



Commission for
Communications Regulation

Consultation Paper

Carrier Pre Selection in Ireland 2003

ComReg's 2003 Review

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All responses to the consultation should be clearly marked:-
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Contents

1	Foreword by the Chairperson	2
2	Introduction	3
3	An update on ComReg’s Review of CPS in Ireland	4
3.1	BACKGROUND	4
3.2	CPS CONSUMER SURVEYS.....	4
3.3	COMPLIANCE ISSUES	5
3.4	INTERNATIONAL COMPARISONS	6
4	Options.....	8
4.1	CPS WIN BACK.....	8
5	Other aspects of ComReg’s Review	11
5.1	CODE OF PRACTICE FOR PRICE COMPARISONS	11
5.2	ANTI SLAMMING LETTER	11
5.3	FINANCIAL ISSUES.....	13
5.4	DEVELOPMENTS IN METHODS OF SIGNING UP CUSTOMERS	13
6	Submitting Comments.....	15
	Appendix A – Legislation	16
	Appendix B – Consultation Questions	22
	Appendix C- Anti Slamming Letter	23

1 Foreword by the Chairperson

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 best pricing option for their needs.

Today Carrier Pre Selection is one of the key measures of competition among service and network providers in Ireland, offering the Irish consumer a choice of provider for voice telephony calls. ComReg has made CPS growth a strategic priority.

Given the critical importance of CPS to the development of competition in the market ComReg is concerned by the current level of instability. Absolute levels of CPS in Ireland are well below the EU average. Of even greater concern is the level of churn which has increased dramatically since the end of 2002 and suggests that it is increasingly difficult to maintain for operators a business case for CPS. In addition ComReg is receiving an increasing number of complaints from both operators and consumers regarding aggressive selling practices.

As a result of these developments ComReg decided in April of this year to conduct a fundamental review of the CPS framework in Ireland. The primary purpose of this Review was to identify and address any weaknesses in the current system so that the Irish consumer can continue to receive the best in terms of choice, price and quality. In this paper ComReg provides an update on the findings of its review and suggests ways in which the current CPS Framework can be enhanced in order to achieve these goals.

Responses to this consultation will be accepted up to 14 August 2003 and a Response to Consultation will be issued in September 2003.

**Etain Doyle,
Chairperson**

2 Introduction

In April this year, ComReg issued an Information Notice¹ informing the industry and the general public that it would undertake a thorough review of all elements of the CPS framework, associated processes and costs.

Since April, ComReg has held discussions with a number of operators to achieve a fuller understanding of their individual experiences and concerns regarding the CPS framework. ComReg has also considered issues raised by Irish consumers either directly with ComReg or via their service provider. In addition, ComReg has met with *eircom*'s CPS residential and business team and has visited *eircom*'s telesales win back offices.

ComReg also undertook a survey of customers, both residential and business, who had experience of CPS in order to obtain their views on the factors taken into account by them when choosing/changing a service provider. ComReg has also examined the position in other EU countries.

Work on the commercial dynamics of CPS in Ireland is continuing in parallel with this consultation.

ComReg is required under the Communications Act² to promote competition in the provision of electronic communications networks, services and associated facilities by inter alia: ensuring that users, including disabled users, derive maximum benefit in terms of choice, price, and quality; ensuring that there is no distortion or restriction of competition in the electronic communications sector; and by encouraging efficient investment in infrastructure, and promoting innovation. The legislative basis for this consultation paper is included in Appendix A.

In this consultation paper ComReg outlines a number of initiatives aimed at supporting and developing the framework for CPS in the market.

This document is without prejudice to the legal position or the rights and duties of ComReg to regulate the market generally. Any views expressed are not binding and are without prejudice to the final form and content of any decisions which ComReg may make.

¹ ComReg Document No. 03/44: A Review of Carrier Pre Selection in the Irish Market available on ComReg's website www.comreg.ie

² Number 20 of 2002

3 An update on ComReg's Review of CPS in Ireland

3.1 Background

As reported in the Information Notice in April, ComReg notes that CPS usage in Ireland is below that in other European countries. Ireland's penetration level at 10% is significantly below the European average of 15%, and well below that in countries with the highest penetration levels, at 25%-30%. It is a matter of even greater concern that these figures in fact camouflage a very high level of customer churn which threatens the viability of the product for many of the alternative providers.

