



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Management and Maintenance of the National Directory Database

Response to Consultation and Decision

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An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation

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1 Executive Summary

- 1 The National Directory Database ("**NDD**") is a comprehensive record of all subscribers of publicly available telephone services in the State who have not refused to have their details recorded in it. The function of the NDD is primarily to facilitate the compilation of and access to information for telephone directories and directory enquiry services. In addition, following the entry into force of the e-Privacy Regulations,¹ the NDD continues to be the basis for the operation of the "opt-out" register for direct marketing purposes.²
- 2 ComReg has the power to direct an undertaking to manage and maintain the NDD under Regulations 19 and 30 of European Communities (Electronic Communications Networks and Services) Regulations 2011, ("**the Regulations**").³ Eir currently maintains and manages the NDD and the collation of information from all undertakings that assign telephone numbers to subscribers until the 31 March 2019.⁴
- 3 On 22 March 2018 ComReg published Information Notice 18/22⁵ which extended an invitation to all undertakings who are interested in managing and maintaining the NDD to express their interest in doing so. ComReg received one expression of interest from PortingXS, a Dutch company that currently provides a fixed number portability ("**FNP**") solution in Ireland.⁶ Eir who currently manages the NDD, did not put forward an expression of interest in continuing to offer the service. Subsequent to Information Notice 18/22, detailed information was provided to ComReg by PortingXS, such as its competence and expertise to manage and maintain the NDD, a project plan of how it will manage the migration from the existing NDD and a proposal for the management and maintenance of the NDD going forward.
- 4 On 15 October 2018, ComReg published Document 18/91⁷ ("**the Consultation**") in order to determine the most appropriate undertaking to manage and maintain the NDD beyond the current Decision D07/18, if so decided by ComReg.

¹ European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (S.I. No. 336 of 2011), ("e-Privacy Regulations")

² The "opt-out" register is the means by which subscribers express their preference not to be contacted by direct marketing companies. Regulation 14 of the e-Privacy Regulations requires all undertakings to record a subscriber's telephone number in the NDD "do not call register" if the customer does not consent to unsolicited calls. The NDD is used as a direct marketing "opt-out" register, and is the mechanism used for collating the "do not call register" for the purpose of the e-Privacy Regulations.

³ European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011 (S.I. No. 337 of 2011).

⁴ ComReg Document 18/56 and D07/18, "*Management and Maintenance of the National Directory Database*", 27 June 2018.

⁵ ComReg Document 18/22, "*National Directory Database ("NDD") Request for Expressions of Interest for Managing and Maintaining the NDD*", 22 March 2018.

⁶ Porting XS are an "authorised undertaking" pursuant to Regulation 4 of the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011.

⁷ ComReg Document 18/91, "*Management and Maintenance of the National Directory Database*", 15 October 2018.

- 5 During the course of the Consultation, ComReg also published an Information Notice⁸ which set out further information in response to a request received from an operator for clarifications as regards certain operational aspects of PortingXS proposal.
- 6 This Response to Consultation and Decision document sets out ComReg's final position on the management and maintenance of the NDD having considered the submissions received together with all available relevant information.
- 7 We wish to thank the four respondents for their submissions to the Consultation which were received in November 2018. The submissions were received from the following:
 - BT Communication Ireland Ltd (“**BT**”);
 - Eircom Group (consisting Eircom Limited and Meteor Mobile Communications Limited) (“**eir**”);
 - Imagine Group (“**Imagine**”);
 - PortingXS.
- 8 ComReg has considered the views of respondents and has taken due consideration when assessing and quantifying the potential impact on stakeholders and on competition arising from its proposals in coming to its Decision.
- 9 ComReg has taken into account a number of key considerations in making its Decision including:
 - ensuring that subscribers have the right to be listed in directories and DQ services;
 - keeping an up-to-date and comprehensive database (NDD) containing telephone directory information in relation to all listed telephone numbers;
 - ensuring that providers of directory information services and/or directories continue to have access to the information necessary to offer those services on the appropriate terms;
 - the NDD continues to be the basis for the “opt-out” register for direct marketing purposes;
 - the receipt of one expression of interest in managing and maintaining the NDD following the publication of Information Notice 18/22; and
 - a possible transition from the current manager of the NDD to a new undertaking if so decided.

⁸ Information Notice 18/93, *Management and Maintenance of the National Directory Database, Additional Information*, 6 November 2018.

10 Below is a summary of some of the main aspects of our decision which is set out in the Decision Instrument at Annex 1 to this Decision and which is explained in more detail in this Response to Consultation and Decision:

- Having regard to the continued need for the NDD (section 3.1) and to other relevant factors as set out in the Consultation and in this Decision, ComReg has decided that PortingXS is the appropriate undertaking to manage and maintain the NDD for a minimum period of 3 years, and up to 5 years at ComReg's discretion, having regard to any future developments as regards a changing legislative, regulatory framework and electronic communications sector generally, as set out in section 3.2;
- In response to the submissions to the Consultation, ComReg considers that on balance a longer transition period than 3 months is likely needed to allow the migration and transition to be completed. ComReg has decided that the transition period should be extended to approximately 6 months commencing on the date ComReg confirms its agreement in writing with the Operational Specification and up to 30 June 2019 (the "**Transition Period**");
- Subject to agreeing the Operational Specification with ComReg prior to the Transition Period, ComReg has decided that PortingXS will manage and maintain the NDD from 1 July 2019.
- Upon request, PortingXS shall provide information to the Data Protection Commission and/or to ComReg, in the timeframe set out in the request, for the purposes of the carrying out their respective regulatory functions. For the purposes of ComReg's regulatory functions and to ensure the NDD continues to be managed and maintained at all times, and to ensure the integrity and comprehensiveness of the NDD, PortingXS, shall provide and facilitate access by ComReg and/or any person nominated by ComReg in this regard, to any information contained in the NDD in such format, and within such time period, as may be specified by ComReg and it shall appropriately back up the contents of the NDD at appropriate intervals. As part of the Operational Specification, ComReg and PortingXS shall also agree the methodology for the maintaining of appropriate back-ups of the NDD and also for the putting of data in escrow, as a means of ensuring the security and continuity of the NDD at all times as set out in section 3.2.

11 As set out in the Consultation, PortingXS has committed to engage with users of the NDD (service providers, direct marketing companies and DQ providers) and eir, as the current manager of the NDD, to facilitate the effective migration of the NDD to PortingXS. ComReg envisages that industry will engage in a timely and constructive manner to complete the carry over to PortingXS, though ComReg may assist with facilitating the co-ordination of this to help mitigate any risk of delay to the timelines specified.

- 12 In addition, taking into account eir's view as regards a longer transition period, it may be necessary and appropriate for ComReg take further steps to help ensure the management and maintenance of the NDD until 1 July 2019. Subject to the progress of the transition arrangements and carry-over of the NDD to PortingXS, ComReg may need to ensure that eir continues to manage and maintain the NDD to the end of the Transition Period, 1 July 2019, or sooner once the PortingXS system is fully functional and in operation, as set out in section 3.3.
- 13 The purpose of the Transition Period is to allow the effective migration of the NDD from the existing manager of the NDD (currently eir) to any new undertaking directed by ComReg. It also allows all undertakings who provide information to the NDD time to implement any changes necessary. Given the various functions of the NDD and a stakeholder's right to access this information, ComReg considers that the NDD must continue to be managed and maintained at all times. In this light, and to help ensure the integrity and comprehensiveness of the NDD in any change-over from the undertaking directed to manage and maintain the NDD, ComReg considers that it is appropriate that an undertaking so directed must provide ComReg access to the NDD in the format specified by ComReg within such time period as may be specified. In the circumstances of a change-over in NDD manager ComReg may appoint an independent third party to conduct a certified carry-over of the NDD as it considers appropriate.
- 14 In making this Decision, ComReg has taken full account of its statutory functions and obligations by reviewing and giving complete consideration to the submissions received in response to the Consultation.

