effect of a proposed new regulation or regulatory change. Its purpose is to help identify regulatory options, and it 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.
- 99 ComReg's approach to RIA is set out in the Guidelines published in August 2007<sup>22</sup>. Furthermore, in conducting this RIA, ComReg takes account of the RIA Guidelines,<sup>23</sup> adopted under the Government's Better Regulation programme.
- 100 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 "Better Regulation" programme.
- 101 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.
- 102 ComReg's approach to the RIA follows five steps:
- (i) Step 1 Describe the policy issues and identify the objectives
  - (ii) Step 2 Identify and describe the regulatory options
  - (iii) Step 3 Determine the impacts on Stakeholders
  - (iv) Step 4 Determine the impacts on Competition
  - (v) Step 5 Assess the impacts and choose the best option

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<sup>22</sup> Commission Document No. 07/56 & 07/56a "Guidelines on ComReg's Approach to Regulatory Impact Assessment", 10 August 2007 (the "RIA Guidelines").

<sup>23</sup> See: <http://www.djei.ie/publications/ria/RIAGuidelines2009.pdf>



## 4.2 Describe the Policy Issues and identify the objectives

103 The 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.

104 The NDD is an important and convenient resource for directory enquiry service providers and direct marketing companies.

105 The NDD lists just over 2 million fixed numbers (including listed, unlisted) of which over 1.5 million are opted out of receiving direct marketing calls. It also lists over 1.2 million fixed numbers (listed and unlisted), only a very small amount of which are opted in to direct marketing calls.

106 The NDD also holds details of subscriber preferences for listing their telephone numbers. Furthermore, following the entry into force of the e-Privacy Regulations, the NDD continues to be the basis for the “opt-out” register for direct marketing purposes.

107 This information is used for the collation of the printed telephone directory. Eir is currently required to provide a printed telephone directory to subscribers, on an annual basis, by virtue of it being the USP for directories in the State<sup>24</sup>.

108 Eir also provides directory information held in the NDD to directory enquiry service providers under a Directory Information Licence Agreement (“DILA”) for the purposes of access by directory enquiry service providers. In addition, Eir provides information in a CD format to the direct marketing industry under the Direct Marketing Licence Agreement (“DMLA”).

## 4.3 Identify and describe the Regulatory Options

109 ComReg recognises that any regulatory measures should be kept to the minimum necessary whilst ensuring the needs of industry and consumers are met. ComReg now considers there are two regulatory options available to it. The options available are therefore as follows:

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

**Option 2:** Specify an undertaking to manage and maintain the NDD

**Option 2a:** Direct Eir for a period of 3-5 years.

**Option 2b:** Direct PortingXS for a period of 3-5 years.

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<sup>24</sup> Under Regulation 4(1) of the 2011 Regulations, this is currently under review.

### 4.4 Determine the impacts on Stakeholders and Competition

110 For the stakeholder analysis, there are 2 groups to consider: subscribers and industry.

	Impact on Industry	Impact on Consumers	Impact on Competition
<p><b>Option 1:</b></p> <p><b>ComReg do not direct any undertaking to manage and maintain the NDD.</b></p>	<p>This option would create significant 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.</p> <p>In addition, the undertaking that maintains the NDD must provide access to subscriber details 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 Regulations.</p> <p>Directory Inquiry service providers, may no longer have access to the source of information which their services are based upon, in this case they may potentially have to cease operation.</p> <p>Additionally, Eir would no longer incur the costs of managing and maintaining the service, but would also lose any potential revenue from it.</p> <p>Eir may decide to continue to manage and maintain the NDD.</p>	<p>If Eir does not continue to maintain the NDD consumers who do not wish to be contacted for Direct Marketing purpose may now be contacted as, there would be no way for them to register their preference. This would cause detriment to consumers.</p> <p>Directory enquiry service providers may cease operation or increase prices causing detriment to consumers.</p>	<p>Currently Eir is required, under Regulation 19(4) of the Regulations, to manage and maintain the NDD on a fair, objective, cost-oriented, and non-discriminatory basis. Absent a direction to do it, it could be more costly for directory enquiry service providers to access this information and consequently for consumers.</p>



