



Commission for
Communications Regulation

Decision Notice

Protecting Phone Users from Internet Dialler Scam

Direction to Internet Access Providers and Providers of Publicly Available Telephone Services

Decision No:	D13/04
Document No:	04/99
Date:	20th September 2004

Contents

1 Foreword..... 2

2 Executive Summary 3

3 Introduction 5

 3.1 PROPOSED MEASURES 5

4 Views on Draft Decisions 7

 4.1 DRAFT DIRECTION 1 7

 4.1.1 *Views of Respondents*..... 7

 4.1.2 *Commission’s Position* 7

 4.2 DRAFT DIRECTION 2 8

 4.2.1 *Views of Respondents*..... 8

 4.2.2 *Commissions Position* 9

 4.3 QUESTION 2..... 11

 4.3.1 *Views of Respondents*..... 11

 4.3.2 *Commission’s Position* 12

 4.4 QUESTION 3..... 12

 4.4.1 *Views of Respondents*..... 12

 4.4.2 *Commission’s Position* 12

5 Legislation..... 13

 NATIONAL PROVISIONS 13

 INTERNATIONAL TELECOMMUNICATIONS UNION 14

 GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT)..... 15

Appendix A – Directions 16

Appendix B – Destinations for which Direct Dial Facilities are to be suspended
..... 16

Appendix C –Impact Assessment 18

1 Foreword

The Commission for Communications Regulation (“ComReg”) is responsible for the regulation of the Irish communications sector in accordance with national and European legislation. Both the Communications Regulation Act 2002 and the relevant European Directives which came into effect from July 2003 give ComReg a specific role regarding the protection of end users.

Earlier this year, ComReg became aware of a growing problem for users of dial up internet access. The problem faced by such users is the prevalence of dialler programmes which permanently change dial up settings, without the user’s knowledge or consent. Such programmes are known as autodiallers. The result is that the user is connected to the internet at international call rates instead of the normal call rate which varies between 1c and 5c per minute or subscription only. All too frequently, the subscriber will only realise that they have fallen victim when they receive their telephone bill with high call charges to International numbers.

Last April, ComReg issued a Consumer Guide – “Modem Hi-jacking using dialler programs” – to warn consumers about the problem and to highlight some practical preventative measures that could be taken to guard against the problem. In addition discussions have been held with Internet Service Providers and telephone service providers with the aim of having additional measures at industry level to help deal with the issue. While industry currently employs a number of security measures without which the scale of the problem for consumers could be considerably worse, the difficulties and the hardship for consumers who fall victim to the scam continue. Throughout the discussions, ComReg has continually sought for the industry to come forward with robust solutions, which would ensure the protection of consumers. Regretfully it has not been possible to arrive at what we consider to be an appropriate solution and therefore in interests of consumers ComReg is forced to take some unusual and exceptional measures.

I would like to thank all those who responded. Their responses have assisted ComReg in deciding on appropriate measures in order to protect consumers from modem hijacking.

**John Doherty,
Chairperson**

2 Executive Summary

The issue of auto dialler programs and modem hijacking has affected a number of consumers in Ireland. The significance of the problem not only relates to the numbers affected but the additional expenditure which those telephone subscribers have incurred.

While dialler programs may act as an alternative payment method for internet based transactions, problems arise where consumers are not aware that their internet dial up settings have been changed. In certain cases, this can occur when the internet user does not review all applicable terms and conditions associated with web sites or they may not be presented with the relevant information. Regardless, the result is that the user is connected to the internet at high charge international call rates instead of the normal call rate which varies between 1c and 5c per minute or subscription only.

All too frequently, the subscriber will only realise that they have fallen victim when they receive their telephone bill with high call charges to international numbers. The problem is a global one and not confined to Irish internet users.

