



Commission for
Communications Regulation

Response to Consultation and Direction: Management and Maintenance of the National Directory Database

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1 Introduction

- 1 The National Directory Database (the "**NDD**") is a comprehensive record of all subscribers of publicly available telephone services in the State who have not refused to have their details recorded in it. The function of the NDD is primarily to facilitate the compilation of information for telephone directories and directory enquiry services. In addition, following the entry into force of the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 ("**the Data Protection Regulations**"), the NDD continues to be the basis for the "opt-out" register for direct marketing purposes.¹ Eircom currently continues to manage the NDD and the collation of information from all undertakings that assign telephone numbers to subscribers.
- 2 The Commission conducted a consultation in respect of the maintenance and the management of the NDD, ComReg document 12/70. The consultation sought the views from interested parties in relation to a proposal by the Commission to direct Eircom to continue to manage the NDD until 30 June 2014.
- 3 The Commission received nine responses to the consultation and it has carefully reviewed all responses. The Commission would like to thank all respondents for their comments and views.

¹ Mobile telephone numbers are automatically protected pursuant to certain provisions in the European Communities (Electronic Communications Networks and Services) Data Protection and Privacy) Regulations 2011 against unsolicited communications.

2 Background

- 1 Historically, Eircom, in its capacity as the universal service provider (the “**USP**”), was obliged by law to maintain the NDD.² Since the coming into force of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011 (“**the Universal Service Regulations**”) a USP designated as such under the Universal Service Regulations, cannot be mandated to maintain the NDD merely by virtue of being the USP.³
- 2 However, the Commission now has the power to require an undertaking to maintain the NDD in accordance with Regulation 19 (4) of the Universal Service Regulations.
- 3 Given the various functions of the NDD, it is critical that it continues to be maintained.
- 4 Eircom is required to provide a printed telephone directory to subscribers, on an annual basis, as the USP⁴ in the State. Eircom also provides directory information held in the NDD to other directory enquiry service providers under a Directory Information Licence Agreement.
- 5 Furthermore, following the entry into force of the Data Protection Regulations, the NDD continues to be the basis for the “opt-out” register for direct marketing purposes and all undertakings that assign telephone numbers to subscribers are required to provide this required information to Eircom as the current Universal Service Provider as designated by the Commission. The “opt-out” register is the means by which subscribers express their preference not to be contacted by telephone by direct marketing companies (by “opting out”). In addition, Eircom provides this information in a CD format to the direct marketing industry under the Direct Marketing Licence Agreement.
- 6 Eircom has successfully managed the NDD to date. Due to its ownership of the assets and systems supporting the NDD, its operational control over the NDD, and because of its unique experience in maintaining the NDD, the Commission believes that Eircom is currently best placed to continue to maintain the NDD on the same basis as it currently does.

² Because of a provision in the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2003.

³ However, Eircom was designated as such pursuant to the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2003 and accordingly, Eircom remained legally obliged to maintain the NDD in its capacity as the USP, until such time as its designation under the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2003 lapsed, i.e. on 31 June 2012.

⁴ for Directory enquiry services and directories pursuant to Regulation 4(1) of the Universal Service Regulations

- 7 During the Commission's consultation on who should be the Universal Service Provider in the State from 1 July 2012, some suggested that a tendering procedure should be conducted in relation to the appointment of an undertaking to operate the Directory services and the NDD. Notwithstanding these comments the Commission has never received an expression of interest in respect of maintenance of the NDD. Further, the Commission is not required to issue a tender process for the maintenance of the NDD
- 8 The Commission notes that in accordance with Regulation 14 of the Data Protection Regulations, Eircom is currently and until June 2014⁵, the '*operator*' responsible for recording information in respect of direct marketing in the NDD and other related aspects.
- 9 However, should the Commission not direct an undertaking to maintain and operate the NDD under Regulation 19(4), it would create legal and commercial uncertainty for stakeholders⁶ and may jeopardise other obligations on undertakings and other entities in relation to the NDD and also affect the rights of consumers.
- 10 In view of the above factors, the Commission is directing Eircom to continue to maintain the NDD until 30 June 2014, under Regulation 19 and Regulation 30 of the Universal Service Regulations. The Commission plans to commence a review of its decision at least six months in advance of the expiry date, 30 June 2014, in accordance with the legislation in place at that time.

