



Commission for  
**Communications Regulation**

Decision Notice & Response to Consultation

**ComReg's Review of Carrier Pre Selection in  
Ireland 2003**

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## **1 Foreword by the Chairperson**

Carrier Pre Selection (CPS) is a key barometer of competition in the market. It is therefore a key contributor to the delivery of competitive prices, greater choice and improved quality. Since its launch in January 2000 ComReg has worked with the industry to develop the framework for CPS in line with market and consumer needs. The faltering of the initial progress made in relation to CPS, as shown by the current instability, is a source of concern. It was against this background that ComReg initiated its Review in April of this year. This Decision Paper is the culmination of that Review.

The two core objectives underlying the various initiatives and decisions in this paper are the promotion of competition and the protection of consumers. The measures broadly fall into three categories. First, there are measures that address the framework itself. These are designed to ensure, in a balanced and proportionate manner, that competition can be sustained and grow. Second a set of new initiatives is proposed where ComReg will work with the industry to enhance the CPS product for the benefit of consumers. These include price transparency and consumer awareness of CPS. Finally, ComReg intends to monitor developments in the CPS market and undertake effective enforcement measures to ensure compliance.

The growth of competition in the CPS market depends on the successful implementation of the measures outlined in this paper. ComReg will continue to work proactively with industry and consumer groups to achieve that end.

**Etain Doyle,  
Chairperson of the Commission**

## 2 Introduction

The Commission for Communications Regulation (ComReg) is responsible for the regulation of the Irish telecommunications sector in accordance with European and National law.

Carrier Pre Selection (CPS) was launched in Ireland in January 2000. This service enables consumers to route calls through the operator ("carrier") of their choice, thus allowing them to select the service provider offering the best value in terms of price and quality according to their needs.

ComReg had undertaken a Review of CPS in 2002. This gave rise to a number of changes and initiatives including the development of wholesale line rental/single billing product and adjustments to the win-back processes. However earlier this year, having evaluated the progress of the previous initiative, ComReg was concerned that this progress was faltering. Penetration levels of CPS continued to compare poorly with other EU countries. Of particular concern was that the level of churn, by international standards, appears to be high.

These developments coupled with increasing operator and consumer concern, complaints regarding misleading promotional material and anti-competitive activities such as slamming, gave rise to serious questions as to the overall stability of the market. In accordance with ComReg's objective to promote the development of competition in the Irish market and, given the critical importance of CPS in that context, ComReg launched a review of CPS in April 2003<sup>1</sup>.

The primary purpose of this review was to examine all elements of the CPS framework and associated processes and costs, identify and address any weaknesses in the current system and identify ways in which further growth in competition through CPS can be achieved.

Key parts of ComReg's review included:

- Discussions with eircom and a range of service providers to achieve a fuller understanding of their individual experiences and concerns regarding the CPS framework;
- Analysis of the business case for CPS;
- Consideration of issues raised by Irish consumers either directly with ComReg or via their service provider;
- Contacts with the Competition Authority, Director of Consumer Affairs and European NRAs to examine the CPS product;
- A survey of business and residential customers who had experience of the CPS product;

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<sup>1</sup> ComReg Document No. 03/44: "A Review of Carrier Pre Selection in the Irish Market" available on ComReg's website [www.comreg.ie](http://www.comreg.ie)

In July 2003 ComReg issued a consultation paper<sup>2</sup> which provided an update on the findings of its review on CPS. The Consultation Paper outlined a number of proposed measures aimed at supporting and developing the framework for CPS in the market and sought views from interested parties. ComReg believed that the framework for CPS needed adjustment to restore stability to CPS and to ensure that the Irish consumer could continue to receive the best overall value in terms of price, choice and quality.

The consultation period ran between 17 July and 14 August 2003 and twenty responses were received.

The following is a list of respondents to the consultation:

- ACN Europe
- ALTO
- Cinergi Telecom
- Communications Workers Union (CWU)
- Digitalk
- Eircom
- Esat BT
- Fabien Peyaud, a user
- Friends Telecom
- IFA Telecom
- MCI
- Newtel
- NTL
- Perlico Communications
- Pure Telecom
- Silvertel
- Smart Telecom
- Trans Global Telecom (TGT)

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<sup>2</sup> Please read this Response to Consultation and Decision Notice in conjunction with the preceding consultation paper "Carrier Pre Selection in Ireland 2003- ComReg's 2003 Review" ComReg document no 03/76 available on ComReg's website [www.comreg.ie](http://www.comreg.ie)

- Vartec Telecom
- Vodafone

The Commission wishes to thank all of the respondents to the consultation for their help in reaching its decisions. The responses are available for inspection at the ComReg office, excluding confidential material that respondents specifically asked to be withheld.

In parallel to the Consultation, ComReg also examined the business case of some CPS Operators (CPSOs) as well as a number of other initiatives on CPS e.g. CPS charges etc. Given the commercially sensitive and confidential information involved, ComReg cannot publish the details of this analysis. However, ComReg has drawn on this work and in the interests of transparency has provided as much information as to the conclusions of this work as possible.

Details regarding the legislative basis for CPS are set out in Appendix A.

### 3 Decision Notice Issues

#### 3.1 Churn

##### 3.1.1 Summary of Consultation Issues

In the Consultation Paper ComReg stated that CPS usage in Ireland was below that in other European countries. Ireland's penetration level at 10% was significantly below the European average of 15%, and well below that in countries with the highest penetration levels, at 25%-30%. It was a matter of even greater concern that these figures in fact camouflaged a very high level of customer churn which threatened the viability of the product for many of the alternative providers.

CPS figures received from operators showed levels of churn for individual operators ranging from 40-80% in any given month. ComReg believed that this level of churn was unsustainable. It also appeared from our review of other markets to be unusual. From the end of Q4 2002 to the end of Q1 2003 eircom figures<sup>3</sup> showed that there was a net increase of 3,737 of CPS lines. The CPS hub<sup>4</sup> showed that for that period, alternative operators signed up 61,363 lines. This indicated that the churn for alternative operators for the period was approximately 93% (See Section 3.1.3).

This level of churn raised concerns about the operation of the market in terms of delivering value to consumers. At the most extreme, operators had to gain one hundred customers to keep seven. This implied very high customer acquisition costs, which operators had to take into account in their business plans and which therefore impacted on the value for money they could deliver to consumers and on their spending on new products and services. ComReg stated that in the longer term, the financial viability of CPS could affect, and was already affecting, the availability to consumers of a choice of operators for their call services.

In the Consultation Paper, ComReg also noted that churn levels did not appear to be an issue in other countries. In terms of specifics ComReg noted that Portugal had recently introduced a four month "no contact" period for the incumbent. Similarly, in Canada the incumbent could not contact and attempt to win back lost CPS customers for three months.

ComReg sought views from interested parties on whether they agreed with its assessment that current churn levels in Ireland were unsustainable and threatened the viability of the CPS product and whether measures were needed to introduce stability to the market.

**Q. 1. Do you agree that the present levels of churn are unsustainable and that stability needs to be introduced into the market?**

<sup>3</sup> eircom's figures are obtained from its Corporate Data Warehouse [CDW].

<sup>4</sup> The CPS hub is also operated by eircom.

