



Response to Consultation and Decision

Amendment to General Authorisation: New General Authorisation conditions in relation to the provision of Consumer References by Operators.

Response to Consultation Document Number 09/80

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Amendment to General Authorisation: New General Authorisation conditions in relation to the provision of Consumer References by Operators.

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Amendment to General Authorisation: New General Authorisation conditions in relation to the provision of Consumer References by Operators.

1 Foreword

This document is a response to the Consultation “Proposal to attach conditions in relation to the provision of Consumer References by Authorised Persons supplying electronic communications services at a fixed location”, Document No. 09/80 (“Consultation 09/80”).

As stated in Consultation 09/80, freedom of choice in the provisioning of Electronic Communications Services at a fixed location is important for both industry and consumers. It is a key driver in the development of a healthy and sustainable electronic communications market. In Ireland, a consumer’s ability to switch Electronic Communications Service provider is underpinned by industry-agreed processes. These processes facilitate switching for consumers. They can also offer a high degree of protection to consumers from unauthorised service switching.

With this in mind the Commission for Communications Regulation (“ComReg”) examined the existing processes for changing between service providers and decided that the area would benefit from amendment. It decided that one possible improvement would be to require the provision of certain identifying information to consumers to facilitate the transition from one service provider to another. In Consultation 09/80 it consulted on attaching this requirement as a condition to the General Authorisation (Document No. 03/81).

ComReg has carefully considered all submissions received in response to Consultation 09/80 and has decided to attach the proposed conditions to the General Authorisation with a change to the proposed definitions. The Conditions shall from this date form part of ComReg General Authorisation Document 03/81.

The General Authorisation (Document Number 03/81) has accordingly been amended and can be found on www.comreg.ie.

Mike Byrne
Commissioner (Commission for Communications Regulation)

2 Executive Summary

Consultation 09/80 put forward proposals to attach certain conditions to the General Authorisation¹ to require the mandatory provision of Consumer References (i.e. some form of identification code or number, described in detail in Section 4) on all consumer invoices or bills for consumers of Electronic Communications Services² at a fixed location by Authorised Persons³ supplying such services. This document is ComReg's response to Consultation 09/80.

ComReg has carefully considered all the submissions received in response to Consultation 09/80. This document addresses the key comments of the respondents and provides ComReg's reasoning for proceeding or not with particular amendments and suggestions. It is noted that not all the respondents addressed each condition and definition individually. However, ComReg has endeavoured to summarise the key aspects of the respondents' views and respond appropriately. It should be noted that all views were considered and account taken of the merits of the views expressed. However, it is not practical for ComReg to provide commentary on every comment made and therefore this response to consultation summarises the major elements of comments provided and ComReg's views in relation to these.

It is ComReg's conclusion, following the recent submissions in response to the Consultation 09/80, that it is appropriate to attach the proposed additional terms to the General Authorisation (with some amendment to the definitions) to ensure the mandatory provision of Consumer References on all consumer invoices or bills for consumers of Electronic Communications Services at a fixed location, by Authorised Persons supplying such services.

ComReg's decision is contained in Appendix A of this document.

¹ General Authorisation "Conditions for the provision of Electronic Communications Networks and Services", Document No, 03/81R1

² As defined in the European Communities (Electronic Communications Networks and Services)(Framework) Regulations 2003 "the Framework Regulations "a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting, but excludes- (a) a service providing, or exercising editorial control over, content transmitted using electronic communications networks, and services, and (b) an information society service, as defined in Article 1 of Directive 98/34/EC, which does not consist wholly or mainly in the conveyance of signals on electronic communications networks."

³ Meaning the person who is deemed to be authorised to provide Authorised Services under Regulation 4 of the European Communities (Electronic Communications Networks and Services)(Authorisation) Regulations 2003 "the Authorisation Regulations" Authorised Services is as defined in the General Authorisation as the establishment, operation, control and/or making available of any Electronic Communications Network and/or the provision of Electronic Communications Services to any third party.

3 Introduction

The following discussion summarises the responses received to Consultation 09/80 and considers the key issues raised. It also demonstrates the manner in which these responses informed ComReg’s retention of the original proposed conditions and its amendment of the original definitions. It should, however, be noted that responses to Consultation 09/80 were, with certain exceptions, generally supportive of the proposed conditions.

ComReg received responses to ComReg Consultation 09/80 from four respondents (“the Respondents”), namely:

- Vodafone Ireland Limited (“Vodafone”)
- BT Communications Ireland Limited (“BT”)
- UPC Communications Ireland Limited. (“UPC”)
- eircom Ltd. (“Eircom”)

ComReg thanks all the Respondents for their submissions.

As a result of the responses received, ComReg has made some amendments to the proposed definitions which inform the conditions which it has been decided to attach to the General Authorisation.

The remainder of this document adopts the following layout:

- Section 4 of the document deals with responses to questions one to six of Consultation 09/80. It outlines the Respondents’ views of the proposed conditions. It provides ComReg’s position in relation to the submissions and demonstrates ComReg’s rationale in relation to its decision to attach the conditions. It also sets out the amendment to one of the proposed definitions and indicates why this amendment has been made.
- Section 5 of the document deals with responses to questions seven and eight of Consultation 09/80 and contains ComReg’s Regulatory Impact Assessment.
- Appendix A contains the decision attaching the new conditions to the General Authorisation.
- Appendix B sets out the relevant legislation and legal basis for this consultation.

