



Commission for
Communications Regulation

Information Notice

CPS Code of Practice Breach

Esat BT advertising breaches

Document No:	04/45
Date:	20th April 2004

Contents

1 Introduction 2

2 Complaints 3

3 Finding 5

4 Next Steps 7

Appendix A..... 8

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 Practice¹.

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 and require the operator to remedy such breach within a specified time. Further, ComReg may publish the particulars of such notification. This Information Notice contains details of a complaint made against Esat BT and the findings, of ComReg, in respect of a breach by Esat BT of an obligation under the CPS Code of Practice.

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

¹ See Appendix A

2 Complaints

ComReg received a complaint made against Esat BT for an advertisement that appeared in the Sunday Tribune and Sunday Independent dated 18th January 2004. A further complaint against Esat BT relating to a shorter though similar advertisement appearing in bus shelters for 2 weeks from 25th January 2004 across the country was made on 3rd February 2004. The complaints alleged the following;

- It was alleged that the general theme of the newspaper advertisement was derogatory and misleading.
- It was alleged that specific statements contained in both advertisements were derogatory and misleading.

Specifically it is alleged that;

- 1 The general theme of the newspaper advertisement was to misrepresent eircom's line rental price change, to confuse consumers as to the basis for the price change and to impute anti-consumer motives to eircom in making the change.
- 2 The statements contained in both advertisements "*Sick of eircom's rental rip off?*" and "*eircom rip off*", are untrue categorisations that are misleading, derogatory and detrimental to eircom's reputation. Esat BT is fully aware of the basis for eircom's line rental charges and therefore this can be only taken as a deliberate intention to mislead customers. "*Don't get mad, get even*". This statement purports to capitalise on the misrepresentation by encouraging consumers to act on the basis of misleading information about eircom and its services.
- 3 "...[i]t means the few *price cuts eircom have made since deregulation count for nothing (so much for you)*". This statement is inaccurate, misleading and derogatory. Eircom has reduced prices significantly since 1997 and to suggest eircom does not value its customers is totally contrary to the spirit of the CPS Code of Practice. The same concerns apply to the statement "*That's what eircom thinks of you, the customer, and that's how they show it*".
- 4 "...*just as importantly, you'll send a plain and powerful message to rip-off Ireland's worst offender...*". This is inflammatory, misleading and wholly derogatory in its terms. It is made all the more objectionable given Esat BT's familiarity with the lack of objective truth to this allegation.
- 5 "*24% increase in the eircom line rental in 12 months.*" This is factually incorrect and misleading. The advertisement creates the impression that none of eircom's prices would apply to customers that "*switch to Esat*

BT thereby confusing and misleading consumers about the benefits of changing service providers.

3 Finding

On foot of these complaints, ComReg conducted an investigation and following its investigation, ComReg found that;

- The general theme of the newspaper advertisement was not so derogatory and misleading such that the whole advertisement was a breach of clause 4.1 of the CPS Code of Practice.
- Specific statements contained in the advertisements are derogatory and misleading.

The details of these findings are set out below.

Clause 4.1 of the CPS Code of Practice states that “an operator must not release misleading or derogatory information about another operator’s service”. ComReg found from its investigation that Esat BT had not complied with clause 4.1 of the Code of Practice and consequently, Esat BT was in breach of its obligation to be bound by the CPS Code of Practice.

ComReg investigated both complaints. ComReg sought information from Esat BT regarding the newspaper advertisement on 29th January 2004. Esat BT responded in writing on 6th February 2004. ComReg sought information from Esat BT regarding the bus shelter advertisements on 12th February 2004 and received a response in writing on 16th February 2004. ComReg has considered the representations made by Esat BT and all other relevant information including the context of the advertisements and the statements complained of. ComReg notified Esat BT of these findings on 20th April 2004 and, in that notification, ComReg gave Esat BT an opportunity to state its views or remedy its non-compliance with the CPS Code of Practice.

Specifically ComReg finds that;

- 1 “*Sick of eircom’s rental rip off?*” from the newspaper adverts and “*eircom rip off*” from the bus shelter adverts. The purpose of both advertisements appeared to be to inform consumers of their ability to change carriers from eircom to Esat BT. As such, ComReg considers these advertisements to be promotional material covered by the CPS Code of Practice. This categorisation of the charges for eircom’s line rental service as being a “rip off” which may lead consumers to believe they are overcharging is not based on fact since the charges for line rental are currently regulated prices as approved by ComReg from time to time. Therefore such a description is prejudicial to eircom’s reputation and thus derogatory. The categorisation is misleading because it is not factually correct and thus deceives or is likely to deceive consumers and affect their economic behaviour and Esat BT is aware of the legal basis

for the line rental charges. The further statement in the newspaper advertisement “*Don’t get mad, get even*” encourages consumers to act on the basis of derogatory information about eircom and its services and change carriers to eircom’s detriment. Publication of an untrue statement that is likely to cause consumers to act in such a way as to cause loss and damage to eircom is misleading.

- 2 “...[I]t means the *few price cuts eircom have made since deregulation count for nothing (so much for you)*” and “*That’s what eircom thinks of you, the customer, and that’s how they show it*” from the newspapers advertisements. ComReg does not find that these statements are misleading as to the facts and are mere advertising bluff and hyperbole. The statements merely appear to suggest that it is the opinion of Esat BT that the price cuts count for nothing and such an opinion does not amount to a derogatory statement prejudicing eircom’s reputation.
- 3 “*...Rip-off Ireland’s worst offender...*” from the newspaper advertisements. The purpose of the advertisements appeared to be to inform consumers of their ability to change carriers from eircom to Esat BT. As such, ComReg considers these advertisements to be promotional material covered by the CPS Code of Practice. As discussed in 1. above, there is no basis in fact to support the statement that eircom has “ripped off” its customers. As discussed above there is a legal basis for the line rental charges applied by eircom and as such this statement is prejudicial to eircom’s reputation. This statement is thus derogatory. Further, the categorisation is misleading because it is not factually correct and thus deceives or is likely to deceive consumers and affect their economic behaviour and Esat BT is fully aware of the legal basis for the line rental charges.
- 4 “*24% increase in eircom line rental in 24 months*” This statement made in the bus shelter advertisements although technically inaccurate was not misleading because the actual figure was 23.37%. ComReg does not find such a misstatement to be material.
- 5 The statement “*Switch to Esat BT*” must be read in the context of the entire bus shelter advertisements which referred to the line rental increase but noted after the reference to switching to Esat BT only that “*you can keep your phone number and save on local, national, international and calls to mobile*”. As such ComReg does not find that the advertisement would lead consumers to believe that they would no longer have to pay line rental charges if they changed carriers. ComReg therefore does not find this part of the advertisement to be misleading.

4 Next Steps

The newspaper advertisements were only run once and Esat BT have stated that they do not intend to use it again. The bus shelter advertisements ran for two weeks and then concluded and Esat BT have stated they have no immediate plans to re-use them. ComReg will monitor the incidence of this type of breach and will take further action as appropriate. Esat BT has one month from receipt of the notification of ComReg's findings to state its views in accordance with the Universal Service Regulations.

ComReg continues to proactively monitor compliance by Esat BT 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 customers 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.