⁵ The USP designation made by ComReg on 28 June 2012 is in place until June 2014

⁶ Including: undertakings, subscribers, directory enquiry service providers, direct marketing companies, and the Office of Data Protection Commissioner.

3 Respondents views and the Commission's position

11 The Commission's consultation asked the following question:

Q. 1 Do you agree/disagree that Eircom should be required, pursuant to the Universal Service Regulations, to continue to manage and maintain the NDD until 30 June 2014?

Please provide detailed reasons and supporting evidence for your view.

12 Respondents to the consultation provided input in relation to a number of aspects including the timing of the consultation and draft Direction, the duration of the Direction, Eircom as the undertaking required to maintain the NDD and other issues. The Respondents' views and the Commission's position are detailed in the sections below.

3.1 Timing

3.1.1 Respondents views

13 Four respondents to the consultation raised a concern in relation to the timing of The Commission's consultation. Respondents stated that as the Commission had not directed an undertaking to maintain the NDD following the period 1 July 2012 that this has created legal uncertainty.

14 In addition the Irish Direct Marketing Association (IDMA) expressed concerns in respect of its members, regarding obligations under the Data Protection Regulations and notes that the Commission did not address the NDD in its consultation in respect of the Universal Service designation.

15 BT states that it notes the ruling of the Court of Justice of the European Union (commonly called the ECJ) on the 17th February 2011 (case C-16/10) which could limit the Commission from designating Eircom to provide the information of other operators.

3.1.2 The Commission's position

16 The Commission notes that since the coming into force of the Universal Service Regulations; a USP designated as such under the Universal Service Regulations, cannot be mandated to maintain the NDD merely by virtue of being the USP.

- 17 In this regard, the Commission is of the view that there is no issue arising in respect of the ECJ case C-16/10.⁷
- 18 The Commission does however have the power to require an undertaking to maintain the NDD in accordance with Regulation 19 (4) of the Universal Service Regulations.
- 19 The Commission notes that the Universal Service Regulations state that it ‘*may*’ require an undertaking to ‘*keep a record (to be known as the National Directory Database) of all subscribers. . . .*’
- 20 The Commission notes that under Regulation 14 of the Data Protection Regulations and for the purpose of the NDD “do not call register”, Eircom is required, until June 2014, to collate customers’ direct marketing preferences received from all undertakings and carry out other related tasks.
- 21 The Commission is cognisant that Eircom currently has contractual arrangements in place with directory enquiry providers and direct marketing organisations that would require Eircom to fulfil NDD tasks under that contractual arrangement for both directory and direct marketing purposes. In addition, the Commission notes that Eircom has confirmed that in the absence of a direction from the Commission that it has and will continue to manage and maintain the NDD to the highest standards.
- 22 In light of this, the Commission is satisfied that no issues have arisen for stakeholders. The Commission remains of the view that it is in the best interests of stakeholders to now direct an undertaking in accordance with Regulation 19(4) to maintain the NDD

3.2 Eircom as the undertaking required to maintain the NDD

3.2.1 Respondents views

- 23 Eircom states that it has no objection to the Commission's proposal for Eircom to maintain the NDD for the period 1 July 2012 to 30 June 2014.
- 24 Eight respondents to the consultation agree that the NDD in its current form is required and one respondent notes that continuity of the service is essential and there should be no break in service.

⁷ Under Regulation 19(4) of the Universal Service Regulations, obligations in respect of the NDD are not placed on an undertaking by virtue of the fact that they are the USP.

- 25 Telefónica agrees that Eircom is best suited to manage and maintain the NDD. Hutchison 3G Ireland Limited (H3GI) is of the view that because of its unique experience in maintaining the NDD, Eircom is best placed to maintain and manage the NDD. The IDMA welcomes the continuity that comes with retaining the legacy USO provider as the undertaking that maintains the NDD.
- 26 Demographics Ireland has no issue with Eircom maintaining the NDD, subject to a review to address particular issues.
- 27 Alternative Operators in the Telecommunications Market (ALTO) states that by June 2013, the Commission and the Department of Communications, Energy and Natural Resources - DCENR, should make the necessary arrangements to have a competitive tender process concluded and in place for the operation and management of the NDD.
- 28 H3GI states that as no tender process was initiated by the Commission that there is uncertainty in relation to costs and that another undertaking may be in a position to manage and maintain the NDD at a lower cost. It notes that a lower cost would benefit all undertakings in the current economic climate.
- 29 The IDMA is of the view that there is a very strong case to be made for the NDD data being provided on a 'free' basis to the direct marketing sector.