2 Introduction

2.1 Purpose of the NDD

- 15 In accordance with Regulation 19(2) of the Regulations, undertakings that assign numbers to subscribers must supply the information to the NDD with the relevant subscriber information. These undertakings provide up-to date information to the NDD on a regular basis.
- 16 The NDD lists just over 2 million (listed and unlisted) fixed numbers, of which over 1.5 million are opted out of receiving direct marketing calls. It also lists over 1.2 million mobile numbers (listed and unlisted), only a very small amount of which are opted in to direct marketing calls.⁹
- 17 In addition, the NDD also holds details of subscriber preferences for listing their telephone numbers. These are:
- Listed: Details (name, address, telephone number) are listed in the telephone directory and with Directory Enquiries;
 - Unlisted : Listed with Directory Enquiries only, i.e. not in the phonebook;
 - Ex-Directory: Details not listed in the phone book or with Directory Enquiries.
- 18 Furthermore, the NDD continues to be the basis for the “opt-out” register for direct marketing purposes. The “opt-out” register is the means by which subscribers express their preference not to be contacted by direct marketing companies (by so “opting out”).¹⁰
- 19 The information in the NDD may also be accessed for the collation of printed and online telephone directories and for directory enquiry services in accordance with Regulation 19(4).

⁹ Mobile telephone numbers are automatically protected pursuant to certain provisions in the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 against unsolicited communications.

¹⁰ Subscribers can opt out of direct marketing by asking their telecoms service provider to place their number on the “do not call register.” Fixed line ex-directory numbers must be placed automatically on the “do not call register” by undertakings. Additionally Regulation 13 (6) of the e-Privacy Regulations automatically precludes unsolicited calls to mobile numbers and as such these numbers are already “opted out” by default.

2.2 Current Direction

- 20 There is a specific power for ComReg under Regulation 19(4) of the Regulations to require an undertaking to manage and maintain the NDD. In accordance with Regulation 19(4), the undertaking managing and maintaining the NDD must provide access to the information on terms that are fair, objective, cost oriented and non-discriminatory.
- 21 eir was directed to manage and maintain the NDD for a 3 year period from July 2015 until June 2018. ComReg considered its option in respect of the NDD during 2018. Information Notice 18/22¹¹ extended an invitation to all undertakings who are interested in managing and maintaining the NDD to express their interest in doing so. ComReg received one expression of interest from PortingXS. eir did not express an interest in continuing to manage and maintain the NDD.
- 22 Following a consultation process, in June 2018 ComReg directed eir, as the existing undertaking directed to maintain and manage the NDD, to continue in that capacity for an additional 9 month period.¹² The direction for a period of 9 months was to allow:
- ComReg to continue in its assessment as to whether the interested party or another undertaking should be required to manage the NDD, this should be completed by Q3 2018;
 - ComReg to consult and issue a response to consultation and decision in Q4 2018;
 - A further minimum period of three months to allow for a transition from the current manager of the NDD to the new manager should ComReg's assessment of the expression of interest result in another undertaking being directed to maintain and manage the NDD.¹³
- 23 In accordance with Regulation 19(4), eir currently provides directory information held in the NDD to directory enquiry service providers (“**SP’s**”) under a Directory Information Licence Agreement (“**DILA**”) for the purposes of access by directory enquiry SP’s. In addition, eir provides information in a CD format to the direct marketing industry under the Direct Marketing Licence Agreement (“**DMLA**”).

¹¹ ComReg Document 18/22, “*National Directory Database (“NDD”) Request for Expressions of Interest for Managing and Maintaining the NDD*”, 22 March 2018.

¹² ComReg Document 18/56 and D07/18, “*Management and Maintenance of the National Directory Database*”, 27 June 2018.

¹³ The transition period will only be necessary if there is a new undertaking directed to manage and maintain the NDD. This transition period would be required to allow all undertakings who provide information to the NDD to implement any changes necessary.

- 24 Under the current direction (D07/18), eir must *“meet all reasonable requests for access to any information contained in the NDD in an agreed format”*. The terms of access *“shall be fair, objective and cost orientated and non-discriminatory”, and “in accordance with such terms and conditions as may be specified by eir and approved by ComReg”*. eir is directed to manage and maintain the NDD to 31 March 2019.
- 25 It was noted that as this requirement is not a Universal Service Obligation there are no implications for Universal Service Funding.

3 Consultation Issues

3.1 Need for NDD

26 Under Regulation 19 of the Regulations, ComReg has discretion as to whether or not to require an undertaking to maintain the NDD. Therefore, as a starting point ComReg considered whether there continues to be a need for the NDD.

27 The Consultation noted that the NDD is currently used for a number of purposes, for example:

- the information is used for the collation of the printed telephone directory and there are also multiple providers of online directories;
- directory enquiry service providers use the information to provide their service;
- the direct marketing industry use the information and it continues to be the basis for the “opt-out” register for direct marketing purposes.

28 It was furthermore noted that given the various functions of the NDD, ComReg was of the view it is critical that it continues to be maintained in its current form. Absent an NDD;

- a number of regulatory requirements could not be fulfilled by undertakings;
- subscribers might lose their legal entitlements and protections under the Regulations in respect of directories/directory enquiries;
- subscribers might lose their legal entitlements and protections under the e-Privacy Regulations and be subjected to unsolicited direct marketing.

29 The Consultation set out ComReg’s preliminary view that there will be continued demand to access to the information contained in the NDD over the coming years and considered if users’ rights will be delivered absent a direction. However, crucially, without a direction there are no alternative ways in which stakeholders can access this information. A stakeholder’s right to access this information will be ensured by directing an undertaking to manage and maintain the NDD.

30 In light of the above factors, ComReg’s preliminary view was to direct an undertaking to manage and maintain the NDD under Regulation 19 and Regulation 30 of the Regulations after March 2019.

31 In this context, the Consultation elicited views on the following:

Q. 1 Do you agree that there is a need for a NDD?

Q. 2 Do you agree that ComReg should require an undertaking pursuant to Regulation 19 and 30 of the Regulations, to manage and maintain the NDD after March 2019? Please provide detailed reasons and supporting evidence for your view.

3.1.1 Respondents Views

- 32 In its response, BT agreed that *“there is a need for the NDD for: directory, X-directory and opt-out of cold calling information.”* BT also *“agree there is a need to mandate an operator to provide the NDD and welcome that a volunteer has come forward”*.
- 33 PortingXS noted *“even in a changing world with an increasing internet access PortingXS still sees the relevancy for a NDD solution. Consumers as well as businesses deserve the right to have a quality information published and protected with regards to their details”*. PortingXS also noted that *“having a party managing and maintaining guarantees the quality of service and the correct distribution of information in a safe manner”*.
- 34 Imagine agreed that there is a requirement for a NDD *“as per the reasons outlined by ComReg within this consultation document”*; it also agreed that ComReg should require an undertaking to manage and maintain the NDD *“to ensure the existing functions continue”*.

3.1.2 ComReg’s View

- 35 ComReg notes respondents were in general agreement with its proposals.
- 36 Given the various functions of the NDD, it is critical that it continues to be maintained. As set out above, absent an NDD some regulatory requirements could not be fulfilled and subscribers might lose some of their legal entitlements.
- 37 While this is a discretionary power, if ComReg does not direct an undertaking to maintain and operate the NDD under Regulation 19(4), it would create legal and commercial uncertainty for stakeholders¹⁴ and may jeopardise other obligations on undertakings and other entities in relation to the NDD and also affect the rights of subscribers.
- 38 For example, absent an NDD, direct marketing companies may not be able to access the information they require to determine who they may and may not contact under the e-privacy Regulations.

¹⁴ Including: undertakings, subscribers, directory enquiry service providers, direct marketing companies, and the Office of Data Protection Commissioner.

- 39 It is also important to recognise the legislative anomaly which ComReg has to be mindful of.¹⁵ ComReg is currently in communication with the DCCAE and expect to have this anomaly resolved as soon as possible.¹⁶
- 40 It is ComReg's view that given the various functions of the NDD, it is critical that it continues to be managed and maintained.
- 41 In addition, ComReg is of the view there will be continued demand to access to the information contained in the NDD over the coming years by DISP's and direct marketing companies, as set out in the Consultation. It was noted that the number of licences has remained broadly stable since 2014. Continued access to information contained in NDD is necessary to offer retail directory services. It is noted that a significant minority of end-users continue to rely on retail directory services, printed, online and DQ.¹⁷
- 42 In the absence of a direction it is not guaranteed that the NDD would continue to be managed and maintained.
- 43 Crucially, without a direction there are no alternative ways in which stakeholders can access this information. A stakeholder's right to access this information will be ensured by directing an undertaking.
- 44 In light of the above factors, ComReg considers there continues to be a need for the NDD after 31 March 2019 when the current Decision, D07/18, expires. Therefore, ComReg has decided that it is appropriate and reasonable to direct an undertaking to manage and maintain the NDD under the Regulations.