4 Summary of responses to consultation

4.1 Proposed new conditions to be attached to the General Authorisation

Consultation 09/80 proposed that the text of the following definitions and conditions be added to the General Authorisation:

Consumer References mean, any number, letter, code or reference (or combination of these and any variation thereof from time to time) designating, pertaining to, identifying or associated with a consumer, a consumer account(s), or service(s), which is necessary for the purposes of the consumer efficiently changing services or efficiently switching from one Authorised Person supplying Electronic Communications Services at a fixed location to another Authorised Person supplying such services. Consumer References includes, but is not limited to Universal Account Number(s) (UAN(s)), Circuit Reference Numbers (CRN(s)) or Calling Line identifier (CLI(s)).

Universal Account Number(s) (UAN(s)), means any number, letter, code or reference (or a combination of these) designating, pertaining to, identifying or associated with a consumer, a consumer account(s) or service(s), necessary for the purposes of a consumer switching from one Authorised Person to another.

Circuit Reference Numbers (CRN(s)), means a unique number sequence used to identify unbundled metallic paths.

Calling Line Identifiers (CLI(s)), means the facility that enables identification of the number from which a call originates by the recipient of the call.

18.6.1 Every Authorised Person that is the direct provider of Electronic Communications Services at a fixed location to a consumer, shall ensure as far as practicable, that all Consumer References are included on all consumer invoices or bills for such services, including those provided electronically. They shall be clearly presented and identified prominently.

18.6.2 Where an Authorised Person is not the direct provider of Electronic Communications Services at a fixed location to a consumer but has created, designated or allocated Consumer References pertaining to a consumer, or consumer account, or consumer service, it shall upon request and as soon as possible provide those Consumer References to the Authorised Person that is or will imminently be the direct provider of such services to the consumer, in order that that Authorised Person can meet its obligations under condition 18.6.1.

4.2 Consultation 09/80 asked at Question One:

4.2.1 Do you agree with the text of the conditions (and the proposed defined terms⁴) now proposed for attachment to the General Authorisation? If not, please indicate which of the proposed definitions and/or conditions you do not agree with and why.

4.2.2 Respondents' views

Eircom and UPC were broadly supportive of the introduction of the proposed conditions, although Eircom did propose significant changes to the text. Vodafone disagreed with the text of the proposed conditions. BT expressed no view in relation to the proposed text; save that it considered that the text should be modified to include business customers.

Vodafone expressed concern that the proposed conditions and definitions could embed the current SMP⁵ provider's proprietary processes and systems into the conditions associated with the General Authorisation. Vodafone suggested that the definition of Consumer Reference was flawed and that no adequate reasoning or justification had been provided by ComReg to warrant its inclusion. Vodafone further suggested that the only information required when a consumer wishes to change service provider at a fixed location is their address and telephone number.

Vodafone was of the view that the proposed conditions did not address situations where a customer wishes to switch from an alternative infrastructure service provider to taking services from Authorised Persons who are not the direct provider of Electronic Communications Services at a fixed location, but do resell Electronic Communications Services at a fixed location. Eircom had a similar view and suggested that proposed Clause 18.6.2 would be clearer if it referred to "re-sellers of service provided by an Authorised Person".

Vodafone also pointed out that CLI, as defined in Consultation 09/80, is a network facility and that such a facility could not be included on an invoice and therefore that it considered that it would not be possible to comply with the provision as worded. Eircom also disagreed with the inclusion of CLI in the definition of Consumer References and suggested that CLI be replaced by "Telephone Number" in that context.

Vodafone also took issue with ComReg's statement that Consumer References would include those agreed by the industry and documented in Industry Process Manuals. It suggested that this meant that an "unspecified group" could modify an Authorised Person's obligations.

Eircom suggested that the term "Subscriber" should be used in place of the term "Consumer" in order to include business customers. This respondent also

⁴ Consumer References, UAN, CRN and CLI

⁵ Significant Market Power

pointed out that “Subscriber” is defined in the Framework Regulations⁶ to mean “any natural person or legal entity who or which is a party to a contract with a provider of publicly available electronic communications services for the supply of such services”.

Eircom also suggested that the following nomenclatures be used as alternatives to the proposed, UAN, CRN & CLI respectively: Access Provider Account Number(s) (APAN(s)), Access Provider Reference Number(s) (APRN(s)) and Telephone number(s). It also suggested the inclusion of a new Consumer Reference, namely Authorised Operator Account Number(s) (AOAN(s)).

4.2.3 *ComReg’s view*

ComReg believes it important that all necessary information is at the consumer’s disposal and is available to the consumer when seeking to switch service provider. Previously, industry complied with agreed Codes of Practice which stated that (product appropriate) Consumer References had to be applied to consumer invoices. Following ComReg’s Decision on Retail Narrowband Access⁷ in August 2007 compliance with these Codes of Practice is no longer mandatory. Since that time service providers have in general continued to include Consumer References on consumer invoices and this is welcomed. However there have been several instances of failure to include appropriate Consumer References and no sanctions exist for this failure. Given the importance of facilitating change of providers ComReg considers it appropriate to mandate the provision of Consumer References by attaching the proposed conditions to the General Authorisation.