### 3.1.2 Views of Respondents

Fifteen of the nineteen respondents in answering this question agreed that the current levels of churn in Ireland were unsustainable. Two respondents also believed that churn was a significant barrier to effective competition, particularly when it was caused by aggressive sales practices and distribution of misinformation on the part of the losing operator. These two respondents said that the present churn levels destroyed the business case for CPSOs and one added that it would result in higher prices to the consumer resulting from increased costs of customer acquisition.

One of the respondents stated that high churn levels forced it to withdraw from offering residential CPS last year as it was losing six CPS customers for every ten it added and the product was generating negative cash flows. This respondent stated that it would not re-launch a residential CPS product unless an effective and ComReg enforced regulatory framework had been established to manage win back activities. Another believed that there were a number of factors contributing to high churn: no policing and enforcement of the CPS Code of Practice (CoP) regarding selling practices; huge deployment of resources by eircom on win back activities; consumers not being given enough time to realise the savings with the CPSO as a result of winback contacts by eircom; eircom's brand awareness and historical track record in Ireland; consumers' fears of reduced service from eircom if they switch to a CPSO, excluded calls from the CPS product and non adherence by eircom to CPS processes e.g. regarding upgrading of lines. One respondent believed that the present levels of churn could ultimately be the death of smaller operators. Another stressed that it was imperative that rules and procedures were established and enforced to facilitate the development of competition.

Four respondents believed that the levels of churn were sustainable. One respondent believed that instead of restricting the period where the losing operator could contact the customer ComReg should examine the selling practices of the providers, particularly eircom. This respondent felt that customers only change service provider when they were unhappy with their current provider.

Another respondent queried ComReg's analysis of the relationship between CPS churn levels and consumer awareness. This respondent noted ComReg's comments that churn levels did not appear to be an issue in European countries and cited the National Audit Office Report<sup>5</sup> which found that over a period of two years, 68% of consumers in the UK had made no changes in the way they bought telecoms services and 77% could not name any telephone company other than the UK incumbent. According to this respondent this indicated a prima facie low level of awareness within the UK of CPS which was coupled with low levels of churn.

Two respondents disagreed with ComReg's calculation of churn. Both calculated that for the period Q1 2003 churn was 32% and not 93% as calculated by ComReg. One stated that the calculation in the consultation

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<sup>5</sup> "The Office of Telecommunications: helping consumers benefit from competition in the telecommunications market" available on [www.nao.gov.uk](http://www.nao.gov.uk)



document assumed that all disconnections in this period affected those subscribers that connected during the period, whereas a valid measure of churn should be against the entire population of CPS users. The second quoted Newton's Telecom Dictionary<sup>6</sup> which defines churn as "level of disconnection of service relative to total subscriber's base of the system" and that using this definition and the figures used in the Consultation Paper churn was calculated at 32% per quarter. This respondent felt that the 32% quarterly churn figure gives a fairer view of the market.

One respondent felt that churn at 32% was not high compared to other sectors of the communications industry and believed that churn is an indicator that customers are exercising choice in a competitive market. This respondent believed that price cap obligations on eircom which forced price reductions have significantly bridged the price gap between eircom and service providers, thereby making the latter's offers less attractive. The impact of this and the possible lack of a targeted sales strategy among some CPSOs could not be remedied by imposing limitations on competition in CPS. Finally this respondent argued that if the gaining operator has provided the customer with complete and balanced information in order to make their decision to switch, win back in advance of the customer actually experiencing the service by the losing operator would be extremely difficult.

One of the respondents queried ComReg's period of analysis of churn Q1 2003 where the low net gains by CPSOs in that quarter reflected a significant reduction in sales activity on their part. According to this respondent the preceding or subsequent quarters showed a dramatically different picture where CPSOs were achieving net gains of 4-5,000 lines per month.

### 3.1.3 Commission's Position

In launching this consultation process ComReg expressed concern that the levels of CPS customer churn were sufficiently high to threaten the viability of the product for many alternative service providers. Fifteen respondents agreed with ComReg that current churn levels were unsustainable and threatened the business case for CPS. This, along with the overall decrease in CPS numbers, plus numerous complaints by consumers points to the fact that intervention is required in the CPS market in order to promote competition by restoring stability.

ComReg indicated that during Q1 2003 CPS operators had made sales of 61,363 lines for a net gain of 3,737. Churn was calculated by dividing losses by gains to show that 93% of sales are neutralised by simultaneous losses. Two respondents have indicated that the standard industry definition of churn is calculated differently, using the number of customers lost over the period as a percentage of the overall customer base, rather than comparing losses with gains. This gives a churn rate of 32% for the same period (Quarter 1, 2003). On the basis of data representing the last two and a half years, the same calculation for previous quarters shows this level of 32% to be consistent (the average being 35% per quarter, for the last ten quarters).

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<sup>6</sup> Newton, Harry (2001); "Newton's Telecom's Dictionary –the official dictionary of telecommunications networking and internet", 17<sup>th</sup> edition: 144, New York, CMP Books.

While it is accepted that churn can be calculated in a number of ways, it is noted that it is conventional to express churn rates on an annual basis, which, using the methodology proposed by these respondents gives the annualised churn rate for the first quarter of this year of between 130 - 140%<sup>7</sup>.

The churn rate seeks to measure the rate at which customers take the CPS service and leave it, principally in order to take service direct from eircom. For OLOs the CPS product represents the principal mechanism for addressing residential and SME markets in current market conditions, therefore the churn rate that they experience is the churn rate created by customers leaving the indirect product in favour of direct service. Given the incumbents starting point of 100% of lines and its success in winback, the impact on the incumbent is far less than on the OLOs as a whole.

ComReg's work to improve its understanding of the commercial dynamics of CPS in Ireland has proceeded in parallel with this consultation and forms part of our overall review. CPS operators have provided confidential financial information to ComReg about the costs and revenues of this aspect of their businesses. This indicates gross margins broadly comparable with international experience<sup>8</sup>. The consequence of which is to leave CPS operators with a similar, or somewhat smaller, amount to that paid to eircom for the elements of its network involved in the call. Out of this amount the CPS operators must pay for their own network costs, billing, customer service and have something left over to recover customer acquisition costs and make a contribution to corporate costs.

An annual churn rate of 130 - 140% for the CPS service as a whole is broadly equivalent to all customers leaving the service in c. 9 months giving an average lifetime of 4.5 months with a CPS operator. Information supplied by CPS operators indicates that their sales channels are efficient, with costs per customer acquired which compare favourably with those supplied by eircom, nonetheless average lifetimes of 4.5 months are insufficient to recover these costs let alone contribute to corporate costs. This is true, even if the churn rates were half the current levels given the impact of customer acquisition costs.

As stated, churn can have many causes, many of which cannot be directly influenced by regulation. Nevertheless, with the continued existence of competition endangered by the current instability of the market, ComReg considers that a package of measures must be adopted immediately to provide the conditions for sustained competition, which should encourage more sustainable levels of churn.

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<sup>7</sup> This figure is approximate to the extent that there may be some reporting errors in respect of multiple line orders for ISDN services.

<sup>8</sup> Credit Suisse First Boston, British Telecom Group, August 2003.