3.2 Relevant Undertaking

- 45 As noted above, PortingXS was the only undertaking to express an interest in managing and maintaining the NDD.

¹⁵ The current definition of "operator" in the e-Privacy Regulations needs to be precisely aligned with the entity that is required to maintain the NDD under Regulation 19(4) of the Regulations. This requires the Department to correct the definition of the word "operator" in the e-Privacy Regulations, in order for any ComReg Direction to an "undertaking" to be the operator of the NDD in accordance with Regulation 19 to be precisely aligned with it.

¹⁶ Further details were set out in Annex 1 of the Consultation

¹⁷ ComReg document 18/90a "*Market Research - Consumer behaviour regarding finding phone numbers*", 10 October 2018.

- 46 ComReg undertook a detailed assessment of the expression of interest received and the subsequent detailed information provided to ComReg by PortingXS, in order to help determine the most appropriate undertaking to direct to maintain the NDD going forward (if so decided). The assessment included aspects in relation to the company as well as its proposal to manage and maintain the NDD. This included but was not limited to its proposed approach to keeping a record of all subscribers of publicly available telephone services in the State and meeting all reasonable requests for access to any information contained in that record. The evaluation also considered whether access to such requests would be provided in an agreed format, on terms that are fair, objective, cost orientated and non-discriminatory. It also considered the terms and conditions as proposed by PortingXS and which may be approved by ComReg in accordance with other relevant legislation.
- 47 ComReg's overview of PortingXS proposal was set out in sub-sections 3.2.1 to 3.2.6 of the Consultation.
- 48 Having considered the proposal as provided by PortingXS, together with additional information subsequently provided to ComReg by PortingXS, ComReg was of the preliminary view that PortingXS should be required pursuant to Regulations 19 and 30 of the Regulations, to manage and maintain the NDD from 1 April 2019.
- 49 ComReg was of the preliminary view based on PortingXS proposals that service providers who currently provide information to the NDD and DMLA and DILA holders who currently use the information in the NDD should not experience any significant additional costs resulting from a change in the NDD manager from eir to PortingXS.
- 50 The consultation posed the following questions:

Q. 3 Do you agree that PortingXS as the sole undertaking who expressed an interest in managing and maintaining the NDD should be required, pursuant to Regulations 19 and 30 of the Regulations, to do so? Please provide detailed reasons and supporting evidence for your view.

Q. 4 Do you agree with ComReg's preliminary view that a change in the undertaking required to manage and maintain the NDD would have minimal impact on stakeholders? Please provide detailed reasons and supporting evidence for your view.

3.2.1 Respondents Views

- 51 Eir agreed that PortingXS should be required to manage and maintain the NDD. It also noted its view that it agrees *“that an orderly transition can be achieved with relatively limited impact on stakeholder resources in light of the clarification in ComReg 18/93 that PortingXS will be able to support the current interface specifications.”*
- 52 BT noted *“the work of the industry with PortingXS on number porting has been very successful and a similar experience with the NDD will be good for both the industry and the end customer”*
- 53 BT stated that *“given the nature of the task it should be regulated appropriately”* and agrees *“that it is possible to minimise the impact of the change-over”*. BT also stated *“we know from years of experience dealing with the automated interworking of operators that discussions between the actual operators will be required to achieve the correct software configuration, timers etc. Without such ComReg should expect problems. Number porting and years of making products interwork automatically has proven we can do this.”*
- 54 PortingXS *“agree that PortingXS should be required as the sole undertaking to administer in managing and maintaining the NDD.”* Furthermore PortingXS agrees there will be minimal impact and notes it *“will migrate all parties with a minimal impact from Eir to PortingXS.”*
- 55 Imagine also agreed that PortingXS should manage and maintain the NDD for the following reasons:
- *“Based on the supplied consultation document PortingXS would be a cheaper option than the current pricing*
 - *PortingXS through the FNP process and along with industry have introduced an improved and efficient replacement to the legacy porting process and as such, it would be Imagine’s hope that the current NDD process could evolve with PortingXS to make it more efficient than the current process.“*
- 56 Imagine also agreed that the change in the undertaking would have minimal impact on stakeholders. Imagine noted *“If as outlined in the consultation document the intent is for PortingXS to keep the same process in place, then this should minimize the impact to stakeholders. However Imagine would like to point out that the current process is inefficient and could be improved in order to make updates more real-time. We would be eager to explore what options may be available to move not only the updating of Data but also the Direct Marketing “opt out” element of the NDD to a real time api based solution.”*

3.2.2 ComReg's View

- 57 ComReg notes the general agreement of respondents that PortingXS should be required to manage and maintain the NDD beyond the current Decision D07/18 and for a period of up to 5 years.
- 58 ComReg considered PortingXS's proposal and the additional information subsequently provided to ComReg by PortingXS in detail, as set out in sections 3.2.1-3.2.6 of the Consultation under the following headings:
- Experience
 - Understanding and Approach
 - Service Level Agreements
 - Security
 - Timelines
 - Prices, Costs and Revenues
- 59 ComReg is satisfied that PortingXS has sufficient relevant experience. In addition, PortingXS demonstrated an in-depth knowledge and understanding of the NDD requirements.
- 60 The approach as set out by PortingXS will not likely require significant system or process changes by service providers or users of the data. In this respect, PortingXS outlined that it would implement a solution which would require minimal changes to the processes currently used by service providers in providing information to the NDD. Furthermore, PortingXS indicated that changes to how service providers, DMLA and DILA currently interact with the NDD will be minimised. ComReg notes PortingXS proposed improvements and the respondents' views that some improvement would possibly achieve efficiencies.
- 61 ComReg is of the view that the standards which PortingXS have proposed appear adequate for an undertaking directed to manage and maintain the NDD. However, PortingXS must agree the Operational Specification with ComReg as soon as is practical and during the transition period specified by ComReg. It is envisaged that as part of that process ComReg will engage with PortingXS as regards practical implementation aspects. It is furthermore envisaged that industry will engage in a timely and constructive manner to complete the carry over to PortingXS and complete the necessary agreements.
- 62 PortingXS demonstrated that it understood that it must, as NDD manager, ensure that all existing records are migrated onto the new NDD and that the integrity of the data is ensured. In addition, to providing reports to ComReg and the Data Protect Commissioner ("**DPC**"), ComReg will require access to the NDD as it considers appropriate to ensure compliance with the requirements.

- 63 In this respect, and given the various functions of the NDD and a stakeholder's right to access this information, ComReg considers that the NDD must continue to be managed and maintained at all times. In this light, and to help ensure the integrity and comprehensiveness of the NDD in any change-over from the undertaking directed to manage and maintain the NDD, ComReg considers that it is appropriate that an undertaking so directed must provide ComReg access to the NDD in the format specified by ComReg within such time period as may be specified. In the circumstances of any changeover of provider of the NDD, ComReg may appoint an independent third party to conduct a certified carry-over of the NDD as it considers appropriate. PortingXS shall back up the contents of the NDD at appropriate intervals and agree with ComReg a methodology for placing the data in escrow.
- 64 The purpose of the Transition Period, as set out in section 3.3, is to allow the effective migration of the NDD from the existing manager of the NDD (currently eir) to any new undertaking directed by ComReg. It also allows all undertakings who provide information to the NDD time to implement any changes necessary. ComReg requires that PortingXS would similarly facilitate the effective migration to another NDD manager in that eventuality.
- 65 Having taken into account all of the information provided by PortingXS, and taking into account respondents views, including the endorsements of PortingXS given by BT and Imagine, ComReg remains satisfied that PortingXS is the appropriate undertaking to manage and maintain the NDD in the future, subject to agreeing the Operational Specification with ComReg prior to commencement of the Transition Period.

3.3 Relevant Time period

- 66 Historically, eir, has been directed to manage and maintain the NDD for time periods ranging from 9 months to 3 years. The lower range was to allow for consideration of the expression of interest to be assessed, while the longer period was from July 2015 to July 2018.