<p><b>Option 2a</b></p> <p><b>Specify Eir to maintain the NDD for a 3-5 year period</b></p>	<p>If the NDD is maintained in its current form by Eir it will mean that there is no change to the status quo.</p> <p>Industry and DMLA/DILA licence holders will not need to obtain information from each telecoms service provider individually.</p> <p>There will be no changes to the processes currently used.</p> <p>It is more convenient and less costly for Directory Service Providers and undertakings to obtain the information from the one, centralised source that is the NDD.</p> <p>The costs to Eir of maintaining the NDD would continue to be covered by the licence fees (DILA/ DMLA).</p>	<p>Requiring an undertaking to maintain the NDD would avoid any risks in relation to the continuity of operation and the integrity of the data held and processed by the NDD.</p> <p>Also, if the NDD is maintained, consumers Direct Marketing preferences will continue to be recorded, as will their ability to access a Directory enquiry service.</p>	<p>Currently Eir is required, to manage and maintain the NDD on a fair, objective, cost-oriented, and non-discriminatory basis. This would ensure directory enquiry service providers have access to this information.</p>
<p><b>Option 2b</b></p> <p><b>Specify PortingXS to maintain the NDD for a 3-5 year period</b></p>	<p>Industry and DMLA/DILA licence holders will not need to obtain information from each telecoms service provider individually.</p> <p>It is more convenient and less costly for Directory Service Providers and undertakings to obtain the information from the one, centralised source that is the NDD.</p>	<p>Requiring an undertaking to maintain the NDD would avoid any risks in relation to the continuity of operation and the integrity of the data held and processed by the NDD.</p> <p>Also, if the NDD is maintained, consumers Direct Marketing preferences will continue to be recorded, as will their ability to access a Directory enquiry service.</p>	<p>PortingXS would be required, to manage and maintain the NDD on a fair, objective, cost-oriented, and non-discriminatory basis. This would ensure directory enquiry service providers have access to this information.</p>

	<p>As a new undertaking would be directed industry will need to divert resources to ensure their systems and process are compatible. However, there will be minimal changes to the processes currently used. Therefore service providers and users of the NDD information will not incur significant systems costs as a result of PortingXS being directed.</p> <p>ComReg expects that service providers will liaise with PortingXS during the transition phase in order to ensure continuity of the NDD. This will require resourcing from the service providers however it is expected that the number of days required would be no more than 10. As Eir are the currently managers of the NDD it may require slightly more days resourcing during the transition phase.</p> <p>PortingXS have proposed prices for both DMLA and DILA which are lower than those currently charged by Eir, therefore resulting in savings to DMLA and DILA holders.</p> <p>However, prices are subject to change depending on licence volumes. If volumes decrease licence fees may increase.</p> <p>The costs of maintaining the NDD would continue to be covered by the licence fees (DILA/ DMLA).</p>		
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## 4.5 Assess the impacts and choose the best option

- 111 ComReg has considered the options available to it in terms of managing and maintaining the NDD.
- 112 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.
- 113 Eir has not indicated that it is interested in managing and maintain the NDD, absent a regulatory obligation to do so it is not guaranteed that Eir would continue to manage and maintain the NDD.
- 114 Option 1 would cause detriment to consumers, in ComReg's view, this scenario must be avoided.
- 115 ComReg is of the view that in order to facilitate the associated consumer rights in respect of directory entries and opting out of direct marketing (the e-Privacy Regulations) is for ComReg to require an undertaking to maintain the NDD. Doing this would avoid any risks in relation to the continuity of operation and the integrity of the data held and processed by the NDD. Also, if the NDD is maintained, consumers Direct Marketing preferences will continue to be recorded, as will their ability to access a Directory Inquiry service.
- 116 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 for undertakings to obtain the information from the one centralised source that is the NDD.
- 117 In addition ComReg has to be mindful of legislative anomaly, ComReg is in communication with the DCCA and expect to have this anomaly resolved in due course,
- 118 As set out above, Eir did not respond to ComReg's invitation to express an interest in continuing to manage and maintain the NDD in the future.
- 119 Having considered the Proposal as provided by PortingXS, together with additional information provided, ComReg is of the preliminary view that PortingXS should be required pursuant to Regulations 19 and 30 of the Regulations, to manage and maintain the NDD from 1 April 2019.

120 ComReg is of the preliminary view that to direct PortingXS to manage and maintain the NDD for a 3-5 year period is the most appropriate and objectively justified option at this time, as it is the only way to ensure that the related rights and obligations can be guaranteed.

121 Requiring PortingXS to maintain the NDD would ensure users rights are preserved and have a positive impact on the industry.

122 ComReg is not aware of any competition issues arising by specifying PortingXS to manage the NDD.

Q. 7 Do you agree with ComReg's draft assessment of the impact of the proposed options? Please provide detailed reasons and supporting evidence for your view.