ComReg has a statutory function to investigate complaints from consumers regarding the supply of and access to electronic communications networks and services. Since the beginning of 2004, ComReg has been contacted by over 300 telephone subscribers regarding excessive telephone charges arising from dialler programmes. During the past 4 weeks alone over one hundred subscribers have contacted ComReg arising from greater publicity associated with the issue. The amounts complained of have generally ranged from €20 to €2,000 with one business subscriber incurring charges of €12,000.

In July 2004 ComReg issued a consultation paper¹ which proposed measures to be implemented by both Internet Access Providers (“ISPs”) and Providers of Publicly Available Telephone Services in order to address the problem of modem hijacking. The consultation period ran between the 28 July and 20 August 2004 and fourteen responses were received.

The following is a list of respondents to the consultation:

- Ben Hallinan
- Chorus
- David Kelly
- *eircom* Ltd
- Embassy of the Cook Islands to the European Communities, Brussels
- Esat BT
- Glenn Gall
- NTL
- Pacific Islands Telecommunications Association, Fiji
- Peter Weigl

¹ Doc No 04/81 “Protecting Phone Users from Internet Dialler Scam” available on ComReg’s website www.comreg.ie

- Smart Telecom
- Thuraya Satellite Telecommunications Company
- Tony Murray
- Vodafone

ComReg would like to thank those who took the time to respond to this consultation. The responses have helped ComReg to develop its view regarding the measures proposed. In this paper ComReg provides a brief synopsis of the issues raised in the consultation. In conjunction with this Decision Notice the full submissions received in the course of the consultation, with the exception of material stated to be confidential, material considered to be irrelevant and material the publication of which might expose ComReg to possible legal action have also been published on the ComReg website as Doc No 04/99a. All submissions are available in their entirety with the exception of confidential information for public inspection on reasonable request at ComReg's offices.

3 Introduction

Between the beginning of 2004 and the end July 2004, ComReg has been contacted by over 200 telephone subscribers regarding excessive telephone charges arising from dialler programs overwriting their dial-up settings and connecting to the internet at international call rates. In response to those complaints, ComReg published draft measures which it planned to set as a requirement for Internet Access Provides and by providers of publicly available telephone services. Furthermore, since publication of the consultation paper, an additional 131 complaints have been received demonstrating that the issue is continuing to affect a growing number of consumers.

3.1 Proposed measures

The following draft directions were proposed under ComReg's powers and objectives arising from the Communications Regulation Act, the Data Protection and Privacy Regulations (S.I. No 535 of 2003) and the Authorisation Regulations (S.I. No 306 of 2003) and Condition 18.1 of the General Authorisation:

Draft Direction 1:

Internet Service Providers are required no later than 2 weeks from the date of the Decision Notice to recommend to their subscribers, members and users, free or low-cost hardware and/or software solutions designed to remove or render inoperable dialler programs and to block the installation of dialler programs in the future. ISPs shall affect this by sending a targeted e-mail to all registered e-mail accounts, followed by reminders at weekly intervals for a total period of 6 weeks.

Draft Direction 2:

- a) Providers of Publicly Available Telephone Services shall no later than 2 weeks from the date of the Decision Notice:
 - i. suspend direct dial access to destinations listed in the attached Appendix B. The Appendix will be reviewed on a regular basis by ComReg and the network operators and amended appropriately in response to any significant changes to problem destinations; and
 - ii. permit direct dial access to specific telephone numbers located within the destinations referred to in the attached Appendix B only at the request of a subscriber and following the network operator having verified that the requested telephone number is a voice only service.
- b) Providers of Publicly Available Telephone Services, with effect from the date of i., above, shall not charge any subscriber account for direct dial calls to destinations listed in the Appendix B unless the call invoiced was to a number unbarred under a subscriber request as detailed above.
The requirements under a) and b) shall be operable for a period of six months from the date of the Decision Notice and shall lapse if not renewed or otherwise amended following a further consultation

Detailed reasoning of the necessity of the draft Directions was given in Doc No 04/81. In relation to draft Direction 1, while noting that the recommendations of the

service providers, if acted upon by users, would address the problem in many cases, ComReg recognises that implementation of this Direction in isolation from other measures would not prevent all instances of modem hi-jacking.

