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Regulatory Guidance on Title III: End-User Rights of the European Electronic Communications Code

Inter-operator processes – principles to
facilitate end-user rights to switch internet
access services

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¹ Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast).

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1: Introduction

1. This Guidance is issued by ComReg in light of Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the new European Electronic Communications Code² (the “**Code**”).
2. The Guidance intends to set out for providers of Internet Access Services (“**IAS**”)³ to the Irish market ComReg’s views on the meaning and effect of the provisions of the Code as they relate to end-user IAS switching under Article 106 (1) and, where they pertain to switching between providers of IAS (“**IAS providers**”), provisions of 106 (5), 106 (6) and 107 of the Code (the “**IAS Guidance**”). Pursuant to the Code, providers of IAS will be required to have processes and procedures in place to facilitate IAS switching in a manner which meets the requirements set out in Article 106 (and, where applicable with regard to bundled offers, Article 107) of the Code.
3. The Code introduces new end-user rights related to switching IAS, which aim to:
 - i. increase transparency in the switching process,
 - ii. make it easier for end-users to switch their service(s),
 - iii. and provide end-users with greater levels of confidence when it comes to engaging with the switching process.
4. As set out below, Article 106 (1) of the Code seeks to ensure continuity of service for end-users during the IAS switching process by imposing obligations on providers of IAS in relation to the switching process and continuity of service requirements, and clear timelines for completing the switching process. In particular, Recital 277 of the Code notes the possibility of switching between providers is key for effective competition. Recital 277 also notes that providers should ensure continuity of service so that end-users are able to switch providers without being hindered by a risk of loss of service.
5. The IAS Guidance is intended to facilitate industry in designing inter-operator processes to meet their requirements pursuant to Article 106 of the Code with the result that the end-user’s right to exercise choice and change provider of IAS in

² Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast)Text with EEA relevance. (europa.eu)

³ The Code defines “internet access services” by reference to the definition of that term in Article 2 (2) of the Open Internet Access Regulation (EU) 2015/2120, which is in turn defined as, “a *publicly available electronic communications service that provides access to the internet, and thereby connectivity to virtually all end points of the internet, irrespective of the network technology and terminal equipment used*”.

accordance with Article 106 (1) of the Code is facilitated (including with regard to bundled offers insofar as provided for in Article 107). It takes the form of principles (the “**Principles**”) for switching IAS providers to have regard to in complying with the requirements of Article 106 and 107 of the Code. In summary the Principles are:

- Principle 1: End-user switching should be quick, easy, and seamless and the receiving provider shall lead the switching process;
 - Principle 2: IAS providers should ensure information provision and communication during the switch is used for effectively processing a switch;
 - Principle 3: IAS providers ensure continuity of service for end-users and that loss of service does not exceed one working day during the IAS switching process;
 - Principle 4: Switching works well for end-users and supports end-user choice and effective competition.
6. The role of the Regulator is to ensure the efficiency and simplicity of the process for the end-user. ComReg has assumed, for the purposes of this Guidance, that it will be the national regulatory authority (i.e., the “**Regulator**”) in instances where the Code directly imposes obligations on or gives responsibility to the national regulatory authority.
7. ComReg’s approach will be (as it has been to date, under the current legal framework) to monitor implementation and, where appropriate, specify (or further specify) obligations to be complied with by providers (of IAS and ICS⁴), in relation to the IAS switching process or, switching and porting process more generally. This approach does not alter the obligations that the Code places on switching IAS providers when transposed.
8. ComReg will continue to evolve its Guidance in relation to implementation of end-user rights provisions, including in relation to IAS switching, as appropriate.

⁴ Interpersonal Communications Services (ICS). ComReg in ComReg Document 20/111R, Section 1.6, set out the three types of ECS subject to regulation under the Code and their key characteristics. See [Regulatory Guidance on Title III: End-User Rights of the European Electronic Communications Code | Commission for Communications Regulation \(comreg.ie\)](#)

2: Basis of this Guidance

9. In this section, ComReg sets out obligations on IAS providers under the Code in relation to the switching process including continuity of service requirements, and clear timelines for completing the switching process. ComReg then sets out the background to why it has published this IAS Guidance.

2.1 The Code and providers' obligations in relation to IAS switching

10. Article 106 (1) of the Code establishes rules for facilitating switching between providers of IAS. In relation to the switching process the requirements on IAS providers are:

- I. To provide the end-user with adequate information before and during the IAS switching process; and
- II. To ensure continuity of IAS, unless technically not feasible.

11. It is required that during the IAS switching process:

- a) The receiving provider must ensure the activation of IAS occurs within the shortest possible time on the date and within the timeframe expressly agreed with the end-user.
- b) The transferring provider shall continue to provide its services on the same terms until the services of the receiving provider are activated.
- c) Loss of service must not exceed one working day.

12. Article 106 (6) establishes in the case of IAS switching under Article 106 (1):

- a) The receiving provider shall lead the switching and porting processes.
- b) The end-users' contracts with the transferring provider shall be terminated automatically on conclusion of the switching process.

13. Both the receiving and transferring providers:

- a) Are required to cooperate in good faith.
- b) Shall not delay or abuse the switching and porting processes.