CPS figures received from operators show levels of churn for individual operators ranging from 40-80% in any given month. This is unsustainable and it also appears from our review of other markets to be unprecedented. From the end of Q4 2002 to the end of Q1 2003 eircom figures³ show that there was a net increase of 3,737 of CPS lines. The CPS hub⁴ shows that for that period, alternative operators signed up 61,363 lines. This indicates that the churn for alternative operators for the period was approximately 93%.

This level of churn raises concerns about the operation of the market in terms of delivering value to consumers. At the most extreme, operators have to gain one hundred customers to keep seven. This implies very high customer acquisition costs, which operators must take into account in their business plans and which therefore impact on the value for money they can deliver to consumers and on their spending on new products and services. In the longer term, the financial viability of CPS will affect the availability to consumers of a choice of operators for their call services.

It was against this background that ComReg initiated its review in April of this year. ComReg considers that it is timely to provide the market with an update and to raise some specific issues that are of immediate concern for consultation as it wishes to take these into account in finishing its review.

3.2 CPS Consumer Surveys

ComReg undertook two surveys on CPS in June 2003. The first of these involved CPS customers, both residential and business, who had returned to their original supplier. The survey sought to ascertain why customers moved to CPS initially and subsequently switched back to their original supplier. The second survey involved new residential CPS customers. In this survey ComReg wanted to ascertain their experience of CPS and CPS winback activities in the marketplace.

The key results from the first survey involving CPS residential customers that returned to their original supplier suggests that a large percentage of residential customers change from their new supplier back to their original supplier in the first three months of CPS service. Figures for customers switching back to their original

³ eircom's figures are obtained from its Corporate Data Warehouse [CDW]

⁴ The CPS hub is also operated by eircom

telecoms provider decrease over time. Contact with these customers was initiated by the original supplier claiming to offer lower prices, with price comparisons used in the majority of cases⁵.

The frequency of contact by the original telecoms supplier was also investigated. According to customers, over half were contacted once with one in ten being contacted more than four times.

The majority of business customers spend over one year with their new telecoms supplier. Again contact was initiated by the original supplier with claims of lower prices being used to win back customers. Price comparisons were used in the majority of cases.

96% of business customers were contacted by their original supplier, as opposed to the customer contacting their original telecoms supplier. The scale of contact by the original supplier was also investigated in the business market. One in five businesses was contacted more than four times, indicating that the scale of “winback” activity on behalf of the original telecoms supplier is quite significant.

The key results from the survey on new residential CPS customers were as follows. The main factor influencing consumers to move to a new supplier was an expectation of lower prices. Over half of the consumers indicated that they were contacted by their original supplier within the first month. The vast majority of these contacts were by means of telephone with a minority indicating that they had received a letter.

3.3 Compliance Issues

In the last nine months ComReg has received an increasing number of complaints from service providers regarding win back activities by operators. In addition, ComReg has received numerous complaints from consumers concerning win back practices. This suggests that service providers’ sales campaigns are becoming more focused, and in some cases, aggressive. It also suggests that some service providers may not be adhering to the terms of the CPS Code of Practice. The most common complaints received by ComReg are:

- Excessive contacts aimed at win back;
- Telephone contact with consumer within the first billing period;
- Misleading price comparisons which have enticed the consumer to switch;
- Slamming [Slamming is where a customer has been signed over to a new supplier without their understanding and consent];
- Customers receiving letters presuming agreement to switch to service providers and partially completed Customer Authorisation Forms [CAFs] where the customer has previously indicated satisfaction with their current provider.
- Operators misrepresenting the service provided by competitors.

⁵ See Section 5.1 on price comparison

By their very nature many of these complaints can be difficult to validate. Most win-back activity takes place either by telephone or “Feet on the Street” contact and there are few if any records confirming the actual messages given to customers. It is however clear that the number of complaints in relation to CPS is growing.

The growth in operator and consumer discontent and the obvious difficulties with enforcement and compliance suggests that changes to the CPS Framework, including the Code of Practice, are required.

3.4 International Comparisons

ComReg has conducted a review of the position with CPS in other countries. From this survey, ComReg concludes that the average European CPS penetration is now in excess of 15%. This figure allows for minor differences in the way NRAs compute their figures. Penetration in Ireland at 10.5% is therefore well below the European average. Only two countries are below 10% - the UK, who started later with CPS and make up the competition shortfall with direct/cable connections and Carrier Select, and Portugal, where CPS is a new product.