3.2.2 The Commission's position

- 30 The Commission is not required to issue a tender process for the maintenance of the NDD. Notwithstanding this, the Commission has never received an expression of interest in respect of maintenance of the NDD and is therefore unaware of the interest, willingness or capability of any other undertaking to maintain the NDD at this time. ComReg will re-consider this position in due course, depending on the relevant circumstances at the time.
- 31 The Commission notes Eircom's willingness and ability to maintain the NDD.
- 32 The Commission notes that the maintenance of the NDD and the requirement to provide access to it is no longer a universal service obligation imposed under Regulation 4 of the Universal Service Regulations. As such, any obligations imposed under Regulation 19(4) of the Regulations are not included in Regulations 11 and 12 of the Universal Service Obligations⁸.

⁸ Regulations 11 and 12 of the Universal Service Regulations relate to the costing and financing of Universal Service Obligations.

- 33 The Commission is of the view that there may be a cost associated with maintaining the NDD and the Commission notes that the provisions in respect of the NDD costs relate to the cost of access to the information in the NDD which must be on terms that are cost orientated, under Regulation 19(4).⁹
- 34 Under Regulation 19(4) an undertaking required to 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, and in accordance with such terms and conditions as may be specified by the undertaking and approved by the Regulator. “
- 35 Therefore, the cost of the maintenance of the NDD does not have a direct impact on undertakings except in relation to their access to the information in the NDD, if applicable or in relation to the systems or resources required by undertakings to interact with the NDD. In this regard, if there was a change of NDD provider and/or associated systems this may affect costs in relation to the interaction by undertakings with the NDD.
- 36 The Commission agrees that Eircom is best placed to maintain the NDD and in the absence of any expressions of interest or information regarding other undertakings' willingness or ability to maintain the NDD, it is of the view that it is appropriate to direct Eircom in this regard, at this time.
- 37 *However, the Commission notes the issues raised by some respondents and its position* in relation to these issues is further detailed in 3.4.2 below.

3.3 Duration

3.3.1 Respondents views

- 38 Three respondents¹⁰ to the consultation are of the view that Eircom should only be required to manage and maintain the NDD for a period of 1 year, as an interim period.
- 39 ALTO notes that its members are of the view that the period should be only until June 2013.
- 40 Four respondents¹¹ commented on the possibility for the Commission to have a tender process.

⁹ ComReg Document 07/79 - Approval of Revised Prices per the Directory Information Licence Agreement (“DILA”)

¹⁰ ALTO, BT, Vodafone

¹¹ ALTO,BT,H3GI,Vodafone

- 41 Vodafone is of the view that there is no justification for designating Eircom to manage and maintain the NDD for a 2 year period and that a further consultation allowing for a different outcomes should be conducted within six months.
- 42 BT's view is that the Commission designating Eircom to be the only provider of the NDD is exclusionary and raises competition concerns going forward as the opportunity exists for the Commission to review the current model in detail with the potential to employ a new approach.

3.3.2 The Commission's position

- 43 The Commission notes that there can only be one undertaking directed under Regulation 19(4) of the Universal Service Regulations and the Commission notes that no other undertaking has indicated its willingness or ability to carry out the requirements in relation to the NDD under this provision.
- 44 In addition, it is the Commission's view that by directing Eircom in accordance with Regulation 19(4), the associated obligations in respect of access to the information contained in the NDD are also put in place e.g. "*. . .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.*"
- 45 Therefore, the Commission does not agree that competition concerns in relation to other undertakings arise from directing Eircom, in the absence of any appropriate alternative, at this time.
- 46 The Commission notes that under Regulation 14 of the Data Protection Regulations, and for the purpose of the NDD "do not call register", Eircom is required, until June 2014, to collate customers' direct marketing preferences received from all undertakings and carry out other related tasks. In light of this obligation, the Commission is of the view that, at this time, it is not practical or workable to direct Eircom to maintain the NDD under regulation 19(4) for a shorter period of time than the duration of its obligations under the Data Protection Regulations.
- 47 This also provides further reasoning as to why it is appropriate and reasonable to designate Eircom to maintain the NDD, at this time which is further discussed in section 3.2 above.