## 3.2 The Options

### 3.2.1 Summary of Consultation Issues

ComReg stated that the very existence of CPS as a means of developing competition for the benefit of the consumer was under threat and that action may be required to enhance the CPS framework to support CPS. Three possible options to amend the current win back process in the CPS Code of Practice were proposed and views and preferences were sought from all interested parties on these options and any alternative proposals.

#### Option 1

A twelve month moratorium on all win back activities for all operators to be reviewed by ComReg at the end of the twelve month period. If stability returned to the market e.g. if levels of CPS, churn and complaints had improved significantly then the moratorium would be lifted.

#### Option 2

A shorter moratorium of four months, plus a four month 'no contact' period going forward. This would apply to all operators. After the four month moratorium period, the removal of the moratorium could be reviewed at CPS Committee level depending on levels of churn decreasing and a recommendation made to ComReg. If levels of CPS, churn and complaints had stabilised, then the moratorium would be lifted. The four month 'no-contact' period would commence at this stage and would be reviewed after a twelve month period.

#### Option 3

A four month 'no contact' period. This would apply to all operators. This would be reviewed by ComReg in twelve months time and if levels of CPS, churn and complaints regarding selling practices had stabilised then this no-contact period may be altered.

**Q. 2. If yes to Q3 which option to extend the current "no contact" period for win back do you prefer? Please give reasons for your answer.**

**Q. 3. If you do not agree with the above options proposed by ComReg, please submit alternative proposals to address the problems identified by ComReg.**

### 3.2.2 Views of Respondents

All twenty respondents replied to these questions. Fifteen respondents favoured an option proposed and four did not favour any option proposed and requested that the status quo be maintained. One respondent suggested that the losing operator should never be allowed to make contact with the customer again. The four respondents who wanted the status quo to remain believed that

churn levels were sustainable whilst the fifteen respondents who felt that current churn levels were unsustainable believed that some option to extend the current "no contact" period for win back was required.

Many respondents in favour of some restriction stressed the need for effective monitoring of compliance with the COP and enforcement of sanctions for breaches. They felt that an extended "no contact" period on its own would not address the root causes of the problem or prevent win back activity from resuming once the twelve month period had expired.

The respondents who favoured an extended "no contact" period felt that this option:

- would give customers the chance to experience alternative service offerings fully while at the same time leaving customers free to make contact with other operators should they wish to independently change supplier, without continual and unwanted intrusion from the losing operator;
- would provide the stability that has been lacking in CPS since its inception and would allow customers time to judge whether the new service providers had met their expectations;
- would enable the operator to build up a relationship with the customer;
- would put an end to the consumer confusion within the telecom industry resulting from the excessive level of sales messages currently being experienced and the fundamental lack of confidence in the CPS product;
- would enable service providers to manage revenue growth in line with customer acquisition and would facilitate operators to provide financially sustainable operations, with increasingly competitive offerings to consumers and would encourage more competition;
- would enable CPSOs to launch strong, innovative sales and marketing campaigns in the knowledge that they could attract commercially viable business and achieve a return on investment;
- would combat the aggressive, dedicated and highly resourced win back teams employed by eircom.

Of the four respondents who believed that churn levels were sustainable and favoured the maintenance of the current "no contact" period [i.e. one month], three expressed the need for effective monitoring of compliance with the COP and enforcement of credible penalties for breaches instead of the three options proposed by ComReg regarding winback. Two respondents felt that ComReg and the industry should examine the selling practices of service providers. One of these stated that eircom's selling practices should be addressed in particular.

The respondents who favoured the current "no contact" period felt that the three options proposed by ComReg:

- would only serve to protect those providers who were not providing adequate information on their sales proposition or whose sales propositions were not robust rather than protecting consumers and fostering healthy competition;
- were premature given the imminent application of single billing;
- were anti competitive and served to distort the competitive market unnecessarily. This respondent noted that before alternative proposals were proffered the problems identified by ComReg must be properly grounded. For example the substantive reasons for the level of churn must have been thoroughly researched and firmly established;
- contravened the spirit and letter of the new regulatory framework;
- would restrict consumers access to information which was not in consumers' interests and contrary to ComReg's responsibilities to consumers;
- compromised the role of market forces in developing competition;
- would restrict the legitimate commercial activities of undertakings unreasonably and disproportionately to the objective to be achieved and would compromise competition in the long term which was contrary to the new framework's requirements;
- was a breach of the Communications Act 2002 and Policy Direction 5 on "Regulation Only Where Necessary" as issued by the Minister for Communications, Marine and Natural Resources under Section 13 of the Communications Act 2002;

One respondent expressed serious concerns about ComReg's jurisdiction to adopt the proposed measures. This respondent claimed that there was no correlation between European best practices and a "no contact period"; this was particularly evident in the cases of Sweden and Denmark where according to its research<sup>9</sup>, CPS penetration was 33% and 20-25% respectively with no restrictions regarding win back in place. According to this respondent the fact that Ireland was at 11.8%<sup>10</sup> would indicate that Ireland was in line with the rest of Europe given the length of time CPS had been available in Ireland.

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<sup>9</sup> Source quoted by this respondent is based on Ofcom document entitled "A draft direction by the Director General of Telecommunications Carrier pre-selection "save" and "cancel other" activity", 17 April 2003 with additional research carried out by this respondent.

<sup>10</sup> Obtained from eircom CDW 3<sup>rd</sup> July 2003

Another respondent also believed that ComReg had failed to abide by certain provisions of the Framework Regulation<sup>11</sup>.

Two respondents queried whether ComReg intended to carry out a Regulatory Impact Assessment (RIA) as mandated under Policy Direction 6 pursuant to Section 13 of the Communications Act.

### 3.2.3 *Commission's Position*

ComReg notes that the majority of respondents, irrespective of their views on the options for "no contact", suggest that effective enforcement of the CPS Code of Practice is required. This point is addressed in Section 4.7.

Throughout the review ComReg has been motivated by concerns that without additional measures being brought into the market which would help promote competition and stabilise the market the future of CPS as a competitive consumer choice would be endangered. These additional measures would take the form of changes to the framework that will allow competition to flourish. Ultimately the consumer benefits, in terms of price, choice and quality will be delivered through operators competing actively and in a fair manner. Any intervention must be balanced to ensure that fair competition can take place but must not act as an unnecessary support for inefficiency or poor customer value propositions.

The majority of the respondents supported Option 1. ComReg can see the value of the points made by these respondents and have taken these into account in making its decision. The twelve month 'no-contact period' would allow alternative operators greater certainty in planning investment. Investment in customer acquisition could also be better targeted. The increased stability could lead to more economically efficient decisions by alternative operators. ComReg also agrees with the majority of respondents that it would enable operators to build a relationship with the customer. It would also allow a considerable opportunity for the new operator to demonstrate benefits and would address potential customer confusion resulting from excessive levels of sales messages. As with all of the other options the customer is free to move of their own volition during that period.

As stated above four respondents did not favour any change in the status quo i.e. that the current one-month no contact period be maintained. These respondents echoed many of the points made by others in relation to effective enforcement and measures to deal with selling practices. ComReg agrees with many of these points and these are addressed later in this paper.

