



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

National Directory Database (NDD)

Proposal to extend Direction made pursuant to ComReg Document 18/108 and D16/18 (Management and Maintenance of the National Directory Database)

Consultation

Reference: ComReg 22/35

Version: Final

Date: 05/05/2022

An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation

1 Lárcheantar na nDugaí, Sráid na nGildeanna, BÁC 1, Éire, D01 E4X0.
One Dockland Central, Guild Street, Dublin 1, Ireland, D01 E4X0.
Teil | Tel +353 1 804 9600 Suíomh | Web www.comreg.ie

Legal Disclaimer

This Consultation is not a binding legal document and also does not contain legal, commercial, financial, technical or other advice. The Commission for Communications Regulation is not bound by it, nor does it necessarily set out the Commission's final or definitive position on particular matters. To the extent that there might be any inconsistency between the contents of this document and the due exercise by it of its functions and powers, and the carrying out by it of its duties and the achievement of relevant objectives under law, such contents are without prejudice to the legal position of the Commission for Communications Regulation. Inappropriate reliance ought not therefore to be placed on the contents of this document.

Content

Section	Page
1 Executive Summary	5
2 Background	6
2.1 Entries in a Directory and Directory Enquiry Service and the NDD	6
2.2 Unsolicited communications for the purpose of direct marketing and NDD...	7
2.3 Management and maintenance of the NDD	7
3 Summary Of Considerations	9
3.1 The Regulatory Impact Assessment (RIA) as set out in D16/18	9
3.2 Evolution of the regulatory framework and associated legislative provisions 11	
3.3 Market or technological changes.....	13
3.4 ComReg's preliminary conclusion	13
4 Next Steps.....	15

Annex

Section	Page
Draft Decision Instrument.....	16
Annex 1: Decision 16/18	17
Annex 2: Legislation	20
Annex 3: Consultation Question.....	24

1 Executive Summary

1. ComReg has the power to direct an undertaking to manage and maintain the National Directory Database (“NDD”) under Regulations 19 and 30 of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011 (“the Universal Service Regulations”).
2. Porting Access B.V.2 (“PortingXS”) is the undertaking directed by the Commission for Communications Regulation (“ComReg”) under ComReg Decision D16/183 (“D16/18”) to manage and maintain the NDD in accordance with the operational specification⁴ agreed with ComReg (“the Operational Specification”), for a minimum period of 3 years, and up to 5 years from 1 July 2019.
3. D16/18 is due to expire on 30 June 2022, unless otherwise specified by ComReg. There is provision in D16/18 for ComReg to extend the direction pursuant to D16/18 on PortingXS and have them continue to manage and maintain the NDD beyond 30 June 2022, up to a further maximum 2 year period, to 30 June 2024.
4. This Consultation seeks stakeholders’ views on ComReg’s proposal to extend the direction and have PortingXS continue to manage and maintain the NDD for a further 2 years for the period 1 July 2022 to 30 June 2024.

¹ S.I. No. 337/2011 - European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011.

² PortingXS” is a Dutch company, which is an “authorised undertaking” pursuant to Regulation 4 of the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011. PortingXS currently provides a fixed number portability solution in Ireland.

³ ComReg Document 18/108 and ComReg Decision D16/18, “Management and Maintenance of the National Directory Database”, 6 December 2018.

⁴ Defined in ComReg Decision D16/18 as “the process, and all technical requirements necessary for managing and maintaining the NDD, as agreed with ComReg”.

2 Background

5. The NDD must be managed and maintained in accordance with the relevant provisions of the Universal Service Regulations and the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011⁵ (as amended) (“the e-Privacy Regulations”).

