



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Management and Maintenance of the National Directory Database

Response to Consultation and Decision

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An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation

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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 Regulations¹, 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 the Universal Service Regulations 2011, ("**the Regulations**")².
- 3 eir currently manages the NDD and the collation of information from all undertakings that assign telephone numbers to subscribers and is directed to do so until the end of June 2018.³
- 4 On 1 June 2018, ComReg published Document 18/45⁴ ("**the Consultation**") on the subject of the management and maintenance of the National Directory Database ("**NDD**"). This followed the publication of Information Notice 18/22⁵ which extended an invitation to all undertakings who are interested in managing and maintaining the NDD to express their interest in doing so, and was published on 22 March 2018. One expression of interest was received.
- 5 Detailed information has been provided by the undertaking who submitted the expression of interest, such as its competence and expertise to manage and maintain the NDD, and how it proposes to manage and maintain the NDD. ComReg is continuing to engage with this undertaking in its assessment of the expression of interest. ComReg is undertaking a full assessment of the information provided to it in order to determine the most appropriate undertaking to direct to maintain the NDD, should ComReg determine there is a continued need for the NDD post March 2019. eir did not put forward an expression of interest in continuing to manage and maintain the NDD.

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

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

³ ComReg Document 15/44 and D02/15 "*Management and Maintenance of the National Directory Database*", 19 May 2015. ("D02/15")

⁴ ComReg Document 18/45, "*Management and Maintenance of the National Directory Database*", 1 June 2018.

⁵ ComReg Document 18/22, "*National Directory Database ("NDD") Request for Expressions of Interest for Managing and Maintaining the NDD*", 22 March 2018.

- 6 One submission to the Consultation was received on 18 June 2018. We wish to thank eir for their submission. ComReg has endeavoured to summarise the key elements of the comments provided by eir and ComReg's views in relation to these.
- 7 This Response to Consultation and Decision document sets out ComReg's final position on the management and maintenance of the NDD having considered the submission received together with other analyses and relevant information.
- 8 ComReg has considered eir's views and has taken due consideration when assessing and quantifying the potential impact on stakeholders and on competition arising from its proposals in coming to its Decision.
- 9 As set out in detail below, whilst this assessment is being conducted, ComReg has decided that eir, as the existing undertaking directed to maintain and manage the NDD should continue in that capacity for an additional 9 month period. This additional period will allow for a determination of who is best suited to the management and maintenance of the NDD based on appropriate criteria post March 2019.
- 10 The direction for a period of 9 months will allow:
 - 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.⁶
- 11 In making this Decision, ComReg has taken full account of its statutory functions and obligations by reviewing and giving complete consideration to the submission received in response to the Consultation.

⁶ 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

- 12 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.
- 13 The NDD lists just over 2 million fixed numbers (including listed, unlisted and ex-directory) 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.⁷
- 14 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. 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”).
- 15 The information in the NDD is also used for the collation of the printed and online telephone directory and for directory enquiry services. Under D07/14, eir is required to provide a printed telephone directory to subscribers, on an annual basis, by virtue of it being the Universal Service Provider (“**USP**”) for directories in the State⁸.

2.2 Current Direction

- 16 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.
- 17 In accordance with Regulation 19(4), eir 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 respect of marketing preferences in a CD format to the direct marketing industry under the Direct Marketing Licence Agreement (“**DMLA**”).

⁷ Mobile telephone numbers are automatically protected pursuant to certain provisions in the e-Privacy Regulations against unsolicited communications.

⁸ The designation expires on 30 June 2018, this is currently under review.

- 18 Under the current direction (D02/15), 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, cost orientated and non-discriminatory”*, and *“in accordance with such terms and conditions as may be specified by Eircom and approved by ComReg”*.
- 19 It is important to note that as this is not a Universal Service Obligation there are no implications for Universal Service Funding.

2.3 Legal Basis

- 20 Since the coming into force of the Regulations in 2011, a USP designated as such thereunder, cannot be mandated to maintain the NDD merely by virtue of being the USP.
- 21 However, ComReg now has the power to require an undertaking to maintain the NDD in accordance with Regulation 19 (4) of the 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.
- 22 Under Regulation 19(4) of the Regulations any undertaking directed to manage and maintain the NDD *“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”*.
- 23 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 calls⁹. 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.
- 24 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 consumers.

