



Commission for  
**Communications Regulation**

## Response to Consultation & Decision Notice

### **The Cost Orientation Obligation in Providing Number Information to the National Directory Database**

<b>Decision No:</b>	<b>D02/07</b>
<b>Document No:</b>	<b>07/20</b>
<b>Date:</b>	<b>5<sup>th</sup> April 2007</b>

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## 1 Introduction

The Commission for Communications Regulation ('ComReg') published its document 'Consultation on the cost orientation obligation in providing number information to the National Directory Database', ComReg document 06/46 on 4<sup>th</sup> September 2006. The consultation document initiated a process to review the current charges for the provision of 'relevant information'<sup>1</sup> by operators to the National Directory Database ('NDD') to ensure they are 'cost oriented', in accordance with the obligation in Regulation 21(2) of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2003 ('The Universal Service Regulations'). Number assigners were invited to answer three questions, in order to provide ComReg with sufficient information to assess whether the current charge for provision of relevant information to the NDD was 'cost oriented'. To enable all parties to comprehensively respond the deadline for receipt of submissions was extended to 20<sup>th</sup> October 2006.

There were four respondents to the consultation as detailed below.

### List of Respondents:

eircom Limited	Fixed network operator
BT Communications Ireland Ltd.	Fixed network operator
Magnet Networks Ltd.	Fixed network operator
Conduit Enterprises Ltd.	Directory Enquiry Service Provider

All points raised by the respondents have been considered, although readers will appreciate that it is not feasible to refer to every point made by every respondent in a document of this nature. With the exception of material marked confidential, the written comments of respondents will be published separately on ComReg's website.

Having considered the views of all respondents, ComReg has decided that the current cost of providing information to the NDD is very small and in fact approximates to zero euro per update. As such ComReg is, by way of a further specification of the obligation of cost orientation, directing that the charge for provision of relevant information to the NDD will be zero euro going forward.

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<sup>1</sup> ComReg considers that 'relevant information' in this context means the name and address, including postcode (if appropriate), of listed and unlisted subscribers (but not ex-directory subscribers), together with any telephone numbers allocated to them by the entity concerned.

## 2 Summary of the consultation issues

Under Regulation 21(2) of the Universal Service Regulations, all telephone number assigners are obliged to ‘meet all reasonable requests to make available, for the purposes of the provision of publicly available directory inquiry services, directories and the record referred to in Regulation 4(4), the *relevant information* in an agreed format on terms that are fair, objective, *cost oriented* and non-discriminatory’ (emphasis added). The NDD is ‘the record referred to in Regulation 4(4)<sup>2</sup>. ComReg considers that ‘relevant information’ in this context means the name and address, including postcode (if appropriate), of listed and unlisted subscribers (but not ex-directory subscribers), together with any telephone numbers allocated to them by the entity concerned. This interpretation of ‘relevant information’ is consistent with the interpretation given by the European Court of Justice (‘ECJ’) to this phrase in the context of the ruling in ‘Denda’<sup>3</sup>.

In interpreting cost orientation, ComReg is also guided by the interpretation given by the ECJ in Denda, in which it interpreted ‘fair, cost oriented and non-discriminatory’ to mean, with regard to data which the supplier is bound to make available to third parties (i.e. the relevant information), ‘*only the costs of actually making those data available to third parties may be invoiced*’ (i.e. incremental costs) not the ‘*costs relating to the compilation of those data*’. In particular the ECJ emphasised that compilation, or allocation of the basic data relating to subscribers ‘*unlike the costs incurred in making them available to third parties, must in any event be borne by the supplier of a voice telephony service and are already included in the costs and revenue of such a service*’. In those circumstances, passing the costs associated with compiling or allocating data on to persons requesting access to the data would result in an excessive and unwarranted offset of the costs in question.

In summary, ComReg considers that ‘relevant information’ must be provided to third parties (including the NDD) on a cost oriented basis. The charge for providing relevant information required under Regulation 21 of the Universal Service Regulations should only cover the cost of making the data available to third parties (i.e. incremental costs) and not the costs of compiling and maintaining this information, which are already included in the costs and revenue of the service and therefore should be incurred by the individual operators.

In the light of this interpretation, ComReg initiated a consultation with the aim of assessing the current charge for provision of relevant information to the NDD. ComReg outlined in the consultation that if it were to come to the view that the charge was not ‘cost oriented’ (using the interpretation outlined above), and if the costs were similar for each operator, it would direct operators to charge a specific rate for the provision of relevant information to the NDD going forward. This direction would be as a further specification of the obligation to make the relevant information available on a cost oriented basis.