ComReg notes Vodafone’s concern that the text of the proposed conditions serves to further entrench Eircom’s SMP in the fixed retail narrow band access market. ComReg notes that the text of the proposed conditions was drafted to deal with the issues at the level of fundamental “principles”. ComReg considers that the “operator-neutral” wording of the conditions is comprehensive enough to address all classes of provider of electronic communications services in Ireland.

In relation to Vodafone’s concern about the link between Consumer References and the agreed Industry Process Manuals, ComReg believes that industry fora are appropriate venues to decide on the required information. The non-exhaustive operator-neutral nature of the definition of Consumer Reference will allow for process and technology changes, as appropriate, over time. Therefore ComReg considers that the proposed amendment provides sufficient flexibility to allow industry to decide the nature of the information necessary to allow the consumer to switch service providers. With regard to the suggestion by Vodafone and Eircom of an amendment to the text of proposed condition 18.6.2,

⁶ European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003, S.I. No. 307 of 2003, hereafter “the Framework Regulations”

⁷ Decision Notice and Decision Instrument “Designation of SMP and SMP obligations “Market Analysis: Retail Fixed Narrowband Access Markets”, Decision No.D07/61, dated 24 August 2007.

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ComReg regards this as unnecessary as the proposed wording places the obligation on all Authorised Persons who are “not the direct provider of Electronic Communications Services at a fixed location to a consumer but has created, designated or allocated Consumer References pertaining to a consumer, or consumer account, or consumer service”, which encompasses re-sellers.

ComReg notes both BT and Eircom’s proposal that the text of the proposed conditions be modified to include business customers. As outlined in detail in section 4.4.2 below, part of the legal basis for attaching the conditions proposed in Consultation 09/80 is that they are “Consumer protection rules specific to the electronic communications sector”. As business customers do not come within the definition of “consumer”, it is not possible in the context of the current consultation to amend the text to include business customers.

Eircom suggested the use of different nomenclature for UANs, CRNs and CLIs. It should be noted that UAN and CRN were included in the definition of Consumer References as part of a non-exhaustive list of examples of what constitutes a Consumer Reference. ComReg was simply providing examples of Consumer References currently in use by industry. The new definitions proposed by Eircom are in ComReg’s view too prescriptive and not appropriate for inclusion in the General Authorisation. However they may be considered by industry, at some point, as appropriate terms to be used when describing Consumer References. ComReg is also satisfied that the definitions of UAN and CRN contained in the Consultation 09/80 are fit for purpose.

Both Eircom and Vodafone suggested that the use of term CLI in the definition of Consumer References should be replaced with reference to the telephone number. ComReg accepts this suggestion and has replaced the term and definition of “CLI” with the term and definition of “Telephone Number”. Telephone Number is defined as “a number from a national or international telephone numbering plan associated with Electronic Communications Services”.

ComReg, in proposing the additional conditions (and associated definitions), is seeking to promote and enhance consumer protection and to enhance personal data and privacy protection. ComReg believes that mandating the conditions (and associated definitions) will fulfil these objectives. Therefore ComReg has decided that the text of conditions 18.6.1 and 18.6.2 should remain unchanged. The only textual change that ComReg will make is the replacement of the term and definition of “CLI” with “Telephone Number” as outlined above.

4.3 Consultation 09/80 asked at Question Two:

Do you agree that the conditions should apply to Authorised Persons providing Electronic Communications Services at a fixed location only and/or should the proposed conditions apply to Authorised Persons operating mobile terrestrial networks⁸? Do you agree that the reference to “Electronic Communications Services at a fixed location” is clear? If not, please indicate which of the proposed definitions and/or conditions you do not agree with and why.

4.3.1 Respondents' views

ComReg notes that two respondents provided responses to this question. These two respondents agreed that the proposed conditions should apply to Authorised Persons providing Electronic Communications Services at a fixed location only.

Vodafone noted that there is strong empirical evidence that there are no barriers to switching at the consumer level in respect of mobile services. Eircom observed that the existing process for the transfer of mobile customers between mobile networks works well and therefore agreed that the proposed conditions should not apply to Authorised Persons operating mobile terrestrial networks.

Eircom suggested that the reference to “Electronic Communications Services at a fixed location” should be clarified to make it clear that the proposed obligations apply to Fixed Line Services provided at a fixed location (including services provided by alternative infrastructure providers).

4.3.2 ComReg's view

ComReg concurs with the two respondents. The proposed conditions shall not apply to Authorised Persons operating mobile terrestrial networks. It is ComReg's view that Authorised Persons who are “not the direct provider of Electronic Communications Services at a fixed location to a consumer but has created, designated or allocated Consumer References pertaining to a consumer, or consumer account, or consumer service” (condition 18.6.2) can encompass alternative infrastructure providers.

⁸ The reference to mobile terrestrial networks is also taken from the definition of ECN as set out in General Authorisation ComReg document 03/81 R1

4.4 Consultation 09/80 asked at Question Three:

Bearing in mind the legal basis⁹ for the amendments do you agree that the text of conditions proposed for attachment to the General Authorisation can be classified as conditions providing for ‘Consumer protection rules specific to the electronic communications sector including conditions in conformity with the Universal Service Regulations’ and/or “Personal data and privacy protection specific to the electronic communications sector”?

4.4.1 Respondents’ views

Two respondents (Eircom and Vodafone) responded directly to this question.