- 48 However, the Commission plans to commence a review of this Direction at least six months in advance of the expiry date (30 June 2014), in accordance with the legislation in place at the time. In advance of this review, to assist informing the review, the Commission would welcome any information from undertakings in respect of their willingness to maintain the NDD and carry out associated obligations.

3.4 Other issues

3.4.1 Respondents View's

- 49 Three¹² respondents state that the Commission should undertake a review of the systems and processes of the NDD. BT state that the NDD systems are outdated and cumbersome, for example, there is no on-line method to readily check own customer records for 'listed' information and that manual off-line synchronisation checks are impractical.
- 50 ALTO states that new undertakings that require access to the NDD must have a pre-existing relationship with Eircom wholesale in order to access the NDD. ALTO's view is that certain reforms to the operating systems and practices surrounding the NDD are required including access, standards and guidance.
- 51 Demographics Ireland state that the operation of the database is not satisfactory, that contact with the NDD can be unsatisfactory and that the NDD requires cleansing as there are duplicate and invalid numbers on it. However, if these matters were attended to Demographics Ireland state that it would have no objection to the continuation of the management by Eircom.
- 52 Bill Moss¹³ raises concerns regarding the placing of entries on the NDD and regarding proof that a subject has specifically requested to be included on it.
- 53 Other respondents raise matters that are outside the scope of the consultation. ALTO state that ComReg should consider the introduction of postal codes and consider doing so in conjunction with the NDD. The IDMA state that the NDD could hold aggregated demographic information associated with the telephone number in question.
- 54 H3GI state that as the consultation document makes reference to the "maintenance and management" of the NDD and so, for consistency, it suggests that section 3.1 of the Direction should state "Eircom shall maintain and manage the NDD until 30 June, 2014".

3.4.2 The Commission's Position

¹² ALTO, BT, Demographics Ireland

¹³ MD Bill Moss Partnership

- 55 The Commission notes the issues raised by respondents in respect of the operation of the NDD.
- 56 The Commission notes that by directing Eircom under Regulation 19(4) to maintain the NDD ex ante obligations arise including to *“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.”*
- 57 In light of these concerns and obligations on Eircom as the undertaking responsible for maintaining the NDD, the Commission will undertake a review of the NDD systems and processes to ensure that Eircom’s obligations are being met in accordance with Regulation 19(4).
- 58 The Commission also notes that undertakings have obligations in respect of placing their subscribers’ details on the NDD.
- 59 In respect of the wording of the Direction, the Commission is of the view that the definition of ‘maintain the NDD’ appropriately addresses the requirement of Regulation 19(4) of the Universal Service Regulations.

4 Regulatory Impact Assessment ("RIA")

60 The Commission consulted on a DRAFT RIA as part of its consultation.

4.1.1 Respondents View's

61 Vodafone is of the view that if the Commission concludes that Option 1 is not viable then it is obvious that Option 2 should be adopted. However, Vodafone is of the view that Option 2 is not appropriately reasoned.

62 Vodafone states that ComReg's reasoning appears to select Eircom so as to maintain the status quo.

63 Vodafone states that the RIA should address transition issues arising if an undertaking other than Eircom was to be directed, so as to reason the duration of the Direction.

64 Vodafone states that the RIA should address issues in respect of "*possible state aid issues that arise in granting what is in effect a regulated monopoly to a specific undertaking.*" and "*competition effects of granting to an undertaking which has been designated as having SMP in multiple markets the guaranteed revenue stream and rate of return that accrues from the operation of the NDD.*"

4.1.2 The Commission's Position

65 The Commission notes that the Universal Service Regulations state that it '*may*' require an undertaking to '*keep a record (to be known as the National Directory Database) of all subscribers. . . .*'. Accordingly, the Commission is only able to direct one undertaking and has considered the scenarios if it did or did not require an undertaking to maintain the NDD.