Churn levels do not appear to be an issue in other countries. In terms of specifics ComReg notes that Portugal has recently introduced a four month no contact period on the incumbent for the purposes of win back. Similarly, in Canada the incumbent cannot contact and attempt to win back lost CPS customers for three months.

From ComReg’s survey of other European NRAs, cultural norms also influence the incumbents’ win back strategy. For instance, in Denmark, customers become very irate when contacted frequently by the incumbent for win back. Other incumbents’ win back activities seem to focus primarily on business consumers and high spenders.

An important factor leading to high CPS penetration is that the Carrier Pre Select Operators [CPSOs] in these countries have easy to understand discount messages and simple tariff packages which are consumer friendly. Further, top performing countries all have tariff information readily available to allow consumers to independently verify offerings and price compare- Switzerland, Sweden, Denmark and Austria.

European countries with the highest levels of CPS penetration tend to have very high levels of consumer awareness of the CPS product and potential price savings. Examples would be Switzerland, Sweden and Denmark. In the UK the National Audit Office [NAO] in a report⁶ to the UK parliament on 11 July 2003 warned that many UK consumers were not motivated to switch suppliers and many were unaware of the existence of rivals to the British incumbent. The NAO urged OfTel, the UK regulator to take a more proactive role "in helping to ensure that consumers are aware of the choices available to them". The NAO published its report on foot of a survey it conducted which showed that over a period of two years, 68% of UK

⁶ “The Office of Telecommunications: helping consumers benefit from competition in the telecommunications market” available on www.nao.gov.uk

consumers had made no changes in the way they bought telecoms services and 77% of consumers could not name a telecoms supplier other than the British incumbent.

In 2003 ComReg published a leaflet on CPS⁷. The aim of this leaflet was to increase consumer awareness of CPS options. ComReg is currently considering further measures in this area and would welcome views on this from the public.

Q. 1. Do you consider that the promotional measures are helpful for CPS in Ireland?

Q. 2. Please propose any measures to increase consumer awareness of CPS which you believe would be helpful.

⁷ ComReg Consumer Information Guide "Telephony services- exercise your choice" available on ComReg's website www.comreg.ie

4 Options

The previous sections of this document have outlined ComReg's concerns in relation to the general instability of CPS at this time. In summary the following key issues are evident:

- Absolute levels of CPS in Ireland are well below the EU average;
- Churns levels are unsustainable and are seriously threatening the business case for CPS;
- The potential for less competitive offerings to consumers from alternative providers as a result of costs incurred from high levels of churn;
- Both consumer and operator dissatisfaction with CPS is increasing.

The very existence of CPS as a means of developing competition for the benefit of the consumer is under threat at present. Taking these factors into account, ComReg believes that action may be required to enhance the CPS framework to support CPS. The specific options for consultation are set out below:

4.1 CPS Win Back

A substantial percentage of complaints received from consumers and operators alike relate to win-back activities in the market. As ComReg has noted it is difficult to ensure adequate compliance with the Code of Practice which requires operators not to engage in unfair selling practices in relation to CPS. Usually operators' contacts with customers are based on telephone contact or by way of 'feet on the street'. It is therefore difficult and expensive to 'police' the messages that may be given by operators to consumers. Notwithstanding this there is evidence of dissatisfaction from operators and consumers in relation to win-back activities. ComReg therefore believes that the best means of addressing general industry and consumer concerns in relation to win-back is through the CPS framework itself.

The CPS Code of Practice currently states at Clause 8.1:

"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....The Losing Operator or Reseller shall endeavour not to make further unsolicited contact with the customer thereafter until a reasonable period of time has elapsed."

ComReg believes that the one unsolicited contact should continue to take the form of the anti-slamming letter [letter sent to a new CPS customer by the losing operator to indicate that the customer has moved to another operator]. Please see Section 5.2 for full details.

ComReg notes that the industry has to date interpreted a reasonable period of time to mean 30 calendar days.

ComReg is of the opinion that one billing period is not a long enough duration. Customers, having made the choice to move to one operator should have the opportunity to experience the service provided by that operator. Ideally ComReg

believes that customers should have the opportunity of receiving a number of bills from their new provider, so that they would be in a better position to identify a pattern in their bills and engage in a comprehensive comparison with their other providers on price, service and customer care.