Accordingly ComReg proposed draft Direction 2 as an exceptional short term measure in order to ensure that the maximum number of consumers are protected from incurring inadvertent call charges. To minimise disruption to legitimate call traffic, ComReg proposed that specific numbers be unblocked upon request. The destinations proposed in the consultation document are those destinations which telephony companies informed ComReg represented the majority of complaints.

In proposing the measures, ComReg has considered various protection mechanisms regarding modem hijacking that exist in other countries. In a number of countries, telephone companies have voluntarily blocked direct dialled calls to certain countries. In other countries, legislation has been enacted or is proposed regarding the use of autodialler programmes. For example, in Germany its national regulatory authority has introduced a specific dialling code for autodiallers, requiring the owners to register with the Regulator and follow specific guidelines that have been introduced to ensure that consumers are aware that their dial-up settings are being changed. As a result, any autodiallers that breach the guidelines are deemed to be exempt from charges and therefore consumers do not have to pay for call charges arising from these autodiallers.

In a number of countries the incidence of autodiallers appears to be predominately on Premium Rate numbers. For example, in the UK the Regulator has announced a review of the regulation of premium rate telephone services with a view to improving measures to protect consumers from fraudulent and unscrupulous activity. This review will include an examination of options aimed at strengthening the powers of ICTIS (the industry funded regulatory body for all premium rate services) as well as any other actions necessary. ComReg intends to further monitor and review such options in conjunction with any national measures with the aim of finding a permanent solution to this problem.

4 Views on Draft Decisions

The Consultation document sought the views from interested parties regarding the appropriateness of the measures proposed. ComReg requested that where there was a disagreement with a proposed measure or with a particular aspect of a measure, ComReg would like to receive views on alternative measures. If it was felt that mandatory measures were regarded as inappropriate, details of an alternative approach were sought.

Q.1. Do you agree with the measures as proposed? If not, please indicate what aspect you disagree with and the reason for your views. Also where appropriate please indicate alternative measures to address the problem

4.1 Draft Direction 1

4.1.1 Views of Respondents

The majority of respondents agreed with draft Direction 1 stating that it was reasonable that Internet Service Providers alert their subscribers and users to the risk of modem hijacking. One respondent agreed that the requirement to advise by email to be a reasonable means of alerting consumers to the risk and believed that the recommendation should be provided automatically to new subscribers taking out ISP subscriptions.

Three respondents raised concerns that emailing subscribers may raise Data Protection issues. In addition two of the respondents believed that a requirement that reminders be sent at weekly intervals for a period of six weeks would be excessive. Another respondent stated that it was unaware of the existence of free or low cost hardware or software and believed that this suggestion would lead to a barrier to competition.

Two respondents, while agreeing with the draft direction, did not believe that this alone would fully protect consumers as a significant number of consumers do not have full technical competency. One respondent disagreed with the draft direction stating that it would not help consumers protect themselves from modem hijacking. The respondent believed that all the available software and hardware have enormous compatibility issues.

4.1.2 Commission's Position

ComReg agrees with the majority of respondents that draft Direction 1 will prove useful in educating consumers to the issue of modem hijacking. As noted earlier, ComReg recognises that the draft Direction in isolation cannot eliminate the problem of modem hijacking.

ComReg cannot accept that one respondent (a leading internet service provider) is unaware of the existence of software and hardware available to address this issue. There are currently several software offerings available to combat this issue and a simple search on any search engine will suggest a number of alternatives as indeed

will a perusal of the responses to this consultation. ComReg does not intend to specify which software should be recommended to users but ISPs are in a position to evaluate and nominate possible software solutions for their subscribers and users. They are also in a position to provide detailed technical advice on the use of solutions including possible conflicts with other software. ComReg is aware that hardware solutions are also available or under development and similarly evaluation and recommendation is best left to ISPs.

