



Commission for
Communications Regulation

Submissions to Consultation

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

Submissions received from respondents

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1 eircom Limited

**Commission for Communications
Regulation**

Consultation Paper 06/46

**Consultation on the Cost Orientation
Obligation in Providing Number Information
to the National Directory Database**

**Non-Confidential Response by
eircom Limited**

Introduction

This document is eircom's non-confidential response to ComReg's Consultation Paper 06/46 "Consultation on the Cost Orientation Obligation in Providing Number Information to the National Directory Database", published on 4 September 2006.

The three questions raised in the Consultation Paper are addressed in turn below.

Question 1

How do you send the relevant information to the NDD and how often do you send it?

eircom updates the NDD nightly, at the end of each working day, and it is performed by means of FTP (File Transfer Protocol).

Question 2

What is the incremental cost (see guidance in section 3) to your organisation of providing the relevant information to the NDD? In your response please provide a detailed cost submission.

eircom has identified three different costs that arise in relation to the NDD database:

Type A: There are costs associated with collecting and maintaining customer details for service, billing etc. Likewise, there are costs associated with the IT systems themselves. These costs are not exclusive to NDD *and have never been included* in eircom's submission relating to costs associated with provision of listings to the NDD.

Type B: There are costs associated with collating and maintaining directory listings and direct marketing preferences, for example, inclusion of phone number in printed phone books, inclusion in Directory Enquiry listings and "cold calling" schemes. eircom must perform this as part of General Authorisation/USO. These costs have been included in previous submissions relating to the provision of listings to the NDD.

Type C: There are costs associated with validation, formatting and transmission of data directly to NDD. These would include costs associated with interface systems and could comprise:

- IT Systems costs
- Time of Internal IT Support staff in developing, supporting and operating the relevant procedures
- Depreciation and capital charges

Question 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).

The appropriate charging mechanism should be based on the “efficient operator” principle. This would mean that once the appropriate “efficient operator” cost is calculated, all operators would be compensated at that rate. It should not be the case that operators are compensated at differing levels for the supply of listings to the NDD. The current charging regime accepted the eircom costs as those of an “efficient operator” and thus all operators were compensated at that level. eircom would suggest that this would be an appropriate model to continue in the future.

eircom believes that the current charging mechanism, fixed charge per listing, should remain in place. Type B costs are very clearly volume dependent and Type C costs also vary to a significant degree with volume. The volume of listing being managed will determine the complexity and sophistication, which will be required to store and maintain the accuracy of the listings. The complexity of these IT systems will in turn significantly impact the IT solution required to interface from this system to the NDD. eircom also feels that the current charging mechanism is understood and operated by operators and the costs associated with a potential change to the charging basis might well result in additional billing system costs in excess of any benefits it would deliver.

2 BT Communications Ireland Ltd.

BT Response to the NDD consultation 06/46

20th October 2006

General comments

BT welcomes this opportunity to comment to the operation and costing of providing information to the NDD. Over recent years there have been some major changes to the information provided to the NDD and BT is disappointed at the overall way that this has been managed as it has in effect meant two development activities when only one should have been required; increasing implementation costs and leaving X-Directory customers exposed to unwanted sales calls for longer than necessary.

Additionally we now appear to have an inflexible NDD which requires different schedules for updating it, and in time the current solution has 'baked' unnecessary costs and problems into the system when future changes are required.

Data Verification

BT is strongly of the opinion that operators should have the ability to properly verify their information on the NDD to both check that the NDD is synchronised and to ensure that it is correct. Although all reasonable efforts will be taken to ensure the integrity of customer data, without a fair and reasonable process of NDD verification it is simply not possible to be assured that the data on the NDD is correct. As BT has no control of the data stored on the NDD once a record is updated, it is outside of BT's control to give any assurance that the data on the NDD is correct.

Past experience of obtaining data extracts from the NDD for verification is poor, with eircom refusing to supply extracts on occasions. It is acknowledged that occasionally agreement has been reached to supply an extract to verify data, and this has happened as part of the X-Directory work. The payment method used to obtain extracts also goes against standard business trading principles as eircom require payment up front initially without an invoice. BT pays eircom huge sums in interconnect and other charges over the course of the year and it is frustrating that eircom cannot trade in the same way for the one thousand euros charge for NDD extracts. We understand informally that eircom are considering changing the current payment method we hope this will be carried through.

Existing payments

BT understanding is that it has not been receiving payment for sending numbers to the NDD and therefore requests that it should be back paid such monies as it is entitled under regulation.