Eircom agreed that the conditions proposed for attachment could be classified as “Consumer protection rules specific to the electronic communications sector”. Eircom did not address whether it considered that the conditions proposed could be classified as conditions providing for “Personal data and privacy protection specific to the electronic communications sector”. Both Eircom and BT suggested that the obligations be extended to cover those customers who are not consumers.

Vodafone disagreed with the classifications proposed by ComReg. It opined that the legal basis given for the attachment of the conditions and definitions was not appropriate as it considered that the proposed modifications did not fulfill their stated purpose and were procedurally deficient. It submitted that the requirement to include Consumer References on invoices falls outside the meaning of “Consumer protection rules specific to the electronic communications sector”. This respondent therefore argued that the proposed conditions and definitions do not meet the requirements of the Authorisation Regulations¹⁰. Finally, Vodafone argued that there is a tension in the legal basis relied on by ComReg in that making Consumer References more readily available would appear to be opposed to the aims of “Personal data and privacy protection specific to the electronic communications sector in conformity with Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector”.

4.4.2 ComReg’s views

ComReg considers that the proposed conditions constitute consumer protection rules specific to the electronic communications sector. The proposed conditions would have the direct consequence of protecting and promoting consumer welfare by ensuring that consumers of Electronic Communications Services at a

⁹ See Appendix B Legal Basis

¹⁰ The European Communities (Electronic Communications Networks and Services)(Authorisation) Regulations 2003, as amended hereafter “the Authorisation Regulations”.

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fixed location are not prevented (or unduly obstructed) in switching between service providers supplying such services because they do not possess Consumer References. Access to Consumer References is a key factor in both empowering and protecting a consumer when choosing to contract to avail of certain products or services with a provider of Electronic Communications Services at a fixed location. Most order handling processes for Electronic Communications Services at a fixed location require a consumer to provide details of these Consumer References when submitting a request to switch service provider. Access to Consumer References provides a means of validating the request and facilitates efficient switching while providing protection for consumers against unauthorised provisioning.

ComReg has considered Vodafone's submissions in relation to whether the proposed conditions are "Personal data and privacy protection specific to the electronic communications sector" but does not agree with same. ComReg's view is that the proposed conditions are captured by the "Object and scope"¹¹ and subject matter¹² of the European Directive on privacy and electronic communications¹³. ComReg therefore considers that the proposed conditions constitute conditions providing for personal data and privacy protection specific to the electronic communications sector in conformity with the European Directive on privacy and electronic communications.

ComReg's position is that the legal basis for the proposed attachment of conditions to the General Authorisation, as stated (as a preliminary view) in the Consultation 09/80 is correct. The text of the conditions proposed for attachment to the General Authorisation can be classified as conditions providing for "Consumer protection rules specific to the electronic communications sector including conditions in conformity with the Universal Service Regulations" and as "Personal data and privacy protection specific to the electronic communications sector" and therefore come within the parameters of the clauses 7 and 8 of Part A of the Schedule to the Authorisation Regulations.

ComReg notes the suggestion by BT and Eircom that the proposed conditions should extend to protect customers who are not consumers. As outlined above, part of the legal basis for attaching the conditions proposed in Consultation 09/80 is that they are "Consumer protection rules specific to the electronic communications sector". The term "consumer" is defined in the Framework Regulations as "any natural person who uses or requests a publicly available

¹¹ In particular paragraphs 1 & 2 of Article 1 of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector, which replaced and repealed Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector

¹² See Article 3(1) which provides that Directive 2002/58/EC applies to "to the processing of personal data in connection with the provision of publicly available telecommunications services in public telecommunications networks in the Community"

¹³ Directive 97/66/EC was repealed and replaced by Directive 2002/58/EC (see above)

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electronic communications service for purposes which are outside his or her trade, business or profession". This definition does not encompass business customers. Therefore ComReg is of the view that in the context of the current consultation, the proposed conditions cannot be amended to extend to business customers.

4.5 Consultation 09/80 asked at Question Four:

Do you agree that the text of the conditions proposed for attachment to the General Authorisation is objectively justified, non-discriminatory, proportionate and transparent?

4.5.1 Respondents' views

Eircom answered this question in the affirmative. Eircom noted in particular that the proposed conditions reflect the large majority of current industry practice and that the imposition of the conditions as obligations is objectively fair and will not be an unreasonable burden for the service providers having regard to the significant benefits it will afford both providers and end-users. UPC did not answer this question directly, although it is noted that it was broadly in support of the proposals. Two respondents answered this question in the negative.

BT did not agree that the text of the conditions proposed for attachment to the General Authorisation was objectively justified, non-discriminatory, proportionate and transparent as it did not address business customers.

Vodafone did not agree that the text of the conditions proposed for attachment to the General Authorisation was objectively justified, non-discriminatory, proportionate and transparent. It submitted that the harm that ComReg is seeking to address is not material currently and is hypothetical going forward and therefore that there is insufficient objective justification for the imposition of the condition. It noted that there was insufficient objective justification given for the conditions, breach of which could give rise to substantial penalties including criminal conviction. Vodafone also noted that it considers that ComReg has not explored alternative mechanisms that could be used to require Authorised Persons to provide the Consumer References on Consumer invoices. Vodafone considered that the proposed text was not non-discriminatory as it "predefines only eircom related references".

4.5.2 ComReg's view

The issue which BT raised has been addressed above at s.4.4.2.