- c) Shall not port numbers or switch end-users without the end-users' explicit consent.
14. Article 106 (5) requires that *“Operators whose access networks or facilities are used by either the transferring or the receiving provider, or both, shall ensure that there is no loss of service that would delay the switching and porting process”*.
15. Recital 277 of the Code notes *“The possibility of switching between providers is key for effective competition in a competitive environment. The availability of transparent, accurate and timely information on switching should increase the end-users' confidence in switching and make them more willing to engage actively in the competitive process. Service providers should ensure continuity of service so that end-users are able to switch providers without being hindered by the risk of a loss of service and, where technically possible, allow for switching on the date requested by end-users.”*
16. Recital 281 includes provision that *“In order to facilitate a one-stop-shop enabling a seamless switching experience for end-users, the switching process should be led by the receiving provider of electronic communications to the public.”*

2.2 Consumer Information Regulations

17. Providers will be aware that upon conclusion of the contract with the receiving provider, cooling off rights apply for consumers⁵ in the case of distance and off-premises contracts in accordance with the European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013 (S.I. No. 484 of 2013) (the **“Consumer Information Regulations”**).⁶

2.3 Background

18. Article 106 of the Code places end-user obligations directly on providers and, upon transposition, obligations will be directly applicable to providers of IAS and operators whose access networks or facilities are used by such providers, in relation to switching. It is ComReg's view that these providers should put in place

⁵ The European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013 defines “consumer” to mean a natural person who is acting for purposes which are outside the person's trade, business, craft or profession.

⁶ See [SI No 484 of 2013 European Union \(Consumer Information, Cancellation and Other Rights\) Regulations 2013 - DETE \(enterprise.gov.ie\)](#) which implements in Ireland Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (the **“Consumer Rights Directive”**), in particular Articles 5 and 6 of the EU Directive.

the required inter-operator processes required to meet their obligations under the Code in relation to IAS switching. In complying with the requirements of Article 106, ComReg expects processes for IAS switching to be implemented as soon as possible and with minimum delay.

19. On 23 December 2020, ComReg issued regulatory Guidance in respect of certain end-user rights on the basis of the Code (ComReg Document 20/111R),⁷ including on switching requirements under Article 106 of the Code. That Guidance was intended to give providers of electronic communications services (“**ECS**”)⁸ to the Irish market an overview of the key retail aspects and end-user rights that will be applicable under the Code. Its purpose was to provide operators with ComReg’s views on the impact and application of the end-user rights provisions in Articles 102 to 107.
20. In addition, in the case of switching between IAS providers, at the request of Telecommunication Industry Ireland (TII), on 21 January 2021, ComReg convened and hosted the first industry wide meeting.⁹ This was intended to facilitate the coming together of the wider industry of IAS providers with a view to a dialogue as regards internet access switching under the Code. At the initial industry meeting, an industry working group was agreed.¹⁰ Since then, ComReg understands that the industry IAS switching working group has met with a view to identifying, discussing, and resolving potential inter-operator issues on IAS switching processes. ComReg will continue to engage with stakeholders on IAS switching, including through engagement via an IAS Industry forum, as appropriate.
21. This IAS Guidance builds on the existing Guidance contained in ComReg Document 20/111R, including, on switching requirements under Article 106 of the Code. ComReg, in ComReg Document 20/111R, set out that it may, in due course, update existing Guidance in line with legal, technological, or other developments or practical experience of its application.
22. At present, IAS switching can be performed on certain network operators’ access networks using a common process for operators, for example different operators use a common IAS switching process for end-users whose services are provided through Eircom’s wholesale access network. However, currently existing IAS

⁷ See [Regulatory Guidance on Title III: End-User Rights of the European Electronic Communications Code | Commission for Communications Regulation \(comreg.ie\)](#)

⁸ ComReg Document 20/111R highlights the new definition of ECS created by the Code. See definitions in Article 2 of the Code.

⁹ See [Information Notice regarding Invite to IAS Switching Meeting | Commission for Communications Regulation \(comreg.ie\)](#)

¹⁰ During the meeting some IAS providers volunteered to participate in an IAS industry working group (“the industry IAS switching working group”).

switching process(es) differ between different access networks. In ComReg's view the rights of end-users under Article 106 and extending for consumers to IAS and ICS bundled services,¹¹ avoiding confusion, delays, unnecessary costs, and loss of service, would be best served through an agreed industry inter-operator switching process(es),¹² implementing the steps required under Article 106 (1) and 106 (6) of the Code, which are encompassed in the Principles set out below.

¹¹ Article 107 (4) also extends the rights involved to certain other classes of end-user (and where relevant, microenterprises, small enterprises, and not-for-profit organisations).

¹² For wholesale network access providers Article 106 (5) establishes that "*Operators whose access networks or facilities are used by either the transferring or the receiving provider, or both, shall ensure that there is no loss of service that would delay the switching and porting process.*"

3: Guidance on IAS switching provisions

23. ComReg, in this section, provides IAS Guidance covering the steps required under Article 106 (1) and 106 (6) of the Code (and with regard to applicable bundled offers pursuant to Article 107) for providers to affect a switch for an end-user, critical for efficiency and simplicity of the switching process for the end-user and for effective competition.
24. ComReg also addresses certain matters regarding definitions and the applicability of Article 106 (1) of the Code and this Guidance below.

3.1 Switches within the scope of Article 106 (1) of the Code

25. This Guidance applies for all types of IAS switching, the provisions of Article 106 (1) applies to switching between providers of IAS. In the case of IAS, ComReg notes that the Code¹³ refers to Article 2 of Regulation (EU) 2015/2120¹⁴ where:

“internet access service’ means a publicly available electronic communications service that provides access to the internet, and thereby connectivity to virtually all end points of the internet, irrespective of the network technology and terminal equipment used.”