2.1 Entries in a Directory and Directory Enquiry Service and the NDD

6. The NDD is a record of all subscribers of publicly available telephone services in Ireland, including those with fixed, personal and mobile numbers who have not refused to be included in that record, kept in accordance with Regulation 19(4) of the Universal Service Regulations and the e-Privacy Regulations.
7. The NDD holds details of subscriber preferences for listing their telephone numbers as entered on the NDD by Undertakings. The following are the possible subscriber listing preferences (“Directory Listing Preferences”):
 - I. **Listed:** Subscriber details (name, address, telephone number) are to be listed in the printed Directory and with Directory Enquiry Services;
 - II. **Unlisted:** Subscriber details are not to be listed in the printed Directory and are to be listed with Directory Enquiry Services, and (I and II are together known as “Directory Preferences”);
 - III. **Ex-Directory:** Subscriber details are not to be listed in the printed Directory and are not to be listed with Directory Enquiry Services (“Ex Directory Preferences”).
8. 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 information.

⁵ The European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011. S.I. No. 336 of 2011.

2.2 Unsolicited communications for the purpose of direct marketing and NDD

9. The e-Privacy Regulations provide that subscribers of publicly available telephone services have certain rights in relation to the potential inclusion of their personal data in a Directory and/or Directory Enquiry Service.⁶ The e-Privacy Regulations prohibit unsolicited communications (including telephone calls or calls by automated calling machines or facsimile machines) for the purpose of direct marketing (“Direct Marketing Communications”) to subscribers who do not consent to receiving such communications.⁷ The e-Privacy Regulations contain obligations on Undertakings to record certain information in the NDD about whether an individual subscriber consents to Direct Marketing Communications or not (“Direct Marketing Preferences”).

10. The Direct Marketing Preferences are held on the NDD and consist of:

- 1) A record of those fixed subscribers who have notified their service provider that they do not consent to receiving unsolicited Direct Marketing Communications and all ex-directory numbers. This list is known as the “opt out register” and is a means by which direct marketers can check telephone numbers to ensure that they do not conduct unsolicited communications with a subscriber who has indicated that they do not consent to unsolicited Direct Marketing Communications or an ex-directory number (i.e., those that have “opted out” of Direct Marketing Communications).
- 2) A record of those mobile subscribers who have consented to receiving Direct Marketing Communications⁸ i.e., “opted-in” to unsolicited Direct Marketing Communications. All other mobile subscribers have not consented to Direct Marketing Communications

2.3 Management and maintenance of the NDD

11. The function of the NDD is primarily to facilitate the compilation of and access to information for telephone directories and directory enquiry services.⁹ In addition, following the entry into force of the e-Privacy Regulations, the NDD continues to be the basis for the operation of the “opt-out” register for direct marketing purposes.

⁶ Regulation 12 of the e-Privacy Regulations.

⁷ Regulation 13(1) of the e-Privacy Regulations.

⁸ Regulation 13(6) of the e-Privacy Regulations. Communications by facsimile machine are not included for the purpose of mobile subscribers.

⁹ In accordance with Regulation 19(4) of the Universal Service Regulations.

12. On 22 March 2018, ComReg published Information Notice 18/22¹⁰ which extended an invitation to all undertakings who are interested in managing and maintaining the NDD to express their interest in doing so. ComReg received one expression of interest from PortingXS. Eir who previously managed the NDD, did not put forward an expression of interest in continuing to offer the service. Subsequent to Information Notice 18/22, and as part of the process for determining which undertaking could be directed by ComReg to manage and maintain the NDD, 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.
13. Having regard to all information available to it and the continued need for the NDD, ComReg, pursuant to D16/18, had decided that PortingXS would manage and maintain the NDD for a minimum period of 3 years and up to 5 years from 1 July 2019, at ComReg's discretion, having regard to any future developments as regards a changing legislative, regulatory framework and electronic communications sector generally.
14. Pursuant to D16/18 ComReg has discretion to extend the direction on PortingXS to continue to manage and maintain the NDD by a further two years.¹¹ In this context, D16/18 set out that ComReg may conduct a review and consultation on the continued management and maintenance of the NDD after 30 June 2022, as it considers appropriate.

¹⁰ National Directory Database ("NDD") Request for Expressions of Interest for Managing and Maintaining the NDD.