In relation to Vodafone's submission that ComReg had not considered alternative mechanisms to require Authorised Persons to provide Consumer References on Consumer invoices, this is not the case. ComReg has considered

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possible alternative mechanisms and has concluded that no alternative mechanisms requiring a Consumer Reference exists. In this context ComReg considers that the attachment of the proposed conditions is proportionate and objectively justified.

In relation to Vodafone's submission that "the harm that ComReg is seeking to address is not material currently and is hypothetical going forward" ComReg does not consider that this is accurate. Although Authorised Persons have in general continued to include Consumer References on consumer invoices, ComReg has received complaints from consumers who were informed by the winning operator that a switch could not be effected until certain personal consumer data was provided to it by the losing operator. There have been several instances of failure to include appropriate Consumer References and currently no sanction exists for this failure. Given the importance to consumers of facilitating change of providers, ComReg considers it objectively justified and proportionate to mandate the provision of Consumer References by attaching the proposed conditions to the General Authorisation.

In relation to Vodafone's concern that the proposed conditions may be discriminatory, ComReg reiterates its position stated above at section 4.2.3 that the Eircom references were included in the definition of Consumer References as part of a non-exhaustive list of examples of what constitutes a Consumer Reference. As the definition of Consumer Reference is non-exhaustive and operator-neutral ComReg does not consider the proposed conditions to be discriminatory.

ComReg considers the attachment of the conditions to be proportionate for the following reasons. As the majority of Authorised Persons providing Electronic Communications Services at a fixed location are currently in the practice of placing Consumer References on consumer invoices, the requirement by way of attachment of conditions to the General Authorisation is merely the "copper fastening" and clarification of the requirement to do so. This is important as the voluntary placing of Consumer References on bills by those providing Electronic Communications Services at a fixed location could change if there was a significant change in the competitive dynamic in the market place. ComReg thinks it likely that if one operator was to change its behaviour in this regard it would increase the incentives for other operators to follow suit. Mandating Consumer References will ensure that no one operator is able to induce the industry to revert to a different norm that would increase the cost of switching and have a negative impact on consumer welfare.

Vodafone noted that non-compliance with the obligations could result in criminal prosecutions. ComReg is of the view that the fact that non-compliance with the proposed conditions may expose an operator to penalties is not relevant to the issue of proportionality in this context.

Furthermore, compliance with the conditions proposed would have limited direct costs as all Authorised Persons have invested in billing systems, and

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ComReg is of the initial view that the proposed conditions do not require major changes to these systems or any unreasonable costs to be incurred. Any (minor) costs of changing the bill are also likely to be “one-off”, as once bills automatically produce the Consumer References then no further costs need to be incurred. Therefore ComReg considers the attachment of the condition to be proportionate.

ComReg has considered the submissions of the Respondents and is of the view that the conditions proposed for attachment to the General Authorisation are objectively justified, non-discriminatory, proportionate and transparent for the reasons already set out throughout this consultation and for the reasons further set out at Section 5 “Regulatory Impact Assessment (RIA)”.

4.6 ComReg Document Number 09/80 asked at Question Five:

In your view, do the conditions proposed for attachment to the General Authorisation constitute specific obligations, or conditions which are applicable to Authorised Persons by virtue of other laws?

4.6.1 Respondents' views

Eircom is of the view that the proposed conditions can be considered to be specific obligations (although it gives no reasoning for this position) and that the specific requirements that the conditions set out are not mandated by other laws.

BT and UPC did not comment directly on this question.

Vodafone submitted that if the justification for the proposed condition is that the failure to include a Consumer Reference on an invoice actually impedes the consumer from switching then this would appear, by definition, to constitute “the imposition of onerous or disproportionate non-contractual barriers by the trader when the consumer wishes to terminate the contract, exercise a contractual right or switch to another product or trader”. This respondent considers that this is already prohibited by statute under the Consumer Protection Act 2007 and therefore there is no necessity for the proposed modification to the General Authorisation and the assessment of any such proposed modification would not appear to meet any consideration of the “necessity” principle of Better Regulation. Further this respondent suggests that if the lack of Consumer References does not amount to an “onerous or disproportionate” barrier to switching then the proposed changes would not appear to meet any consideration of the “proportionality” principle of Better Regulation. Vodafone expressed no views in relation to whether the conditions proposed for attachment constituted specific obligations.

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4.6.2 *ComReg's view*

ComReg has considered Vodafone's comments in relation to section 53(3)(d) of the Consumer Protection Act, 2007. ComReg is of the view that s.53(3)(d) would only be of use to a consumer in a switching context if there was a systematic refusal to communicate information and the delays could be seen to constitute "the imposition of onerous or disproportionate non-contractual barriers by the trader when the consumer wishes to terminate the contract, exercise a contractual right or switch to another product or trader". ComReg is of the view that the proposed conditions positively facilitate switching in a way that s.53(3)(d) of the Consumer Protection Act 2007 is incapable of doing and therefore that s.53(3)(d) does not render the proposed conditions unnecessary. ComReg is of the view (as expressed in a preliminary fashion in Consultation 09/80) that the conditions are not applicable to undertakings by virtue of any other law.