Non-Confidential

# 5 Draft 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 and is made:**

- i. Having regard to sections 10 and 12 of the Communications Regulation Act 2002, as amended (“the Act”);
- 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. 18/XX and further information provided to ComReg following request; and
- v. Having regard to the analysis and reasoning set out in ComReg document No. 18/XX.

## **2. Definitions**

**In this Decision Instrument, save where the context otherwise admits or requires:**

**“National Directory Database” (“NDD”)** means 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.

**“Operational Specification”** means the process for managing and maintaining the NDD as agreed with ComReg.

**“Terms of Access”** means the terms and conditions for the purpose of providing reasonable access to the NDD.

**“Transition Period”** means [X November 2018] to [31 March 2019] unless otherwise specified by ComReg.

## **3. Decision**

**3.1** From 1 April 2019, subject to Clause 3.2 and on expiry of the Transition Period, Porting Access B.V., “PortingXS” and its subsidiaries and any related companies, and any undertaking which it owns or controls or any undertaking which owns or controls PortingXS, its successors and assigns and including agents, contractors or sub-contractors of any of the latter shall manage and maintain the NDD in



accordance with the Operational Specification, for a period of [x] years. For the purposes of this Decision Instrument the terms “subsidiary” and “related company” shall have the meanings ascribed to them in the Companies Act 2014.

- 3.2** Prior to the commencement of the Transition Period, the Operational Specification shall be agreed with ComReg. The commencement of the Transition Period is conditional upon the Operational Specification being agreed by ComReg. The Transition Period may be extended by ComReg, if necessary.
- 3.3** For the purpose of Regulation 19(1) of the Regulations PortingXS shall enter into Service Level Agreements with relevant undertakings in accordance with Regulation 19(1) of the Regulations prior to the expiry of the Transition Period.
- 3.4** Upon request, PortingXS shall provide information to the Data Protection Commission and/or to ComReg, in the timeframe set out in the request, for the purposes of the carrying out their respective regulatory functions.
- 3.5** PortingXS shall meet all reasonable requests for access to any information contained in the NDD in a format agreed by ComReg if appropriate.
- 3.6** The Terms of Access to the NDD shall be fair, objective, cost orientated and non-discriminatory and in accordance with the laws of Ireland and subject to the Courts of Ireland.
- 3.7** Subject to Clause 3.6, the Terms of Access to the NDD shall be specified by PortingXS and approved by ComReg. ComReg’s approval shall be obtained in writing prior to the expiry of the Transition Period.
- 3.8** PortingXS shall publish on its website the Terms of Access and information on how to access the NDD.

#### **4. 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.

#### **5. 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.



## 6. Effective Date and Duration

**6.1** This Decision shall be effective from X November 2018 (the “Effective Date”).

**6.2** This Decision shall remain in force from the effective date for a period of [X] years.

THE COMMISSION FOR COMMUNICATIONS REGULATION

Q. 8 Do you agree with the terms of ComReg’s draft Decision Instrument? Please provide detailed reasons and supporting evidence for your view.

Non-Confidential

## 6 Submitting Comments

123 The consultation period will run from Monday 15 October 2018 to Monday 12 November 2018. Responses must be submitted in written form. If responses are submitted electronically, they must also be unprotected so as to facilitate online publication.

124 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.

Non-Confidential

## Annex 1: Legal Basis

Regulation 19(4) of the Universal Service Regulations<sup>25</sup> provide:

*Subject to Regulation 14 of the Privacy and Electronic Communications Regulations and for the purposes of this Regulation, an undertaking that may be required to do so by the Regulator shall 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 shall meet all reasonable requests for access to any information contained in that record in an agreed format, on terms that are fair, objective, cost orientated and non-discriminatory, and in accordance with such terms and conditions as may be specified by the undertaking and approved by the Regulator.*

Regulation 14 of the e-Privacy Regulations<sup>26</sup> provide:

National Directory Database

14. (1) An undertaking referred to in Regulation 19(1) or (2) of the Universal Service Regulations shall, for the purpose of Regulation 13(3)(b) or (5)(b), record or cause to be recorded in the National Directory Database the relevant information specified in paragraph (3) in respect of a line of any one of its subscribers who—

(a) is, upon the making of these Regulations, an ex-directory subscriber in respect of that line who, in the absence of any express instructions to the contrary, shall be taken not to consent to unsolicited calls for the purpose of direct marketing or to such calls by means of an automated calling machine or a facsimile machine, or (b) had, at any time after the establishment of that Database, made a request to the operator or notified the relevant undertaking that the subscriber does not consent to unsolicited calls for the purpose of direct marketing or to such calls by means of an automated calling machine or a facsimile machine to a line of that subscriber.