¹¹ In accordance with Clause 6.2 of the Decision Instrument D16/18 which provides: "6.2 *This Decision shall remain in force from the effective date until 30 June 2022 unless otherwise specified by ComReg.*"

3 Summary Of Considerations

15. Clause 3.1 of Decision Instrument D16/18 provides as follows:

3.1 From 1 July 2019, subject to Clause 3.2 and on expiry of the Transition Period, Porting Access B.V., "PortingXS" shall manage and maintain the NDD in accordance with the Operational Specification, for a period of 3 years. This 3 year period is extendable by ComReg, at its discretion, for a further period of up to 2 years, such that the maximum period, including any extension, shall not exceed 5 years.

16. ComReg is considering the extension of the management and maintenance of the NDD for a further period of two years to 30 June 2024 and whether to extend the direction on PortingXS to continue as manager for that period. In that regard, ComReg has given consideration to whether there have been any relevant developments impacting the operation of the NDD, such as in respect of:

- The Regulatory Impact Assessment (RIA) as set out in D16/18;
- Evolution of the regulatory framework and other associated legislative provisions; and
- Market or technological changes.

3.1 The Regulatory Impact Assessment (RIA) as set out in D16/18

17. The RIA in D16/18¹² considered the effect upon stakeholders and competition, of ComReg exercising its powers to direct a manager of the NDD, and of imposing any associated requirements.

18. ComReg's RIA analysis considered the options available to it in terms of managing and maintaining the NDD. The counterfactual analysis indicated that, absent a direction, it was not guaranteed that the NDD would continue to be managed and maintained, with the result that the need for the NDD would not be met.

19. It was noted that the NDD was used for a number of purposes, for example:

- the information is used for multiple providers of online directories;

¹² [ComReg-18108.pdf](#), see section 3.5 and section 4.

- 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.

20. Given the various functions of the NDD, ComReg had decided that it was critical that it continues to be maintained, otherwise, absent regulation:

- a number of regulatory requirements may not be fulfilled by undertakings;
- subscribers might lose their legal entitlements and protections under the Universal Service 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.

21. In that context, ComReg had decided that it was appropriate to require an undertaking to manage and maintain the NDD. It would help facilitate the associated consumer rights in respect of directory entries and opting out of direct marketing (the e-Privacy Regulations). Doing this would help mitigate 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 were maintained, consumers Direct Marketing preferences would continue to be recorded, as would their ability to access Directory information services.

22. As set out in the RIA analysis, by ensuring the management and 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 information for NDD, the directories/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.

23. Having regard to the RIA and analysis as set out in D16/18, ComReg decided that to direct PortingXS to manage and maintain the NDD for a minimum period of 3 years from 1 July 2019, was the most appropriate and objectively justified option, as it is the only way to ensure that the related rights and obligations can be guaranteed, whilst having regard to any relevant future developments, such as, any new e-privacy Regulations or technological changes.

24. Having regard to the foregoing and based on the information available to ComReg at this time, ComReg considers that the RIA analysis as set out in D16/18, section 4, remains relevant.

3.2 Evolution of the regulatory framework and associated legislative provisions

25. In the context of management and maintenance of the NDD, ComReg considers legislative developments, including, the European Electronic Communications Code¹³ (“the Code”) and the e-Privacy Regulations.

The Code

26. The Code was enacted on 20 December 2018, with a transposition deadline of 21 December 2020. Article 112 of the Code, in relation to directory services provides:

(1) Member States shall ensure that all providers of number-based interpersonal communications services which attribute numbers from a numbering plan meet all reasonable requests to make available, for the purposes of the provision of publicly available directory enquiry services and directories, the relevant information in an agreed format, on terms which are fair, objective, cost oriented and non-discriminatory.

(2) National regulatory authorities shall be empowered to impose obligations and conditions on undertakings that control access to end-users, for the provision of directory enquiry services, in accordance with Article 61. Such obligations and conditions shall be objective, equitable, non-discriminatory and transparent.