ComReg believes that the anti-slamming letter will continue to protect consumers to ensure that they have not been subjected to unauthorised transfer of their calls.

These proposals for win back would not affect those customers who want to move to an alternative operator of their own free will. Rather ComReg's proposals would ensure that those customers, who having made a choice would not be subjected to aggressive sales techniques until they have had a chance to evaluate that choice.

Therefore, in this paper ComReg presents three possible options to amend the current win back process in the CPS Code of Practice and seeks views and preference from all interested parties.

(Please note that a 'moratorium' below refers to a standstill on all win-back activity in respect of the losing operator. 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. Win Back only concerns operators' sales practices once the operator has lost the customer. It does not concern a new supplier contacting customers in an attempt to win their business. CPS customers can always contact their own service providers or any other service provider).

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 returns to the market e.g. if levels of CPS, churn and complaints have 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 can 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 have stabilised, then the moratorium would be lifted. The four month 'no-contact' period would commence at this stage and 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 have stabilised then this no-contact period may be altered.

This option could have a significant effect on win-back for new losses; customers lost for a period of more than four months would be contactable.

ComReg is of the opinion that a twelve month moratorium would allow all existing and newly lost customers to enjoy their service with their telephone supplier, without repeated sales pitches by their previous operator. Similarly, in Option 2, all customers would be non contactable for four months. Once the four months has elapsed and dependent on CPS and churn levels stabilising, the moratorium would be lifted. From that point on, only newly lost customers could not be contacted by the losing operator for a four month period. In ComReg's opinion this option would provide a short term cooling off period on all win back activity by all operators, which in turn would provide the market with an opportunity to stabilise and allow normal supply and demand conditions to dictate levels of CPS and churn. The subsequent four month no contact period would 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. Option 3 aims to achieve the same objective without the preceding moratorium. ComReg considers that, if effective, it is easy to understand, enables the greatest level of continuing market activity and welcomes views on its effectiveness.

Of course under all options customers are free to switch their telephone supplier of their own volition.

Q. 3. Do you agree that the present levels of churn are unsustainable and that stability needs to be introduced into the market?

Q. 4. If yes to Q1 which option to extend the current no contact period for win back do you prefer? Please give reasons for your answer.

Q. 5. If you do not agree with the above options proposed by ComReg, please submit alternative proposals to address the problems identified by ComReg.

5 Other aspects of ComReg's Review

5.1 Code of Practice for Price Comparisons

One of main complaints received by ComReg from both operators and consumers is that operators are misrepresenting their prices in comparison with their competitors to consumers. The CPS Code of Practice currently states at Clause 4.1:

“An operator or reseller must not release misleading or derogatory information about another operator's or reseller's service.”

ComReg understands that some operators obtain their competitors' prices from the competitors' websites and/ or by calling the competitors' call centres. They then create material using some of this information to present comparisons. Such ad hoc approaches can result in incomplete information which could affect the accuracy of comparisons made by operators. For instance, operators may not be comparing like with like: may be using out of date pricing and failing to take account of call set up charges or minimum monthly spend etc.

In the recent ComReg consultation paper “Protecting users in a Developing Communications Market”⁸, ComReg proposed an industry Code of Practice under the draft regulation transposing the Universal Service Directive and the Communications Act 2002, for price transparency of consumers of publicly available electronic communication services. Therefore, ComReg believes that this issue is best addressed in the Response to Consultation on Users Rights which will be published shortly.

5.2 Anti Slamming Letter

The 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 D13/02⁹ the ODTR stated that as a result of guidance from the Data Protection Office the unsolicited contact should be more limited and stated that the contact must take the form of an anti-slamming letter. Slamming is where a customer has been signed over to a new supplier without their understanding and consent. The ODTR confirmed that it would convene the CPS Committee to agree the wording of the anti- slamming letter and to make the necessary changes to the CPS Code of Practice and the CPS Process Manual.

⁸ ComReg Document 03/26 – Protecting users in a Developing Communications Market

⁹ Please see ODTR Document No 02/64 Decision Notice CPS in Ireland 2002 on ComReg's website

At the CPS Committee meeting of 24 September 2002 it was agreed that this unsolicited contact with the customer must take the form of the anti-slamming letter whose contents were also agreed by the Committee. ComReg has included it in Appendix C for information purposes.