26. Providers should note the exemption in Article 98 of the Code, which disapplies the requirements of Title III of the Code, save for Articles 99 and 100, to “microenterprises” who provide only number-independent interpersonal communications services (“**Article 98 Exemption**”).
27. It is ComReg’s view that the requirements of Article 106 (1) apply to all IAS services and providers except those subject to the Article 98 Exemption.
28. In complying with the requirements of Article 106 (1), ComReg expects appropriate inter-operator processes for IAS switching to be implemented having regard to all various scenarios in which IAS switching may take place, *inter alia*,
- i. between IAS providers on the same access network;
 - ii. across different access networks;

¹³ Article 1 (3)(d) provides that the Code is without prejudice to the contents of Regulation EU 2015/2120.

¹⁴ Transposed in to Irish law by the European Union (Open Internet Access) Regulations 2019 (S.I No 343 of 2019) (the “Open Internet Access Regulations 2019”) – which implements certain aspects of the Open Internet Access Regulation EU/2015/2120 relating to ComReg’s powers and penalties.

- iii. the switching of services based on different underlying technologies (including copper, fibre, cable and fixed wireless access);
- iv. across mobile networks; and
- v. between mobile and fixed access networks.

29. ComReg considers that pursuant to the Code, providers of IAS will be required to have in place an appropriate inter-operator process that covers all types of IAS switches, as set out above. In relation to porting of a number during an IAS switch, mobile operators have an obligation to provide Mobile Number Portability (“MNP”),¹⁵ however, the right of end-users to retain their numbers independently of the undertaking providing the service does not apply to the porting of numbers between networks providing services at a fixed location and mobile networks.¹⁶

3.2 Applicability to End-User

30. Article 106 (1) and 106 (6) of the Code covers end-users, that is “*user[s] not providing public electronic communications networks or publicly available electronic communications services*” and where ‘user’ is “*a natural or legal person using or requesting a publicly available electronic communications services*”.¹⁷

31. ComReg notes Title III being subject to maximum harmonisation, including Article 106 (1).¹⁸ The European Commission (“EC”) addresses the applicability of Article 106 (1) of the Code including to larger companies in its, “Questions and Answers on the EECC¹⁹” guidance (**EC guidance**) to Member States. In that context,

¹⁵ In accordance with Regulation 25(1) of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011 (the “**Universal Services Regulations**”), S.I. No. 337/2011.

¹⁶ Annex VI, Part C provides that “The requirement that all end-users with numbers from the national numbering plan, who so request can retain their numbers independently of the undertaking providing the service shall apply:

- a) In the case of geographic numbers, at a specific location; and
- b) In the case of non-geographic numbers, at any location.

And that “*This part does not apply to the porting of numbers between networks providing services at a fixed location and mobile networks.*”

¹⁷ As defined in Article 2 (13) and Article 2 (14) of the Code.

¹⁸ According to Article 101 on the level of harmonisation “*Member States shall not maintain or introduce in their national law end-user protection provisions diverging from Article 102 to 115, including more, or less, stringent provisions to ensure a different level of protection, unless otherwise provided for in this Title (Title III). This applies also to the provisions on scoping to end-users or its limitations.*”

¹⁹ European Commission (2020) “Questions and Answers on the EECC”, available at: https://webgate.ec.europa.eu/cas/login?loginRequestId=ECAS_LR-1057636-muSGC9jAU8JIYLRyOuPYNTLBWSt9VQWzi1DmmvTQjWMvLoUErIHn2WkqeTgoEFr45NzZnDzKSPlyd eY3fM7qFCG-jpJZscgsw0KMqITwbrze3x-zzZYTqZGzHfaF3I4G0mHwZTmVlg0GgHOjYxcLqd231XdbdVKYt2HJcljs1zrbuENnGe8kiHH7AvQepclX Qjf1ee (Note: You must create a CIRCABC account to access.) Please note the disclaimer at the start of

ComReg understands that the requirements of Article 106 (1) apply to all end-users of IAS services, including end-users who are larger companies. Accordingly, the principles for inter-operator processes to facilitate end-user rights with regard to IAS switching, as set out below, in ComReg's view apply to all end-users.

3.3 Bundled offers and IAS switching

32. This Guidance applies to the switching of bundled services which include an IAS service. Article 107 (1) of the Code extends the provisions of 106 (1) to bundles involving consumers, and Article 107 (4) states that those provisions also apply to microenterprises, small enterprises, or not-for-profits, unless they have explicitly agreed to waive all or parts of those provisions. The requirements of Article 106 (1) shall apply to any bundle involving such classes of end-user which comprises an IAS service or number-based interpersonal communications service (“**NBICS**”)²⁰ except where the Article 98 Exemption applies.
33. Article 107 of the Code requires that providers extend certain end-user rights provisions to all elements of a bundle.²¹ Reference in this Guidance to ‘*all elements of a bundled offer*’ means any services or terminal equipment provided as part of a bundle comprising an IAS or an NBICS.
34. ComReg Document 20/111R addresses bundled offers with reference to the EC guidance in its “**Questions and Answers on the EECC**” which is relevant in the context of IAS switching.²²

the “Questions and Answers on the EECC” document: “This is a rolling document that has not been adopted or endorsed by the European Commission. It is shared with Member States solely for information purposes. Any views expressed therein are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the Commission nor prejudice the Commission or its services. Moreover, the final interpretation of EU law lies with the Court of Justice of the EU.”

²⁰ Article 107 (1) of the Code provides that, “*If a bundle of services or a bundle of services and terminal equipment offered to a consumer comprises at least an internet access service or a publicly available number-based interpersonal communications service, Article 102 (3), Article 103 (1), Article 105 and Article 106 (1) shall apply to all elements of the bundle including, mutatis mutandis, those not otherwise covered by those provisions.*”

²¹ Including terminal equipment, digital content or digital services and ECN / ECS that are not otherwise directly covered by the scope of those end-user rights provisions.