Tendering for a new NDD provider

Given the current problems with dealing with the NDD and eircom highlighted in this response, and the recent information within the consultation of the Miscellaneous Provisions Bill process that 999/112 services are to be tendered out, there is growing logic for linking the two directory databases and tendering out for a truly independent provider that serves the industry as a customer to supply a central directory information base that could serve not only directory enquiries, but emergency services, data protection and potentially other features going forward.

Response to the questions within the consultation

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

Originally BT manually processed data for sending to the NDD and this was when customer requests were made. Over the last year, BT has manually updated some individual and corporate requests but generally sent information to the NDD in a semi-automated way with our systems providing the base information, and for this to be packaged into the correct format before being manually sent to the NDD. In addition to the time to send, we also receive a number of rejects back from the NDD and these are checked and processed manually into the next upload.

As part of the upgrade to support X-directory customers BT will be introducing a fully automated system for both listed customers and X-directory customers, updating the NDD daily for listed and two weekly for the X-Directory customers as required. However, telephone number entries that are rejected by the NDD will still have to be checked and re-processed manually both for listed and X-Directory customers.

Q.2 What is the incremental cost (see guidance in section 3) to your organisation of providing the relevant information to the NDD? In your response please provide a detailed cost submission.

To date BT does not believe it has received any payments for sending numbers to the NDD, or additionally rechecking rejects and resending them.

The incremental costs going forward are the recovery of development costs of developing and maintaining our new systems to send this information, followed by re-loading rejects reported by the NDD (see reasons for failures in Q3). In addition, there are ad hoc manual and management costs of trying to verify that the data on the NDD is correctly aligned with the data on our own systems and this should be added into the costs of updating the NDD. The lack of an established facility to check and verify our data against that on the NDD is frustrating and ultimately puts the consumer at unnecessary risk of incorrect information being recorded on the NDD. For X-Directory, verification will not be an issue going forward as we will send complete updates every two weeks, however something fair and reasonable needs to be implemented for listed numbers etc.

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).

For larger companies much of the activity involved is not on a per number basis, but on managing lists of numbers, hence once a method has been developed to format the list for the NDD it is a small number of activities managing large files rather than many. The only exception to this is the management of NDD rejects which have to be processed on a per number basis. The current system therefore looks disproportional towards the largest operator.

In summary the cost activity split looks as follows:

- Large operators would construct lists automatically for scheduled uploads – there should be a cost recovery of the development of this activity. Please note the lists are only used for the upload and such an activity is not needed otherwise.
- For smaller operators that update the NDD manually, then the per number approach is probably still correct.
- For both large and small operators there will be an ongoing reject rate for various reasons such as customers moving provider between updates (see some reasons below). This will be predominately for X-Directory lists due to 2 week gap. It is likely that rejected numbers will have to be checked manually and reprocessed into the next update manually. ComReg need to establish the percentage of rejects and man hours to correct. BT should have reliable information of its reject rates following the implantation of automation on the 30th October 2006 and will be happy to supply reject rates then.

In summary a new scheme does appear to be required and should include dealing with re-submitting rejects to the NDD.

Some reasons for failures are:

- Incorrect syntax – seems to happen from time to time but should generally be driven to a very low number of errors.
- Not your customer - this is quite common for a variety of reasons such as:
 - Customers from other networks trying to register a preference on your company freephone systems. BT has even had mobile customers trying to register their preference via our free dial up service even though the service clearly identified it was for BT customers only.
 - Customer has just left your network. The NDD does not hold a real time record hence there will always be synchronisation errors.

End

3 Magnet Networks Ltd.

On behalf of Magnet Networks Limited we welcome this opportunity to respond to your consultation.

1. Magnet would ask that you consider the following issues with regards to the NDD to minimise costs:

a. We would like to ensure costs are minimised to interact with the NDD. To that end we would like to be able to transfer NDD information between ourselves and the NDD system using modern standards. Currently there is a legacy ISDN/Leased Line system. Specifically we would like to be able to add/change/view/delete records using a web services based XML system. The current system and schema must be updated to allow this.

b. In addition, we believe it would be a more cost effective and accurate NDD if the content of the address records was enforced based on validation with the An Post Geo Directory. This would allow us to better validate/verify and match records throughout are IT systems. In addition this would give greater certainty to the Emergency Services as to the location of a specific address.

2. We are concerned that any proposal that you make from this consultation does not lead to increased costs at the far end to users of the data for directory enquiry services etc. Should modern means of interacting with the NDD and the use of a data validator such as Geo Directory be implemented than the incremental costs are marginal. The transport costs effectively disappear as the marginal usage of Internet capacity would be negligible, and the benefits of being able to more easily correlate and clean our data sets against a structured (as opposed to the current unstructured mess) would lower our incremental costs of providing the data to almost nothing.