Table 1: Previous Designations

| Period | Duration | Undertaking |
|--------------------------------------|-----------|-------------|
| October 2012-June 2014 ¹⁸ | 20 months | Eir |
| July 2014- June 2015 ¹⁹ | 1 year | Eir |
| July 2015- June 2018 ²⁰ | 3 years | Eir |
| July 2018-March 2019 ²¹ | 9 months | Eir |

67 ComReg was of the preliminary view that a period of 3-5 years was an appropriate and proportionate time period for which to direct an undertaking to manage and maintain the NDD.

68 The Consultation noted that in light of set-up costs a longer direction period may be more beneficial. A longer period should ensure any direction is met in possibly a more cost-effective manner and lead to certainty for stakeholders where there are less system changes.

69 The Consultation posed the following question:

Q. 5 In your view is 3-5 years the most appropriate time period for this direction? Please provide detailed reasons and supporting evidence for your view.

3.3.1 Respondent's Views

70 BT agree that 3 to 5 years is the most appropriate time period for this direction, however it was of the view *“the direction should also allow for a performance review at the end of each year, and deal with events such as PXS potentially being taken over by another company.”*

71 PortingXS is of the view *“the most appropriate time period for this direction is 5 years”*. It also stated *“a period of 5 years will ensure a long-term solution with less impact for users”*.

¹⁸ ComReg Document D10/12, *“Response to Consultation – Management and Maintenance of the National Directory Database”*, 19 October 2012.

¹⁹ In 2014 ComReg received an Expression of Interest from another undertaking, in order to allow time to fully assess this expression of interest, ComReg directed Eir to manage and maintain the NDD for a period of one year. (ComReg Document D06/14 *“Management and Maintenance of the National Directory Database”*, 1 July 2014). The Expression of Interest was subsequently withdrawn

²⁰ ComReg Document D02/15 *“Management and Maintenance of the National Directory Database”*, 18 May 2015

²¹ ComReg Document D07/18 *“Management and Maintenance of the National Directory Database”*, 27 June 2018

- 72 In its response eir noted the proposed transition period. eir set out its view that *“Whilst we welcome the clarification in ComReg 18/93 that PortingXS will support the current interface specifications, we believe that 3 months may not be sufficient for a migration period as a number of operators and DQ providers will need to schedule the necessary integration activity into already busy IT schedules. We believe it would be more appropriate for a 6 month transition period to be catered for. The 6 month period should commence in the new year, after the change freeze period that is generally maintained by operators over the Christmas period.”*
- 73 Additionally eir was of the view that *“if PortingXS was not able to support the current interface specifications the transition period would need to be much longer than 6 months.”*
- 74 eir *“believe it would be appropriate to set a 5 year period for the direction from when the transition is complete. Taking into account a 6 month transition period, this would mean that the direction would run to 30th June 2024.”* eir also state that it believes *“it would be appropriate for ComReg to undertake a review of the effectiveness of the PortingXS solution after the first full year of operation.”*
- 75 Imagine’s is of the view *“3 years would be a sufficient time period to award the contract for. As stated in the document this allows for reduced costs over the longer period. It would be Imagine’s view that the contract should not be greater than a 3 year period as this will allow for the contract to be reviewed and retendered which would accommodate changes in technology and potentially improvements in processes”.*

3.3.2 ComReg’s View

- 76 ComReg notes that two of the three respondents are of the view a 5 year period is appropriate for the direction, one was of the view a 3 year period should be sufficient and the other that a 3-5 year period was appropriate. ComReg also notes eir’s concerns in relation to the transition period.
- 77 The Consultation set out that, a shorter period may be beneficial where a number of undertakings express an interest in managing and maintaining the NDD. However, where set-up costs are high, longer time are likely more cost-effective, as the costs can be recouped over a longer period and may give certainty to stakeholders. It may involve potentially less systems and process changes for stakeholders and therefore a more stable environment.

- 78 ComReg notes possible future technological changes, evolution of the regulatory framework and other associated legislative provisions. On the one hand, the coming into force of the new EECC²² when transposed in Ireland in 2 years presents no difficulties in fixing the direction period for the management and maintenance of the NDD at the proposed 3-5 year period as the proposed final text for the new Directive does not set a time period. However, it is likely new e-privacy Regulations will also come into force in the coming years and the impact of these Regulations is not yet clear.
- 79 ComReg notes Imagine's comments that a 3 year period may allow for the contract to be reviewed and retendered which would accommodate changes in technology and potentially improvements in processes. It is furthermore noted that PortingXS proposals as regards NDD factored in a business case over three years.
- 80 Having regard to the above considerations, ComReg has decided that, on balance, PortingXS will manage and maintain the NDD for a minimum period of three years from 1 July 2019. Having regard to any relevant future developments, such as, any new e-privacy Regulations or technological changes, this direction may at ComReg's discretion be extended by a further two years. At that stage, it is envisaged that ComReg may conduct a review and consultation on the continued management and maintenance of the NDD after July 2022 as it considers appropriate.
- 81 As regards a change-over in the undertaking directed to manage and maintain the NDD, ComReg in D07/18 extended the direction on eir to continue in the capacity as manager of the NDD until the 31 March 2019 to allow a minimum period of three months for a transition from eir to a new undertaking if so decided.
- 82 Having regard to eir's view that a longer transition period than the minimum of 3 months as set out in the Consultation is likely required, ComReg acknowledges that on balance a longer transition period is likely needed to mitigate any possible delay completing necessary transition arrangements and carry-over of the NDD to PortingXS. Therefore, ComReg has decided that the transition period should be for approximately 6 months i.e., commencing when ComReg confirms its agreement to the Operational Specification and ending on 30 June 2019, unless otherwise extended by ComReg.

²² European Electronic Communications Code

- 83 As set out in the Consultation, PortingXS has committed to engage with users of the NDD (service providers, direct marketing companies and DQ providers) and eir, as the current manager of the NDD, to agree amongst other things a transition plan to facilitate effective migration of the existing records to PortingXS. ComReg envisages that industry will engage in a timely and constructive manner to complete the transition and carry over, though ComReg may assist with facilitating the co-ordination of this to mitigate any risk of delay to the timelines specified.
- 84 ComReg noted that the current direction D07/18 expires on 31 March 2019. Taking into account eir's view as regards a longer transition period, it may be necessary and appropriate for ComReg to take further steps to help ensure the continued management and maintenance of the NDD until all necessary transition arrangements are completed and the PortingXS system is fully functional and in operation by 1 July 2019. Subject to the progress of the transition arrangements and carry-over of the NDD to PortingXS, ComReg may separately engage with eir to agree that it continue to manage and maintain the NDD for the further period to the end of the Transition Period, 1 July 2019, or sooner once the PortingXS system is fully functional and in operation.

3.4 Existing Eir Licence Agreements

- 85 ComReg is aware that a change in the company directed to manage and maintain the NDD will impact those who currently have paid for licence agreements with eir. The Consultation set out ComReg's view that where agreements between eir and licensees are due to expire between now and 31 March 2019, that if eir bill these licensees in advance that eir could consider charging the licensees a reduced (pro rata) fee.
- 86 Furthermore, ComReg was of the view that where agreements between eir and licensees are due to expire post the move to a new NDD manager that eir would reimburse any fees paid in advance by these licensees, for periods beyond the go live date, (i.e. on a pro rata basis). In this respect the Consultation asked the following question:

Q. 6 Do you agree that in the event PortingXS is directed to manage and maintain the NDD that Eir should reimburse licensees if fees have been paid for access to the information for periods beyond the go live date? Please provide detailed reasons and supporting evidence for your view.

3.4.1 Respondent's Views

- 87 Three respondents answered this question. BT agreed that *"Eir should only be paid for the period which they have provided service. However, ComReg and Eir should give fair and reasonable notice of the end of service and a short period of overlap testing should be built into the changeover"*.

88 Eir also agreed that *“fees collected in advance will be reimbursed pro rata relative to the service consumed to date”*.