²² Section 3.7.1, paragraphs 278 - 287 of ComReg Document 20/111R refers to definition and scope of provisions on bundle under Article 107.

3.4 Principles to facilitate end-user rights to switch IAS

35. In accordance with Article 106 of the Code, the following are the key and minimum requirements of any IAS switching process to be established:

- i. an end-user's new provider (the receiving provider) takes the lead in managing the switch; and
- ii. end-users are kept adequately informed before and during the switch and are not switched without their express consent; and
- iii. the switch happens in the shortest possible time on the date and within the timeframe agreed by the end-user;
- iv. providers minimise or avoid loss of service during the switch; and
- v. end-users are to be compensated if things go wrong.

36. Accordingly, ComReg has identified broad Principles it views as consistent with the obligation for a simple and efficient switching process to ensure end-users' are protected and their rights upheld.

3.4.1 Principle 1: End-user switching should be quick, easy, and seamless and the receiving provider shall lead the switching process

37. Article 106 (6) establishes in the case of IAS switching under Article 106 (1), that the receiving provider must lead the end-user switching process.²³ In particular, Recital 281 of the Code includes provision that *"In order to facilitate a one-stop-shop enabling a seamless switching experience for end-users, the switching process should be led by the receiving provider of electronic communications to the public."*

38. Therefore, the switching process commences with the receiving provider.

²³ In accordance with Article 106 (6) of the Code: *"The receiving provider shall lead the switching and porting processes set out in paragraph 1 and 5 and both the receiving and transferring providers shall cooperate in good faith."*

The receiving provider must lead the end-user switching process

39. End-users initiate an IAS switch by simply contacting the receiving provider, requesting service provision. The end-user chooses and signs up for a new service with the receiving provider.
40. The receiving IAS provider shall take the lead and manage the switch request on behalf of the end-user. ComReg expects this regardless of whether the end-user is moving across networks or between providers that use the same network. Subject to the provisions of Article 107, this principle also applies in relation to the switching of bundled services which include an IAS service, as set out at section 3.3 and in the Principles.
41. For a receiving provider led process to be effective, it is ComReg's view, that in complying with the requirements of Article 106 (1) and 106 (6), the receiving provider should take the following steps, in accordance with Principle 1. The receiving provider as the leader of the process:
- i. Confirms with the end-user their service(s) order (i.e., there is an agreement with an end-user to enter the service with the receiving provider), the service(s) that will be switched (the “**switching service(s)**”) and that they have decided to proceed with the switch. ComReg considers it is the responsibility of the receiving provider to determine whether the end-user requires a switch (including identifying any phone number that would be switched), parallel connection, or a new connection;
 - ii. Ensures accurate processing and completion of the agreed upon order for end-user's service(s) on the relevant ordering system so as to avoid a risk that the receiving provider has submitted an order for a different product or service which the end-user has not agreed to purchase;
 - iii. Leads an end-user through the validation process *inter alia* gathering all the correct information to ensure activation of the switching service(s) in the shortest timeframe and completion of the switch of the relevant services as agreed with the end-user;²⁴
 - iv. Should obtain the end-user's authorisation or consent to coordinate the switch on their behalf with the transferring provider;

²⁴ The transferring provider previously at the point of sale should have provided the end-user with information necessary for the receiving provider as part of the validation process to identify the end-user's existing service(s) with the transferring provider, including, for example, the end-user's account number on the bill.

- v. Should record and retain an end-user's switch authorisation or consent, in order to help avoid a risk of switching without consent or slamming.²⁵ ComReg Document 20/111R addresses an end-users' consent for the switching to occur;
- vi. Concludes the agreement with an end-user to enter the service(s) which should include the date of switch agreed with the end-user²⁶ and, where appropriate, an agreed install timeframe relevant to the switch. In particular Recital 277 includes provision that "*where technically possible, allow for switching on the date requested by end-users.*" However, it is possible that the receiving provider may not be able to give an exact date for the completion of a required installation process. In such an instance, ComReg expects the receiving provider to factor the required timeframe for installation into consideration when agreeing with the end-user the actual date for the switch (i.e., where the switching service becomes active);
- vii. Contacts the transferring provider and arranges the switch of service(s).

An end-user is not required to contact the transferring provider during the switching process

42. During the switching process, it is ComReg's view, that an end-user is not required to contact the transferring provider to terminate the old contract in respect of the switching service(s), or deal with two providers throughout the process or if something goes wrong. This is regardless of whether the end-user is moving across networks or between providers that use the same access network.

3.4.2 Principle 2: IAS providers should ensure information provision and communication during the switch is used for effectively processing a switch

43. Article 106 (1) establishes that "*the providers concerned shall provide the end-user with adequate information before and during the switching process.*"

44. It is ComReg's view that information provision and communication during the switching process, as between IAS providers or, between an IAS provider and the end-user, will only comprise that which is necessary and appropriate to technically

²⁵ Broadly, slamming is switching end-users to another fixed provider without their knowledge and which can be done in a number of different ways.