Operators, including *eircom* have been following this approach since July 2002. However, it has come to ComReg's attention that this letter is having an effect not envisaged by ComReg and the operators in September – 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 and call 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.

The purpose 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. Therefore changes are needed to the existing letter.

ComReg is of the opinion that the letter needs to be more user friendly and less likely to cause consumers concern or worry. The letter's only function should be to alert consumers that their telephone supplier for selected calls has changed. Consumers should also be alerted that they may have been slammed. A contact number of the sender should be included in the letter to protect these consumers. In addition, ComReg proposes that the standard letter becomes a mandatory letter which operators cannot amend. Finally, ComReg proposes that the letterhead used for the Anti-Slamming letter should be standard for all operators to use.

ComReg believes that the CPS Committee is the most appropriate forum to discuss and agree changes to the existing anti-slamming letter. ComReg intends to convene a meeting of the CPS Committee for this purpose on Wednesday 23 July 2003 and will notify all participants to this effect. Once the necessary amendments to the Code of Practice have been finalised, *eircom* will include this in its RIO.

ComReg proposes the following revised letter for discussion at the CPS Committee:

Mandatory letter format

STANDARD LETTERHEAD

Date

Dear [customer name],

CHANGE OF TELEPHONE SUPPLIER

We have been sent notification that you have moved your telephone calls to another telephone supplier.

Please note that as and from [date of porting] the following will occur:

- You will be billed by your new supplier for your selected calls;
- You will continue to receive a bill from *eircom* for your line rental.

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.

5.3 Financial Issues

The Commission is examining the commercial dynamics, in particular the business case in light of the high churn in the CPS market in Ireland, and some initial conclusions are referred to in this paper. It is intended to conclude this work in the coming weeks and ComReg will draw on the results when reaching its final conclusions.

ComReg would welcome comments from respondents on their assessments of the current situation and on the business, consumer or competitive impact of the 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.

5.4 Developments in Methods of Signing up customers

There are a number of methods whereby service providers can sign up new consumers or in some cases win consumers back. Currently, the Code of Practice in *eircom*'s RIO only refers to one method, however, the CPS Committee have approved a second method - TPV and a third method, Internet sign up is currently undergoing trials by Operators.

The Code of Practice for CPS is included in *eircom*'s RIO, Appendix 2 to Service Schedule 120 Clause 1 states "In order to offer CPS service to a customer, the operator or reseller must enter into a written contract with that customer"; details of requirements for the customer contract are outlined in this clause. It also states that the contract must also "include a Customer Authorisation Form (CAF) which shall be signed by the customer who shall be given a copy or a facility to retain a copy."

The paper CAF which requires the consumer's written signature was the original method of signing up consumers. CAFs are posted by service providers to interested consumers, can be downloaded from some service provider's websites, are included in some promotional material or are available from some service provider's door to door sales people.

Third Party Verification [TPV] is an alternative method of "signing up" consumers. This method was subject to an industry trial and was formally accepted by the CPS Committee as a valid method of sign up for customers. The next step is for *eircom* to amend Service Schedule 120 in its RIO to include references to TPV. TPV is where a consumer rings a service provider and expresses a desire to move to that provider for voice calls. Alternatively, the service provider may have contacted the consumer and was successful in winning the provision of voice calls. The consumer is then transferred to an independent company [used by the SP] who undertakes the formal signing of the consumer. This conversation is recorded to serve as a record of the consumer's order. More and more service providers are availing of this method.

A new method of sign up which is currently being trialled is signing consumers via the Internet. This involves the consumer completing a standard form on the service provider's website. This method is used by a number of operators in other EU countries. It is anticipated that this third method will prove popular in the future, given the penetration of the Internet in Ireland and the ease of this method to consumers.

ComReg has worked with Industry to develop these different forms of sign up to improve the ease and accessibility of CPS sign up for customers. TPV has proved a valuable tool for Operators in signing up customers. ComReg view Internet sign up as another valuable tool for Operators to sign up customers.

6 Submitting Comments

All comments are welcome; however it would make the task of analysing responses easier if comments were referenced to the relevant question numbers from this document.

The consultation period will run from **17 July 2003** to **14 August 2003** during which the Commission welcomes written comments on any of the issues raised in this paper.