In relation to the points made by this group against any form of extension, ComReg responds as follows:

- the objective of this intervention is to promote competition and protect consumers i.e. two of ComReg's core objectives under the new framework. As stated above ComReg does not intend to take an

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<sup>11</sup> S.I. 307 of 2003 European Communities (Electronic Communications networks and services) (Framework) Regulations 2003

action that would protect poor customer propositions. In fact the intention is to introduce a measure that will facilitate competitive customer propositions by providing for a relatively short window that will allow the customer experience the new operator's service free from unsolicited contacts. ComReg would suggest that such a window will not, in the end, protect an operator whose 'proposition' is not competitive;

- ComReg notes that a four month no-contact period has been directed in relation to single billing/wholesale line rental;
- ComReg considers that a relatively short 'no-contact' period is proportionate and can, for reasons already outlined, promote competition by increasing stability;
- ComReg's proposed action is fully within both the spirit and the letter of the new framework. The promotion of competition is, in fact, the key aim of this intervention. Equally, the intervention is entirely consistent with ComReg's objectives in relation to consumer protection. The consumer will benefit from increased competition and will be protected, in a proportionate way, from unsolicited contacts;
- given the general level of concern that exists across the industry in relation to misleading advertising material it appears that there a problem in relation to the quality of the information the consumer receives under the status quo. In this paper ComReg will propose a number of measures to address these issues. The extended no-contact period will provide a breathing space to allow competition develop and these measures to work. The measures will not restrict operators from engaging in their normal mass marketing and advertising campaigns;
- as stated below, ComReg has a responsibility to regulate only where necessary and is committed to allowing competition develop through market forces. However, ComReg believes that a proportionate measure is necessary to facilitate such development;

In the consultation paper ComReg proposed three possible options for amending the Code of Practice (CoP). Clearly these options did not exclude other possibilities and ComReg also asked whether there were other ways in which the current problems could be addressed. A number of respondents submitted variations on these options, including four of the respondents who favoured retaining the status quo regarding win-back. In making its final decision ComReg has taken a number of factors into account:

- The views of respondents;
- As indicated earlier, ComReg's analysis of the commercial dynamics;

- The package of measures in this paper, that, taken together, will provide a solid foundation for the growth of CPS;
- The need to balance both operator and consumer interests e.g.
  - The need to ensure that operators have a reasonable chance to build customer relationships and;
  - That consumers are protected from excessive unsolicited contacts but at the same time are free to make their own choices and can receive appropriate information from operators for that purpose
  - The need for certainty in the market going forward and to avoid over frequent revision of the framework

Taking these factors into account ComReg has decided that the CoP will be amended to extend the no-contact period from the current one month to three months. However, it is intended to review this arrangement in eighteen months time rather than twelve.

This measure must be viewed in the context of the current circumstances where concerns persist in relation to advertising material, anti-competitive practices, slamming, reductions in overall penetration and extraordinary churn. A three month period of no-contact represents a balance between the various options proposed and the positions of the various respondents. It will also provide an opportunity for ComReg, and the industry, to develop, implement and evaluate the other measures proposed in this paper. This measure will allow newly lost customers to experience service provided by their new supplier and ensure they make the decision to remain with/ or move from their new supplier of their own volition. It will provide a short term cooling off period on win back activity by all operators, which in turn will provide the market with an opportunity to stabilise and allow normal supply and demand conditions to dictate levels of CPS and churn. The three months no-contact period represents a shorter time frame than initially proposed. However, it is intended to review this arrangement in eighteen months time rather than twelve.

The key indirect impact for consumers relates to the aim of achieving stability in the market by reducing levels of churn. The proposed measure applies to all operators; the restriction is reasonable and does not preclude any change initiated by the consumer, neither does it include mass marketing and advertising by operators. The enhancement of stability should allow operators greater certainty in planning investment, both in infrastructure and in customer acquisition. It is anticipated that this will result in increased competition in this sector of the market.

*What is meant by a “no contact” Period for Win Back?*

To ensure absolute clarity, a clear definition of what is meant by “no contact” for win back is required. A “no contact” period refers to a win-back standstill



in respect of new losses for a specific period starting from the date the customer is lost.

It covers contacts made by the losing provider to the lost customer for the lost voice services only.

“no contact” means all direct customer contacts, including telesales, feet on the street (FOTS) contacts, written correspondence, account manager contact in relation to CPS etc. However, it does not include general advertisements such as television or radio adverts, billboard adverts or the selling of other products.

Furthermore, the “no contact” period only concerns service provider's sales practices once the service provider has lost the customer. It does not concern a new supplier contacting customers in an attempt to win their business. Customers can always contact their own service providers or any other service provider at any time of their own volition.

ComReg does not accept the request by one respondent for differential treatment for business and residential consumers regarding “no contact” periods for win back. The revised win-back arrangements will apply for all consumers. This is necessary to ensure it is a balanced and effective measure. ComReg understands that in order to comply with its direction this respondent will need to make system adjustments and will communicate bilaterally with this respondent to ensure compliance.

**Direction 1: Clause 8.1 of the Code of Practice in Service Schedule 120 of eircom's Reference Interconnect Offer should be immediately amended to read as follows:**

**“Subject to obligations otherwise at law, following notification by the Access Provider of loss of service the Losing Operator has five (5) days within which it may make one unsolicited contact with the customer. This unsolicited contact with the customer must take the form of the anti-slamming letter in Annex A of this document. The Losing Operator shall endeavour not make further unsolicited contact with the customer until three months has elapsed following notification by the Access Provider.”**

**Direction 2: ComReg directs that all undertakings providing CPS and eircom are bound by the CPS Code of Practice.**

ComReg intends to review this arrangement in eighteen months time.

### 3.3 Consumer Awareness of CPS

#### 3.3.1 Summary of Consultation Issues

ComReg noted that as a result of its review of the position of CPS in other European countries, CPS penetration levels were highest in countries which tended to have high levels of consumer awareness of the CPS product and potential savings. ComReg cited Switzerland, Sweden and Denmark. Another important factor in these countries was that the CPSOs had easy to understand discount messages and simple tariff packages that were consumer friendly. ComReg also drew attention to its publication of a leaflet on CPS in 2003<sup>12</sup>. The aim of this leaflet was to increase consumer awareness of their options for fixed voice telephony. In the Consultation Paper ComReg stated that it was considering further measures in this area and sought views from the public.

- Q. 4. Do you consider that the promotional measures are helpful for CPS in Ireland?**
- Q. 5. Please propose any measures to increase consumer awareness of CPS which you believe would be helpful.**

#### 3.3.2 Views of Respondents

All eighteen respondents, who answered this question, believed that promotional activity was helpful in raising consumer awareness of CPS in Ireland.

One of these noted that ComReg's consultation and review of CPS was evidence enough to support the view that promotional measures had not been successful in Ireland. Two respondents stated that ComReg should concentrate first on ensuring: that the structure of the CPS product was optimal and; that providers comply with their obligations, in particular vis-à-vis the CPS Code of Practice. Other respondents stressed that, were ComReg to undertake further promotional measures, these needed to be carried out in co-operation with service providers and consumer groups.

One respondent believed that the leaflet published by ComReg in 2003 was of little help as it was not widely distributed while two others stated that its success in increasing awareness was debatable. A number of respondents stated that it was the responsibility of every service provider to drive consumer awareness.