²⁶ Article 106 (1) requires that during the IAS switching process, "*The receiving IAS provider must ensure that the activation of IAS occurs within the shortest possible time on the date and within the timeframe expressly agreed with the end user.*"

effect the switch.²⁷ ComReg sees this principle to mean that, at a minimum, to effectively process a switch in practice:

The receiving provider informs the end-user during the switching process about the switch

45. The receiving provider, as leader of the switching process:

- Should obtain from an end-user sufficient information to affect the switch including, for example, the end-user's account number, which will enable them to accurately identify the transferring provider and the end-user and the service(s) which they wish to be switched to;
- As part of the contract, will give information on the arrangements for the provision of the service.²⁸ The receiving provider must clearly inform the end-user of the date on which the switch will occur and keep the end-user adequately updated on progression of their switching service(s);
- In instances of potential delay, failure to switch or where issues of technical feasibility arise during the switching process, it is appropriate and necessary that the receiving provider inform the end-user of the delay or failure and update as to when they can expect their switching service(s) to be ultimately switched;
- Where applicable should inform an end-user that they can continue to use additional support services (e.g. alarms) or of a potential impact of the switch where there is a dependency of a support service on the switching service(s).

46. As part of the final bill in relation to the switching service(s), the transferring provider shall in accordance with the contract inform the end-user of payment to be made, if any, on switching service(s), in particular, of any early termination charges (or a cancellation penalty) that would apply at completion of the switch of

²⁷ As set out in ComReg Document 20/111R, in particular, section 2, section 3.6.1 and Annex 1, the Code mandates in line with the requirements of Article 102 (Information Requirements) and Annex VIII that end-users must be provided with Pre-Contractual Information relating to: contract duration, any switching charges, compensation and refund arrangements for delay or abuse of switching, information about how to switch, information on how to obtain a refund of prepaid credit when switching, and details of any early termination fees (including handset unlocking costs).

²⁸ Before the commencement of the switching process, the receiving provider must ensure the end-user is provided with pre-contractual information about the receiving provider, service(s) requested and various associated rights, as required by obligations on contract information under Article 102 of the Code. Information from the receiving provider regarding switching (for example, that fact that the end-user is switching their service, the services that will be switched and the location of information on the switching process) should be provided at the point of sale alongside other contract information.

service(s).²⁹ In complying with providers' obligations on contractual information under Article 102 of the Code, the transferring provider shall ensure that the end-user is presented as necessary and appropriate with required billing information.

47. In the case of switching IAS while retaining other services, possibly in a bundle, ComReg considers that following notification by the receiving provider, and subject to Article 107 in the case of bundled offers comprising of an IAS, the transferring provider can identify any non-migrating services and, if contacted by the end-user during the switching process,³⁰ the transferring provider should give required information including of any potential impact, whether direct or indirect, financial or otherwise,³¹ of the switch on existing non-migrating services as provided by them including, support services for disabled end-users.

The receiving provider informs the transferring provider about the switch and a switching notification may not be used for save activity/winback³² within the IAS switching process

48. Consistent with Principle 1, the receiving provider, arranging the switch of service(s), should communicate with the transferring provider and ensure that it is adequately informed, for example, by sending a switching notification:

- i. That the end-user has decided to switch provider and of the service(s) for switching as agreed with the end-user;
- ii. That the receiving providers service has been activated;
- iii. With information necessary and appropriate to accurately identify the end-user's account.

²⁹ The transferring provider where relevant, gives an explanation of any credit balances for pre-paid services including the right to a refund and the process for claiming a refund in relation that credit balance, in accordance with the requirements of 106 (6) and the contract.

³⁰ ComReg draws industry attention to the Code requirements in place to help ensure customers can make informed decisions about the terms they are signing up to with their provider, notably (pre) contractual information so that end-users can make an informed choice. IAS providers should clearly set out upfront at the point where the contract is to be signed with the end-user any potential impact of an IAS switch (or cancellation of service) on bundled offers and on a remaining service(s) that is not being migrated.

³¹ For example, such as, early cease charge(s) applicable to the service(s) to be ceased and a discontinuation of any discounted prices where relevant.

³² "Save activity/Winback" means marketing activity which is undertaken by the transferring provider during the switchover period in an attempt to persuade the consumer not to switch to a new provider or after the switching period in an attempt to recover the consumer.

49. Therefore, from the perspective of the transferring provider, the switching process is triggered when the receiving provider gives a notification and with no additional interaction with the end-user or any documentation is required.
50. ComReg considers that the transferring provider should be able to rely on information about the switch as provided by the receiving provider. ComReg also considers that receipt of a switching notification from the receiving provider relating to the execution of the switch is sufficient for the transferring provider to automatically terminate the end-user's contract with it in regard to the switching service(s) in accordance with requirements of Article 106 (1) and Article 106 (6).
51. Article 106 (6) establishes in the case of IAS switching under Article 106 (1) both the receiving and transferring providers:
- i. Are required to cooperate in good faith; and
 - ii. Shall not delay or abuse the switching and porting processes.
52. Therefore, ComReg expects switching IAS providers shall cooperate in good faith and should agree inter-operator processes geared towards ensuring the efficiency and simplicity of the process so that end-users are able to switch provider without a risk of delays to or abuse of the switching process.
53. As set out above, pursuant to Article 106 (6) of the Code, as leader of the switch process, the receiving provider acts in accordance with the end-user's switch request and, as part of the switching process, should issue a switching notification between the IAS providers concerned; upon receipt of which the transferring provider will need to act to cease the switching service(s), so as to automatically terminate the end-user's contract with the transferring provider in relation to the switching service(s), and cease billing following activation of the receiving provider service(s). In that context, and having regard to the requirements of Article 106 (6), it is ComReg's view, that a switching notification must not be used for any purpose other than for what it was intended and must not be used for save activity/winback. Where an end-user has confirmed with the receiving provider the service(s) to switch and that it has decided to switch, any contact with the end-user by the transferring provider during the switching process, unless initiated by the end-user, may constitute a disincentive to switching with a risk of delays to or abuse of the switching process.
54. IAS providers should ensure information provided to end-users and communication with end-users during the switching process do not have the effect that end-users are disincentivised from switching and competition is dampened.