In order to address the concerns raised by a number of respondents with regard to ISPs being required to send consumers emails in cases where such customers have opted out of receiving emails from their ISP, ComReg has decided not to require ISPs to contact such consumers for the purposes of Direction 1 below. In addition, those consumers to whom emails are sent in accordance with Direction 1 below must be given the choice of opting out of receiving any further communications with each email that is sent. In addition, ComReg does not believe that sending reminders to subscribers for a period of six weeks is excessive in light of the problem being addressed. However, in order to ensure that subscribers are not irritated by the frequency of the emails, ComReg has modified the direction to reduce the rate of these reminders from weekly to fortnightly.

Direction 1:

The Commission for Communications Regulation directs that all Internet Service Providers are required no later than 2 weeks from the date of this Decision Notice to recommend to their subscribers, members and users, free or low-cost hardware and/or software solutions designed to remove or render inoperable dialler programs and to block the installation of dialler programs in the future. Internet Service Providers are directed to affect this by sending a targeted e-mail to all registered e-mail accounts, where the subscribers to such accounts have not opted out of receiving information, followed by reminders at fortnightly intervals for a total period of 6 weeks.

4.2 Draft Direction 2

4.2.1 Views of Respondents

The majority of respondents disagreed with draft direction 2 citing technical issues with the proposal as a factor.

Two respondents believed that their current practices of monitoring consumer traffic and blocking the offending numbers on a case by case basis as being effective in addressing the issue. One respondent stated that they will enhance this process in the following manner.

- Contact customers within one day of being identified.
- Advise the customer what has occurred and provide guidelines on how to protect themselves against future autodiallers.

- The respondent will send out literature to all customers outlining the dangers of modem hijacking.

One respondent believes that further consideration needs to be given to CPS operators/Resellers to ensure that their needs are covered under any proposals.

Another respondent who agreed with draft direction 2, further questioned why telecom providers cannot provide a facility of a pin number before making an international call as this would stop this scam and other unauthorised international dialling.

Several respondents are of the opinion that the draft direction may cause some customer service issues as consumers will not be able to call such international destinations without the initial intervention of their telecommunications provider.

Two respondents suggested providing a special dial tone/noise when calling certain numbers which would cause the modem to disconnect.

A number of respondents believe that the draft direction will only result in the individuals that perpetrate such scams moving their operation to numbers to which no bar exists, for example a European destination.

Two respondents believed that the proposed draft direction would be inconsistent with the position of the Irish Government and the European Union in terms of trade facilitation, market opening, market access and developmental assistance. One respondent commented that he believed that the draft proposal would also prevent the sending of facsimilies – a core function of most travel agents. In addition, one of the respondents offered to register with ComReg a list of all Audiotext numbers in attempt to eliminate the Modem Hi-jacking problem from named destinations.

One respondent questioned the use of Thuraya Satellite numbers in this practice, they stated that Thuraya is a mobile satellite operator with coverage in more than 100 countries with a unique country code, and that they were unaware that Thuraya Satellite numbers are used in this practice. They asked for ComReg's help in providing information to aid them in preventing this practice from taking place using Thuraya Satellite numbers.

4.2.2 Commissions Position

ComReg notes that, while critical of draft direction 2, none of the respondents who offer telephone services offered to absorb the costs from the consumer who in this instance is being forced to pay for substantial unauthorised call charges. Indeed, many respondents cited technical difficulties associated with international barring but did not provide adequate proposals to ensure that their customers no longer suffer from these exorbitant call charges.

ComReg notes that two respondents are already barring traffic on a case by case basis and have stated that they believed that this was an adequate solution to the

problem of modem hijacking. However, as ComReg is still receiving an ever increasing number of complaints from consumers who are being forced to pay for call traffic that they believe did not authorise, ComReg does not share the opinion of these respondents that their actions are adequately addressing the problem. However, ComReg welcomes the additional steps proposed by one of these respondents.