One respondent believed that, in comparison to the UK, consumer awareness of CPS in Ireland was very high. This respondent noted that CPSOs have been very active in promoting CPS since its launch in 2000 via TV/ radio adverts, mail shots, web and direct sales. It noted that the fact that there had been over

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<sup>12</sup> ComReg Consumer Information Guide "Telephony services- exercise your choice" available on ComReg's website [www.comreg.ie](http://www.comreg.ie)

500,000 CPS activations since January 2000, out of a total base of 1.6 million, lines was indicative of high consumer awareness and promotional activity in Ireland.

Another respondent queried whether consumer awareness was an issue in Ireland and argued that it would be unlikely that there would be high levels of churn if consumer awareness of CPS products was low. This respondent also believed that high levels of churn were evidence of a highly competitive market. One respondent suggested that further research was needed to determine whether additional ComReg resources should be spent in raising consumer awareness of CPS and how those resources could be utilised best.

Two respondents stated that, in their experience, general consumer awareness of CPS was quite high but felt that ComReg could inform customers of the facts relating to CPS and allay any fears consumers may have about availing of CPS. Two other respondents noted that, from their experience, there was a very low level of awareness of CPS and the rules governing it in Ireland with one adding that credibility of the CPS product was low.

A number of respondents submitted suggestions on measures to increase CPS consumer awareness. These can be summarised as follows:

- Creation of a Web based Price Comparison model maintained by ComReg or the Director of Consumer Affairs which would allow consumers to make comparisons between service providers on price;
- A ComReg facilitated forum where providers could lodge up to date information on rates and discounts which would be accessible to all service providers;
- Well managed promotional campaign using leaflet distribution informing the public of the benefits of switching supplier;
- A high profile and nationwide awareness campaign on ComReg and CPS
- Nationwide distribution of ComReg's 2003 leaflet with additions including details of a helpline number for queries and website with information on CPS and answers on F.A.Q and queries;
- A Television and/or radio campaign aimed at promoting competition;
- Quarterly publication by ComReg comparing and ranking the CPS product of all providers [ as in Denmark, Austria and Sweden];
- Newspaper advertisements on CPS;-
- ComReg should publish a factual leaflet on CPS for consumers which should inform consumers of their rights and the details of the CPS product and should provide a ComReg contact for consumer complaints/ queries regarding CPS. This would need to be

distributed to every home in the country to be of use. One respondent suggested that eircom should be required to send this leaflet in its bills to customers.

- Need for an industry agreed standard for presenting prices in promotional material- such as average cost per minute ( ACPM)- this requirement should be included in the CPS Code of Practice.

### 3.3.3 Commission's Position

ComReg agrees with the view expressed by respondents that it is primarily the responsibility of service providers to market their products.

Nevertheless ComReg is also required under the Communications Act 2002<sup>13</sup> to promote the interests of users, in particular "promoting the provision of clear information, in particular requiring transparency of tariffs and conditions for using publicly available electronic communications services". As part of this role ComReg has issued a leaflet entitled "Telephony Services – Exercise your choice" in early 2003 with the aim of increasing consumer awareness of the options available for consumers in the market, including CPS. With residential and SME consumer awareness of CPS at 33% and 76% respectively<sup>14</sup>, it is evident that there is room for improvement.

ComReg intends to take further initiatives to promote consumer awareness regarding CPS and will work with the industry to achieve this. In doing so, ComReg notes the comments expressed by respondents to this consultation and believes that there is merit in exploring some of the suggested measures. ComReg will present proposals to industry within one month of this Decision Notice.

## 3.4 Guidelines on Promotional Measures and Sales Practices

### 3.4.1 Promotional Guidelines

Taking respondents views into account and, in light of feedback from consumer research and consumer complaints, ComReg considers it appropriate to amend the CPS code of practice to include guidelines on promotional measures. For clarity, as with the entire contents of the CPS CoP, the guidelines will be binding on all signatories of the CPS CoP. These sector specific guidelines are in line with other Industry guidelines such as the ASAI (Advertising Standards Authority Ireland) and IDMA (Irish Direct Marketing Association).

The guidelines are:

- All descriptions, claims and comparisons which relate to matters of objectively ascertainable fact should be capable of substantiation.

<sup>13</sup> SI 20 of 2002

<sup>14</sup> ComReg document no 03/29c: Telecommunications Survey Residential Market & ComReg document no 02/106c: SME Telecommunications Services Study 2002

Service providers are required to hold such substantiation ready for production on demand; service providers should maintain records outlining substantiation for the period recommended by the Data Protection Commission. ComReg will monitor and review this material on an ongoing basis;

- Any data included in promotional material should be correct at the date of print. Records should be maintained by service providers to substantiate this. All offers, whether made by advertisement or other forms of communication which contain descriptions, claims or comparisons must be factual;
- Advertisements or other offers should not contain statements or visual presentations which, directly or by implication, by omissions, ambiguity, or exaggeration, are likely to mislead the consumer about the product or service advertised, the advertiser, or about any other product or advertiser;
- The presentation should be clear and honest and should not be likely to mislead those who are addressed or those to whose attention such material is likely to come.
- As an element of the Code of Practice these Guidelines are binding. They are not, however, a substitute for general obligations in national and EU Law. The appropriate statutory authority for misleading advertising is the Office of the Director of Consumer Affairs.

The issue of the provision of written quotations to customers as part of the sales process has also been raised, in particular, whether operators should be required to provide a written quotation to customers on request. ComReg intends to examine the issues associated with such a requirement and if appropriate bring proposals to the CPS Committee as part of the work stream to revise the CPS CoP.

Furthermore, in its recent decision notice (D16/03)<sup>15</sup>, ComReg has signalled its intention to establish a further code of practice, separate to the CPS code of practice, which will contain principles for presentation of tariff information. This consultation paper will issue in November 2003. ComReg also proposes in this paper to initiate specific additional measures on price transparency.

**Direction 3: The CPS Code of Practice will be amended to include the Guidelines on Promotional Material as set out above.**

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<sup>15</sup> ComReg Document Number 03/86 – Users Rights to Communications Services

### 3.5 Price Transparency

In the consultation paper ComReg stated that one of main complaints received by ComReg from both operators and consumers was that operators were misrepresenting their prices in comparison with their competitors. .

ComReg stated that as the issue of price transparency was being addressed as part of the Consultation on "Protecting users in a Developing Communications Market"<sup>16</sup> there was no need for duplication of initiatives. In the subsequent Decision Notice<sup>17</sup> published in July 2003 ComReg decided to introduce a code of practice for the presentation of tariff information and will commence a consultation process on this in November.

However, given the persistent level of complaints on this matter and the interest expressed by a number of respondents to this consultation for an initiative to promote price transparency, ComReg believes that a focused initiative on price transparency / comparability would be beneficial and would be a useful complement to the Code of Practice measure referred to above.

One respondent made specific and constructive proposals, drawing an analogy with the APR % which the banking industry uses as a standardised comparison of interest rates. Equally one might cite food retailers' presentation of price per Kg figures to allow comparison across packages of different sizes and weights.