Any communication with an end-user within the switching process should, in ComReg's view, consist only of communications necessary and appropriate to technically effect the switch, and excludes communications for marketing or save activity/winback purposes. Any material that could be considered direct marketing communications should not be included in or accompany the switching information, or be sent to the end-user after the transferring provider has received a notification/information from the receiving provider during the switching process.³³ In that context, in ComReg's view, the transferring provider may not contact the end-user during the switching process for the purpose of save activity or winback. The final bill and related billing information required to be provided to end-users is distinguishable from generic marketing and, in ComReg's view, would not constitute unsolicited direct marketing communications.

55. In addition, providers should, as always, be mindful of their obligations under applicable data protection laws, including the GDPR and e-Privacy Regulations. ComReg understands that it is unlikely that a notification sent by the receiving provider to facilitate the switching (or porting) process on the part of the transferring provider could be lawfully used to initiate save activity/winback with the end-user concerned.

3.4.3 Principle 3: IAS providers ensure continuity of service for end-users and that loss of service does not exceed one working day during the IAS switching process

56. Article 106 (1) requires that the switching IAS providers shall ensure during the switching process:

- i. continuity of service unless technically not feasible: and
- ii. that loss of service is limited to one working day.³⁴

57. Article 106 (5) also places a complementary obligation on providers whose access networks or facilities are used by IAS providers to ensure there is no loss of service that would delay the switching (or porting) process(es).³⁵

³³ Direct marketing communications are governed by Regulation 13 of the e-Privacy Regulations, 2013.

³⁴ In accordance with the requirements of Article 106 (1) that "*Loss of service during the switching process shall not exceed one working day*".

³⁵ In accordance with Article 106 (5) "*Operators whose access networks or facilities are used by either the transferring or the receiving provider, or both, shall ensure that there is no loss of service that would delay the switching and porting process.*"

58. In complying with these requirements, ComReg expects that IAS providers, including providers whose access networks or facilities are used by transferring or receiving providers, should seek to ensure the switching process is prompt, focused and streamlined.

Continuity of service and timelines for completing the switching process

59. ComReg expects switching IAS providers shall cooperate in good faith and agree inter-operator processes geared towards ensuring continuity of service for end-users during the IAS switching process so that end-users are able to switch providers without being hindered by the risk of loss of service,³⁶ while ensuring no delays to or abuse of the switching process. To achieve this:

- The receiving provider, as leader of the process, shall ensure activation of the switching service(s) in the shortest time on the date agreed with the end-user, as required by Article 106 (1)³⁷ and avoid or reduce the risk of loss of service during the switch. In line with Recital 277, ComReg sees this principle to also mean that the receiving provider should allow, where technically possible, for switching to occur on the date requested by the end-user;
- The transferring provider shall, during the period of pre-activation of the switching service(s), where technically feasible, continue to provide its IAS service (or subject to Article 107, the bundled offer) on the same terms until the receiving provider confirms to it the completion of the switch of the relevant services, as agreed with the end-user.³⁸ ComReg sees this principle to mean first, that the transferring provider should not deprovision the existing service to the end-user until the switch is executed and completed, unless it is not technically feasible to do so. ComReg expects this regardless of whether the end-user is moving across networks or between providers that use the same network. Additionally, IAS providers should ensure that the switching and porting processes work seamlessly together and do not have the effect of an end-user experiencing a loss of service or, delays exceeding one working day

³⁶ In particular Recital 277 of the Code notes “Service providers should ensure continuity of service so that end-users are able to switch providers without being hindered by the risk of a loss of service and, where technically possible, allow for switching on the date requested by end-users.”

³⁷ Article 106 (1) requires that during the IAS switching process: “The receiving provider shall ensure that the activation of internet access service occurs within the shortest possible time on the date and within the timeframe expressly agreed with the end-user”

³⁸ Article 106 (1) requires that during the IAS switching process: “The transferring provider shall continue to provide its internet access service on the same terms until the receiving provider activates its internet access service.”

in activation of the service.³⁹ In any case, Article 106 (5) provides that “*in the case of failure of the porting process, the transferring provider shall reactivate the number and related services of the end-user until the porting is successful*”. Therefore, where an IAS service is being switched at the same time as the number is ported, and if something goes wrong with the port or, where a port fails, in ComReg’s view, the transferring provider is also required to reactivate the number and related services of the end-user until the porting and switching has been successfully completed. As referred to above, the transferring provider shall continue to provide its services on the same terms until the switching service(s) of the receiving provider are activated.

- ComReg expects the transferring provider to take the required actions on receipt of a notification from the receiving provider in a timely manner to ensure the switching process proceeds swiftly to deliver the desired outcome for the end-user *inter alia* the transferring provider automatically terminates the end-user’s contract with the transferring provider in relation to the switching service(s) and must immediately cease billing and not incur any further charges beyond the switch date and issue the final bill following activation of the receiving provider service(s), so as to ensure that the switching process does not have the effect that an end-user is double billed;
- Providers whose access networks or facilities are used by transferring or receiving providers, or both, should ensure that there is no loss of service that would risk a delay or failure of the switch requested by an end-user.

60. ComReg is of the view that during the period of pre-activation of the switching service(s), loss of service for the end-user may occur where issues of technical feasibility arise. However, ComReg is of the view that should loss of service for the end-user occur in exceptional circumstances contrary to the switching process, in any case loss of service for the end-user is limited to a maximum of one working day, in accordance with the requirements of Article 106 (1).