(2) An undertaking referred to in Regulation 19(1) or (2) of the Universal Service Regulations that has not already done so shall ensure that its subscribers are provided with information regarding their entitlements under Regulation 13(1), (3)(b) and (5)(b) and the possibilities referred to in paragraph (1).

(3) An undertaking referred to in Regulation 19(1) or (2) of the Universal Service Regulations shall, for the purpose of Regulation 13(3)(b) and (5)(b) and when so notified by any one of its subscribers, make available to the operator the following

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<sup>25</sup> European Communities (Electronic Communications Networks And Services) (Universal Service And Users' Rights) Regulations 2011- SI 337 of 2011

<sup>26</sup> European Communities (Electronic Communications Networks And Services) (Privacy And Electronic Communications) Regulations 2011- SI 336 of 2011

relevant information in respect of a line of that subscriber to be recorded in the entry in the National Directory Database in relation to that subscriber—

(a) the fact that the subscriber does not consent to unsolicited telephone calls for the purpose of direct marketing or to such calls by means of automated calling machines or facsimile machines, and

(b) if appropriate, the date on which a notification under Regulation 13(3)(b) and (5)(b) was received by the operator.

(4) (a) An undertaking, for the purpose of Regulation 13(3)(b) or (5)(b), shall, as soon as practicable after having been notified under paragraph (3) that a subscriber does not consent to unsolicited telephone calls for the purpose of direct marketing or to such calls by means of automated calling machines or facsimile machines, transmit particulars of such notification to the operator or other person who publishes a directory to whom the undertaking supplies relevant information relating to its subscribers for inclusion in that directory.

(b) When the operator or other person who publishes a directory receives particulars of a notification under paragraph (1), the notification shall be deemed, for the purpose of this Regulation, to have been made to the operator or that other person at the time the operator or that other person receives particulars of the notification.

(5) The operator shall record the relevant information referred to in paragraph (3) in respect of a line of a subscriber in the entry in the National Directory Database in relation to that subscriber when it is made available to the operator.

(6) (a) For the purpose of complying with Regulation 13(3)(b) and (5)(b) a person may, on such terms and conditions as may be approved under Regulation 19(4) of the Universal Service Regulations and on payment to the operator of such fee as may be required by the operator—

(i) be allowed access to the National Directory Database at all reasonable times and take copies of, or of extracts from, entries in that Database, or

(ii) obtain from the operator a copy (certified by the operator or by a member of the operator's staff to be a true copy) of, or of an extract from, any entry in the National Directory Database, or both, but the operator shall refuse such inspection or copying of, or of extracts from, entries in the National Directory Database if the operator has reasonable grounds to believe that the person will not comply with the Data Protection Acts and these Regulations in respect of the information in that Database. (b) A subscriber, or other person with the written consent of the subscriber, may—

(i) be allowed access to the entry in the National Directory Database in relation to that subscriber in respect of a particular line of the subscriber at all reasonable times and, on payment to the operator of such fee as may be required by the operator, take a copy of that entry, or (ii) on payment to the operator of such fee as may be required



by the operator, obtain from the operator a copy (certified by the operator or by a member of the operator's staff to be a true copy) of that entry, or both. (c) In any proceedings— (i) a copy of, or of an extract from, an entry in the National Directory Database certified by the operator or by a member of the operator's staff to be a true copy is evidence of the entry or extract on the date that it is so certified, and (ii) a document purporting to be such a copy, and to be certified as aforesaid, is deemed to be such a copy and to be so certified unless the contrary is proved. (d) In any proceedings— (i) a certificate signed by the operator or by a member of the operator's staff of an entry in the National Directory Database in relation to a specified subscriber in respect of a particular line is evidence of the entry on the date that it is so certified, and (ii) a document purporting to be such a certificate, and to be signed as aforesaid, is deemed to be such a certificate and to be so signed unless the contrary is proved.

(7) (a) Subject to subparagraph (c), the operator may require the payment of fees in respect of the matters referred to in paragraph (6)(a) or (b) and the amount of those fees shall be designed to secure, as nearly as may be and taking one year with another, that the aggregate amount of fees received, or reasonably expected to be received, equals the costs incurred, or reasonably expected to be incurred, by the operator in performing the functions conferred on the operator by this Regulation. (b) Different fees may be required in respect of the matters referred to in paragraph (6)(a) and (b). (c) The amount of the fees required under subparagraph (a) is subject to the approval of the Regulator.