⁹ 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.

3 Consultation Issues

3.1 Need for NDD

- 25 Under Regulation 19 of the Regulations, ComReg has discretion as to whether or not to require an undertaking to maintain the NDD. As noted above, if ComReg do not direct an undertaking to maintain and manage the NDD, it would create legal and commercial uncertainty for stakeholders¹ and may jeopardise other obligations on undertakings and other entities in relation to the NDD and also affect the rights of consumers.
- 26 Therefore, as a starting point the Consultation considered whether there continues to be a need for the NDD.
- 27 The Consultation noted that information in the NDD is currently used for a number of purposes, for example, for the printed telephone directory, by directory enquiry service providers and by the direct marketing industry.
- 28 Given the various functions of the NDD, ComReg was of the view that it is critical the NDD continues to be maintained in its current form. Absent an NDD;
- a number of regulatory requirements could not be fulfilled by undertakings;
 - consumers and businesses might lose their legal entitlements and protections under the Regulations in respect of directories/directory enquiries;
 - consumers and businesses might lose their legal entitlements and protections under the e-Privacy Regulations and be subjected to unsolicited direct marketing.
- 29 ComReg was of the preliminary view in the Consultation that if it decides not to direct an undertaking to maintain and operate the NDD, it would create legal uncertainty for stakeholders.¹⁰
- 30 In light of the above factors, the Consultation noted ComReg's intention to direct an undertaking to manage and maintain the NDD under Regulation 19 and Regulation 30 of the Regulations after June 2018.
- 31 In this context, the Consultation elicited views on the following:

¹⁰ Including: undertakings, subscribers, directory enquiry service providers, direct marketing companies, and the Office of Data Protection Commissioner.

Q. 1 Do you agree that an undertaking should be required, pursuant to Regulation 19 and 30 of the Regulations, to manage and maintain the NDD after June 2018? Please provide detailed reasons and supporting evidence for your view.

3.1.1 Respondent's View

- 32 In its response, eir did not explicitly state whether or not it was in agreement that an undertaking should be required to manage and maintain the NDD after June 2018. eir stated its view that *“ComReg appears to have already concluded that there is a need for the NDD to be maintained”* and noted that *“only the current NDD manager will be capable of maintaining the NDD in two weeks’ time”*.
- 33 eir also was of the view that *“ComReg should have started the review process earlier... and certainly should not be consulting on extending the current designation with only two weeks left before the current designation expires”*.

3.1.2 ComReg's view

- 34 ComReg notes eir's views as set out in summary above and in detail in its submission to the Consultation. ComReg notes and agrees with eir's view that *“only the current NDD manager will be capable of maintaining the NDD in two weeks’ time”*. This is addressed further in section 3.2 below.
- 35 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.
- 36 As set out in summary above, the NDD is currently used for a number of purposes, which include:
- information is used for the collation of the printed telephone directory and eir also provides an online directory;
 - directory enquiry service providers use the information to provide their service;
 - the direct marketing industry use the information as it continues to be the basis for the “opt-out” register for direct marketing purposes.
- 37 ComReg is of the view that, given the various functions of the NDD, it is critical that it continues to be maintained in its current form. Absent an NDD;
- a number of regulatory requirements could not be fulfilled by undertakings;

- consumers and businesses might lose their legal entitlements and protections under the Regulations in respect of directories/directory enquiries;
- consumers and businesses might lose their legal entitlements and protections under the e-Privacy Regulations and be subjected to unsolicited direct marketing.

- 38 However, 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 consumers.
- 39 In response to eir's view on timing, ComReg confirms that it commenced the process in March with a publication regarding expression of interest. ComReg considers that the instigating of the current Consultation process to be timely and in keeping with its Regulatory function.
- 40 In consideration of the factors as set out, ComReg has decided to direct an undertaking to manage and maintain the NDD under Regulation 19 and Regulation 30 of the Regulations after June 2018.