27. The Department of Environment, Climate and Communications (“DECC”) is responsible for the transposition of the Code into national law in Ireland, and this is ongoing. DECC has published Draft European Union (Electronic Communications Code) Regulations (December 2021).¹⁴ As regards directory enquiry services, Draft Regulation 95 provides:

“(1) A provider of number-based interpersonal communications services which attributes numbers from a numbering plan shall meet all reasonable requests to make available, for the purposes of the provision of publicly available directory enquiry services, directories and the record referred to in paragraph (3), the relevant information in an agreed format, on terms which are fair, objective, cost oriented, and non-discriminatory.

¹³ Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast).

¹⁴ See <https://assets.gov.ie/212062/b320ab75-300e-4a19-9a5e-a3a4d66d1db7.pdf>

(2) In accordance with Regulation 42, the Regulator may impose obligations and conditions on undertakings that control access to end-users, for the provision of directory enquiry services and any such obligations and conditions shall be objective, equitable, non-discriminatory and transparent.

(3) Subject to Regulation 14 of the Privacy and Electronic Communications Regulations and for the purposes of this Regulation, a person 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 voice communication 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.”

28.Regulations 19 (4) of the Universal Service Regulations provides:

“Subject to Regulation 14 of the Privacy and Electronic Communications Regulations and for the purposes of this Regulation, a person 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 voice communication 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.”

In the interim, and until the Draft Regulations are enacted the 2011 Universal Service and Users’ Rights Regulations, SI 337 of 2011 made pursuant to section 3 of the European Communities Act 1972 (“the 1972 Act”) remain valid and in force.

E-Privacy Regulations

29.As set out in D16/18, ComReg noted possible future changes of the Regulatory framework and that it was likely new e-privacy Regulations would also come into force in the relevant time period for the decisions and the impact of these Regulations possibly on the operation of the NDD was not clear. The situation with regard to the updating of the Regulations remains unchanged and ComReg cannot consider any possible impact of these regulations on the operation of the NDD at this time.

3.3 Market or technological changes

30. ComReg is not aware of any significant market or technological developments that would change the initial RIA analysis as regards the continued need of the NDD and the direction of a manager for managing and maintaining the NDD.
31. Extending the requirement on PortingXS to continue to manage and maintain the NDD would help ensure end user rights are preserved, as appropriate. It would also have a positive impact on the industry where NDD assists them in meeting their respective obligations. ComReg is not aware of any competition issues arising by extending the requirement on PortingXS to continue to manage and maintain the NDD for a further two years for the period 1 July 2022 to 30 June 2024.
32. Furthermore, ComReg, in the RIA as set out in D16/18, section 4, considered the impact of the direction on the manager of the NDD, PortingXS. In summary, as part of the consultation process leading to D16/18, PortingXS was the only undertaking to express an interest in managing and maintaining the NDD. In accordance with Regulation 19(4), PortingXS currently provides access to 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, PortingXS provides access to information to the direct marketing industry under the Direct Marketing Licence Agreement (“DMLA”). PortingXS receive a cost orientated price form DMLA and DILA holders who access and use the information in the NDD. It is envisaged that the costs to PortingXS of managing and maintaining the NDD would continue to be covered by the licence fees under DILA and DMLA. It is furthermore envisaged that PortingXS therefore should not experience any significant additional costs resulting from an extension of the requirement on it to continue in its capacity as the NDD manager for a further two years for the period 1 July 2022 to 30 June 2024.

3.4 ComReg’s preliminary conclusion

33. Therefore, in light of the factors considered above and, in light of the forthcoming expiration of the current direction on PortingXS to manage and maintain the NDD, it is ComReg’s preliminary view that it is appropriate to extend the direction pursuant to Document 18/108 and D16/18 on PortingXS and require it to continue to manage and maintain the NDD for a further two years for the period 1 July 2022 to 30 June 2024.

Q. 1 Do you agree with ComReg's preliminary view that it is most appropriate to extend the direction pursuant to Document 18/108 and D16/18 on PortingXS to manage and maintain the NDD for the period 1 July 2022 to 30 June 2024? Please provide supporting information and reasons to support your response.

4 Next Steps

35. The timeframe for receipt of submissions to this consultation paper is **5.00 pm on 2 June 2022** during which time ComReg welcomes written responses on the question posed in this consultation document.