This respondent noted the need to take into account all detailed features of tariffs including, for example, discounts applied to per minute rates but not to minimum call charges so that the actual discount is less than that headline discount. The UK incumbent in its advertising literature mentions other issues of detail:

"...unlike some of our competitors, we don't round up charges to the next minute. Nor do we charge a connection fee, just a minimum charge of 5p."

All of these 'small print' issues need to be captured if a comparative indicator is to be true and fair.

This respondent proposed an Average Cost Per Minute as the appropriate measure, which seems eminently sensible, but ComReg would prefer to express the measure as an Average Monthly Bill, which would be arrived at by equivalent calculations but should be more readily intelligible and comparable than a weighted average rate per minute across a multiplicity of destinations, times of day and 'small print' items.

Because consumers spending patterns vary naturally ComReg favours three average monthly bill calculations relating to low, medium and high users as a practical compromise between applicability and complexity. These would be

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<sup>16</sup> ComReg Document 03/26 – Protecting users in a Developing Communications Market

<sup>17</sup> ComReg document 03/86 Decision Notice D16/03 on "Users' Rights to Communications Services Protecting users in a developing communications market"

generated using standard profiles devised by ComReg in association with the industry.

They would be used in an inclusive, not exclusive basis. That all operators would be free to make any price comparisons they feel appropriate as at present but that, in addition, the standard average monthly bill rates would have to be quoted in conjunction with these.

It is proposed that this requirement will be included in the CPS Code of Practice and will be binding on all signatories of the Code.

ComReg will propose details on the standard profiles to the CPS Committee within one month of this Decision Notice. In order to assist ComReg in developing these proposals views are now invited from industry players and consumer representative groups on the general approach outlined above. These views are required within two weeks of this Decision. After a further two weeks (i.e. one month from the date of this Decision), ComReg will present more detailed proposals to the CPS Committee. ComReg proposes to invite consumer representative groups to the Committee for that purpose. The Committee will have a further six weeks to agree the overall approach. At the end of that six week period ComReg will direct on the approach to addressing this issue.

ComReg believes that this initiative will increase consumer awareness and will assist consumers in making an informed decision when choosing their provider for fixed voice telephony services. In addition, this measure should help ensure that service providers do not mislead consumers by misrepresenting their or their competitors' offerings regarding price.

### **3.6 Anti- Slamming letter**

The CPS Code of Practice at Clause 8 currently outlines the rules regarding customer contact. It currently reads in eircom's RIO as:

“Subject to obligations otherwise at law, following notification by the Access Provider of loss of service the Losing Operator or Reseller has five (5) days within which it may make one unsolicited contact with the customer”.

In D13/0218 the ODTR stated that as a result of guidance from the Data Protection Office the unsolicited contact should be more limited and that the contact must take the form of an anti-slamming letter, the contents of which were subsequently agreed by the CPS committee. Slamming is where a customer has been signed over to a new supplier without their understanding and consent.

Operators, including eircom, have been following this approach since July 2002.

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<sup>18</sup> Please see ODTR Document No 02/64 Decision Notice CPS in Ireland 2002 on ComReg's website

In the Consultation Paper ComReg stated that it had come to its attention that the letter was having an effect not envisaged by ComReg and the operators. In addition to alerting consumers that they may have been "slammed" into transferring their calls to another operator, some consumers have been confused/concerned by both the tone and contents of the letter. The consumer then calls the sender. This contact appears then to be used as a win back opportunity which was clearly not the intention behind the issue of an anti-slamming letter.

Therefore, ComReg proposed revisions to the anti-slamming letter in order to make it more customer friendly and requested the CPS Committee to consider its proposals and agree changes to the existing anti-slamming letter.

A meeting of the CPS Committee was duly convened on the 24<sup>th</sup> July 2003 to discuss the proposed amendments to the letter. The majority of ComReg's suggestions were agreed by the Committee with one exception - the use of a standard letterhead.

Industry representatives objected to ComReg's proposal for a standard letterhead and stated that this would cause consumer confusion. ComReg accepted industry's objections and it was agreed that an operator letterhead may be used by all service providers.

At the meeting, *eircom* required the inclusion of a reference in the letter notifying consumers of their removal from *eircom* discount schemes as a result of their transfer to an alternative provider. CPSOs rejected *eircom*'s suggestion stating that the inclusion of such information may cause consumer concern.

Subsequently, ComReg circulated the revised anti slamming letter to CPS Committee members for final comments. The responses indicated that the only outstanding issue was the inclusion of information on the removal of *eircom* discount schemes for consumers that avail of CPS.

As the CPS Committee could not agree the final content of the anti-slamming letter; ComReg was requested by the CPS Committee to make a decision on this issue.

ComReg remains of the opinion that the only aim of the anti-slamming letter is to safeguard customers from being slammed by Service Providers. It should not be used as an indirect method of win back. ComReg notes CPSOs' objections to the inclusion of the reference to discount schemes. Similarly, ComReg has considered *eircom*'s arguments for its inclusion. However ComReg considers that the inclusion of a reference to discount schemes is unnecessary and not compatible with the objective of the anti-slamming letter.

ComReg now directs that the following text for the anti-slamming letter be included in the CPS Code of Practice. This letter is now a mandatory letter which cannot be amended without the agreement of the CPS Committee. .

Mandatory letter format



OPERATOR LETTERHEAD

Date

Dear [customer name],

CHANGE OF TELEPHONE SUPPLIER

We have received notification that you have moved your telephone calls to another telephone supplier, at your request.

Please note that as and from [date of porting] you will be billed by your new supplier for your selected calls.

No further action needs to be taken by you.

However if you have not consented to the transfer of calls and are unaware that your telephone calls have been transferred to another telephone supplier, you can contact us on 1800 XXX XXX and we will rectify the position.

Yours .....

\*

Rules agreed by the industry require us to write to you to confirm that your calls have been moved to a new supplier.

This is a standard notification sent to all customers who move their calls and requires no action by you unless you did not agree to being transferred.

**Direction 4: The Commission for Communications Regulation directs that the revised anti-slamming letter, as set out above, be included in the CPS Code of Practice. The effective date of this direction is the date of this Decision Notice.**

### 3.7 Code of Practice Issues

The majority of the respondents to this Consultation stressed the need for effective monitoring and enforcement of the CPS Code of Practice. ComReg agrees that effective enforcement is critical and proposes to monitor compliance with the CPS Code of Practice in a pro-active manner. The specific initiatives will include:

- Monitoring accuracy of price comparisons
- Monitoring of CPS market statistics
- Guidelines on Sales Practices will assist monitoring of compliance
- Monitoring of compliance with the extended “no contact” period
- Follow up surveys of consumers to check compliance with COP
- Random consumer surveys re: experience of win back
- Eircom, as the operator on whom the obligation to provide access for CPS is placed, to retain appropriate records so as to meet ComReg requests for information. This is addressed in more detail below.

Regarding Enforcement of the COP ComReg believes that, as there will be clearer criteria against which complaints can be assessed, the more prescriptive COP will assist with the enforcement of complaints.

In relation to enforcement, the following measures will apply:

- Report of breaches of Code of Practice or other obligations on ComReg's Website
- Breach of the CoP is a breach of a ComReg decision and therefore liable to enforcement measures under ComReg powers.
- The contractual nature of the CoP will enable service providers to issue contractual law actions between themselves.