With regard to the technical issues cited by many of the respondents, ComReg remains of the opinion that barring complete country codes and allowing access to a given number at the request of a consumer is viable, proportionate and reasonable response. ComReg understands that it is not possible to solely provide access to the individual consumer who requests it but indeed any number that is opened will be able to be dialled by any consumer for whom that operator provides services. To this end, ComReg is placing the responsibility upon the operators concerned of ensuring that only legitimate numbers are opened. ComReg is aware that this requirement is placing an additional burden on those operators, but believes that operators ultimately will wish to ensure that their consumers are protected. Operators in this regard can always choose to absorb the cost of any rogue numbers instead of checking the numbers.

With regard to the additional technical options proposed by a number respondents for e.g. using a pin or inserting an engaged tone, ComReg believes that while these options may be possible, the practical implementation of these options is best examined as part of a longer term solution and to be considered during the following six months.

With regard to the respondent's comments concerning registering Audiotext numbers, as Audiotext numbers are equivalent to Premium numbers, registering these numbers with ComReg will not eliminate modem hi-jacking, as the problem being addressed is mainly on International numbers and not on Premium or Audiotext numbers. Therefore, ComReg remains of the opinion that an opt-in approach by consumers is the most suitable option.

Several respondents have stated that they believe that the perpetrators of Autodialler scams will simply move to destinations that are not blocked. ComReg does not believe that they will move to a European destination (as one respondent stated), as there would not be enough revenue generated to allow the practice to remain profitable, since the scam by its very nature is dependent upon high call charges. However, ComReg in conjunction with the industry will continually monitor destinations for autodialler activity and update the list as necessary.

ComReg is aware that the direction will initially and briefly inconvenience legitimate consumers who wish to call some of the destinations in Annex B. However, these consumers can opt-in to call these destinations by contacting their telecoms provider. Once the number has been unblocked for one consumer, it is unblocked for all consumers. In advance of the direction coming into force, operators should create a "white list" of numbers i.e. based on existing traffic profiles any legitimate numbers currently in use after examination should remain open once the customer has been contacted and stated their desire for the numbers to

remain open. In addition, ComReg recommends that operators should continue to monitor their traffic daily for autodialler activity.

In making this decision ComReg has tried to balance the implications that may be caused to consumers calling legitimate numbers assigned to the destinations in Annex B with the much greater harm to consumers who fall victim of modem hijacking and receive a large bill for unauthorised calls. Therefore ComReg will allow operators the options of choosing whether to implement the technical option of barring traffic to the destinations contained in Annex B or alternatively choosing not to pass on the charges of rogue Autodiallers to their consumers whichever option the operator considers to be a proportionate and justified response.

Direction 2:

The Commission for Communications Regulation directs that Providers of Publicly Available Telephone Services shall no later than 04 October 2004

- a) Suspend direct dial access to destinations listed in the attached Appendix B. The Appendix will be reviewed on a regular basis by ComReg and the network operators and amended appropriately in response to any significant changes to problem destinations; and
- b) permit direct dial access to specific telephone numbers located within the destinations referred to in the attached Appendix B only at the request of a subscriber and following the network operator having verified that the requested telephone number is a legitimate service only or
- c) As an alternative to only permitting direct dial access in accordance with paragraph b), above, providers of publicly available telephone services can choose to no longer charge any consumers for unauthorised call charges arising from Autodiallers.

Providers of Publicly Available Telephone Services, with effect from 04 October 2004, shall not charge any subscriber account for direct dial calls to destinations listed in the Appendix B unless the call invoiced was to a number unbarred under a subscriber request as detailed above.

The requirements under a) and b) or c) shall be operable for a period of six months from the date of this Decision Notice and shall lapse if not renewed or otherwise amended following a further consultation.