3.2 Relevant Undertaking and Direction Period

- 41 As set out above, ComReg must consider the expression received in response to Information Notice 18/22 in order to determine the most appropriate undertaking to direct to maintain the NDD, should an undertaking be directed to do so in the future.
- 42 The Consultation noted ComReg intends to make a full assessment of this expression of interest. It also noted the assessment will include examining all aspects in relation to the company as well as its proposal to manage and maintain the NDD.
- 43 The Consultation noted that eir has managed the NDD in an effective manner to date and set out ComReg's view that eir should be directed to continue to maintain and manage the NDD. 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 eir should be directed to continue to maintain and manage the NDD on the same basis as it currently does for the next 9 months commencing 1 June 2018. This additional period would also allow adequate time for the expression of interest to be assessed.

44 The Consultation highlighted that it is also important to recognise the legislative anomaly which ComReg is mindful of and has taken steps to have rectified¹¹. Taking this into consideration, the direction on eir for a further period is the only appropriate solution.

45 In this context the Consultation posed the following questions:

Q. 2 Do you agree that as an expression of interest was received that eir 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.

Q. 3 In your view is 9 months the correct time period to ensure adequate time for each stage of the process (evaluation, consultation, response to consultation and decision and transition, if appropriate)? Please provide detailed reasons and supporting evidence for your view.

3.2.1 Respondent's View

46 In its response to question 2, eir did not explicitly state whether or not it was in agreement that it should continue to be required to manage and maintain the NDD. eir noted its view that *"the potential for the obligation to continue to be imposed on eir has not arisen because of an expression of interest being declared...but rather due to delays in ComReg's administrative process"*.

47 In response to question 3 eir stated it *"believes that a shorter time period closer to 6 months should be sufficient"* [to evaluate, consult, respond to the consultation, issue a decision and a transition period]. Eir was of the view that *"ComReg's assessment of the expression of interest should be well advanced as it will have received a detailed submission by 16th April 2018...and consequently has already had two and a half months to undertake analysis"*. In addition eir was of the view that *"ComReg should be aiming to complete the assessment, consultation and decision making phase by the end of Q3 2018"*.

48 Additionally, in response to question 2 eir noted its disappointment that *"due to the ongoing existence of the legislative anomaly "the direction of eir for a further period is the only appropriate solution"*, furthermore eir request *"ComReg to set out the steps it has undertaken over the last three years to encourage the Department to remedy the anomaly"*.

¹¹ 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 ComReg to be in a position to proceed unhindered to a Consultation on directing an "undertaking" to the role of operator of the NDD

- 49 Eir also stated that *“the evaluation [of the expression of interest] should also consider whether the proposed solution represents value for money, i.e. is the cost base associated with the cost orientated charges appropriate, proportionate and reasonable.”*

3.2.2 ComReg’s view

- 50 As a first step in the process of reviewing the current NDD direction ComReg issued an Information Notice requesting expressions of interest in managing and maintaining the NDD in the future. As set out above, one expression of interest was received.
- 51 Upon receipt of the expression of interest, ComReg engaged with the undertaking to ensure the expression of interest was acceptable. In the period since the expression of interest was received ComReg has continued to engage with the undertaking who expressed an interest in managing and maintaining the NDD.
- 52 ComReg expects to shortly have full details of the undertaking’s approach to managing and maintaining the NDD. The information provided should allow ComReg to conduct a full assessment of the expression of interest put forward. ComReg must ensure that there is an adequate time period for a complete assessment of this expression of interest to be carried out in the interests of fairness and in keeping with the tenets of due process.
- 53 ComReg notes eir’s view that a shorter period should be sufficient. ComReg does not agree with eir that it would be feasible to *“complete the assessment, consultation and decision making phase by the end of Q3 2018”*. ComReg must first assess the expression of interest; a detailed assessment cannot be undertaken until the information required to be provided by 30th June 2018 has been received. Once this assessment is complete ComReg must then come to its preliminary view on whether the interested party or another undertaking should be required to manage the NDD should there be a continued need for the NDD post March 2019 and then ComReg must consult on this view. As eir is aware, under ComReg’s Consultation Procedures¹², normally the period of time allowed for interested parties to respond to a consultation is four weeks¹³. Upon receipt of submissions, ComReg must then consider all submissions received in full before coming to its final decision. Given these timelines, the expectation that ComReg should complete a thorough evaluation which includes; consulting and issuing a decision by the end of September is not practical.

