



Commission for  
**Communications Regulation**

## Information Notice

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

#### **Smart Telecom TPV 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 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 from eircom on 1<sup>st</sup> March 2004 regarding three Third Party Verification (TPV)<sup>2</sup> recordings from Smart Telecom. The complaint alleged that:

- In each of the three verification recordings, it is shown that the customer is confused and does not understand the process. therefore these recordings are evidence of a breach of the CPS Code of Practice.

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<sup>2</sup> Third Party Verification is an independent means of verifying a customer's consent and obtaining the customer information required to submit a change to CPS service. It is conducted via the telephone, with a recording of the call serving as a record of the customer's consent.

### 3 Finding

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

- In each of the three recordings the customer is confused about what is happening to them and does not understand that they are involved in a process of verification of their consent to a change in their telephone service. Therefore ComReg finds that this unauthorised provisioning of the CPS service constitutes a breach of the CPS Code of Practice.

Clause 10.1 of the CPS Code of Practice states that “*Operators shall not engage in unauthorised provisioning of CPS of any form whatsoever*”. ComReg finds from its investigation that Smart Telecom has not complied with clause 10.1 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 TPV recordings on 4<sup>th</sup> March 2004. Smart Telecom responded in writing on 22<sup>nd</sup> March 2004. ComReg has considered the representations made by Smart Telecom and all other relevant information.

ComReg notified Smart Telecom of these findings on 30<sup>th</sup> April 2004 and, in that notification, ComReg gave Smart Telecom an opportunity to state its views.

#### **4 Next Steps**

ComReg notes that Smart Telecom are introducing the TPV Code of Practice into all commercial contracts with TPV agents. In addition Smart Telecom staff training in the area of TPV has occurred and also additional staff training by the TPV agent has occurred. 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.