66 The Commission is of the view that it is important that the NDD should be maintained and that the interests of stakeholders be upheld by ensuring that the associated obligations in respect of access are in place. Should the Commission direct an undertaking (irrespective of which undertaking) to maintain the NDD, then the associated obligations in relation to access must be upheld by that undertaking minimising any potential competition or '*state aid*' issues. It is the Commission's view that on balance the benefits associated with Option 2 outweigh any competition issues arising as a result that only one undertaking can be directed to maintain the NDD.

- 67 As mentioned in paragraphs 8, 20 and 45, the Commission notes that under Regulation 14 of the Data Protection Regulations and for the purpose of the NDD “do not call register”, Eircom is required, until June 2014, to collate customers’ direct marketing preferences received from all undertakings and carry out other related tasks. In light of this obligation, the Commission is of the view that, at this time, it is appropriate to direct Eircom under Regulation 19(4) and that it is not practical or workable to direct Eircom to maintain the NDD under Regulation 19(4) of the Universal Service Regulations for a shorter period of time than the duration of its obligations under the Data Protection Regulations.
- 68 The Commission’s position in the paragraphs above has been incorporated into the final RIA below.

4.2 Role of the RIA

- 69 A RIA is an analysis of the likely effect of a proposed new regulation or regulatory change. The RIA should help identify regulatory options, and should establish whether or not a proposed regulation is likely to have the desired impact. The RIA should also in certain cases suggest whether regulation is or is not appropriate. The RIA is a structured approach to the development of policy, and analyses the impact of regulatory options on different stakeholders.
- 70 The Commission’s approach to RIA is set out in the Guidelines published in August 2007, Commission Document No. 07/56 & 07/56a. In conducting this RIA, the Commission takes account of the RIA Guidelines,¹⁴ adopted under the Government’s *Better Regulation* programme.
- 71 Section 13 (1) of the Communications Regulation Act 2002, as amended, requires the Commission to comply with certain Ministerial Policy Directions. Policy Direction 6 of February 2003 requires that before deciding to impose regulatory obligations on undertakings the Commission must conduct a RIA in accordance with European and International best practice, and otherwise in accordance with measures that may be adopted under the Government’s *Better Regulation* programme. In conducting the RIA, the Commission also has regard to the fact that regulation by way of issuing decisions e.g. imposing obligations or specifying requirements can be quite different to regulation that arises by the enactment of primary or secondary legislation.

¹⁴See: http://www.taoiseach.gov.ie/eng/Publications/Publications_2011/Revised_RIA_Guidelines_June_2009.pdf

72 In conducting RIA, the Commission takes into account the six principles of *Better Regulation*. These are:

1. Necessity.
2. Effectiveness.
3. Proportionality.
4. Transparency.
5. Accountability.
6. Consistency.

73 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, the Commission would expect to carry out a less exhaustive RIA. In determining the impacts of the various regulatory options, current best practice appears to recognise that full cost benefit analysis would only arise where it would be proportionate, or, in exceptional cases, where robust, detailed, and independently verifiable data is available. This approach will be adopted when necessary.

4.3 Policy Issues

Purpose of the NDD

74 The Universal Service Regulations provide that all undertakings providing publicly available telephone services must ensure that their subscribers have the right without charge, to have an entry in a printed directory and/or a directory enquiry service. Eircom as the USP in the State is legally obliged to ensure that a comprehensive printed directory of subscribers (based upon data maintained on the NDD) is made available to all subscribers, free of charge, and that it is updated at least once a year. For this purpose, Eircom receives, stores and maintains relevant subscriber data electronically. The technical specifications and protocols in relation to the arrangements are overseen by the Commission. The relevant subscriber data is obtained and recorded by Eircom in the NDD, without charge to undertakings¹⁵ and the NDD is updated nightly. The NDD is therefore, a central, up to date and reliable source of data relating to subscribers who have consented to their details being recorded on it.

¹⁵ Commission Document No. 07/20.