¹² ComReg 11/34

¹³ This may vary in certain cases.

- 54 It is also important to recognise the legislative anomaly which ComReg is mindful of¹⁴ and taking this into consideration, the direction on eir for a further period is the only appropriate solution. ComReg first raised this matter in writing in the course of a previous consultation on this issue in December 2013 to what was then the Department of Communications, Energy and Natural Resources. The matter was not addressed and ComReg proceeded to publish its Consultation and Decision¹⁵ directing eir to manage and maintain the NDD. The matter was raised again in writing with the Department of Communications, Climate Action and Environment (“**DCCA**E”) in March 2018 and ComReg is continuing to liaise with the DCCA E on the legislative change that ought to be made.
- 55 ComReg notes eir’s view in respect of the evaluation of the expression of interest. As set out in the Consultation, ComReg will consider all relevant aspects in relation to the company as well as its proposal to manage and maintain the NDD including, but not limited to, its proposed approach to keeping a record (the NDD) 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 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 and in accordance with other relevant legislation.
- 56 As set out above, ComReg is of the view that, given the various functions of the NDD, it is critical that it continues to be maintained in its current form. ComReg therefore has decided the extension for 9 months is appropriate as it will allow:
- a. ComReg to assess the expression of interest received and to come to its preliminary view on whether the interested party or another undertaking should be required to manage the NDD in Q3 2018;
 - b. ComReg to consult and issue a response to consultation and decision in Q4 2018; and
 - c. A three month transition period, if appropriate.

¹⁴ 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 ComReg to be in a position to proceed unhindered to a Consultation on directing an “undertaking” to the role of operator of the NDD.

¹⁵ D02/15

- 57 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 necessary not only for any new undertaking directed to manage and maintain the NDD, but would also allow all undertakings who provide information to the NDD to implement any changes necessary.
- 58 To date eir has managed the NDD in an effective manner. 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, in order to allow adequate time for the expression of interest to be assessed, ComReg is of the view that eir should be directed to continue to maintain and manage the NDD on the same basis as it currently does for the next 9 months commencing 1 July 2018.

3.3 Draft Regulatory Impact Assessment (RIA)

- 59 Following the RIA guidelines¹⁶, European and international best practice, the Consultation included a draft assessment of the relevant regulatory options.
- 60 As part of the process in choosing a preferred regulatory approach to this matter, ComReg set out its key policy issues and objectives. ComReg noted that all subscribers have the right without charge, to have an entry in a printed directory and/or a directory enquiry service.
- 61 The draft RIA noted that the NDD is an important and convenient resource for directory enquiry service providers and direct marketing companies to which eir provides information held in the NDD. It also holds details of consumer preferences for listing their telephone numbers and is the basis for the “opt-out” register for direct marketing purposes. This information is used for the collation of the printed telephone directory.
- 62 The draft RIA identified and described two potential regulatory options. These were as follows:
- Option 1: Not to specify an undertaking to maintain the NDD beyond the current direction expiration on the 30th June 2018
 - Option 2: Direct eir for a period 9 months while ComReg considers the expression of interest or other alternatives to maintain the NDD.

¹⁶ ComReg 07/56a, “Guidelines on ComReg’s Approach to Regulatory Impact Assessment”, 10 August 2007.

- 63 After outlining what each of these possibilities might entail, ComReg assessed the options and their respective impacts for consumers, service providers as well as for competition. This included an assessment of the potential costs and benefits of each option, the potential net welfare among other key factors.
- 64 The proposed regulatory approach was chosen to ensure the interests of consumers, service providers and other users of the NDD are upheld. In this respect, the continued management and maintenance of the NDD, is critical to ensure these interests are sustained.