In order to facilitate ComReg in reviewing the current charge, ComReg asked that all number assigners answer three questions. The questions, responses and ComReg’s position in relation to the issues are summarised in Section 3.

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<sup>2</sup> Note that the NDD is the record referred to in Regulation 4(3) and not Regulation 4(4). No record is referred to in Regulation 4(4) and therefore this seems to be an obvious typographical error and should be interpreted as such.

<sup>3</sup> Case C-109/03 KPN Telecom BV v onafhankelijke Post en Telecommunicatie Autoriteit, ECJ judgment of 25th November 2004.

### 3 Summary of Responses to Consultation

#### 3.1 Q.1 How do you send the relevant information to the NDD and how often do you send it?

##### 3.1.1 Views of Respondents

One respondent stated that it updates the NDD nightly, at the end of each working day, and that this information is sent by means of File Transfer Protocol<sup>4</sup> ('FTP').

Another respondent stated that the current system in place for sending information to the NDD is a legacy ISDN/leased line system but this respondent did not provide detail on the frequency by which they send relevant information to the NDD or whether the transmission means used by them is ISDN or leased line.

Another respondent did not specifically indicate the means or frequency by which they send the information to the NDD.

##### 3.1.2 Commission's Position

ComReg has reviewed the responses to consultation and is of the view that the means of transfer of relevant information to the NDD is generally by a file transfer using either ISDN or leased line.

ComReg notes that one respondent suggested the use of a web based XML system as a medium for transferring data from the operator to the NDD. ComReg is not in a position to discuss the technical feasibility of alternative means of data transfer but this is something which the operator concerned may wish to discuss with the NDD provider itself.

#### 3.2 Q2. What is the incremental cost to your organisation of providing the relevant information to the NDD? In your response please provide a detailed cost submission.

##### 3.2.1 Views of Respondents

Of the three operator responses only one operator responded with a detailed cost submission. The cost submission included two types of costs which the operator said that it incurred in providing relevant information to the NDD, namely costs in relation to collating and maintaining directory listings and direct marketing preferences and interface costs i.e. costs associated with validation, formatting and transmission of data directly to the NDD (examples that are given are IT systems costs, IT support staff and other capital charges).

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<sup>4</sup> FTP or file transfer protocol is used to connect two computers over the Internet so that the user of one computer can transfer files and perform file commands on the other computer. FTP is a commonly used protocol for exchanging files over any network that supports the TCP/IP protocol (such as the Internet or an intranet). There are two computers involved in the FTP transfer: a server and a client.

Another operator respondent broadly outlined the incremental costs as being the recovery of costs of developing and maintaining their systems to send this information, re-loading rejects reported by the NDD and ad hoc manual and management costs of trying to verify that the data on the NDD is correctly aligned with the data on their systems.

One respondent pointed out that inefficiencies in the systems and processes used by either the NDD or the network operators supplying data could cause an increase in the cost of transferring the data. They cite the example of the data supplier having a poorly compiled database which could result in a large number of rejected listings when the automated systems attempt to transfer the data requiring manual intervention. The respondent is of the view that if the database is properly compiled and established, it should run with minimal intervention and the cost of transferring the data would 'tend towards zero'.

### 3.2.2 Commission's Position

ComReg has reviewed the responses to the consultation and is of the view that the incremental cost of providing the relevant information to the NDD is the cost of sending the information to the NDD i.e. the cost of file transfer using such means as ISDN or leased line. Given that the relevant cost in this context is the *incremental* cost only, this cost will be very small, in fact close to zero. Consequently, ComReg believes that the optimal solution is simply to set the charge at zero.

Two operators represented in their submissions that the development and maintenance of systems used to send NDD information, referred to by one operator as 'interface costs' were included in their incremental costs. These are not, in ComReg's view incremental costs. In the consultation, ComReg clearly set out that incremental costs in this context referred to the cost of making the data available to third parties and not the costs of compiling and maintaining this information, which are already included in the costs and revenue of the service and therefore should be incurred by the individual operators.

