



Commission for  
**Communications Regulation**

## Information Notice

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

#### **Smart Telecom advertising breach**

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**Contents**

1 Introduction ..... 2

2 Complaint ..... 3

3 Finding ..... 4

4 Next Steps ..... 6

Appendix A..... 7

## 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 Smart Telecom and the findings, of ComReg, in respect of a breach by Smart Telecom 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 made against Smart Telecom for an advertisement that appeared in the Irish Independent dated 19<sup>th</sup> January 2004. The complaint alleged the following;

- The advertisement begins with the caption “*eircom’s fixed line price hike is insane. Switch to Smart Telecom now and stop the madness.*” The language employed by Smart Telecom in this statement is derogatory towards eircom. The effect is to mislead customers about eircom’s services and prices, and to undermine consumer confidence in eircom’s brand.
- The tone of the text of the advertisement uses extreme and emotive wording that goes beyond fair and reasonable comparison of competing services or prices.
- The depiction of a person in a straight jacket was also complained of as a breach of Clause 4.5 of the CPS Code of Practice.

### 3 Finding

On foot of this complaint, ComReg conducted an investigation and following its investigation, ComReg found that;

- “eircom’s fixed line price hike is insane. Switch to Smart Telecom now and stop the madness.” The purpose of the advertisement is to inform consumers of their ability to change carriers from eircom to Smart Telecom. As such, ComReg considers the advertisement to be promotional material covered by the CPS Code of Practice. The categorisation of the charges for eircom’s line rental service as being “insane” may lead consumers to believe eircom 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 Smart Telecom are fully aware of the legal basis for the line rental charges. The further statement “Switch to Smart Telecom now and stop the madness” encourages consumers to act on the basis of derogatory information about eircom and its services and change carriers to eircom’s detriment. The statement also misleads consumers into thinking that by switching carriers to Smart Telecom they will no longer have to pay the fixed line rental to eircom. 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.
- The tone of the text of the advertisement is not derogatory or misleading. The information within the advertisement comparing minute call charges within Ireland between eircom and Smart Telecom is accurate; the descriptions of eircom’s call charges are advertising bluff and are not extreme and emotive. ComReg therefore finds the tone of the text does not amount to a breach of the Code of Practice.
- The depiction of a person in a straight jacket has not been addressed by ComReg because this complaint has been separately addressed by the Advertising Standards Authority for Ireland who upheld the complaint.

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 finds from its investigation that Smart Telecom has not complied with clause 4.1 of the Code of Practice and consequently, Smart Telecom is in breach of its obligation to be bound by the CPS Code of Practice.

ComReg investigated the complaint. ComReg sought information from Smart Telecom regarding the newspaper advertisement on 29<sup>th</sup> January 2004. Smart Telecom responded in writing on 5<sup>th</sup> February 2004. ComReg has considered the

representations made by Smart Telecom and all other relevant information including the context of the advertisement and the statements complained of.

ComReg notified Smart Telecom of these findings on 20<sup>th</sup> April 2004 and, in that notification, ComReg gave Smart Telecom an opportunity to state its views or remedy its non-compliance with the CPS Code of Practice.

#### **4 Next Steps**

ComReg notes that the newspaper advertisement was only run once on 19<sup>th</sup> January 2004. ComReg will monitor the incidence of this type of breach and will take further action as appropriate. Smart Telecom 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 Smart Telecom 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.