36. Responses must be submitted in written form (post or email) to the following address/email and clearly marked "**Submission to ComReg 22/35**":

Commission for Communications Regulation

Retail Policy

One Dockland Central,

1 Guild St.,

North Dock,

Dublin 1

D01 E4XO

Ireland

Email: RetailConsult@comreg.ie

37. To promote further openness and transparency, ComReg will publish all respondents' submissions to this consultation, subject to the provisions of ComReg's Guidelines on the Treatment of Confidential Information – ComReg 05/24.

38. Respondents are requested to clearly identify confidential material and provide a confidential and non-confidential version of its responses.

39. Respondents are also requested to provide any electronic submissions in an unprotected format so that they can be appended into ComReg's submissions document for electronic publication.

40. When ComReg has considered the responses received to this Consultation, ComReg will issue a decision.

Draft Decision Instrument

1. STATUTORY FUNCTIONS AND POWERS

1.1. This Decision and Decision Instrument is hereby made by The Commission for Communications Regulation (“ComReg”) established under section 6 of the Communications Regulation Act 2002 (as amended) (“the Act”), relates to the maintenance and management of the National Directory Database and is made:

i. Pursuant to and having regard to sections 10 and 12 of the Communications Regulation Act 2002 (as amended) (“the Act”);

ii. 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 Universal Service Regulations”);

iii. Having regard to The European Electronic Communications Code – EECC Directive (EU) 2018/1972 (“the Code”);

iv. Having regard to the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (as amended).

vi. Having had regard to the analysis and reasoning set out in ComReg Document 18/108 and D16/18

vii. Having had regard to the views of interested parties, including Undertakings and the submissions they made in response to ComReg [Dxx/22 and ComReg 22/xx] (which shall, where the context admits or requires, be construed together with this Decision Instrument).

2. APPLICATION SCOPE AND DURATION

2.1. This Decision Instrument extends and maintains ComReg Document 18/108 and D16/18 Management and Maintenance of the National Directory Database (“D16/18”) by amending Section 6.2 of D16/18. Section 6.2 of D16/18 is amended by substituting the words “30 June 2024” for “30 June 2022”

3. EFFECTIVE DATE:

3.1. This Decision and Decision Instrument shall be effective from xx/yy/22 (“the Effective Date”).

THE COMMISSION FOR COMMUNICATIONS REGULATION Made on this xx/yy/2022

Annex 1: Decision 16/18

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 (as amended);
 - 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. 18/91 and further information provided to ComReg following request; and
 - v. Having regard to the analysis and reasoning set out in ComReg document No. 18/91 and 18/108.

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 / or mobile numbers who have not refused to be included in that record, kept in accordance with regulation 19(4) of the Regulations and subject to regulation 14 of the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (as amended).

“Operational Specification” means the process, and all technical requirements necessary for managing and maintaining the NDD, as agreed with ComReg.

“Terms of Access” means the terms and conditions specified by PortingXS for the purpose of providing reasonable access to the NDD as approved by ComReg.

“Transition Period” means the period of time commencing upon the date ComReg confirms its agreement in writing to the Operational Specification in accordance with section 3.3 of this Decision Instrument and ending on 30 June 2019 unless otherwise specified by ComReg.