Having analysed and considered the comments received, ComReg will review the CPS Framework and publish a report in September on the consultation which will, inter alia summarise the responses to the consultation.

In order to promote further openness and transparency ComReg will publish the names of all respondents and make available for inspection responses to the consultation at its Offices.

ComReg appreciates that many of the issues raised in this paper may require respondents to provide confidential information if their comments are to be meaningful. Respondents are requested to clearly identify confidential material and if possible to include it in a separate annex to the response. Such information will be treated as strictly confidential.

Appendix A – Legislation

EC Directive 98/61/EC (the “Numbering Directive”) which amended EC Directive 97/33/EC (the “Interconnection Directive”) required NRA (ComReg in Ireland) to impose an obligation to provide CPS on all operators with SMP in fixed public telephony. *Eircom* has been designated as having SMP in the market for fixed public telephony and fixed public telephone services for these purposes.

The European Communities (Interconnection in Telecommunications) Regulations, 1998¹⁰, as amended by the EC (Interconnection in Telecommunications)(Amendment) Regulations, 1999¹¹, *inter alia*, transpose the relevant provisions of the European Directive¹² concerning Carrier Pre-Selection (‘CPS’) and required the introduction of CPS by 1st January 2000 (hereafter referred to as the “Interconnection Regulations”).

CPS was added to the RIO as a result of the implementation of Regulation 13 of the Interconnection Regulations which provides that *eircom* as an operator designated as having SMP shall enable their subscribers, including those using ISDN, to access the switched services of any interconnected provider of publicly available telecommunications services.”

eircom as an SMP operator in the public fixed telephony services and networks market is obliged to publish a RIO under Regulation 8 of the Regulations and ComReg has the power to direct *eircom* to justify its RIO and where appropriate, direct the RIO to be adjusted to ensure transparency and cost orientation. ComReg also has the power under Regulation 10 (3) to intervene on its own initiative to specify RIO inclusions.

A new EU regulatory framework was adopted by the Council of the European Union on February 14th 2002 for the provision of electronic communications throughout the internal market. The new framework consists of a package of Directives which reflect technological and economic changes and which attempt to further harmonise the regulation of electronic communications:-

- a common regulatory framework for electronic communications networks and services (Framework Directive);
- authorisation of electronic communications networks and services (Authorisation Directive);
- access to, and interconnection of, electronic communications networks and associated facilities (Access Directive);

¹⁰ SI 15 of 1998

¹¹ SI 249 of 1999

¹² EC Directive 97/33 EC as amended by EC Directive 98/61/EC

- universal service and users' rights relating to electronic communications networks and services (Universal Service Directive); and

- processing of personal data and the protection of privacy in the electronic communications sector (Data Protection Directive).

All Member States are now obliged to adopt national legislation implementing this 'telecoms package' by 24 July 2003 except for the Data Protection Directive which has to be implemented before 31 October 2003.

As with the current framework, a mechanism has been included which triggers various regulatory obligations on markets such as access and interconnection. In the new framework this mechanism, still called significant market power (SMP), closely relates to the competition law concept of dominance.

The provisions of the new Access Directive require that the national regulatory authorities of Member States be able to intervene of their own initiative in order to secure the policy objectives of Article 8 of the Framework Directive. National regulatory authorities must, when required, follow the consultation procedures referred to in Articles 6 and 7 of the Framework Directive.

Article 8 of Framework Directive¹³

Policy objectives and regulatory principles

1. Member States shall ensure that in carrying out the regulatory tasks specified in this Directive and the Specific Directives, the national regulatory authorities take all reasonable measures which are aimed at achieving the objectives set out in paragraphs 2, 3 and 4. Such measures shall be proportionate to those objectives.

Member States shall ensure that in carrying out the regulatory tasks specified in this Directive and the Specific Directives, in particular those designed to ensure effective competition, national regulatory authorities take the utmost account of the desirability of making regulations technologically neutral.

National regulatory authorities may contribute within their competencies to ensuring the implementation of policies aimed at the promotion of cultural and linguistic diversity, as well as media pluralism.