- 75 The Data Protection Regulations also require all undertakings to record a subscriber's telephone number in the NDD "*do not call register*" if the customer requests, (fixed line ex-directory numbers must be placed automatically on the "*do not call register*" by undertakings). The NDD is used as a direct marketing "*opt-out*" register. The NDD is the mechanism used for collating the "*do not call register*" for the purpose of the Data Protection Regulations. Consumers can opt out of direct marketing by asking their telecoms service provider to place their number on the "*do not call register*."
- 76 Therefore, the Universal Service Regulations and the Data Protection Regulations require the NDD to be in place and for it to be maintained.
- 77 The NDD is a valuable and convenient resource for directory enquiry service providers. Subscriber names and telephone numbers are key inputs for their businesses and Eircom (who was obliged until 28 June 2012 for maintaining the NDD) provides them with this information from a central and convenient source.

Issue

- 78 Since the coming into force of the Universal Service Regulations in 2011, a USP designated as such there under, cannot be mandated to maintain the NDD merely by virtue of being the USP.
- 79 However, the Commission has the power to require an undertaking to maintain the NDD in accordance with Regulation 19 (4) of the Universal Service Regulations. That undertaking may still be the USP, but the USP cannot be obliged to maintain the NDD *in its particular capacity as the USP*, rather it would be obliged in its capacity as an *undertaking*, like any other undertaking.
- 80 Without the NDD, a number of regulatory requirements could not be fulfilled by undertakings. Residential consumers and businesses might lose their legal entitlements and protections under the Universal Service Regulations in respect of directories/directory enquiries and the Data Protection Regulations in respect of unsolicited direct marketing.
- 81 Given the various functions of the NDD, it is critical that it continues to be maintained.

4.4 Policy Options

- 82 The Commission has considered the options available to it to ensure that the NDD is maintained.
- 83 **Option 1:** Not to specify an undertaking to maintain the NDD.

- 84 **Option 2:** Specify an undertaking to maintain the NDD under Regulation 19(4).

Assessment of Options

Option 1

- 85 The Commission has considered the impact if it were to forebear from specifying an undertaking to maintain the NDD.
- 86 If the Commission does not direct an undertaking to maintain and operate the NDD, it would create legal uncertainty for stakeholders and may jeopardise its own obligations and other obligations on and rights of undertakings and other entities in relation to the NDD and in turn, ultimately affect the rights of consumers.

Consumers

- 87 The Commission is of the view that if there is no undertaking specified to maintain the NDD, consumers' rights (regarding directories and opting out of direct marketing) may be seriously jeopardised. In the Commission's view, this scenario must be avoided.

Industry

- 88 In accordance with Regulation 19 of the Universal Service Regulations, subscriber details are made available by undertakings, recorded and maintained by the undertaking that maintains the NDD. In addition, the undertaking that maintains the NDD must provide access to that information in accordance with specific terms and conditions. If there is no undertaking specified to maintain the NDD, this will create legal and commercial uncertainty about who must provide access to the NDD and the obligations relating to access, specified in Regulation 19 (4) of the Universal Service Regulations would not be imposed on any undertaking.

Competition

- 89 The Commission considers that not specifying an undertaking to maintain the NDD, and to provide access to it for third parties, could result in directory enquiry service providers being deprived of access to the NDD, Eircom having exclusive access and being able to unilaterally set terms and conditions of access to it. This could result in Eircom having an unfair competitive advantage in the market, with the result that competition could be seriously damaged or lessened.

Option 2

- 90 The Commission has considered the impact of requiring an undertaking to maintain the NDD.
- 91 The Commission is of the view that this is the most appropriate, justified, and appropriate option at this time, as it is the only way to ensure that the related rights and obligations can be guaranteed.
- 92 In addition, the Commission has considered which undertaking it should specify and it is of the view that to specify Eircom as the undertaking to maintain the NDD, is the most appropriate, justified, and proportionate option at this time.
- 93 If the NDD is maintained in its current form by Eircom it will mean that there is consistency in terms of service and price.

Consumers

- 94 The Commission is of the view that the preferred option to facilitate the associated consumer rights (in respect of directory entries and opting out of direct marketing) (the Data Protection Regulations) is for the Commission to specify an undertaking to maintain the NDD. In addition, in order to avoid any risks in relation to the continuity of operation and indeed, the integrity of the data in the NDD, the Commission is of the view that Eircom should continue to maintain the NDD, at this time.