4.3 Question 2

Q. 2. Do you have views on the appropriateness of including any of the individual destinations listed in Appendix B?

4.3.1 Views of Respondents

One respondent has provided analysis based on the destinations contained in Appendix B.

Another respondent has suggested an alternative of working with other regulatory authorities in identifying and addressing hijacking operations through regulatory measures with a view to enforcing existing regulations relating to premium services. One respondent believes that Appendix B more appropriately include a list of telephone numbers for restrictive access or call blocking, and this list of telephone numbers should be updated on a regular basis.

One respondent believes that Papua New Guinea (675) should be added to the list. Another respondent does not believe that any of the individual destinations listed in Appendix B will act in any conclusive manner to solving dialler scams.

4.3.2 Commission's Position

ComReg would like to take this opportunity to thank Thuraya Satellite Telecommunications Company for their conclusive investigation into the practice, ComReg can now confirm that Thuraya Satellite Telecommunications Company numbers have never been used for the purpose of Modem Hi-jacking and therefore, the Thuraya Satellite code has been removed from the list contained in Appendix B.

With regard to one respondent's desire to have Papua New Guinea added to the list of destinations in Appendix B, ComReg will investigate with the network operators the traffic profile of this destination to assess it for autodialler activity.

As the traffic profiles to the destinations listed change, the appendix will be amended appropriately.

4.4 Question 3

Q. 3. Have you views on how the destinations listed in Appendix B can be kept up to date?

4.4.1 Views of Respondents

One respondent believes that direction 1 stands out as being more pragmatic. One respondent believes that the list of destinations is continuously changing and will be kept up to date using the processes already employed by them. Another respondent believes that the same practice as that adopted by "Spyware" be applied to maintaining the list.

4.4.2 Commission's Position

Appendix B will be reviewed on a regular basis by ComReg and the network operators and amended where justified appropriately in response to any significant changes to the problem destinations as determined by ComReg.

5 Legislation

National Provisions

The Commission for Communications Regulation (“ComReg”) is responsible for the regulation of the Irish telecommunications sector in accordance with national and European legislation. The Communications Regulation Act 2002 gives ComReg a specific role regarding the protection of consumers.

In accordance with Section 10(1) of the Communications Regulation Act 2002 ComReg’s functions are inter alia

- To ensure compliance by undertakings with obligations in relation to the supply of and access to electronic communications services, electronic communications networks and associated facilities and the transmission of such services on such networks.
- To investigate complaints from undertakings and consumers regarding the supply of and access to electronic communications services, electronic communications networks and associated facilities and transmission of such services on such networks.

Section 10(3) of the Act provides ComReg with all such powers as are necessary for and incidental to the performance of its functions under the said Act.

The Authorisation Regulations², Schedule Part A Condition 16 and Condition 19 of the General Authorisation³ impose an obligation on Authorised Operators regarding the security of Public Networks against unauthorised access according to Directive 97/66/EC⁴.

The 2003 Data Protection and Privacy Regulations⁵ impose the following obligations at Regulation 4:

- (1) An undertaking providing a publicly available electronic communications service shall take appropriate technical and organisational measures to safeguard the security of its services, if necessary in conjunction with undertakings upon whose networks such services are transmitted with respect to network security. These measures shall ensure the level of security appropriate to the risk presented, having regard to the state of the art and the cost of their implementation.
- (2) In the case of a particular risk of a breach of the security of the public communications network, the undertaking providing the publicly available electronic communications service shall inform its subscribers concerning

² European Communities (Electronic Communications Networks and Services)(Authorisation) Regulations 2003 – S.I. No 306 of 2003

³ ComReg Document No 03/81

⁴ This directive was repealed by 2002/58/EC which was implemented by national legislation by the making of the 2003 Data Protection and Privacy Regulations

⁵ European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003 – S.I. No 535 of 2003

such risk without delay and where the risk lies outside the scope of the measures to be taken by the relevant service provider, any possible remedies including an indication of the likely costs involved.

