



Commission for  
**Communications Regulation**

## Information Notice

### **CPS Code of Practice Breach**

**eircom 'no contact' breach**

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## 1 Introduction

Carrier Pre-Selection (CPS) enables consumers to exercise their choice by selecting in advance a specific operator to carry some or all of their telephone calls.

CPS is a vital part of the Irish fixed telecommunications market. It allows for the possibility of competition in the fixed market by new and existing operators without the barrier to entry of large capital investment in extensive infrastructure.

The Code of Practice for CPS sets out the rules and procedures which operators wishing to offer CPS services in the Republic of Ireland must follow. It covers customer contracts, use of customer information, order-handling process, promotion of CPS, bill payment, tariff presentation, complaint and enquiry handling and the activities of the telecommunications service providers to “win back” lost customers. All undertakings providing CPS and eircom are bound by the CPS Code of Practice<sup>1</sup>.

ComReg conducts investigations on an ongoing basis into adherence to the CPS Code of Practice in response to issues raised by operators and consumers alike.

ComReg may notify an operator that it is in breach of its obligations. Further, ComReg may publish the particulars of such notification. This Information Notice contains details of a complaint made against eircom and the findings, of ComReg, in respect of a breach by eircom of an obligation under the CPS Code of Practice.

The basis for the investigation of the complaint and publication of this Information Notice by ComReg is set out in Appendix A.

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<sup>1</sup> See Appendix A

## **2 Complaint**

ComReg investigated a complaint by Smart Telecom in relation to a number of alleged contacts made by eircom and eircom's representatives during the prohibited time period as prescribed by the Carrier Pre-Selection (CPS) Code of Practice (CoP).

The complaint consisted of the following;

- It was alleged that eircom made contact with customers during the CPS CoP no contact period in violation of Section 8.1 of the CPS CoP in over 100 instances in relation to Smart Telecom customers during the period 24<sup>th</sup> December 2003 to 3<sup>rd</sup> April 2004.

### 3 Finding

On foot of the complaint, ComReg conducted an investigation and obtained information from both Smart Telecom and eircom regarding the alleged breach. Having considered all relevant information ComReg finds that:

- Eircom contacted over 100 Smart Telecom customers within the 3 month no contact period in breach of the CPS CoP during the period 24<sup>th</sup> December 2003 to 3<sup>rd</sup> April 2004. The contact within the prohibited period was due to an error in a file that was transferred between one eircom business section and another, the incorrect date was used in order to calculate the CPS CoP no contact period window. This resulted in 37,207 instances, between the 25<sup>th</sup> September 2003 and the 4<sup>th</sup> January 2004, where the no contact window was inaccurately calculated. This gave rise a certain number of instances where eircom inadvertently contacted customers within the no contact period from 24<sup>th</sup> December 2003 to 3<sup>rd</sup> April 2004. The error was not confined to Smart Telecom customers.

ComReg received the complaint from Smart Telecom, that eircom had made a number of alleged contacts during the prohibited time period, on 28<sup>th</sup> April 2004 and sought information from eircom on 12<sup>th</sup> May 2004 by means of a visit to an eircom premises. ComReg requested further information from eircom after the visit of 12<sup>th</sup> May 2004, this further information was received on 28<sup>th</sup> May 2004 and on 9<sup>th</sup> June 2004. The information provided allowed ComReg to assess the complaint and make its finding.

Clause 8.1 of the CPS Code of Practice states that “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 thereafter until three months has elapsed following notification by the Access Provider”.

By contacting Smart Telecom customers within the 3 month no contact period eircom has not complied with clause 8.1 of the Code of Practice and consequently, eircom was in breach of its obligation to be bound by the CPS Code of Practice. ComReg has not assessed how many other customers of Smart Telecom or the other operators have been contacted as a result of eircom’s calculation error referred to. From the data gathered in the course of the investigation into this complaint ComReg has evidence of but not made a finding of confirmation as to the exact number of additional instances where eircom made contact with customers within the no contact period. To ascertain the exact number of instances of contact within the no contact period resulting from the 37,207 cases where the no contact window was inaccurately calculated would require a disproportionate effort on the parties concerned. As eircom has stated that the problem which resulted in this situation has

been rectified, ComReg do not intend to require eircom to evaluate the exact number of additional instances in this case.

On 13<sup>th</sup> July 2004 ComReg notified eircom in writing that it found eircom in breach of Clause 8.1 of the CPS Code of Practice and gave eircom the opportunity to reply to ComReg stating its views in relation to this matter.

#### **4 Next Steps**

eircom has stated to ComReg, during the course of ComReg's investigations into the above complaint, that the inadvertent error which led to the inaccurate calculation of the no contact window was corrected on January 4<sup>th</sup> 2004. As a result the breaches were confined to a period between 24<sup>th</sup> December 2003 and 3<sup>rd</sup> April 2004. Thereafter ComReg is not aware of any continued contact by eircom within the 3 month no contact period and appears to now be in compliance with this provision of CPS CoP. ComReg does not consider that any further action in relation to this complaint is required to ensure compliance given the technical mistake that led to the prohibited contact which has now been remedied. ComReg will monitor the incidence of this type of technical problem that results in a breach of eircom's obligations and will take further action as appropriate if it considers that eircom's processes and controls are not sufficiently effective to detect such inaccuracies from occurring in the future.

ComReg continues to proactively monitor compliance by eircom and all undertakings providing CPS with the CPS Code of Practice and to investigate complaints made by operators and consumers.

ComReg is currently working with industry to review the CPS Code of Practice with a view to enhancing the rules surrounding the provision of the CPS service in the interests of operators and consumers alike.

## Appendix A

On 24 September 2003, ComReg issued a direction, (Direction 2 in Decision Notice D20/03) in exercise of its powers pursuant to Regulation 31 of the EC (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations, 2003 (the "Universal Service Regulations") which directed, inter alia, that "all undertakings providing CPS and eircom are bound by the CPS Code of Practice." Therefore, compliance with the CPS Code of Practice has become an obligation under the Universal Service Regulations.

ComReg is obliged, under Regulation 32(1) of the Universal Service Regulations, to monitor compliance with the Universal Service Regulations.

Pursuant to Regulation 32(2) of the Universal Service Regulations, where ComReg finds that a person has not complied with a direction under Regulation 31 of the Universal Service Regulations, ComReg shall notify the person of those findings and give the person an opportunity to state his or her views or remedy any non-compliance.

Regulation 32(3) of the Universal Service Regulations provides that ComReg may publish, in such manner as it thinks fit, any notification given by it under this Regulation subject to the protection of the confidentiality of any information which the Regulator considers confidential. In publishing this information notice, ComReg is exercising its power under Regulation 32(3) of the Universal Service Regulations.

In publishing this Information Notice, ComReg has taken account of its statutory objectives which are set out in Section 12 of the Communications Regulation Act 2002.