89 Imagine also agreed noting *“Eir should only be paid for the service up until the point that they are providing the service. Once the service goes live on PortingXS then any fees paid in advance to Eir should be reimbursed. This would ensure all stakeholders and not paying twice for a service and are not discriminated against based on their subscriber’s licence renewal date.”*

3.4.2 ComReg’s View

90 ComReg notes all respondents who expressed a view were in agreement that Eir should reimburse licensees if fees have been paid for access to the information for periods beyond the go live date. ComReg also notes Eir’s commitment to reimburse fees on a pro rata basis.

3.5 Draft Regulatory Impact Assessment (RIA)

91 Following the RIA guidelines²³, European and international best practice, the Consultation included a draft assessment of the relevant regulatory options.

92 As part of the process in choosing a preferred regulatory approach to this matter, ComReg set out its key policy issues and objectives. ComReg noted that all subscribers have the right without charge, to have an entry in a printed directory and/or a directory enquiry service.

93 The draft RIA noted that the NDD is an important and convenient resource for directory enquiry service providers and direct marketing companies. It also holds details of consumer preferences for listing their telephone numbers and is the basis for the “opt-out” register for direct marketing purposes. This information is used for the collation of the printed telephone directory.

94 The draft RIA identified and described two potential regulatory options. These were as follows:

- **Option 1:** Do not specify an undertaking to maintain the NDD.
- **Option 2:** Specify an undertaking to manage and maintain the NDD
 - **Option 2a:** Direct Eir for a period of 3-5 years.
 - **Option 2b:** Direct PortingXS for a period of 3-5 years.

²³ ComReg 07/56a, “Guidelines on ComReg’s Approach to Regulatory Impact Assessment”, 10 August 2007.

- 95 After outlining what each of these possibilities might entail, ComReg assessed the options and their respective impacts for consumers, service providers as well as for competition. This included an assessment of the potential costs and benefits of each option, the potential net welfare among other key factors.
- 96 The proposed regulatory approach was chosen to ensure the interests of consumers, service providers and other users of the NDD are upheld. In this respect, the continued management and maintenance of the NDD, is critical to ensure these interests are sustained.
- 97 The Consultation asked the following question:

Q. 7 Do you agree with ComReg's draft assessment of the impact of the proposed options? Please provide detailed reasons and supporting evidence for your view.

3.5.1 Respondents Views

- 98 BT agreed with ComReg's RIA. Imagine also noted it agreed with the RIA *"as per the reasons outlined by ComReg in the [consultation] document"*.
- 99 eir, while not explicitly stating whether it was in agreement or not noted *"Paragraph 107 is incorrect – eir is not currently required to provide a printed directory – and therefore is not relevant to the RIA."* It also drew attention to Paragraph 117 of the Consultation which stated *"ComReg has to be mindful of the legislative anomaly"*. eir set out its view that *"This is not a relevant consideration for the RIA. In any event the Privacy Regulations have been incorrectly transposed and this is widely acknowledged. ComReg should not rely upon flawed legislation to make a flawed decision."*

3.5.2 ComReg's view

- 100 ComReg considers that the issues set out in the RIA to be complete and are in keeping with our functions and objectives and are in adherence to certain Ministerial Policy Directions and ComReg's RIA guidelines.
- 101 Having addressed the specific issues raised, the final RIA at Section 4 sets out ComReg's final assessment of the impact of regulatory options with respect to continuity and reliability of voice service on different stakeholders and competition. On this basis ComReg has decided on the most appropriate approach at this time to managing and maintaining the NDD.

3.6 Draft Decision Instrument

- 102 Section 5 of the Consultation contained ComReg's Draft Decision Instrument. The Consultation asked the following question:

Q. 8 Do you agree with the terms of ComReg's draft Decision Instrument? Please provide detailed reasons and supporting evidence for your view.

3.6.1 Respondents Views

- 103 PortingXS and Imagine agreed with the draft decision Instrument. BT also agreed, noting it *"would like to add one other item if not yet included"*, namely that *"The NDD provider shall not sell or make available the contents of the NDD other than the marketing download to any third part except for ComReg or other competent authorities in Ireland."*
- 104 Eir noted *"The transition period is defined as starting in November 2018. As noted above operators generally maintain IT change freezes over the Christmas period. Therefore the transition period should not commence until January 2019."*
- 105 Furthermore Eir noted that Clause 3.2 of the draft decision stated the Operational Specification shall be agreed with ComReg. Eir stated its view that *"that operators / users of the NDD should be afforded an opportunity to comment on the Operational Specification."*
- 106 Eir also noted its view that *"the term Service Level Agreements in clause 3.3 of the draft decision should be defined."*

3.6.2 ComReg's View

- 107 ComReg notes respondent's general agreement with the draft Decision Instrument as contained in the Consultation.
- 108 In response to BT's comment, ComReg notes that the obligations and rights in respect of access to the NDD are specified under the Regulations and Regulation 14(6)(a) of the e-privacy Regulations.
- 109 eir's proposals in respect of the Transition Period have been addressed in section 3.3 above.
- 110 As set out during the consultation process and in this Decision, ComReg will agree with PortingXS the Operational Specification prior to commencement of the Transition Period, and certain aspects of the specification may be made public as relevant.
- 111 The draft Decision has been amended to take into consideration comments received where appropriate and the final Decision Instrument is set out in Annex 1.

4 Final Regulatory Impact Assessment (“RIA”)

4.1 Introduction

112 The analysis presented in this section represents ComReg’s final RIA. It sets out ComReg’s conclusions of the effect upon stakeholders and competition, of ComReg exercising its powers to direct a manager of the NDD, and of imposing any associated requirements.

113 The purpose the RIA is to assess the likely impact upon stakeholders and competition of options as regards the management and maintenance of the NDD beyond the current decision.

114 ComReg’s aim in conducting the RIA is to ensure that any specific obligations regarding the NDD are appropriate, proportionate and justified in light of the analysis conducted, having regard to its objectives (primarily that subscribers have the right to be listed in directories and DQ services; and keeping an up-to-date and comprehensive database (NDD)) while also taking into account the principle of proportionality. The purpose of the RIA is to establish whether regulation is actually necessary, to identify any possible negative effects that might result from imposing, amending or withdrawing a regulatory obligation and to consider any alternatives. Consistent with the RIA Guidelines²⁴ and, section 13(1) of the Act, ComReg’s RIA considers the effect of proposed regulation along with a consideration of the scope of the various options open to ComReg in respect of the NDD. Therefore, ComReg in conducting this final RIA takes full account of its obligations under the Regulations.

115 ComReg has carefully considered in chapters 3 the specific issues raised on various aspects of its proposals including the draft RIA.

116 Having regard to all available evidence collated during the consultation process, including, the submissions received in response to Consultation 18/91, and ComReg’s statutory objectives, the following sets out ComReg’s final RIA in relation to requirements for managing and maintaining the NDD. This final RIA sets out the 5 steps set out in the RIA Guidelines for conducting RIA’s as follows.

4.2 Step 1 - Describe the Policy Issues and identify the

²⁴ ComReg, “Guidelines on ComReg’s Approach to Regulatory Impact Assessment”, [ComReg Document 07/56a](#), 10 August 2007 (the “RIA Guidelines”).

objectives

- 117 The Regulations provide that all undertakings providing publicly available telephone services must ensure that their subscribers have the right without charge, to have an entry in a printed directory and/or a directory enquiry service.
- 118 The NDD is an important and convenient resource for directory information and enquiry service providers and direct marketing companies.
- 119 The NDD lists just over 2 million fixed numbers (including listed, unlisted) of which over 1.5 million are opted out of receiving direct marketing calls. It also lists over 1.2 million fixed numbers (listed and unlisted), only a very small amount of which are opted in to direct marketing calls.
- 120 The NDD also holds details of subscriber preferences for listing their telephone numbers. Furthermore, following the entry into force of the e-Privacy Regulations, the NDD continues to be the basis for the “opt-out” register for direct marketing purposes.
- 121 This information is used for the collation of the printed telephone directory. ComReg is considering designating eir to provide a printed telephone directory to subscribers, on an annual basis and on request. eir is currently the USP for directories in the State.²⁵
- 122 Pursuant to D07/18, eir also provides directory information held in the NDD to directory enquiry service providers under a Directory Information Licence Agreement (“**DILA**”) for the purposes of access by directory enquiry service providers. In addition, eir provides information in a CD format to the direct marketing industry under the Direct Marketing Licence Agreement (“**DMLA**”).
- 123 ComReg’s concern is that, if left to the operation of market forces alone, the NDD may not be guaranteed. ComReg’s objective in directing a manager of the NDD is to help ensure that subscribers have the right to be listed for the purpose of directories and DQ services; that an up-to-date and comprehensive database (NDD) containing telephone directory information in relation to all listed telephone numbers is kept; that providers of directory information services continue to have access to the information necessary to offer those services on the appropriate terms; and that the NDD continues to be the basis for the “opt-out” register for direct marketing purposes, as relevant.
- 124 In pursuing these objectives, ComReg is also mindful of the principle of proportionality and aims to ensure that any regulatory measures are kept to the minimum necessary whilst ensuring the needs of industry and end users are met.