Regulation 18 provides ComReg with the power to issue directions to an undertaking specifying requirements to be complied with to do or refrain from doing anything relating to the obligations imposed by Regulation 4. Regulation 23 of the Authorisation Regulations also provides ComReg with the power to issue directions to an undertaking specifying requirements to be complied with to do or refrain from doing anything relating to the conditions of the General Authorisation.

In exercising its functions ComReg must have regard for its objectives which are derived from Section 12 of the Communications Act 2002, and are as follows:

In relation to the provision of electronic communications networks, electronic communications services and associated facilities

- To promote competition
- To contribute to the development of the internal market, and
- To promote the interests of users within the Community.

This response to consultation and direction is based on the existing electronic communications regulatory regime and is in accordance with the objectives of the Commission as set out in Section 12(1) and 12(2)(c) of the Communications Regulation Act 2002.

International Telecommunications Union

Ireland is a member of the International Telecommunications Union (ITU). The legal framework of the ITU comprises the basic instruments of the Union, which have treaty status and are binding on ITU Member States. These instruments are:

- The Constitution and Convention of the International Telecommunication Union signed on 22 December 1992 (Geneva) and which entered into force on 1 July 1994, as amended by the Plenipotentiary Conference (Kyoto, 1994) and the Plenipotentiary Conference (Minneapolis, 1998).
- The Administrative Regulations (Radio Regulations and International Telecommunication Regulations), which complement the Constitution and the Convention.

Article 35 of the Constitution of the ITU provides:

"Each Member State reserves the right to suspend the international telecommunication service, either generally or only for certain relations and/or for certain kinds of correspondence, outgoing, incoming or in transit, provided that it immediately notifies such action to each of the other Member States through the Secretary-General."

The proposed direction would be a suspension for certain types of correspondence, thus Ireland would be required to inform the other Member States through the Secretary General of the proposed requirement.

The Administrative Regulations referred to are the International Telecommunications Regulations 1988 which are binding on Ireland as a member of the ITU which provide at Article 7 in relation to the Suspension of Services:

55. 7.1 If a Member exercises its right in accordance with the Convention to suspend international telecommunication services partially or totally, that Member shall immediately notify the Secretary-General of the suspension and of the subsequent return to normal conditions by the most appropriate means of communication.

56. 7.2 The Secretary-General shall immediately bring such information to the attention of all other Members, using the most appropriate means of communication.

The provisions of the International Telecommunications Regulations supplement the International Telecommunication Convention, with a view to attaining the purposes of the International Telecommunication Union in promoting the development of telecommunication services and their most efficient operation while harmonizing the development of facilities for world-wide telecommunications.

General Agreement on Tariffs and Trade (GATT)

This direction may impact on Ireland's obligations as provided for under the General Agreement on Tariffs and Trade (GATT) to which Ireland is a signatory; these obligations include the elimination of obstacles to trade and the maintenance of open telecommunications networks. There are also various bi-lateral trade and developmental aid agreements between the EU and the countries/States referred to in Appendix B or directly between Ireland and those countries/States which may be impacted by the proposed action. Through the relevant Government Departments, ComReg has and will continue to address any implications that compliance with the direction might raise under these various agreements.

Appendix A – Directions

Direction 1:

The Commission for Communications Regulation directs that all Internet Service Providers are required no later than 2 weeks from the date of this Decision Notice to recommend to their subscribers, members and users, free or low-cost hardware and/or software solutions designed to remove or render inoperable dialler programs and to block the installation of dialler programs in the future. Internet Service Providers are directed to affect this by sending a targeted e-mail to all registered e-mail accounts, where the subscribers to such accounts have not opted out of receiving information, followed by reminders at fortnightly intervals for a total period of 6 weeks.