ComReg is of the view that data in relation to ex-directory listings (including ex-directory numbers supplied to the NDD for the purpose of recording a preference not to receive unsolicited calls) and data in relation to direct marketing preferences do not constitute 'relevant information' for the purpose of the obligation in Regulation 21(2) of the Universal Service Regulations. Therefore no cost-orientation obligation applies to this information and costs in relation to collating and maintaining directory listings and direct marketing preferences are not relevant for calculating the appropriate charge in this context. Such costs should be incurred by the operator as part of providing a telephony service, meeting its legal and regulatory requirements and fulfilling the requirements of its customers.

ComReg agrees with the view that the costs incurred and the charging mechanism should be based on "efficient operator" principle and is of the opinion that where numbers are rejected and there are manual processes involved that this is an issue for the operator to improve on and they should not be compensated for such inefficiencies. This point is addressed further in the section below.

**3.3 Q.3 The current charge is on a per number basis, do you feel that this is an appropriate charging mechanism? If not, please suggest an alternative method (including a detailed cost submission).**

*3.3.1 Views of Respondents*

One respondent stated that the current ‘fixed charge per listing’ charging mechanism should remain in place. This respondent was of the view that the current charging mechanism was understood and operated by operators and expressed concern that the costs associated with a potential change to the charging basis could result in additional billing system costs in excess of any benefits it might deliver. This respondent further stated that the “efficient operator” principle should continue to be used i.e. that all operators should be compensated at the rate of an ‘efficient operator’.

Another respondent suggested that there should be three different charges, one for larger operators, one for smaller operators and one for rejected numbers. It was of the view that for larger companies much of the activity involved is not on a per number basis, but relates to managing lists of numbers, hence once a method has been developed to automatically upload on a scheduled basis, there should only be a cost recovery for development of this method. For smaller operators that update the NDD manually it suggested that a per number approach is probably still correct. The respondent also noted the costs of re-submitting rejects to the NDD should be taken into account. This involves manually checking rejected numbers and resubmitting into the next update.

Another respondent stated that they didn’t believe that the current charging mechanism was valid but if the current per number mechanism were to continue that the charge should be significantly lower.

*3.3.2 Commission’s Position*

Following consideration of the responses received, ComReg has formed the view that charges should not be on a per number basis and that it would be more appropriate to set a charge on a ‘per update’ basis, since the current process is based on sending the relevant data in batch form.

ComReg believe that the issue raised by one operator relating to rejected data from the NDD is a matter for the operator to raise with the NDD itself as this is likely to relate to interface problems between the operator and the NDD system. It is the responsibility of the operator to ensure that the data they are sending to the NDD is both accurate and in an agreed format so that the NDD can recognise the update. ComReg is of the view that once the operator database is properly compiled, and the system for transfer of the data to the NDD is established, it should run with only minimal intervention.

One operator included a suggestion that the charging mechanism for sending information to the NDD should be different for large operators and small operators. The suggested means involved automatic lists for large operators and the ‘per number’ approach for smaller operators. ComReg do not see the relevance of the differentiation between listings and ‘per number’ basis as all the data will be sent via a file transfer and therefore the incremental costs will be the file transfer cost/transmission cost. The file

transfer contains all information both listings and numbers and the cost of transferring the file remains the same regardless if a list is included or individual numbers are included.

### **3.4 Other issues**

One operator indicated that it had not been receiving payment for sending numbers to the NDD and therefore requested that it should be back paid such monies.

The current consultation is not an historical analysis of the level of operator costs but an examination of what cost orientation currently means and will mean going forward.



#### **4 Conclusions**

ComReg is of the view that the means of transfer of relevant information to the NDD is generally by such communication modes as ISDN or leased line. Following consideration of the responses received, ComReg has formed the view that charges should not be on a per number basis and that it would be more appropriate to set a charge on a 'per update' basis.

ComReg does not consider that the cost of developing and maintaining such systems are 'incremental costs' in providing data to the NDD on the basis that these are already included in the costs and revenue of the service and therefore should be incurred by the individual operators.

Based on these conclusions ComReg finds that:

- (1) the current charge of €0.0762 is not cost oriented.
- (2) the incremental cost of sending the relevant information to the NDD is in ComReg's view an immaterial amount. On this basis, the charge for provision of relevant information from an operator to the NDD will be zero euro per up-date going forward.