²⁵ Under Regulation 4(1) of the 2011 Regulations, this is currently under review.

4.3 Step 2 - Identify and describe the Regulatory Options

125 As set out in the Consultation, ComReg considered a range of regulatory options open to it to achieve the above stated objectives:

Option 1: Do not specify an undertaking to manage and maintain the NDD.

Option 2: Specify an undertaking to manage and maintain the NDD

Option 2a: Direct eir for a period of 3-5 years.

Option 2b: Direct PortingXS for a period of 3-5 years.

4.4 Step 3 and 4 - Determine the impacts on Stakeholders and Competition

126 In order to determine the impact on stakeholders and competition, ComReg has considered respondents' views and has taken into account the following:

- subscribers have the right to be listed in directories and DQ services;
- keeping an up-to-date and comprehensive database (NDD) containing telephone directory information in relation to all listed telephone numbers;
- providers of directory information services and/or directories continue to have access to the information necessary to offer those services on the appropriate terms;
- the NDD continues to be the basis for the "opt-out" register for direct marketing purposes;
- the receipt of one expression of interest in managing and maintaining the NDD following the publication of Information Notice 18/22; eir as the current manager of NDD did not indicate an interest in continuing to manage and maintain NDD;
- a possible transition from the current manager of the NDD to a new undertaking; and
- and respondents' views.

| | Impact on Industry | Impact on Consumers | Impact on Competition |
|--|---|---|--|
| <p>Option 1:</p> <p>ComReg do not direct any undertaking to manage and maintain the NDD.</p> | <p>May result in legal uncertainty for stakeholders and may jeopardise other obligations and rights of undertakings and other entities in relation to the NDD and in turn, affect the rights of end users.</p> <p>In addition, the undertaking that maintains the NDD must provide access to subscriber details in accordance with specific terms and conditions. If there is no undertaking specified to manage and maintain the NDD, this will create legal and commercial uncertainty about who must provide access to the NDD and the terms of the access specified in Regulation 19 (4) of the Regulations.</p> <p>Directory information service providers, may no longer have access to the source of information which their services are based upon, in this case they may potentially have increased costs or to cease operation.</p> <p>Additionally, eir would no longer incur the costs of managing and maintaining the service, but would also lose any potential revenue from it.</p> <p>eir may decide to continue to manage and maintain the NDD.</p> | <p>If and undertaking is not directed as NDD manager to continue to manage and maintain the NDD, consumers who do not wish to be contacted for Direct Marketing purpose may now be contacted as, there would be no way for them to register their preference. This would likely cause detriment to end users.</p> <p>Directory information and enquiry service providers may cease operation or increase prices causing detriment to end users.</p> | <p>Currently eir is required, under Regulation 19(4) of the Regulations, to manage and maintain the NDD on a fair, objective, cost-oriented, and non-discriminatory basis. Absent a direction as regards and NDD manager, it could be more costly for directory information and enquiry service providers to access this information and consequently more costly for end users.</p> |

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| <p>Option 2a</p> <p>Specify eir to maintain the NDD for a 3-5 year period</p> | <p>If the NDD is maintained in its current form by eir it will mean that there is no change to the status quo.</p> <p>Industry and DMLA/DILA licence holders will not need to obtain information from each telecoms service provider individually.</p> <p>There will be no changes to the processes currently used.</p> <p>It is more convenient and less costly for Directory Service Providers and undertakings to obtain the information from the one, centralised source that is the NDD.</p> <p>The costs to eir of managing and maintaining the NDD would continue to be covered by the licence fees (DILA/ DMLA).</p> | <p>Requiring an undertaking to maintain the NDD would help mitigate any risks in relation to the continuity of operation and the integrity of the data held and processed by the NDD.</p> <p>Also, if the NDD is maintained, end user Direct Marketing preferences will continue to be recorded, as will their ability to access a Directory information service.</p> | <p>Currently Eir is required, to manage and maintain the NDD on a fair, objective, cost-oriented, and non-discriminatory basis. This would help ensure Directory Service Providers have access to this information and on reasonable terms and conditions.</p> |
| <p>Option 2b</p> <p>Specify PortingXS to maintain the NDD for a 3-5 year period</p> | <p>Industry and DMLA/DILA licence holders will not need to obtain information from each telecoms service provider individually.</p> <p>It is more convenient and less costly for Directory Service Providers and undertakings to obtain the information from the one, centralised source that is the NDD.</p> | <p>Requiring an undertaking to manage and maintain the NDD would help top mitigate any risks in relation to the continuity of operation and the integrity of the data held and processed by the NDD.</p> <p>Also, if the NDD is maintained, end user Direct Marketing preferences will continue to be recorded, as will their ability to access a Directory information service.</p> | <p>PortingXS would be required, to manage and maintain the NDD on a fair, objective, cost-oriented, and non-discriminatory basis. This would help ensure Directory Service Providers have access to this information and on reasonable terms and conditions.</p> |

| | | | |
|--|---|--|--|
| | <p>As a new undertaking would be directed, industry will need to divert resources to ensure their systems and process are compatible. However, there will be minimal changes to the processes currently used. Therefore, service providers and users of the NDD information will not incur significant systems costs as a result of PortingXS being directed.</p> <p>ComReg expects that service providers will liaise with PortingXS during the transition phase in order to ensure continuity of the NDD. This will require resourcing from the service providers however it is expected that the number of days required would be no more than 10. As eir are the currently managers of the NDD it may require slightly more days resourcing during the transition phase.</p> <p>PortingXS have proposed prices for both DMLA and DILA which are lower than those currently charged by eir, which may lead to possible savings for DMLA and DILA holders.</p> <p>However, prices are subject to change depending on licence volumes. If volumes decrease licence fees may increase.</p> <p>The costs of maintaining the NDD would continue to be covered by the licence fees (DILA/ DMLA).</p> | | |
|--|---|--|--|

4.5 Step 5 - Assess the impacts and choose the best option

127 ComReg has considered the options available to it in terms of managing and maintaining the NDD.

128 The counterfactual analysis indicated that, absent a regulatory obligation to do so it is not guaranteed that any undertaking would continue to manage and maintain the NDD, with the result that the need for the NDD would not be met. eir did not indicate that it was interested in managing and maintaining the NDD.

129 However, the NDD is currently used for a number of purposes, for example:

- the information is used for the collation of the printed telephone directory and there are also multiple providers of online directories;
- directory enquiry service providers use the information to provide their service;
- the direct marketing industry use the information and it continues to be the basis for the “opt-out” register for direct marketing purposes.

130 Given the various functions of the NDD, ComReg is of the view it is critical that it continues to be maintained, otherwise, absent regulation:

- a number of regulatory requirements may not be fulfilled by undertakings;
- subscribers might lose their legal entitlements and protections under the Regulations in respect of directories/directory enquiries;
- subscribers might lose their legal entitlements and protections under the e-Privacy Regulations and be subjected to unsolicited direct marketing.

131 In ComReg's view, therefore, Option 1 would result in potential detriment to end users and would not achieve the stated objectives, and is therefore not appropriate.

132 Subscriber details are obtained from undertakings and recorded by the manager of the NDD, without charge to undertakings. In addition, the manager of the NDD must allow reasonable access to the information in accordance with specified terms and conditions.