3. We don't believe that the current charge is valid at all, especially if a more efficient NDD system, as described above, would be put in place. If it is to continue we would recommend the charge be retained as a per number charge but significantly reduced.

4 Conduit Enterprises Ltd.



Response to ComReg Consultation

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

20 October 2006

Introduction

Conduit welcomes this consultation by ComReg to clarify the terms under which data is supplied to the National Directory Database (NDD). As a provider of directory services, Conduit depends upon the NDD, and in turn the network operators who supply into the database. Clarification of the terms on which data is supplied into the NDD will have a direct impact on the basis on which Conduit and other directory providers receive data.

Eircom was required to establish the National Directory Database under universal service designation. The requirement has been reconfirmed a number of times since the NDD was first established, and the current obligation imposed under the universal service regulations¹ is due to continue until 2010. The obligation on Eircom to provide the NDD, and on network operators to supply directory data has existed under the 1998 and 2002 regulatory frameworks, however the obligations in relation to directories have remained essentially unchanged throughout this period. During this period, Eircom's NDD unit has also become the compiler of the database of user preference in relation to unsolicited marketing calls. This is however a separate obligation imposed under the Data Protection Regulations², and the costs associated with this activity need to be separately identified.

As ComReg has detailed in the consultation document, there has been some case law in relation to the interpretation of the obligation on network operators to supply data for compilation of directories. The KPN/OPTA³ case has clarified that the "cost orientation" obligation on network operators means that charges can recover only the cost of transferring the data, and not the cost of compiling the database. Conduit believes the current contract between the NDD and data suppliers (of which Eircom itself is the largest) is clearly incompatible with the cost orientation obligation for that supply, and as a direct consequence, the price charged to recipients of data is also incorrect.

As Conduit is not a supplier of data to the NDD, we have not responded specifically to the three questions posed in the consultation, but have commented on other considerations thought to be relevant. Conduit looks forward to ComReg's determination of these issues.

The Cost Orientation Obligation

Regulation 21(2) of the Universal Service Regulations implements Article 25(2) of the Universal Services Directive. The regulation provides that all undertakings which assign telephone numbers meet all reasonable requests to make the relevant information available on terms which are "fair, objective, cost-orientated and non-

¹ S.I. 308 of 2003

² S.I. 535 of 2003

³ judgement of 25th November 2004, C-109/03

discriminatory”. The preceding 1998 Directive contains substantially identical provisions in relation to supply of data by number assigners. This obligation has been interpreted by the ECJ in the KPN/OPTA ruling which states that the regulatory obligation must be interpreted as meaning that only the cost of actually making the data available to the directory providers may be charged.

The ECJ held that compilation of the directory is an activity that must be carried out by the network operator as part of its provision of communications service to the end user, and that “passing the costs associated with compiling or allocating data on to persons requesting access to them would result in an excessive and unwarranted offset of the costs in question”.

Further clarification was given in a judgement by the Dutch Trade and Industry Appeal Tribunal on 26 October 2005, which held that the costs associated with certain systems used to create and maintain the data, for example software to deal with capitals, postcodes, etc. could not be considered to be part of the cost of making the data available to third parties. This analysis has been repeated in Germany, where the BNA has decided in relation to Deutsche Telekom that costs related to the establishment of the database, such as capital costs, development costs, running costs, and costs incurred in updating the data could not be passed on to the receiver of the data.

The conclusion of these judgements makes it clear that the costs which may be passed on to those in receipt of the data is strictly limited to the costs directly associated with the actual transfer of the data.

The current arrangement between the NDD as the receiver of data and network operators who assign numbers to end users is clearly inconsistent with the obligations under the universal service regulations, as clarified in the KPN/OPTA judgement. It is Conduit’s understanding that the current arrangement sees the NDD make a periodic payment according to the amount of data each provider has deposited in the NDD (number of entries) over a period of time. If a network operator that assigns numbers makes a single deposit of data into the NDD they would receive periodic payments, even if the data never changed, and there was no further transfer of data to the NDD. This is clearly incompatible with the cost orientation obligation, as there is no ongoing cost of actually transferring data in this case. In practice it is difficult to understand on what basis the current payment and pricing scheme was derived.