61. With a view to avoiding a risk that the switching (and porting) process may result in a loss of service for the end-user, ComReg considers that, although the receiving provider has completed the install and activated the end-user’s service(s), where a switch between different access networks is involved, and prior to sending a (loss) notification (where the transferring provider would deprovision its service and cease the end-user’s contract) and prior to commencement of billing

³⁹ Article 106 (5) stipulates that the porting of numbers and their subsequent activation must be carried out within the shortest possible time on the date explicitly agreed with the end user, and in any event, the ported number should be activated within one working day.

for the new service, as part of the switching process, the IAS provider and the end-user should consider testing that the switch service(s) work(s) on their equipment.

62. ComReg also considers that, in circumstances where the switch is unsuccessful (e.g., if the receiving provider is unable to provide the switching service(s) in the shortest time on the planned provisioning date or switch date agreed with the end-user), the transferring provider shall continue to provide the end-user's existing service on the same terms until the switch is successfully executed and the receiving provider has activated its IAS, as required by Article 106 (1).
63. As set out at section 3.3, this Guidance applies to the switching of bundled services which include an IAS or NBICS. It is an end-user choice whether to individually switch IAS or (subject to Article 107 to switch to competitive offers for the entire bundle or part of it), providing that such services are available from the relevant provider. A relevant end-user pursuant to Article 107 may choose to switch to a bundle with non-corresponding services (e.g., upgrade or downgrade of bundles) or, the relevant end-user may not be switching all existing services from their bundle with the transferring provider ("**non migrating services**"). In that context, a receiving provider would not be required to provide certain elements of a bundled service (for example TV) that it does not offer, nor is a transferring provider required to make such elements available to the receiving provider for re-sale through it. Non migrating services would be outside of the IAS switching process though unless the customer cancels those services subject to the original contract, they would continue to be provided by the relevant provider.

Switch Cancellation requirements

64. Inter-operator processes which IAS providers may develop to facilitate them in meeting their IAS switching obligations should take into account the requirement for a switch cancellation process so as to ensure the efficiency and simplicity of the switching process for the end-user.
65. In relation to end-user switching rights during the switching (or porting) process, ComReg considers that in the period of pre-activation of the switching service(s):
- a) In cases of failure, delay or technical feasibility, the end-user will be able to direct the receiving provider to cancel the switch. In such a case, where the end-user contract with the transferring provider has not been terminated, the end-user may decide not to proceed with the switch, and to continue to receive their existing service from the transferring provider on the same terms and conditions, remaining on their existing contract, consistent with Article 106 (1).

- b) In cases of cancellation of the switch or, failure to activate the switching service(s) during the switching process, as a switching notification from the receiving provider that the activation of their service has occurred should not have issued, the transferring provider should not deprovision its existing service to the end-user. In accordance with requirements of Article 106 (1) and Article 106 (6) the transferring provider will continue to provide the end-user's service on the same terms, with the end-user remaining on their existing contract.
 - c) The receiving provider, in cases of cancellation of the switch will terminate any agreement it has made with the end-user at their request.
66. However, in the absence of the above reasons for a switch cancellation, ComReg considers that it may also be beneficial for IAS providers to allow a switch cancellation at the end-user request so as to avoid any unnecessary installations or activations.

3.4.4 Principle 4: Switching works well for end-users and supports end-user choice and effective competition

67. IAS providers should ensure they have in place inter-operator processes for IAS switching which are implemented and working effectively for end-users. ComReg sees this principle to mean that, first, the end-user decides which service(s) to switch including any components sold as part of a bundled offer, and which service(s) they may retain with the transferring provider (the non migrating services). Second, IAS providers and operators whose access networks or facilities are used by either provider, in accordance, with Articles 106 (1), 106 (5) and 106 (6), should ensure a switching process amongst IAS providers, that is smooth, and which prioritises the efficiency and simplicity of the process for the end-user. A switching process which is unnecessarily complex or difficult for end-users risk breaks in service, limiting end-user switching rights or creating disincentives to switching.
68. It is important that industry adopt a common process to ensure a consistent experience which is simple and efficient for the end-user and does not have the effect that end-users are disincentivised from switching and competition is not dampened *inter alia* a loss of service, failure to cancel services, disincentives to switching, non-cancellation of contracts, and continued billing for services which have been switched, incurring any further charges beyond the switch date or the inability to revert to the previous service in the event of a failed switch.

IAS providers should ensure that end-users are able to switch providers without being hindered by the risk of a loss of service, delays or failure of the switching process

69. ComReg expects switching IAS providers will cooperate in good faith and agree inter-operator processes geared towards *facilitating a one-stop-shop enabling a seamless switching experience for end-users*. While the receiving provider shall lead and manage the switch on behalf of the end-user, in ComReg's view, both the receiving provider and transferring provider are responsible for ensuring the efficiency and simplicity of the IAS switching process. Article 106 (6) establishes in the case of IAS switching under Article 106 (1) both the receiving and transferring providers:
- Are required to cooperate in good faith.
 - Shall not delay or abuse the switching and porting processes.
 - Shall not port numbers or switch end-users without the end-users' explicit consent.
70. In complying with these requirements, IAS providers should ensure that the IAS switching process is applied and implemented, including the validation and authorisation of the switch, such that:
- the switching process cannot proceed if all the correct information has not been gathered by the receiving provider to ensure activation of the switching service(s) in the shortest timeframe and completion of the switch of service(s) as agreed with the end-user;
 - if the provider in question does not use a Universal Account Number (a "UAN"), they must include an account reference number on the relevant bill which is clearly identifiable as the account number applicable to the IAS, and that the end-user can use if they wish to switch providers;
 - the switching end-user is authorised to switch existing services and a risk of inadvertent slamming is avoided.⁴⁰ The receiving provider should record and retain an end-user's switch authorisation or consent, as set out at paragraph 41 (v) above;

⁴⁰ In accordance with the Consumer Information Regulations, providers shall ensure an end-user has consented to a switch and include protections against an end-user being switched without their consent.