- 133 Having regard to the counterfactual analysis and the submissions, ComReg is of the view that it is appropriate to require an undertaking to manage and maintain the NDD. It would help facilitate the associated consumer rights in respect of directory entries and opting out of direct marketing (the e-Privacy Regulations). Doing this would help mitigate any risks in relation to the continuity of operation and the integrity of the data held and processed by the NDD. Also, if the NDD is maintained, consumers Direct Marketing preferences will continue to be recorded, as will their ability to access a Directory information services.
- 134 By ensuring the management and maintenance of the NDD by a specified undertaking, industry and direct marketers will not need to obtain information from each telecoms service provider individually. While undertakings are legally obliged to provide information for NDD, the directory enquiry service providers do not obtain it in this manner. It is more convenient and less costly for them and for undertakings to obtain the information from the one centralised source that is the NDD.
- 135 In addition, ComReg is to be mindful of the legislative anomaly, and ComReg has been in communication with the DCCAIE in that regard.
- 136 As set out above, eir did not respond to ComReg's invitation to express an interest in continuing to manage and maintain the NDD in the future.
- 137 Having considered the expression of interest and proposal as provided by PortingXS, together with all available information including the submissions, ComReg is of the view that it is appropriate and proportionate to direct PortingXS to manage and maintain the NDD from 1 July 2019 pursuant to Regulations 19 and 30 of the Regulations.
- 138 ComReg is of the view that to direct PortingXS to manage and maintain the NDD for a 3 year period is the most appropriate and objectively justified option at this time, as it is the only way to ensure that the related rights and obligations can be guaranteed. This direction may be extended by a further period of 2 years at ComReg's discretion, having considered the updated e-privacy Regulations which will also come into force in the coming years. The impact of these Regulations on the NDD is not yet clear.
- 139 Requiring PortingXS to manage and maintain the NDD would help ensure end user rights are preserved and have a positive impact on the industry where NDD assist them in meeting their respective obligations.
- 140 ComReg is not aware of any competition issues arising by specifying PortingXS to manage and maintain the NDD.

Annex 1: Decision Instrument.

STATUTORY FUNCTIONS AND POWERS GIVING RISE TO DECISION

1. This Decision and Decision Instrument, made by the Commission for Communications Regulation (“ComReg”), relates to the maintenance and management of the National Directory Database and is made:

- i. Having regard to sections 10 and 12 of the Communications Regulation Act 2002, as amended (“the Act”);
- ii. Having regard to the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011;
- iii. Pursuant to the functions and powers conferred upon ComReg under and by virtue of Regulations 19 and 30 of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011 (“the Regulations”);
- iv. Having taken account of the representations of interested parties submitted in response to ComReg document No. 18/91 and further information provided to ComReg following request; and
- v. Having regard to the analysis and reasoning set out in ComReg document No. 18/91 and 18/108.

2. Definitions

In this Decision Instrument, save where the context otherwise admits or requires:

“National Directory Database” (“NDD”) means a record of all subscribers of publicly available telephone services in the State, including those with fixed, personal and / or mobile numbers who have not refused to be included in that record, kept in accordance with regulation 19(4) of the Regulations and subject to regulation 14 of the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011.

“Operational Specification” means the process, and all technical requirements necessary for managing and maintaining the NDD, as agreed with ComReg.

“Terms of Access” means the terms and conditions specified by PortingXS for the purpose of providing reasonable access to the NDD as approved by ComReg.

“Transition Period” means the period of time commencing upon the date ComReg confirms its agreement in writing to the Operational Specification in accordance with section 3.3 of this Decision Instrument and ending on 30 June 2019 unless otherwise specified by ComReg.

3. Decision

- 3.1** From 1 July 2019, subject to Clause 3.2 and on expiry of the Transition Period, Porting Access B.V., "PortingXS" shall manage and maintain the NDD in accordance with the Operational Specification, for a period of 3 years. This 3 year period is extendable by ComReg, at its discretion, for a further period of up to 2 years, such that the maximum period, including any extension, shall not exceed 5 years.
- 3.2** The obligation imposed on PortingXS in Clause 3.1 may, subject to the prior agreement of ComReg in writing and in ComReg's sole discretion, be carried out by the successors or assigns of PortingXS or by a related company, its successors or assigns. For the purposes of this Decision Instrument the term "related company" shall have the meaning ascribed to it in the Companies Act 2014. References to "PortingXS" and to the obligations imposed on it in this Decision Instrument, shall be construed accordingly.
- 3.3** The Operational Specification shall be agreed with ComReg and confirmed by it in writing. The commencement of the Transition Period is conditional upon the Operational Specification being agreed by ComReg. ComReg may, if it considers necessary, extend the Transition Period.
- 3.4** For the purposes of Regulations 19(1) and 19(2) of the Regulations and prior to the expiry of the Transition Period, PortingXS shall enter into such agreements with relevant undertakings as are necessary to give effect to the requirements of Regulations 19(1) and 19(2) of the Regulations.
- 3.5** Upon request, PortingXS, its successors, assigns or any related companies, or the successors or assigns of any related companies, or any agents, contractors or sub-contractors of any of the foregoing, shall provide information to the Data Protection Commission and/or to ComReg, in the timeframe set out in the request, for the purposes of the carrying out their respective regulatory functions. To ensure the NDD continues to be managed and maintained at all times and to ensure the integrity and comprehensiveness of the NDD in the event of any changeover of provider of the NDD at any time or catastrophic event, PortingXS and / or any entity referenced in this Clause, shall provide and facilitate access by ComReg and/or any person nominated by ComReg in this regard, to any information contained in the NDD in such format, and within such time period, as may be specified by ComReg
- 3.6** PortingXS shall back up the contents of the NDD at appropriate intervals and make arrangements for the data contained on the NDD to be put in escrow as a means of ensuring the security, integrity and continuity of the NDD. The details of these requirements shall form part of the Operational Specification.
- 3.7** PortingXS shall meet all reasonable requests for access to any information contained in the NDD in a format agreed by ComReg.
- 3.8** The Terms of Access to the NDD shall be fair, objective, cost orientated and non-discriminatory and in accordance with the laws of Ireland and subject to the Courts of Ireland.

- 3.9** Subject to Clause 3.8, the Terms of Access to the NDD shall be specified by PortingXS and approved by ComReg. PortingXS is required to obtain ComReg's approval in writing to the Terms of Access prior to the expiry of the Transition Period.
- 3.10** PortingXS shall publish on its website the Terms of Access and all relevant information on how to access any information contained on the NDD.

4. Statutory Powers Not Affected

Nothing in this direction shall operate to limit ComReg in the exercise and performance of its statutory functions, powers and duties under any primary or secondary legislation (in force prior to or after the Effective Date of this direction) from time to time as the occasion may require.

5. Maintenance of Obligations

If any section, clause or provision or portion thereof contained in this direction is found to be invalid or prohibited by the Constitution, by any other law or judged by a court to be unlawful, void or unenforceable, that section, clause or provision or portion thereof shall, to the extent required, be severed from this direction and rendered ineffective as far as possible without modifying the remaining section(s), clause(s) or provision(s) or portion thereof of this direction and shall not in any way affect the validity or enforcement of this direction.

6. Effective Date and Duration

- 6.1** This Decision shall be effective from 6 December 2018 (the "Effective Date").
- 6.2** This Decision shall remain in force from the effective date until 30 June 2022 unless otherwise specified by ComReg.

THE COMMISSION FOR COMMUNICATIONS REGULATION

Annex 2: Legislation

Regulation 19(4) of the Universal Service Regulations²⁶ provide:

Subject to Regulation 14 of the Privacy and Electronic Communications Regulations and for the purposes of this Regulation, an undertaking that may be required to do so by the Regulator shall keep a record (to be known as the National Directory Database) of all subscribers of publicly available telephone services in the State, including those with fixed, personal and mobile numbers who have not refused to be included in that record, and shall meet all reasonable requests for access to any information contained in that record in an agreed format, on terms that are fair, objective, cost orientated and non-discriminatory, and in accordance with such terms and conditions as may be specified by the undertaking and approved by the Regulator.

Regulation 14 of the e-Privacy Regulations²⁷ provide:

National Directory Database

14. (1) An undertaking referred to in Regulation 19(1) or (2) of the Universal Service Regulations shall, for the purpose of Regulation 13(3)(b) or (5)(b), record or cause to be recorded in the National Directory Database the relevant information specified in paragraph (3) in respect of a line of any one of its subscribers who—

(a) is, upon the making of these Regulations, an ex-directory subscriber in respect of that line who, in the absence of any express instructions to the contrary, shall be taken not to consent to unsolicited calls for the purpose of direct marketing or to such calls by means of an automated calling machine or a facsimile machine, or (b) had, at any time after the establishment of that Database, made a request to the operator or notified the relevant undertaking that the subscriber does not consent to unsolicited calls for the purpose of direct marketing or to such calls by means of an automated calling machine or a facsimile machine to a line of that subscriber.