Direction 2:

The Commission for Communications Regulation directs that Providers of Publicly Available Telephone Services shall no later 04 October 2004:

- a) Suspend direct dial access to destinations listed in the attached Appendix B. The Appendix will be reviewed on a regular basis by ComReg and the network operators and amended appropriately in response to any significant changes to problem destinations; and
- b) permit direct dial access to specific telephone numbers located within the destinations referred to in the attached Appendix B only at the request of a subscriber and following the network operator having verified that the requested telephone number is a legitimate service only or
- c) As an alternative to only permitting direct dial access in accordance with paragraph b), above, providers of publicly available telephone services can choose to no longer charge any consumers for unauthorised call charges arising from Autodiallers.

Providers of Publicly Available Telephone Services, with effect from 04 October 2004 shall not charge any subscriber account for direct dial calls to destinations listed in the Appendix B unless the call invoiced was to a number unbarred under a subscriber request as detailed above.

The requirements under a) and b) or c) shall be operable for a period of six months from the date of this Decision Notice and shall lapse if not renewed or otherwise amended following a further consultation.

Appendix B – Destinations for which Direct Dial Facilities are to be suspended

Destination	Code
Norfolk Island	00 672
Sao Tome and Principe	00 239
Cook Islands	00 682
Tokelau	00 690
Diego Garcia	00 246
Wallis and Futuna	00 681
Nauru	00 674
Tuvalu	00 688
Comoros	00 269
Kiribati	00 686
Solomon Islands	00 677
Mauritiana	00 222
French Polynesia	00 689

Appendix C –Impact Assessment

The Ministerial Direction (issued by the Minister of Communications, Marine & Natural Resources) in accordance with S13 of the Communications Regulation Act 2002 published in February 2003, directs:

“The Commission, before deciding to impose regulatory obligations on undertakings in the market for electronic communications or for the purposes of the management and use of the radio frequency spectrum or for the purposes of the regulation of the postal sector, shall conduct a Regulatory Impact Assessment in accordance with European and International best practice and otherwise in accordance with measures that may be adopted under the Government’s Better Regulation programme”.

This section of the Decision Notice examines this decision in terms of its contribution to ComReg’s statutory objectives which are set in Section 12(1)(a) of the Communications Regulation Act 2002 – that is the promotion of competition, the completion of the single market and the promotion of users’ interests. The impact of the decision to introduce requirements on undertakings in order to protect consumers’ dial up Internet settings is assessed.

Promotion of Competition

The actions proposed in this Decision Notice will not affect the promotion of competition.

Development of the Internal Market

The development of the internal market requires the regulator to ensure that there is no discrimination in the treatment of undertakings providing electronic communications networks or services. The measures that are being implemented in this Decision Notice will apply equally to all service providers.

Promotion of User’s Interests

ComReg has a statutory duty to protect consumers; the measures proposed by ComReg will help to ensure that internet users are protected from having their dial up settings changed without their knowledge or consent. The promotion of the interests of users has been a primary driver in developing measures to combat rogue Autodiallers.

This Decision Notice will enable consumers to make informed choices with regard to any software/hardware protection measures they would like to employ. In addition, ComReg is proposing that Direct Dialling Facilities to a number of problem destinations be suspended but that specific numbers may be unblocked at the request of a telephone subscriber or that Telecom operators no longer charge consumers for the unauthorised calls resulting from Autodiallers. The measures directed by ComReg will help to ensure that consumers are protected from incurring unauthorised telephone charges.

Conclusion

The overriding purpose behind this Decision is the need to ensure consumers are protected from incurring telephone charges from calls made without their knowledge or consent. Ultimately while ComReg is aware that the measures initially may have some implications for some consumers, ComReg remains of the opinion that this is outweighed by the harm caused to those consumers who incur unauthorised excessive telephone charges as a result of falling victim to Modem Hi-jacking / Autodiallers. Therefore, the measures are considered reasonable, proportionate and justified and will provide an adequate level of protection for consumers having fully considered all relevant issues.