3. Decision

- 3.1** From 1 July 2019, subject to Clause 3.2 and on expiry of the Transition Period, Porting Access B.V., "PortingXS" shall manage and maintain the NDD in accordance with the Operational Specification, for a period of 3 years. This 3 year period is extendable by ComReg, at its discretion, for a further period of up to 2 years, such that the maximum period, including any extension, shall not exceed 5 years.
- 3.2** The obligation imposed on PortingXS in Clause 3.1 may, subject to the prior agreement of ComReg in writing and in ComReg's sole discretion, be carried out by the successors or assigns of PortingXS or by a related company, its successors or assigns. For the purposes of this Decision Instrument the term "related company" shall have the meaning ascribed to it in the Companies Act 2014. References to "PortingXS" and to the obligations imposed on it in this Decision Instrument, shall be construed accordingly.
- 3.3** The Operational Specification shall be agreed with ComReg and confirmed by it in writing. The commencement of the Transition Period is conditional upon the Operational Specification being agreed by ComReg. ComReg may, if it considers necessary, extend the Transition Period.
- 3.4** For the purposes of Regulations 19(1) and 19(2) of the Regulations and prior to the expiry of the Transition Period, PortingXS shall enter into such agreements with relevant undertakings as are necessary to give effect to the requirements of Regulations 19(1) and 19(2) of the Regulations.
- 3.5** Upon request, PortingXS, its successors, assigns or any related companies, or the successors or assigns of any related companies, or any agents, contractors or sub-contractors of any of the foregoing, 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. To ensure the NDD continues to be managed and maintained at all times and to ensure the integrity and comprehensiveness of the NDD in the event of any changeover of provider of the NDD at any time or catastrophic event, PortingXS and / or any entity referenced in this Clause, shall provide and facilitate access by ComReg and/or any person nominated by ComReg in this regard, to any information contained in the NDD in such format, and within such time period, as may be specified by ComReg
- 3.6** PortingXS shall back up the contents of the NDD at appropriate intervals and make arrangements for the data contained on the NDD to be put in escrow as a means of ensuring the security, integrity and continuity of the NDD. The details of these requirements shall form part of the Operational Specification.
- 3.7** PortingXS shall meet all reasonable requests for access to any information contained in the NDD in a format agreed by ComReg.
- 3.8** 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.

- 3.9** Subject to Clause 3.8, the Terms of Access to the NDD shall be specified by PortingXS and approved by ComReg. PortingXS is required to obtain ComReg's approval in writing to the Terms of Access prior to the expiry of the Transition Period.
- 3.10** PortingXS shall publish on its website the Terms of Access and all relevant information on how to access any information contained on 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 6 December 2018 (the "Effective Date").
- 6.2** This Decision shall remain in force from the effective date until 30 June 2022 unless otherwise specified by ComReg.

THE COMMISSION FOR COMMUNICATIONS REGULATION

Annex 2: Legislation

1. Sections 10 and 12 of the Communications Regulation Act 2002, as amended (“the Act”)
2. Regulation 14 of the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (as amended) (the e-Privacy regulations);
3. Regulation 19(4) of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011 (“the Regulations”)

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.

4. Regulation 14 of the e-Privacy Regulations¹⁵ 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.

¹⁵ European Communities (Electronic Communications Networks And Services) (Privacy And Electronic Communications) Regulations 2011 (as amended) - SI 336 of 2011

(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 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

5. Regulation 30 of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011 ("the Regulations")

The Regulator may, for the purpose of further specifying requirements to be complied with relating to an obligation imposed by or under these Regulations, issue directions to an undertaking to do or refrain from doing anything which the Regulator specifies in the direction.

The Code

6. European Electronic Communications Code, Article 112 **Directory enquiry services**

1. Member States shall ensure that all providers of number-based interpersonal communications services which attribute numbers from a numbering plan meet all reasonable requests to make available, for the purposes of the provision of publicly available directory enquiry services and directories, the relevant information in an agreed format, on terms which are fair, objective, cost oriented and non-discriminatory.

2. National regulatory authorities shall be empowered to impose obligations and conditions on undertakings that control access to end-users, for the provision of directory enquiry services, in accordance with Article 61. Such obligations and conditions shall be objective, equitable, non-discriminatory and transparent.

7. The European Union (European Electronic Communications Code) Regulations 2022 (publicly available draft on gov.ie)

Draft Regulation 95 (3)

Subject to Regulation 14 of the Privacy and Electronic Communications Regulations and for the purposes of this Regulation, a person 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 voice communication 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.

Annex 3: Consultation Question

Section	Page
Q. 1 Do you agree with ComReg’s preliminary view that it is most appropriate to extend the direction pursuant to Document 18/108 and D16/18 on PortingXS to manage and maintain the NDD for the period 1 July 2022 to 30 June 2024? Please provide supporting information and reasons to support your response.	14