- there will be none or minimal loss in service, in accordance with Article 106 (1).
- end-users are not charged for two services from the transferring and the receiving provider simultaneously;
- In the case of an IAS switch with a number port, the IAS switching and porting processes should work in conjunction with one another to provide a seamless experience for the end-user;
- when giving information to end-users, providers should ensure they do so in a way that complies with all their obligations, including to ensure that procedures for terminating a contract do not have the effect that end-users are disincentivised from switching.

IAS providers facilitate end-users choice to switch and cancel service during the cooling off period (if applicable)

71. As set out above, activation of the switching service(s) by the receiving provider, the porting of the number (as relevant) and the termination of the end-user's contract with the transferring provider in relation to the switching service(s) results in the conclusion of the switching process. However, as referred to in section 2.2, in accordance with the Consumer Information Regulations, a consumer may decide to exercise the right to cancel during the cooling off period⁴¹ and, therefore, discontinue service with the receiving provider and, at the same time, engage in a switch, to their previous or a third provider.

72. In these circumstances, ComReg considers that a new switch is commenced. An end-user would go through the switching process to effect their switch request and the relevant end-user (who may be a consumer) may agree a contract with a new receiving provider (whether their previous or a third provider).

73. IAS providers shall facilitate end-users choice to switch during the cooling off period (where applicable). To achieve this IAS providers should, in ComReg's view, also implement and apply the Principles as set out above so as to ensure the efficiency and simplicity of the switching processes for the consumer when cooling off.

74. Both IAS providers will assume the relevant roles and responsibilities (now reversed) to facilitate the end-user in a new switch request, in accordance with the requirements of Article 106 (and, where applicable with regard to bundled offers,

⁴¹See Part IV (Application of the Right to Cancel Distance Contracts and Off-Premises Contracts), Regulations 13 to 22 of the Consumer Information Regulations.

Article 107) of the Code. The new receiving provider leads and manages the switch on behalf of the end-user, with no requirement for the end-user to directly contact the transferring provider to effect the switching service(s), as set out in Principle 2. The new receiving provider should inform the transferring provider of the consumer's intention to switch service(s) and cancel during the cooling off period following the steps as set out in Principle 2. The initial receiving provider (who becomes the transferring provider in the new switch) shall ensure the consumer's right to cancel their contract (where applicable) and will terminate the consumer's contract in respect of service(s) without application of fees other than which may be applicable under the Consumer Information Regulations⁴² and specified in the relevant contract(s).

75. ComReg understands that consumers' cooling off rights apply (where applicable) for the 14 days following the conclusion of the contract with the receiving provider. However, possibly the installation and activation of the receiving providers IAS service could take longer than 14 days from the day on which the contract is concluded with the receiving provider. With a view to avoiding a risk that a consumer may not be able to experience the service contracted for or, exercise the right to cancel during the cooling off period, if so decided, ComReg considers that, providers should seek, where an IAS switch between different access networks is involved, to apply consumers' cooling off rights (where applicable) for the 14 days following the activation of the IAS service by the receiving provider.
76. In addition, circumstances may arise where a consumer may seek to exercise their right to cancel or engage in a switch close to or, at the end of, the cooling off period which may not allow the new receiving provider sufficient time before the expiry of the cooling-off period to inform the new transferring provider of the intention switch/cancel. Notwithstanding this, ComReg considers that cooling off rights would apply where a consumer has informed the new receiving IAS provider during the cooling off period of their intention to switch/cancel service.
77. In any case, ComReg expects that IAS providers would ensure the effective working of any agreed inter-operator IAS switching processes and that they do not have the effect that the consumer's right to cancel their contract in the cooling off period (where applicable) and end-user switching rights pursuant to Article 106 of the Code (and, where applicable with regard to bundled offers, Article 107) are not upheld.

⁴² In accordance with Regulation 14 (2) and 21 (3) of the Consumer Information Regulations.

IAS providers should ensure the switching process supports end-user choice and effective competition

78. Overall, it is essential to ensure a smooth switching process amongst IAS providers, which prioritises the efficiency and simplicity of the process for the end user, in order to meet the objectives of Recital 277 and Article 106 (1) of the Code.
79. ComReg also considers that providers and operators whose access networks or facilities are used by IAS providers, in accordance, with Articles 106 (1), 106 (5) and 106 (6), should ensure that any agreed industry inter-operator IAS switching process(s) does not have the effect that IAS providers would find it unduly burdensome to implement in practice such that the ability of smaller operators to engage with the process is impacted negatively, or that ultimately end-users cannot avail of their right to switch IAS service(s) and competition is dampened.
80. Industry may possibly consider a technical solution for inter-operator communication. Should industry decide to put in place a technical solution for communication between IAS providers to facilitate effective IAS switching, methods for exchanging information should enable efficiency for both larger and smaller IAS providers, and the cost and complexity of a switching process should not act as a barrier for smaller IAS providers.
81. In developing a switching process to meet their obligations under Article 106 of the Code, providers and operators whose access networks or facilities are used by either provider, in accordance, with Articles 106 (1), 106 (5) and 106 (6), should have regard for effective competition and be mindful of their regulatory obligations and competition law. In that context, industry engagement to develop a robust and effective IAS switching process should ensure that discussions amongst IAS providers respect the normal competitive process of service providers competing independently and vigorously for customers, and in a manner that is consistent with competition law.