(2) An undertaking referred to in Regulation 19(1) or (2) of the Universal Service Regulations that has not already done so shall ensure that its subscribers are provided with information regarding their entitlements under Regulation 13(1), (3)(b) and (5)(b) and the possibilities referred to in paragraph (1).

(3) An undertaking referred to in Regulation 19(1) or (2) of the Universal Service Regulations shall, for the purpose of Regulation 13(3)(b) and (5)(b) and when so notified by any one of its subscribers, make available to the operator the following

²⁶ European Communities (Electronic Communications Networks And Services) (Universal Service And Users' Rights) Regulations 2011- SI 337 of 2011

²⁷ European Communities (Electronic Communications Networks And Services) (Privacy And Electronic Communications) Regulations 2011- SI 336 of 2011

relevant information in respect of a line of that subscriber to be recorded in the entry in the National Directory Database in relation to that subscriber—

(a) the fact that the subscriber does not consent to unsolicited telephone calls for the purpose of direct marketing or to such calls by means of automated calling machines or facsimile machines, and

(b) if appropriate, the date on which a notification under Regulation 13(3)(b) and (5)(b) was received by the operator.

(4) (a) An undertaking, for the purpose of Regulation 13(3)(b) or (5)(b), shall, as soon as practicable after having been notified under paragraph (3) that a subscriber does not consent to unsolicited telephone calls for the purpose of direct marketing or to such calls by means of automated calling machines or facsimile machines, transmit particulars of such notification to the operator or other person who publishes a directory to whom the undertaking supplies relevant information relating to its subscribers for inclusion in that directory.

(b) When the operator or other person who publishes a directory receives particulars of a notification under paragraph (1), the notification shall be deemed, for the purpose of this Regulation, to have been made to the operator or that other person at the time the operator or that other person receives particulars of the notification.

(5) The operator shall record the relevant information referred to in paragraph (3) in respect of a line of a subscriber in the entry in the National Directory Database in relation to that subscriber when it is made available to the operator.

(6) (a) For the purpose of complying with Regulation 13(3)(b) and (5)(b) a person may, on such terms and conditions as may be approved under Regulation 19(4) of the Universal Service Regulations and on payment to the operator of such fee as may be required by the operator—

(i) be allowed access to the National Directory Database at all reasonable times and take copies of, or of extracts from, entries in that Database, or

(ii) obtain from the operator a copy (certified by the operator or by a member of the operator's staff to be a true copy) of, or of an extract from, any entry in the National Directory Database, or both, but the operator shall refuse such inspection or copying of, or of extracts from, entries in the National Directory Database if the operator has reasonable grounds to believe that the person will not comply with the Data Protection Acts and these Regulations in respect of the information in that Database. (b) A subscriber, or other person with the written consent of the subscriber, may—

(i) be allowed access to the entry in the National Directory Database in relation to that subscriber in respect of a particular line of the subscriber at all reasonable times and, on payment to the operator of such fee as may be required by the operator, take a copy of that entry, or (ii) on payment to the operator of such fee as may be required

by the operator, obtain from the operator a copy (certified by the operator or by a member of the operator's staff to be a true copy) of that entry, or both. (c) In any proceedings— (i) a copy of, or of an extract from, an entry in the National Directory Database certified by the operator or by a member of the operator's staff to be a true copy is evidence of the entry or extract on the date that it is so certified, and (ii) a document purporting to be such a copy, and to be certified as aforesaid, is deemed to be such a copy and to be so certified unless the contrary is proved. (d) In any proceedings— (i) a certificate signed by the operator or by a member of the operator's staff of an entry in the National Directory Database in relation to a specified subscriber in respect of a particular line is evidence of the entry on the date that it is so certified, and (ii) a document purporting to be such a certificate, and to be signed as aforesaid, is deemed to be such a certificate and to be so signed unless the contrary is proved.

(7) (a) Subject to subparagraph (c), the operator may require the payment of fees in respect of the matters referred to in paragraph (6)(a) or (b) and the amount of those fees shall be designed to secure, as nearly as may be and taking one year with another, that the aggregate amount of fees received, or reasonably expected to be received, equals the costs incurred, or reasonably expected to be incurred, by the operator in performing the functions conferred on the operator by this Regulation. (b) Different fees may be required in respect of the matters referred to in paragraph (6)(a) and (b). (c) The amount of the fees required under subparagraph (a) is subject to the approval of the Regulator.

(8) For the purpose of his or her functions under Regulation 17, the Commissioner— (a) shall be allowed access to the National Directory Database at all reasonable times and take copies of, or extracts from, entries in that Database, and (b) may obtain from the operator a copy (certified by the operator or a member of the operator's staff to be a true copy) of, or an extract from, any entry in the National Directory Database, without payment of a fee to the operator

THE LEGISLATIVE ANOMALY

The definition of "operator" in the E-Privacy Regulations is:

a person designated by the Regulator under Regulation 7(1) of the Universal Service Regulations to provide a universal service (within the meaning of those Regulations) in respect of directory services referred to in Regulation 4 of those Regulations.

Relevant provisions of Regulation 4 of the Universal Service Regulations are as follows:

(1) A designated undertaking shall ensure, based on data provided to it in accordance with Regulation 19(4)—

(a) that a comprehensive directory of subscribers is made available to all end-users in a form approved of by the Regulator, whether printed or electronic or both, and is updated at least once in each year, or

(b) that a comprehensive telephone directory enquiry service is made available to all end-users, including users of public pay telephones.

(2) The designated undertaking concerned shall ensure that the directory or the directory enquiry service referred to in paragraph (1) comprises all subscribers of publicly available telephone services in the State (including those with fixed, mobile and personal numbers) who have not refused to have their personal particulars included in those directories. This paragraph is subject to Regulation 12 of the Privacy and Electronic Communications Regulations.

Regulation 19(4) of the Universal Service Regulations provide:

Subject to Regulation 14 of the Privacy and Electronic Communications Regulations and for the purposes of this Regulation, an undertaking that may be required to do so by the Regulator shall keep a record (to be known as the National Directory Database) of all subscribers of publicly available telephone services in the State, including those with fixed, personal and mobile numbers who have not refused to be included in that record, and shall meet all reasonable requests for access to any information contained in that record in an agreed format, on terms that are fair, objective, cost orientated and non-discriminatory, and in accordance with such terms and conditions as may be specified by the undertaking and approved by the Regulator.

Regulation 14 of the E-Privacy Regulations protects the rights of subscribers, for instance this Regulation provides, inter alia, that an undertaking referred to in Regulation 19(1) or (2) of the Universal Service Regulations shall record in the NDD that a subscriber who has notified the relevant undertaking that he does not consent to unsolicited calls for the purpose of direct marketing.

The key problem with the current definition of “operator” is that there is a possibility that ComReg may decide not to designate an undertaking for the purposes of Regulation 4(1)(a) or (b) of the Universal Service Regulations. Regulation 7 of the Universal Services Regulations provides that ComReg *may* designate one or more undertakings to comply with an obligation or requirement referred to in Regulation 4(1)(a) or (b) (my italics). In such circumstances, the definition of “operator” would be tied to no undertaking.

ComReg are of the view that the functions of the “operator” are dependent on the maintenance of the NDD and not with the role of any universal service provider that provides a subscriber directory.

ComReg are of the view that the definition of “operator” in the E-Privacy Regulations should be more appropriately tied to the primary obligation in relation to maintenance of the NDD, i.e. Regulation 19(4) and not to Regulation 7 (1) of the Universal Service Regulations

In light of the possibility of an undertaking not being designated under Regulation 7 of the Universal Service Regulations to provide the obligation under Regulation 4(1)(a) or (b), it is in our view legally risky and inappropriate for the current definition of “operator” in the E-Privacy Regulations to be maintained.

ComReg are currently in communication with the DCCAE and expect to have this anomaly resolved as soon as possible.