Industry

- 95 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. Undertakings provide nightly updates to the NDD in relation to their consumer's directory preferences. Undertakings also provide, on an annual basis, details of their customers who wish to have their telephone number listed in the telephone directory.
- 96 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 these providers and undertakings to obtain the information from the one, centralised source that is the NDD.
- 97 Requiring Eircom to maintain the NDD would also preserve the *status quo* and continuity; therefore clearly have a positive impact on the industry.

- 98 The Commission believes that the administrative burden on all undertakings to ensure their subscriber data is accurately recorded, would be costly and time consuming. As the NDD is already operational and as undertakings have access to the NDD to update their subscriber data, the Commission considers that the current systems for managing this data should be maintained to ensure regulatory certainty and continuity for undertakings and consumers. As Eircom currently manages the NDD for industry, the Commission considers that Eircom is best placed to continue to maintain the NDD, at this time.
- 99 Finally, the Commission understands that the costs to Eircom of maintaining the NDD are covered by the licence fees (Directory Information Licence Agreement/Direct Marketing Licence Agreement).¹⁶ However, if the NDD was to be maintained by another undertaking, it is very likely that there would be additional costs to Eircom and all other undertakings to put in place new systems to maintain the NDD and to integrate/interact with the NDD to ensure their customers' preferences are up-to-date and accurately recorded by another undertaking.

Competition

- 100 The Commission notes that the Regulations state that it '*may*' require an undertaking to '*keep a record (to be known as the National Directory Database) of all subscribers. . . .*'. Accordingly, the Commission has considered the scenarios if it did or did not require an undertaking to maintain the NDD.
- 101 The Commission is of the view that it is important that the NDD should be maintained and that the interests of stakeholders be upheld by ensuring that the associated obligations in respect of access are in place. Should the Commission direct an undertaking (irrespective of which undertaking) to maintain the NDD, then the associated obligations in relation to access, must be complied with by that undertaking minimising any potential competition or '*state aid*' issues. It is the Commission's view that on balance the benefits associated with Option 2 outweigh any competition issues arising as a result of the fact that the Commission may only direct one undertaking, to maintain the NDD.
- 102 The Commission notes that under Regulation 14 of the Data Protection Regulations and for the purpose of the NDD "do not call register", Eircom is required, until June 2014, to collate customers' direct marketing preferences received from all undertakings and carry out other related tasks. In light of this obligation, the Commission is of the view that, at this time, it is appropriate to direct Eircom under Regulation 19(4) and that it is not practical or workable to direct Eircom to maintain the NDD under Regulation 19(4) for a shorter period of time than the duration of its obligations under the Data Protection Regulations.

¹⁶ Commission Document No. 10/46.

103 In addition, the Commission has observed from responses by industry to previous consultations by the Commission, that the majority of telecoms service providers are supportive of the NDD and its functions.

104 In light of the above, the Commission is of the view that it is appropriate, justified and proportionate that the Commission specifies Eircom be the undertaking required to maintain the NDD.

5 Direction

1 Definitions

In this direction:

“Act of 2002” means the Communications Regulation Act 2002;

“Commission” means the Commission for Communications Regulation;

“Eircom” means Eircom Limited;

“maintain” means to keep a record of all subscribers of publically available telephone services in the State, including those with fixed, personal and mobile numbers who have not refused to be included in that record.

“record” means the NDD.

“NDD” means the national directory database, being the record of all subscribers of publicly available telephone services in the State, including those with fixed, personal and mobile numbers who have not refused to be included in that record; and

“Regulations” means the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011.

2 Statutory Basis for Direction

1. This direction is issued to Eircom by the Commission under Regulation 19 (4) and Regulation 30 of the Regulations and section 10 (1) (a) of the Act of 2002 and having regard to section 12 of the Act of 2002.

3 Direction

1. Eircom shall maintain the NDD until 30 June 2014.
2. Eircom shall meet all reasonable requests for access to any information contained in the NDD in an agreed format.
3. The terms of access to the NDD shall be fair, objective, and cost orientated and non-discriminatory.
4. The terms of access to the NDD shall otherwise be in accordance with such terms and conditions as may be specified by Eircom and approved by the Commission.

4 Statutory Powers Not Affected

1. Nothing in this direction shall operate to limit the Commission 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

1. 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

1. This direction shall be effective from the date of its publication.
2. This direction shall remain in force from the effective date until 30 June 2014.