(8) For the purpose of his or her functions under Regulation 17, the Commissioner— (a) shall be allowed access to the National Directory Database at all reasonable times and take copies of, or extracts from, entries in that Database, and (b) may obtain from the operator a copy (certified by the operator or a member of the operator's staff to be a true copy) of, or an extract from, any entry in the National Directory Database, without payment of a fee to the operator

## THE LEGISLATIVE ANOMALY

The definition of "operator" in the E-Privacy Regulations is:

*a person designated by the Regulator under Regulation 7(1) of the Universal Service Regulations to provide a universal service (within the meaning of those Regulations) in respect of directory services referred to in Regulation 4 of those Regulations.*

Relevant provisions of Regulation 4 of the Universal Service Regulations are as follows:

*(1) A designated undertaking shall ensure, based on data provided to it in accordance with Regulation 19(4)—*

*(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 enquiry service is made available to all end-users, including users of public pay telephones.*

*(2) The designated undertaking concerned shall ensure that the directory or the directory enquiry service referred to in paragraph (1) comprises all subscribers of publicly available telephone services in the State (including those with fixed, mobile and personal numbers) who have not refused to have their personal particulars included in those directories. This paragraph is subject to Regulation 12 of the Privacy and Electronic Communications Regulations.*

Regulation 19(4) of the Universal Service Regulations provide:

*Subject to Regulation 14 of the Privacy and Electronic Communications Regulations and for the purposes of this Regulation, an undertaking that may be required to do so by the Regulator shall 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 shall meet all reasonable requests for access to any information contained in that record in an agreed format, on terms that are fair, objective, cost orientated and non-discriminatory, and in accordance with such terms and conditions as may be specified by the undertaking and approved by the Regulator.*

Regulation 14 of the E-Privacy Regulations protects the rights of subscribers, for instance this Regulation provides, inter alia, that an undertaking referred to in Regulation 19(1) or (2) of the Universal Service Regulations shall record in the NDD that a subscriber who has notified the relevant undertaking that he does not consent to unsolicited calls for the purpose of direct marketing.

The key problem with the current definition of “operator” is that there is a possibility that ComReg may decide not to designate an undertaking for the purposes of Regulation 4(1)(a) or (b) of the Universal Service Regulations. Regulation 7 of the Universal Services Regulations provides that ComReg *may* designate one or more undertakings to comply with an obligation or requirement referred to in Regulation 4(1)(a) or (b) (my italics). In such circumstances, the definition of “operator” would be tied to no undertaking.

ComReg are of the view that the functions of the “operator” are dependent on the maintenance of the NDD and not with the role of any universal service provider that provides a subscriber directory.

ComReg are of the view that the definition of “operator” in the E-Privacy Regulations should be more appropriately tied to the primary obligation in relation to maintenance of the NDD, i.e. Regulation 19(4) and not to Regulation 7 (1) of the Universal Service Regulations

In light of the possibility of an undertaking not being designated under Regulation 7 of the Universal Service Regulations to provide the obligation under Regulation 4(1)(a) or (b), it is in our view legally risky and inappropriate for the current definition of “operator” in the E-Privacy Regulations to be maintained.

ComReg are currently in communication with the DCCAE and expect to have this anomaly resolved in due course.

Non-Confidential



## Annex 2: Questions

- Q. 1 Do you agree that there is a need for a NDD? ..... 12
- Q. 2 Do you agree that ComReg should require an undertaking pursuant to Regulation 19 and 30 of the Regulations, to manage and maintain the NDD after March 2019? Please provide detailed reasons and supporting evidence for your view. 12
- Q. 3 Do you agree that PortingXS as the sole undertaking who expressed an interest in managing and maintaining the NDD should be required, pursuant to Regulations 19 and 30 of the Regulations, to do so? Please provide detailed reasons and supporting evidence for your view. .... 20
- Q. 4 Do you agree with ComReg's preliminary view that a change in the undertaking required to manage and maintain the NDD would have minimal impact on stakeholders? Please provide detailed reasons and supporting evidence for your view. .... 21
- Q. 5 In your view is 3-5 years the most appropriate time period for this direction? Please provide detailed reasons and supporting evidence for your view. .... 22
- Q. 6 Do you agree that in the event PortingXS is directed to manage and maintain the NDD that Eir should reimburse licensees if fees have been paid for access to the information for periods beyond the go live date? Please provide detailed reasons and supporting evidence for your view..... 23
- Q. 7 Do you agree with ComReg's draft assessment of the impact of the proposed options? Please provide detailed reasons and supporting evidence for your view. .... 30
- Q. 8 Do you agree with the terms of ComReg's draft Decision Instrument? Please provide detailed reasons and supporting evidence for your view. .... 33