Relevant Data

The data that undertakings assigning numbers are required to provide to the NDD is specified in Regulation 21(1), which in turn refers to Regulation 4(3). This regulation specified the requirement to keep a record of all subscribers of publicly available telecommunication services in the state with the exception of those who have decided not to be included. All subscribers are entitled to have their numbers included in a directory if they so choose, free of charge. The undertakings assigning numbers must compile a database of their customer listings in order to meet this requirement.

The NDD may contain data in addition to the core directory listings. The KPN/OPTA judgement recognised this and specified that only the relevant data is required to be

supplied at the cost of making it available to third parties. Essentially, the KPN/OPTA judgement concluded that relevant data would include the data in the existing KPN database as it is compiled by the network operator as part of providing communications service to the end user.

In Conduit's view, the relevant data for the purpose of this consultation includes all of the data currently compiled by network operators who assign numbers to end users and supplied to the NDD, excluding the following:

- Ex-directory listings (including ex-directory numbers supplied to the NDD for the purpose of recording a preference not to receive unsolicited calls)
- Data in addition to that which makes up the directory listing
- All data relating to the customer's preference in relation to unsolicited marketing calls.

Unsolicited Marketing Calls

The NDD was established and operated as a directory database before the current requirement to record a user's preference in relation to unsolicited marketing calls came into effect. In 2005 the data needed to record a user's preference was added to the NDD in the case of listings that were already in the NDD. Listings of ex-directory numbers were not included at this time. On 31st October 2006 all operators are required to supply to the NDD their ex-directory numbers and an indication of their preference for receipt of unsolicited marketing calls. Unlike other data supplied to the NDD, this is supplied periodically as a complete refresh, and not an update of the existing data.

This data is provided for a purpose distinct from the publication of directories, and the obligation for its supply is provided in separate regulations. The cost associated with the compilation and supply of this data to the NDD (both for ex-directory and listed numbers) is subject to separate regulation, and should not be included in the cost of supplying already compiled directory data to the NDD.

Conduit is aware that there have been recent system modifications required by network operators in order to supply data to the NDD relating to customer preference for receipt of unsolicited calls. These system costs could not be included as a factor in the charge for transfer of data to the NDD for the purpose of provision of directories. Equally the ongoing cost of periodically supplying a complete refresh of ex-directory numbers and their marketing opt-out preference can not be included in the cost of transferring directory data to the NDD – it serves a different purpose and is not used in the provision of directories.

Efficient Operations

The requirement for Eircom to provide the central database or the NDD is a universal service obligation. There is only one such database in existence. Equally network operators or undertakings assigning numbers are required to make that data available under universal service obligation and there is no other source of that data. It is

possible 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, which in turn would cause an increased cost to the directory providers using the data. For example, if the data supplier has a poorly compiled database, there could be a large number of rejected listings when the automated systems attempt to transfer the data – requiring manual intervention. It is important that the cost of these inefficiencies is not transferred to the downstream users. Conduit is of the view that the obligation on network operators is to properly compile the database of users as part of the activity of providing telecommunications service, which is supported by the conclusion of the ECJ in the KPN/OPTA case. If the database is properly compiled, then once the system for transfer of the data to the NDD is established, it should run with only minimal intervention. In this case the ongoing cost of transfer of the data would tend towards zero.

Interpretation in other Jurisdictions

Following the KPN/OPTA case, the obligation on network operators to supply data at cost oriented rates has been interpreted by a number of NRAs. The following is a summary of decisions taken.

1. Austria

In March 2005, the TCC established the principles for charging a “cost oriented” price for supply of directory data⁴. In the decision there is an established set-up charge per operator, and a variable charge that is divided equally between all of the directory publishers who use the data. Each time there is a new user of the data, this triggers a refund to other data users. Essentially there is no usage based or per search charge. The charge is based on the cost of transfer, and is independent of the number of listings supplied.

2. Spain

In Spain, the CMT has established a system whereby each provider of directories can download the data of 19 data providers. There is no payment to the network operators for supply of the data, and no charge to the directory providers for downloading or using the data.

3. Germany

In Germany, Deutsche Telekom is the compiler of a central database equivalent to the NDD. On 17 August 2005, the BNA issued a decision regarding the costs that could be passed on by Deutsche Telekom to users of this data, the result of which was a reduction in the aggregate annual charge from €49m to €700,000 (a reduction of approximately 98%).

Data Supplied by Eircom

Conduit is not in a position to calculate the cost incurred in transfer of directory data to the NDD, however it is noted that the majority of the data (estimated at 75%) is

⁴ T 3/04-45 (*telegate/TA*) and T 4/04-45 (*datagate/TA*)

supplied by Eircom, and that the cost of transferring this data to the NDD will be minimal.