## 5 Direction

### 5.1.1 Obligations on undertakings that assign telephone numbers to subscribers

By virtue of Regulation 21(2) of the Universal Service Regulations<sup>5</sup>, all undertakings that assign telephone numbers to subscribers are obliged to ‘meet all reasonable requests to make available, for the purposes of the provision of publicly available directory inquiry services, directories and the record referred to in Regulation 4(4), the *relevant information* in an agreed format on terms that are fair, objective, *cost oriented* and non-discriminatory’ (emphasis added). The NDD is ‘the record referred to in Regulation 4(4)’<sup>6</sup>. ComReg considers that ‘relevant information’ in this context means the name and address, including postcode (if appropriate), of listed and unlisted subscribers (but not ex-directory subscribers), together with any telephone numbers allocated to them by the entity concerned.

### 5.1.2 Statutory powers giving rise to direction

These Directions are issued under Regulation 31 of the Universal Service Regulations, for the purpose of further specifying requirements to be complied with by eircom relating to an obligation imposed under the Universal Service Regulations.

These Directions are also issued having regard to sections 10 and 12 of the Communications Regulation Act, 2002.

### 5.1.3 Direction

In this direction ‘relevant information’ means the name and address, including postcode (if appropriate), of listed and unlisted subscribers (but not ex-directory subscribers), together with any telephone numbers allocated to them by the entity concerned.

**Direction: ComReg directs all undertakings that assign telephone numbers to subscribers that from the 4<sup>th</sup> May 2007 going forward a cost oriented rate for making available ‘relevant information’ for the purposes of the provision of publicly available directory inquiry services, directories and the National Directory Database will be zero euro per up-date.**

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<sup>5</sup> S.I. No. 308 of 2003 the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2003 which transposes Directive 2002/22/EC of the European Parliament and the Council of 7 March 2002 on universal service and users’ rights relating to electronic communications networks and services

<sup>6</sup> Note that the NDD is the record referred to in Regulation 4(3) and not Regulation 4(4). No record is referred to in Regulation 4(4) and therefore this seems to be an obvious typographical error and should be interpreted as such.

## **6 Next Steps**

On foot of this direction ComReg proposes to review the Directory Information Licence Agreement ('DILA'). The DILA is the licence agreement governing access to the information in the NDD. This agreement must be approved by the regulator as the 'terms and conditions' referred to in Regulation 4(3) of the Universal Service Regulations. The review of the terms and conditions of the DILA will be on a forward looking basis. The direction set out in section 5 of this document may have an impact on the cost base of the NDD itself and as a result the charges for services offered by the NDD to third parties.

## Appendix A – Legislation

S.I. No. 308 of 2003 European Communities (Electronic Communications Networks and Services)(Universal Service and Users' Rights) Regulations 2003:

Regulation 4(1) states that 'A designated undertaking shall ensure, based on data provided to it in accordance with paragraph (3) –

- a) That a comprehensive directory of subscribers is made available to all end-users in a form approved of by the Regulator, whether printed or electronic or both, and is updated at least once in each year, or
- b) That a comprehensive telephone directory inquiry service is made available to all end-users, including users of public pay telephones'.

Regulation 4(2) states that 'A directory or directory inquiry service referred to in paragraph (1) shall comprise, subject to Regulation 8 of the European Communities (Data Protection and Privacy in Telecommunications) Regulations 2002 (S.I. No. 192 of 2002) all subscribers of publicly available telephone services in the state including those with fixed, mobile and personal numbers, who have not refused to be included in such directories'.

Regulation 4(3) states that 'A designated undertaking shall, subject to Regulation 10 of the European Communities (Data Protection and Privacy in Telecommunications) Regulations 2002 (S.I. No 192 of 2002) 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 allow access to any information contained in such record to any other such undertaking or any person in accordance with such terms and conditions as may be specified by it and approved by the regulator'.

Regulation 4(4) states that ' A designated undertaking shall for the purposes of this Regulation apply the principle of non-discrimination to the treatment of information that has been provided to it by other undertakings or which it has in its possession or under its control'.

Regulation 21(1) states that 'An undertaking providing a publicly available telephone service shall ensure that its subscribers have the right, without charge, to have an entry in a directory as provided for in Regulation 4(1), and a directory enquiry service as provided for in Regulation 4(2)'.

Regulation 21(2) states that 'An undertaking that assigns telephone numbers to subscribers shall meet all reasonable requests to make available, for the purpose of the provision of publicly available directory inquiry services, directories and the record referred to in Regulation 4(4), the relevant information in an agreed format on terms that are fair, objective, cost oriented and non-discriminatory'.