



Commission for  
**Communications Regulation**

## Information Notice

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

#### **Esat BT price comparison breach**

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**An Coimisiún um Rialáil Cumarsáide**

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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 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.

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<sup>1</sup> See Appendix A

## **2 Complaint**

ComReg received a complaint on 12<sup>th</sup> February 2004 from eircom regarding the presenter material used by Esat BT 'feet on the street' agents. The complaint alleged the following;

- The material showed eircom standard or base rates compared to Esat BT advantage rates, however the material does not clarify that the eircom rates quoted are standard or base rates. This may therefore be misleading to customers and would be in breach of 4.5 of the CPS code of practice.

### 3 Finding

Following its investigation ComReg makes the following finding:

- The material showed eircom standard or base rates compared to Esat BT advantage rates, but the material does not clarify that the eircom rates quoted are standard or base rates. ComReg finds that this is misleading to customers and is therefore in breach of 4.5 of the CPS code of practice.

Clause 4.5 of the CPS Code of Practice states that “*Advertisements or other offers should not contain statements or visual presentation 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*”. ComReg found from its investigation that Esat BT had not complied with clause 4.5 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 the complaint. ComReg sought information from Esat BT regarding the ‘feet on the street’ material on 16<sup>th</sup> February 2004. Esat BT responded in writing on 19<sup>th</sup> February 2004. ComReg has considered the representations made by Esat BT and all other relevant information.

ComReg notified Esat BT of these findings on 30<sup>th</sup> 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.

#### **4 Next Steps**

ComReg notes that that a small footnote would have corrected the material in question and that, once brought to their attention, Esat BT immediately withdrew the material from use. 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.