Eircom was the only respondent to submit that the conditions proposed for attachment to the General Authorisation constituted specific obligations. It gave no rationale for this view. None of the other respondents expressed a position on this issue. Specific obligations are defined in the Framework Regulations as "obligations that may be imposed by the Regulator on an undertaking under Regulations 6(1), 6(2), 6(3), 7 and 9 of the Access Regulations and Regulations 13, 14, 15 and 16 of the Universal Service Regulations, and on those designated under Regulation 7 of the Universal Service Regulations to carry out the obligations referred to in that Regulation". None of Regulations 7, 13 to 16 of the Universal Service Regulations nor Regulations 6,7, or 9 of the Access Regulations provide for the imposition of obligations that mandate Consumer References, as contemplated by the proposed conditions. Therefore ComReg is satisfied that proposed conditions are not specific obligations which are mandated by other legislation.

Therefore ComReg is satisfied that the attachment of the conditions it proposes to attach to the General Authorisation is not prohibited by Regulation 8(4) of the Authorisation Regulations.

4.7 **Consultation 09/80 asked at Question Six:**

Do you agree that three months would be an adequate timescale to implement any changes required to come into compliance with the proposed amendments? If not please indicate your reasons?

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4.7.1 Respondents' view

Vodafone suggested that a six month implementation period would be necessary.

BT did not provide a response to this question.

UPC submitted that a twelve month implementation period would be necessary.

Eircom agreed that a three month implementation period would be adequate to implement any changes that may arise.

4.7.2 ComReg's view

Following its consideration of the views of the Respondents ComReg has decided that a six month implementation period is appropriate. It does not consider that the longer twelve month timescale requested by one respondent is necessary as industry is for the most part in the habit of citing Consumer References on consumer invoices. As such ComReg considers that it will be possible for the Authorised Persons to complete any necessary system changes etc within this timeframe.

The six month implementation period shall commence on the date of the publication of this decision.

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5 Regulatory Impact Assessment.

5.1 Consultation 09/80 asked at Question Seven:

Respondents are requested to provide views on whether the proposed conditions are proportionate and justified and offer views on other factors (if any) ComReg should consider in completing its Regulatory Impact Assessment.

5.1.1 Respondents' views

Eircom was of the view that the proposed conditions were generally proportionate and justified, but submitted that the conditions should be extended to cover all end-users and not be confined to consumers.

BT submitted that while it understood ComReg's rationale, it did not consider the outcome proportionate as the business sector of the market had not been considered.

UPC did not provide a response to this consultation question.

Vodafone disagreed with ComReg's assessment of the regulatory impact of the proposed definitions and conditions. Vodafone suggested that ComReg had overstated the potential consumer benefit of the proposed definitions and conditions as the items identified by ComReg as consumer references are already included on invoices. Vodafone suggested that ComReg consider standardising consumer references as is done in the electricity sector.

5.1.2 ComReg's Regulatory Impact Assessment.

Service providers have raised with ComReg the issue of incorrect or absent essential Consumer References obstructing or preventing consumers of Electronic Communications Services at a fixed location when attempting to switch service providers or service. The presentation of Consumer References such as UANs and CRNs is not consistent across the industry nor always presented in the clearest manner for consumers. ComReg is concerned that difficulties for consumers could arise in ascertaining their Consumer References for the purposes of switching between service providers.

ComReg in Consultation 09/80 identified two regulatory options to address the objectives. Option 1 was to do nothing and maintain the status quo. Option 2 was to amend the conditions to the General Authorisation.

ComReg is of the view that the majority of Authorised Persons providing Electronic Communications Services at a fixed location are already using Consumer References as defined in this document. Sectors such as the energy sector also have a type of

Consumer Reference for consumer labelling and identification (e.g. a MPRN¹⁴ reference is needed along with other consumer details in order to switch between electricity providers). It was suggested that ComReg investigate a similar system but this seems excessive given the existence and efficacy of the existing system. ComReg has considered the impact of the conditions on stakeholders. ComReg continues to be of the view that, the amendments to the conditions as set out under Consultation Document Number 09/80 are relatively simple and do not place a disproportionate burden on Authorised Persons.

ComReg is satisfied that as Authorised Persons providing Electronic Communications Services at a fixed location are in the practice of placing Consumer References on consumer invoices, the attachment of the proposed conditions and definitions to the General Authorisation is the “copper-fastening” of this practice. In doing this the standard already achieved by most Authorised Persons providing Electronic Communications Services at a fixed location is mandated and any ambiguity surrounding the requirement is clarified for any Authorised Persons providing Electronic Communications Services at a fixed location not currently in the practice of placing Consumer References on consumer invoices.

The attachment of the conditions to the General Authorisation simply requires that within the actual billing communication format, Consumer References are directly and clearly displayed. As all operators providing Electronic Communications Services at a fixed location have invested in billing systems, this should not require any significant changes to billing systems or any unreasonable costs to be incurred. ComReg is of the view that the conditions do not require major changes to these systems. Any (minor) costs of changing the bill are also likely to be one-off, as once bills automatically produce the Consumer References then no further costs need to be incurred.

Vodafone noted that there was a risk that ComReg had overstated the potential consumer benefit of the change. ComReg disagrees and remains of the view that the benefits are likely to be significant and long-lasting. ComReg acknowledges that although the Consumer References will not in themselves lower prices for consumers; they will enable consumers to switch with efficiency. As a result of the amendments, consumers contacting a potential new supplier of Electronic Communications Services at a fixed location should, reliably, be in a position to access their Consumer References. The amendments promote consumer protection by ensuring that consumers do not face unreasonable difficulties when seeking to switch between service providers while continuing to provide significant protection against unauthorised provisioning or “slamming”.