In addition to the above ComReg will, within one month of this Decision, present proposals for additional measures to address enforcement and compliance with the Code of Practice:

- Revocation of the CPS operator facility (a suspension of right to process orders) for a period of time (potentially indefinitely) for persistent, generalised, breaches of the CPS Code of Practice.
- The establishment of inter-operator penalties, in effect a Service Level Agreement, for bilateral issues between operators (such as slamming).

### **3.8 Storing of records for CPS ‘winback’ consumers**

Eircom already maintains records in relation to its contacts with customers. However, in order to ensure the effective and efficient monitoring and enforcement of CPS obligations ComReg is directing eircom to record and store all contacts with ‘winback’ consumers both business and residential, for a period of 6 months in a manner that can easily be maintained.

This direction is focused on eircom as the SMP operator with an obligation to provide CPS. ComReg considers that, as eircom, already retains much of the information that is necessary to facilitate follow up monitoring of compliance, the additional burden placed on eircom as a result of this direction will be low. The specific direction is set out below:

**Direction 5:**

**eircom is directed to maintain sufficient records of contact with customers, both business and residential for six months in order to be able to comply with ComReg requests.**

**These records must include the following information:**

**Date and time of contact**

**Name and telephone number of the consumer**

**Name of the sales representative**

**Details as to the subject matter**

**10% of all 'winback' calls (i.e. telephone conversations) with consumers, covering both residential and business and taken at random should be recorded.**

ComReg recognises that all operators may not be in a position to retain/record information to the extent set out above. However, compliance with the Code of Practice is an industry wide obligation and, in that context, ComReg proposes, in association with the industry, to review available information, and then to develop a template of basic information that should be retained by CPSO's and Resellers in order to facilitate compliance investigations. These proposals will be presented to the CPS Committee within one month of this Decision.

## 4 Impact of Proposals

### 4.1 Assessment of ComReg's proposals

#### 4.1.1 Summary of Consultation Issues

ComReg requested feedback from respondents on their assessment of the current situation on business, consumer or competitive impact of proposals set out in this paper.

**Q. 6. Please give your assessment on the current situation of CPS in Ireland and give your assessment on how the proposals in this paper would impact your business, consumers and competition.**

#### 4.1.2 Views of Respondents

##### *Assessment of the current situation of CPS in Ireland*

A number of respondents stated that currently there was no business case for CPS in Ireland due to the high churn levels. Two respondents noted that they have withdrawn from the residential CPS market as a direct result of the level of churn. A number of respondents noted a decline in the CPS market for a considerable time.

Four respondents quoted high CPS charges as a factor that had contributed to problems in the CPS market. This has been compounded by the high churn level, which increased operators' costs which in turn impacted on the viability of their business cases for CPS.

Aggressive winback activities by losing operators, bad selling practices and misleading price comparisons were also cited by a number of respondents as having a negative influence on the CPS market.

In line with ComReg's findings, respondents noted that Ireland's CPS figures were below other European market levels. However one respondent noted that consideration should be given to the length of time that CPS has been available in Ireland as opposed to other European countries. One respondent stated that eircom had been permitted to discount their residential packages at an early stage in the development of competition, which had a negative impact on CPS. Another respondent stated that eircom had subsidised their call charges with an increase in line rental.

Two respondents believed that ComReg's inaction over the last 18 months plus the failure to enforce compliance contributed to the problems facing the CPS market to-day.

Single Billing was also mentioned by a number of respondents as impacting the CPS market and that its delayed absence in the market had decreased the attractiveness of CPS.

#### *Assessment of impact of proposals*

The majority of respondents viewed ComReg's proposals favourably, and stated that CPS would become a sustainable market if these proposals were put in place. A number of respondents indicated that churn levels would decrease. Again, the majority of respondents indicated that consumers would benefit from these proposals as service providers could offer more competitive rates as a result of cost reductions through lower churn. Two respondents refuted this argument, stating that such proposals would deny consumers certain information by which they could make an informed choice and the remedies proposed would reduce consumer awareness of competitive offerings. One respondent believed that the proposals underestimated consumers' ability to make their own decisions.

A large number of respondents stated that the proposals would promote competition; this in turn would attract new entrants to the market, which would assist in the enlargement of the CPS customer base. In opposition to this, two respondents stated that the proposal set out in the consultation would prevent and restrict normal competition and distort the competitive market. One respondent noted that a number of new players had entered the voice service market since 2002.

#### *4.1.3 Commission's Position*

Most of the issues raised above have been addressed elsewhere in this paper. The decisions in this paper are directions under existing obligations and a formal RIA is not therefore required. However, as this is the result of a major review, ComReg has taken the general views above on board in its assessment of the impact of this Decision Paper. This is attached in Appendix C.

## 5 Next Steps

- Consumer Awareness Initiative

ComReg will present proposals to industry within one month of this Decision Notice.

- Price Transparency

ComReg will propose details on the standard profiles to the CPS Committee within one month of this Decision Notice. In order to assist ComReg in developing these proposals views are now invited from industry players and consumer representative groups. These views are required within two weeks of this Decision. After a further two weeks (i.e. one month from the date of this Decision), ComReg will present more detailed proposals to the CPS Committee. ComReg proposes to invite consumer representative groups to the Committee for that purpose. The Committee will have a further six weeks to agree the overall approach. At the end of that six week period ComReg will direct on the approach to addressing this issue.

- Monitoring & Enforcement of the CPS Code of Practice

In relation to enforcement, the following measures will apply:

- (1) Report of breaches of Code of Practice or other obligations on ComReg's Website
- (2) Breach of the CoP is a breach of a ComReg decision and therefore liable to enforcement measures under ComReg powers.
- (3) The contractual nature of the CoP will enable service providers issue contractual law actions between themselves.

In addition to the above ComReg will, within one month of this Decision, present proposals for additional measures to address enforcement and compliance with the Code of Practice:

- (1) Revocation of the CPS operator facility (a suspension of right to process orders) for a period of time (potentially indefinitely) for persistent, generalised, breaches of the CPS Code of Practice.
- (2) The establishment of inter-operator penalties, in effect a Service Level Agreement, for issues concerning two specific operators (such as slamming).
- (3) ComReg proposes, in association with the industry, to develop a template of basic information that should be retained by CPSO's and Resellers in order to facilitate compliance investigations.

## Appendix A- Legislation

In issuing this Response to Consultation and the Direction(s) concerning win-back, ComReg is exercising its power to issue directions pursuant to Regulation 31 of the European Communities (Electronic Communications Networks and Services)(Universal Service and Users' Rights) Regulations 2003 (the "Universal Service Regulations"). The Direction(s) contained in this Response to Consultation concerning win-back further specify requirements in relation to obligations imposed on operators in relation to CPS under the European Communities (Interconnection and Telecommunications) Regulations 1998 to 2000 ("CPS Obligations"). These CPS Obligations were carried over into the new regulatory regime by Regulation 13 of the Universal Service Regulations.

In issuing this Response to Consultation and the Direction(s) concerning win-back, ComReg has taken account of its statutory objectives which are set out in Section 12 of the Communications Regulation Act, 2002.

