



Commission for
Communications Regulation

Information Notice

CPS Code of Practice Breach

Optic Communications – misleading information

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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 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 Optic Communications and the findings, of ComReg, in respect of a breach by Optic Communications 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 Complaint

ComReg received a complaint made against Optic Communications in relation to statements made in its promotional material. The complaint alleged the following;

- That statements contained within Optic Communications sales and marketing materials are false and misleading and therefore in violation of clauses 4.5 and 4.6 of the Carrier Pre Selection (CPS) Code of Practice.

The statements at issue state that Optic Communications

- Provides 100% digital fibre optic connection from the origination to the termination of your call.
- Take advantage of a network that was previously reserved for Fortune 500 companies

3 Finding

On foot of this complaint, ComReg conducted an investigation and following its investigation, ComReg found that there has been a breach of the CPS Code of Practice as follows:

The promotional material provided inaccurate information because it is not correct to state

“Optic Communications

- Provides 100% digital fibre optic connection from the origination to the termination of your call.
- Take advantage of a network that was previously reserved for Fortune 500 companies”

In relation to the use of 100% fibre optic connections Optic state in response to the allegation that they only make this claim in relation to long distance portion of their services and not at the local loop level and that it is a common understanding that this is so within the telecommunications industry and amongst business telecommunications consumers and that Optic is not representing itself as a local service provider. Optic state that they inherently control the network used for the long haul of an end-user’s call. In fact the promotional material is not limited to long distance portions of calls and copper is provided for the network in Ireland over which Optic do not have control.

In relation to the claim that Optic provides a network that was previously reserved for Fortune 500 companies, ComReg understands from Optic that this refers to the WilTel network in the United States being a part of the overall network of their network provider. The position put by Optic was that their Customers in Ireland could take advantage of this network. ComReg considers that this is not accurate as regards the network of their provider in Ireland for local and national calls and customers would not generally be aware of this limitation. The access to the WilTel network is not what is being promoted specifically, rather the promotional material misleads the potential customer to believe that the network they will be using in Ireland was previously reserved for Fortune 500 companies.

The promotional material was therefore misleading.

Clause 4.5 and 4.6 of the CPS Code of Practice state:

4.5 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;

4.6 The presentation should be clear and honest and should not be likely to mislead those who are addressed to those to whose attention such material is likely to come.

ComReg notified Optic Communications of these findings on 14th July 2005 and, in that notification, ComReg gave Optic Communications an opportunity to state its

views or remedy its non-compliance with the CPS Code of Practice within one month.

4 Next Steps

ComReg has requested Optic Communications to take the following action within one month in order to remedy its non-compliance with the CPS Code of Practice

- To remove the misleading information from the promotional material the subject of this finding
- To cease using this information in any other way for the purposes of promoting Optic Communications' CPS services

ComReg continues to proactively monitor compliance by Optic Communications 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.