Also given the economic downturn being experienced in Ireland, it could be that the co-operative nature of compliance with the current process may be undermined. Authorised undertakings may seek to prevent consumers switching to other Authorised Undertakings by not providing the consumers with all the information they may require to do so, and as such create a false barrier to switching thus potentially causing asymmetric competition.

¹⁴ MPRN –meter point registration number
http://www.energycustomers.ie/electricity/changing_supplier.aspx

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ComReg considers that the benefits of the adherence to the conditions are substantially higher than the costs of placing the consumer references on bills.

The issue which BT raised has been addressed above at s.4.4.2.

Finally, ComReg is of the view that mandating the supply of Consumer References by service providers of Electronic Communications Services at a fixed location is both reasonable and proportionate and adheres to its functions. ComReg considers it is also in accordance with its statutory objectives to protect consumers and promote competition pursuant to the Communications Regulations Act 2002.

The amendment of the General Authorisation to include the conditions as set out in Consultation Document Number 09/80 shall ensure that no one operator is able to induce the industry to move back to a different norm that will increase the cost of switching and, hence, undermine the competitive dynamic of the market.

For the above reasons, ComReg remains of the view that the benefits of Option 2 are likely to be significant and long-lasting. In contrast, if Option 1 were followed no such benefits would follow. Therefore ComReg considers that Option 2 is the best option.

5.2 Consultation 09/80 asked at Question eight:

If you wish to submit further comments in relation to the conditions proposed for attachment to the General Authorisation please do so here.

5.2.1 Respondents' views

The second respondent re-iterated its view that the proposed obligations should extend to cover customers other than consumers as defined in the General Authorisation.

5.2.2 ComReg's view

This has been dealt with comprehensively above.

Appendix A –DECISION

STATUTORY FUNCTIONS AND POWERS GIVING RISE TO DECISION

This Decision, made by the Commission for Communications Regulation (“ComReg”) is made:

- I. Having regard to sections 10 and 12 of the Communications Regulations Act, 2002;
- II. Having taken account of the representations of interested parties submitted in response to Consultation “General Authorisation, Proposal to attach conditions in relation to the provision of Consumer References by Authorised Persons supplying Electronic Communications Services at a fixed location”, Document Number 09/80;
- III. Pursuant to the functions and powers conferred upon ComReg under and by virtue of Regulation 8 and Regulation 15 of the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2003¹⁵.

DECISION

The following additional conditions are now attached to the General Authorisation “Conditions for the provision of Electronic Communications Networks and Services”, Document No, 03/81R1:

Definitions:

Consumer References mean, any number, letter, code or reference (or combination of these and any variation thereof from time to time) designating, pertaining to, identifying or associated with a consumer, a consumer account(s), or service(s), which is necessary for the purposes of the consumer efficiently changing services or efficiently switching from one Authorised Person supplying Electronic Communications Services at a fixed location to another Authorised Person supplying such services. Consumer References includes, but is not limited to Universal Account Number(s) (UAN(s)), Circuit Reference Numbers (CRN(s)) or Telephone Number(s).

Universal Account Number(s) (UAN(s)), means any number, letter, code or reference (or a combination of these) designating, pertaining to, identifying or associated with a consumer, a consumer account(s) or service(s), necessary for the purposes of a consumer switching from one Authorised Person to another.

¹⁵ S.I. No. 306/2003 European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2003, the “Authorisation Regulations”.

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Circuit Reference Number(s) (CRN(s)), means a unique number sequence used to identify unbundled metallic paths.

Telephone Number(s) means a number from a national or international telephone numbering plan associated with Electronic Communications Services.

Conditions:

18.6.1 Every Authorised Person that is the direct provider of Electronic Communications Services at a fixed location to a consumer, shall ensure as far as practicable, that all Consumer References are included on all consumer invoices or bills for such services, including those provided electronically. They shall be clearly presented and identified prominently.

18.6.2 Where an Authorised Person is not the direct provider of Electronic Communications Services at a fixed location to a consumer but has created, designated or allocated Consumer References pertaining to a consumer, or consumer account, or consumer service, it shall upon request and as soon as possible provide those Consumer References to the Authorised Person that is or will imminently be the direct provider of such services to the consumer, in order that that Authorised Person can meet its obligations under condition 18.6.1.

All Authorised Persons¹⁶ shall from have 6 (six) months from the effective date of this decision to comply with the amendments to the General Authorisation.

EFFECTIVE DATE AND DURATION

This Decision is effective as from the date hereof and shall remain in full force unless otherwise amended by ComReg.

Mike Byrne

Commissioner

THE COMMISSION FOR COMMUNICATIONS REGULATION

DATED THE SIXTH DAY OF APRIL 2010

¹⁶ Meaning the person who is deemed to be authorised to provide Authorised Services under Regulation 4 of the European Communities (Electronic Communications Networks and Services)(Authorisation) Regulations 2003. Authorised Services means the establishment, operation, control and/or making available of any Electronic Communications Network and/or the provision of Electronic Communications Services to any third party.