2. The national regulatory authorities shall promote competition in the provision of electronic communications networks, electronic communications services and associated facilities and services by inter alia:

¹³ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services

- (a) ensuring that users, including disabled users, derive maximum benefit in terms of choice, price, and quality;
- (b) ensuring that there is no distortion or restriction of competition in the electronic communications sector;
- (c) encouraging efficient investment in infrastructure, and promoting innovation; and
- (d) encouraging efficient use and ensuring the effective management of radio frequencies and numbering resources.

3. The national regulatory authorities shall contribute to the development of the internal market by inter alia:

- (a) removing remaining obstacles to the provision of electronic communications networks, associated facilities and services and electronic communications services at European level;
- (b) encouraging the establishment and development of trans-European networks and the interoperability of pan-European services, and end-to-end connectivity;
- (c) ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks and services;
- (d) cooperating with each other and with the Commission in a transparent manner to ensure the development of consistent regulatory practice and the consistent application of this Directive and the Specific Directives.

4. The national regulatory authorities shall promote the interests of the citizens of the European Union by inter alia:

- (a) ensuring all citizens have access to a universal service specified in Directive 2002/22/EC (Universal Service Directive);
- (b) ensuring a high level of protection for consumers in their dealings with suppliers, in particular by ensuring the availability of simple and inexpensive dispute resolution procedures carried out by a body that is independent of the parties involved;
- (c) contributing to ensuring a high level of protection of personal data and privacy;
- (d) promoting the provision of clear information, in particular requiring transparency of tariffs and conditions for using publicly available electronic communications services;

- (e) addressing the needs of specific social groups, in particular disabled users; and
- (f) ensuring that the integrity and security of public communications networks are maintained.

Communications Regulation Act 2002¹⁴

- 12.** (1) The objectives of the Commission in exercising its functions shall be as follows-
- (a) in relation to the provision of electronic communications networks, electronic communications services and associated facilities-
 - (i) to promote competition,
 - (ii) to contribute to the development of the internal market, and
 - (iii) to promote the interests of users within the Community,
 - (b) to ensure the efficient management and use of the radio frequency spectrum and numbers from the national numbering scheme in the State in accordance with a direction under *section 13*, and
 - (c) to promote the development of the postal sector and in particular the availability of a universal postal service within, to and from the State at an affordable price for the benefit of all users.
- (2) In relation to the objectives referred to in *subsection (1) (a)*, the Commission shall take all reasonable measures which are aimed at achieving those objectives, including-
- (a) in so far as the promotion of competition is concerned-
 - (i) ensuring that users, including disabled users, derive
 - (ii) ensuring that there is no distortion or restriction of competition in the electronic communications sector,
 - (iii) encouraging efficient investment in infrastructure and promoting innovation, and
 - (iv) encouraging efficient use and ensuring the effective management of radio frequencies and numbering resources,

¹⁴ No 20 of 2002

- (b) in so far as contributing to the development of the internal market is concerned-
 - (i) removing remaining obstacles to the provision of electronic communications networks, electronic communications services and associated facilities at Community level,
 - (ii) encouraging the establishment and development of trans-European networks and the interoperability of transnational services and end-to-end connectivity,
 - (iii) ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks and services and associated facilities, and
 - (iv) co-operating with electronic communications national regulatory authorities in other Member States of the Community and with the Commission of the Community in a transparent manner to ensure the development of consistent regulatory practice and the consistent application of Community law in this field, and

- (c) in so far as promotion of the interests of users within the Community is concerned-
 - (i) ensuring that all users have access to a universal service,
 - (ii) ensuring a high level of protection for consumers in their dealings with suppliers, in particular by ensuring the availability of simple and inexpensive dispute resolution procedures carried out by a body that is independent of the parties involved,
 - (iii) contributing to ensuring a high level of protection of personal data and privacy,
 - (iv) promoting the provision of clear information, in particular requiring transparency of tariffs and conditions for using publicly available electronic communications services,
 - (v) encouraging access to the internet at reasonable cost to users,
 - (vi) addressing the needs of specific social groups, in particular disabled users, and
 - (vii) ensuring that the integrity and security of public communications networks are maintained.