## Appendix B- List of Directions

For ease of reference, the following sets out a list of Directions set out in this Decision Notice

### List of Decisions

**Direction 1:** Clause 8.1 of the Code of Practice in Service Schedule 120 of eircom's Reference Interconnect Offer should be immediately amended to read as follows:

“Subject to obligations otherwise at law, following notification by the Access Provider of loss of service the Losing Operator has five (5) days within which it may make one unsolicited contact with the customer. This unsolicited contact with the customer must take the form of the anti-slamming letter in Annex A of this document. The Losing Operator shall endeavour not make further unsolicited contact with the customer until three months has elapsed following notification by the Access Provider.”

**Direction 2:** ComReg directs that all undertakings providing CPS and eircom are bound by the CPS Code of Practice.

**Direction 3:** The CPS Code of Practice will be amended to include the Guidelines on Promotional Material as set out above.

**Direction 4:** The Commission for Communications Regulation directs that the revised anti-slamming letter, as set out above, be included in the CPS Code of Practice. The effective date of this direction is the date of this Decision Notice.

**Direction 5:** eircom is directed to maintain sufficient records of contact with customers, both business and residential for six months in order to be able to comply with ComReg requests.

These records must include the following information:

Date and time of contact

Name and telephone number of the consumer

Name of the sales representative

Details as to the subject matter

10% of all 'winback' calls (i.e. telephone conversations) with consumers, covering both residential and business and taken at random should be recorded.



## Appendix C – Impact Assessment

### 5.1 Introduction

This document considers the impact of the decisions relating to Carrier Pre Select (CPS) win-back as set out in the main body of this document.

The decisions are examined in terms of their contribution to ComReg's statutory objectives – that is the promotion of competition, the completion of the single market, and the promotion of users' interests all in proportionate and a technology-neutral manner. An overall evaluation is carried out of the potential impact of the decision on competition.

This analysis looks at the impact of proposals and decisions made by ComReg, and therefore considers the impact of change to the status quo whether of incremental or decremental effect. It should be noted that this is not an analysis of the principles of CPS. ComReg was obliged to implement CPS under previous EU Directives. This paper, therefore, only considers the impact of *changes* to the manner in which CPS is realised by operators.

This assessment draws, *inter alia*, on ComReg market research and comments made by operators as part of the consultation process.

The option which is assessed below is to introduce a three-month “no contact” period for CPS customers who switch supplier. The current no contact period is one month. During the no contact period, the operator losing the customer would make no unsolicited contact with the customer apart from the standard anti-slamming letter. Customers are not prevented from contacting their original supplier, nor from changing back. Operators are not prevented from carrying out general marketing and advertising.

## **Contribution to regulatory objectives**

### **5.2 Promotion of competition**

The regulatory objectives designed to promote competition address user benefits; the absence of distortion; and the encouragement of investment and innovation.

The direct impact of the measure for users is that they will have no unsolicited contact initiated by the previous supplier during the first three months of service with a new operator. Users are free to initiate contact with any operator, and to change service at any point. In addressing the objective that users derive maximum benefit in terms of choice, price and quality, the assessment needs to balance the restriction on the losing operator during the three month period, against the opportunity to establish a reasoned view of the price and quality offering of the new operator and the maintenance of a vibrant CPS market. Given the relatively short no contact period, the benefits of establishing the new supplier relationship outweigh the disadvantages of not receiving information from the original supplier.

The key indirect impact for users relates to the aim of achieving stability in the CPS market by reducing levels of churn. The measure aims to promote better choice and greater efficiency for the industry as a whole. The proposed measure applies to all operators and at this level cannot be seen to distort or restrict competition. The proposed restriction is short, and does not preclude change initiated by the customer. On balance, therefore, the short-term restriction would need to be set against other benefits of the action.

In addressing the aim of encouraging efficient investment in infrastructure and promoting innovation, the enhancement of stability should allow operators greater certainty in planning investment, both in infrastructure and in customer acquisition. The three-month period would not have a significant impact either positively or negatively on the ability to develop innovative product offerings.

### **5.3 Development of the internal market**

The development of the internal market requires the regulator to ensure that there is no discrimination in the treatment of undertakings providing electronic communications networks and services. The proposed measure does not discriminate in terms of treatment, in that all operators are obliged to comply with the three month no contact period. The potential impact of the measure will vary according to the market position of the operator, but this is to do with the structure of the market and not with the measure proposed.

### **5.4 Promotion of user interests**

The main element of the regulatory objective to promote user interests is the need to ensure the provision of clear information to users, particularly in the transparency of tariffs. The three -month no contact period does not in itself have a direct impact on this objective. However, it can be noted that it is imperative that contact with users on pricing, quality, conditions of service and competitor offerings is clear and accurate. While this is addressed in the Code

of Practice, it must be rigorously implemented. The three-month no contact period is insufficient in itself to address market instability, and depends on an enforced code of practice.

### **5.5 Proportionality**

The core issue in considering proportionality is the balance between encouraging stability in the market over time and the short-term direct contact to customers. A three month no-contact period will encourage stability and over time should benefit both operator and consumer interests. The three month no-contact period represents a shorter time frame than initially proposed. However, it is intended to review this arrangement in eighteen months time rather than twelve.

### **5.6 Technology neutrality**

CPS is not limited to a particular access or switching technology. The decisions made have no implications for technology neutrality.

### **5.7 Impact on competition**

In assessing the overall impact on competition ComReg reviewed the market structure and dynamics from the perspectives of the end user, the service provider and the wholesaler. The main areas of impact are in ease of market entry and exit, and in the changing strength of up-stream and down-stream entities relative to each other. Entry should be encouraged by greater stability and the opportunity to recoup customer acquisition costs. There should be no undue encouragement of inefficient entry as customers are free to switch suppliers and seek information whenever they want. A short period of three months has been decided on which should limit any potential for complacency or distortion.

The immediate change for users is that they cannot be contacted directly by their original supplier for a three months period. However, the user can request any information they so choose. On balance, the impact on users is positive. The new service provider is offered a degree of protection for three months. This is a relatively short time to enable the new customer to evaluate the service. However, it is currently considered sufficient to stabilise the market if in place for an extended period to stabilise the market.

The original operator is prevented from making direct contact with lost customers for three months. While this limits its opportunity to target customers with specific information, it is not restricted in the provision of general and indirect information.

### **5.8 Conclusions**

The measure provides a limited no-contact period. This has a number of consequences. First, it will rectify the information imbalance. The new provider will have the chance within the three months to demonstrate the price and quality of its offering to the newly won customer (more information). On

the other hand, the customer already has experience of the price and quality provider by the operator seeking winback, any changes in price can be communicated by standard (non-targeted) mass marketing, so the consumer should not suffer any loss of information. The measure might also be seen as a fetter on the operator seeking win-back. However this is of relatively short duration and furthermore there are no restrictions placed on the customer from reverting on their own initiative. The measure also only addresses direct customer contact. Furthermore, the measure is intended to improve stability. This would allow for better planning both generally and, specifically, in the area of customer acquisition. This should improve overall economic efficiency of market entry and ComReg concludes that stability is a benefit. On balance the measure proposed has a positive competitive impact.