Appendix B –Legal Basis

Legal Basis

The procedure for attaching Conditions to the General Authorisation is established by Regulations 8 and 15 of the Authorisation Regulations¹⁷. In particular note that;

- (i) Any conditions attached to the General Authorisation may only be of the type set out in Part A of the Schedule to the Authorisation Regulations. Of particular relevance in this instance is Paragraph 8 of Part A of the Schedule to the Authorisation Regulations, which provides for conditions providing for ‘Consumer protection rules specific to the electronic communications sector including conditions in conformity with the Universal Service Regulations’,
- (ii) The attachment of conditions to the General Authorisation must be objectively justified and must be non-discriminatory, proportionate and transparent (Regulation 8 (2) of the Authorisation Regulations).
- (iii) ComReg may not attach as a condition to the General Authorisation any specific obligations that it may impose on an undertaking, nor any conditions which are applicable to undertakings by virtue of other laws (Regulation 8(4) of the Authorisation Regulations).
- (iv) In the specification of conditions in the General Authorisation, ComReg will have regard to the criteria and procedures for imposing specific obligations (Regulation 8(5) of the Authorisation Regulations).
- (v) The procedure for amending conditions in the General Authorisation is described in Regulation 15 of the Authorisation Regulations. Regulation 15(1) of the Authorisation Regulations provides, “The Regulator may amend the rights, Conditions and procedures concerning the general authorisation, licences and rights of use for numbers provided that any such amendments may only be made in objectively justified cases and in a proportionate manner.” (The Regulator refers to ComReg).

Regulation 8, “Conditions attached to general authorisation”, of the Authorisation Regulations provides:

“(1) The Regulator shall, as soon as practicable after the commencement of these Regulations, specify conditions to be attached to a general authorisation as are listed in Part A of the Schedule. The Regulator may specify that certain conditions may not apply to undertakings of such class or type as may be specified by the Regulator.

¹⁷ European Communities (Electronic Communications Networks and Services)(Authorisation) Regulations 2003, S.I. 306 of 2003, as amended, hereafter “the Authorisation Regulations”

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- (2) *Any attachment of conditions to the general authorisation or non-application of conditions to undertakings of such class or description as may be specified by the Regulator under paragraph (1) shall be objectively justified in relation to the electronic communications network or service concerned and shall be non-discriminatory, proportionate and transparent.*
- (3) *An authorised undertaking shall comply with the conditions attaching to the general authorisation applicable to it.*
- (4) *The Regulator shall not attach as a condition to the general authorisation any specific obligations that it may impose on an undertaking nor any conditions which are applicable to undertakings by virtue of other law.*
- (5) *The criteria and procedures for imposing any specific obligations referred to in paragraph (4) shall be referred to by the Regulator in the specification of conditions referred to in paragraph (1).*
- (6) *The Regulator shall ensure that where a requirement is specified as a condition of a licence such a requirement shall not be specified as a condition of the general authorisation in respect of the services or networks concerned.*
- (7) *An undertaking that fails to comply with a condition attached to its general authorisation commits an offence.*
- (8) *An offence under this Regulation is triable either summarily or on indictment.*
- (9) *In proceedings for an offence under paragraph (7), it is a defence to establish that— (a) reasonable steps were taken to comply with the relevant condition, or
(b) it was not possible for that condition to be complied with.*
- (10) *An undertaking found guilty of an offence under paragraph (7) is liable on conviction—
(a) if the offence is tried summarily, to a fine not exceeding €5,000, or
(b) if the offence is tried on indictment and the undertaking is a body corporate, to a fine not exceeding—
(i) \5,000,000,
or
(ii) if 10 per cent of the turnover of the undertaking is greater than that amount, an amount equal to that percentage, or
(c) if the offence is tried on indictment and the undertaking is a natural person, to a fine not exceeding €500,000.*
- (11) *If, after being convicted of an offence under paragraph (7), an undertaking continues to fail to comply with the relevant condition, the undertaking*

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commits a further offence on each day or part of a day during which the failure continues.

- (12) *An undertaking found guilty of an offence under paragraph (11) is liable on conviction for the offence—*
- (a) if tried summarily, to a fine not exceeding €500 for each day or part of a day during which the failure continues, subject to a maximum of €5,000, or*
 - (b) if tried on indictment, to a fine not exceeding €5,000 for each day or part of a day during which the failure continues.*

Regulation 15, “Amendment of rights and obligation”, of the Authorisation Regulations provides:

15. (1) *The Regulator may amend the rights, conditions and procedures concerning the general authorisation, licences and rights of use for numbers provided that any such amendments may only be made in objectively justified cases and in a proportionate manner.*
- (2) *A road authority may amend the conditions of a consent under section 53 of the Act of 2002 provided that such amendments may only be made in objectively justified cases and in a proportionate manner.*
- (3) *A planning authority (within the meaning of the Act of 2000) may amend the conditions of a licence under section 254 of the Act of 2000 for the establishment of overground electronic communications infrastructure and any associated physical infrastructure provided that such amendment may only be made in objectively justified cases and in a proportionate manner.*
- (4) *Before making any amendment under this Regulation the Regulator, a road authority or a planning authority, as the case may be, shall –*
- (a) give notice in such manner as it considers appropriate of its intention, inviting interested parties, including users and consumers, to make representations on the proposed amendments within such period (not, except in exceptional circumstances, being less than 28 days from the date of the notice) as may be specified in the notice, and*
 - (b) have regard to any representations made to it pursuant to subparagraph (a)*