- (3) In carrying out its functions, the Commission shall seek to ensure that measures taken by it are proportionate having regard to the objectives set out in this section.
- (4) In carrying out its functions, the Commission shall, without prejudice to subsections (1), (2) and (3), have regard to policy statements, published by or on behalf of the Government or a Minister of the Government and notified to the Commission, in relation to the economic and social development of the State.
- (5) In carrying out its functions, the Commission shall have regard to international developments with regard to electronic communications networks and electronic communications services, associated facilities, postal services, the radio frequency spectrum and numbering.
- (6) The Commission shall take the utmost account of the desirability that the exercise of its functions aimed at achieving the objectives referred to in subsection (1)(a) does not result in discrimination in favour of or against particular types of technology for the transmission of electronic communications services.
- (7) In this section, "national numbering scheme" means the scheme administered by the Commission which sets out the sequence of numbers or other characters used to route telephony traffic to specific locations.

Appendix B – Consultation Questions

List of Questions

- Q. 1. Do you consider that these measures are helpful in promoting CPS in Ireland?7
- Q. 2. Please propose any measures to increase consumer awareness of CPS which you believe would be helpful. 7
- Q. 3. Do you agree that the present levels of churn are unsustainable and that stability needs to be introduced into the market? 10
- Q. 4. If yes to Q1 which option to extend the current no contact period for win back do you prefer? Please give reasons for your answer. 10
- Q. 5. If you do not agree with the above options proposed by ComReg, please submit alternative proposals to address the problems identified by ComReg. 10
- 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. 13

Appendix C- Anti Slamming Letter

Anti Slamming Letter

Purpose

A means of protecting customers from having their CPS service introduced, amended, or their account moved from one telecommunications provider to another without their authorisation or knowledge. It is not mandatory for the losing operator to send all or any of this letter, but it is seen as a useful tool in preventing slamming.

Mailing details

The following list of information represents a maximum list of categories of information that can be sent to the customer. Service Providers need not include particular categories of information if they do not have it available or feel that its inclusion will lead to customer confusion. Should a Service Provider want to include an additional category of information industry agreement must be obtained before extending the list.

- To be sent by the losing operator on the basis of loss notification.
- To be sent within 5 days of receiving loss notification.
- Contact with the customer is to be by letter only and should follow the format below - the exact wording can change but the message and customer take-out should be the same. The following information can be included:
 - Date of porting
 - CPS option
 - CLIs affected (Note - in the case of Business Customers with a large number of CLIs this option may not be viable)
 - An explanation of the industry rules relating to CPS including CAF or telephone verification requirements, supply of full terms and conditions and code of behaviour information
 - A contact number for further customer queries
- There can be only 1 written communication to the customer within the 5 day period following loss notification.
- The letter should also detail specific billing arrangements that the customer needs to be informed of (i.e. your last bill will be received on X date, you will be removed from discount scheme X, details of any penalty charges that may be incurred as a result of cancelling the service, the outstanding amount on your account). However, it cannot include any other text or additional sales or promotional material designed to winback the customer.

- It is suggested that the text shown be at the start of the letter', with any further detail shown at the end. The remaining text should not detract or confuse the customer with respect to the CPS change.

Sample letter format

Date

Dear [customer name],

Change of telephone supplier

We have recently received notification that your telephone calls have been moved to another telephone supplier. Please be aware that from [Date of porting] you will be billed by your new supplier for CPS services from telephone number(s) [STD & telephone number].

Rules agreed by the industry require us to write to you to confirm that your calls have been moved to another supplier and to confirm the new arrangements which will apply to your account.

This is a standard letter sent to all customers who move their calls. In most cases, no further action is required by you as a result of this letter. You need only contact us if the following conditions have not been met by you or someone who is authorised to act on behalf of your household.

In particular you should check that

1. you have
 - (a) physically signed a Customer Authorisation Form with your new supplier indicating your agreement to move your calls. This form should also detail the account name and address, telephone number & *eircom* account number or
 - (b) completed a telephone verification process which records your understanding and agreement to move your telephone calls, as well as your name, address and telephone details; and you will have received a 'welcome pack' from your new Operator detailing this information,
2. you are satisfied with the information received about the terms and conditions of service with your new operator including call charges, billing terms, discount schemes, penalty charges associated with discount schemes that maybe incurred if your cancel your service, payment options and any subscription charges or contract periods
3. you are satisfied that your new supplier has complied to fair selling practices and in particular you have not been given misleading information about your new supplier or another operator's service.

If you do not feel that these conditions have been satisfied or would like any further information concerning this move of telephone supplier, please contact us on 1800

XXX XXX. There is no need to contact us further if you are happy that your calls have been moved.

[Other billing information]

Yours