3.3.1 Respondents Views

- 65 eir's view on the draft RIA is that it *"is a repeat of the qualitative discussion in the main body of the consultation and as such is otiose."*

3.3.2 ComReg's view

- 66 ComReg considers that the issues set out in the RIA to be complete and are in keeping with our functions and objectives and are in adherence to certain Ministerial Policy Directions and ComReg's RIA guidelines.
- 67 Having addressed the specific issues raised by respondents in Sections 3.1 and 3.2 and in relation to the RIA in this Section, the final RIA at Section 4 sets out ComReg's final assessment of the impact of regulatory options with respect to continuity and reliability of voice service on different stakeholders and competition. On this basis ComReg has decided on the most appropriate approach at this time to managing and maintaining the NDD.

4 Final RIA

4.1 Role of the RIA

- 68 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.
- 69 ComReg's approach to RIA is set out in the Guidelines published in August 2007¹⁷. Furthermore, in conducting this RIA, ComReg takes account of the RIA Guidelines,¹⁸ adopted under the Government's Better Regulation programme.
- 70 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.
- 71 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.
- 72 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

¹⁷ ComReg Document No. 07/56 & 07/56a "Guidelines on ComReg's Approach to Regulatory Impact Assessment", 10 August 2007 (the "RIA Guidelines").

¹⁸ See: <http://www.djei.ie/publications/ria/RIAGuidelines2009.pdf>

4.2 Describe the Policy Issues and identify the objectives

- 73 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.
- 74 The NDD is an important and convenient resource for directory enquiry service providers and direct marketing companies.
- 75 The NDD lists just over 2 million fixed numbers (including listed, unlisted and ex-directory) 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.
- 76 The NDD also holds details of consumer 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.
- 77 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 State¹⁹.
- 78 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

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

Option 1: Not to specify an undertaking to maintain the NDD beyond the current direction expiration on the 30 June 2018

Option 2: Direct eir for a period 9 months while ComReg considers the expression of interest or other alternatives to maintain the NDD.

¹⁹ Under Regulation 4(1) of the 2011 Regulations, this is currently under review.

4.4 Determine the impacts on Stakeholders and Competition

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

	Impact on Industry	Impact on Consumers	Impact on Competition
<p>Option 1:</p> <p>ComReg do not direct any undertaking to manage and maintain the NDD.</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>Option 2</p> <p>Specify eir to maintain the NDD for a 9 month period</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 direct marketers 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>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>
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4.5 Assess the impacts and choose the best option

- 81 ComReg has considered the options available to it in terms of managing and maintaining the NDD.
- 82 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.
- 83 Option 1 would cause detriment to consumers, in ComReg's view, this scenario must be avoided.
- 84 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.
- 85 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.
- 86 Furthermore, as eir currently manages and maintains the NDD, and the terms of access "*shall be fair, objective, cost orientated and non-discriminatory*", the extension of the direction for a 9 month period should not result in eir incurring additional costs.
- 87 In addition, it is also important to recognise the legislative anomaly which ComReg is mindful of and taking this into consideration, the direction of eir for a further period is currently the only appropriate solution.
- 88 For these reasons, ComReg is of the view that to direct eir to continue to manage and maintain the NDD for a 9 month 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.
- 89 Requiring eir to continue to maintain the NDD would preserve the status quo and have a positive impact on the industry while ComReg assesses the expression of interest and ensures that the legal issue is addressed.

90 ComReg is not aware of any competition issues arising by specifying eir to continue to manage the NDD for a 9 month period.

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. 18/45 and
- v. Having regard to the analysis and reasoning set out in ComReg document No. 18/56.

2. Decision

- 2.1 Eircom t/a “Eir” meaning Eircom Limited and its subsidiaries and any related companies, and any undertaking which it owns or controls or any undertaking which owns or controls Eircom Limited, its successors and assigns and including agents, contractors or sub-contractors of any of the latter shall maintain the NDD for a period of 9 months. 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.
- 2.2 Eir 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 eir 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 2018.

5.2 This Decision shall remain in force from the effective date for a period of 9 months.

GERRY FAHY
CHAIRPERSON
THE COMMISSION FOR COMMUNICATIONS REGULATION