Commission for
Communications Regulation

Eircom will refund customers for overcharging, pay ComReg a penalty of €2.45 million and make changes to its billing practices

Information Notice

Reference: ComReg 23/46

Date: 17/05/2023

1. On 15 November 2022, The Commission For Communications Regulation **("ComReg")** applied to the High Court for a restraining order under Section 46(4) of the Communications Regulation Act, 2002 (as amended) **("the Act")** against Eircom Limited, trading as Eir **("Eircom"),** requiring Eircom to cease contravening Section 45 of the Act and requiring Eircom not to repeat the contravention of Sections 45(1)(a) and 45(1)(b) of the Act[1], which are offences related to the overcharging of customers.

2. These proceedings were issued following a series of enforcement actions taken by ComReg against Eircom under Section 45 of the Act, which have resulted in Eircom being convicted in 2015, 2017 and 2018 of offences totalling 26 breaches of Section 45 of the Act (in circumstances in which it overcharged customers for electronic communications services).

3. Section 46(1) of the Act provides that in such a situation:

   …the Commission may apply to the High Court to make a restraining order…

4. On hearing such an application, the High Court may, amongst other orders:

   …make a restraining order requiring the undertaking to cease contravening section 45 and not to repeat the contravention…

5. The application also included a request for the Court to issue an order directing Eircom to pay to ComReg a financial penalty pursuant to Section 46(5) of the Act, and request for the Court to issue an order directing Eircom to refund customers who had been overcharged by Eircom between October 2015 and October 2021, where the customers had not yet been refunded by Eircom.

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[1]*45(1)   An undertaking shall not impose, or purport to impose, a charge—*
a) for supplying an electronic communications service or electronic communications product to a consumer that exceeds the amount for that service or product specified—
    (i) in the undertaking's published tariff of charges, or
    (ii) in a written statement previously made or given to the consumer by the undertaking in relation to that supply,
(b) for supplying an electronic communications service or electronic communications product to a consumer that was not requested by the consumer, or
(c) for an electronic communications service or electronic communications product that was requested by a consumer but was not supplied.

6. In addition to the above-mentioned convictions in respect of overcharging, ComReg commenced two investigations into Eircom for further instances of overcharging which formed part of the proceedings. One such investigation was related to the period June 2018 to March 2019, whilst the other related to the period from September 2019 to September 2020. The information obtained in these investigations demonstrated incidents where customers were overcharged by Eircom and had successfully sought a refund for the overcharge. However, ComReg was also concerned that there were many more customers also overcharged by Eircom that had not identified the overcharge nor had they successfully disputed the overcharge with Eircom.

7. Based on the above, ComReg concluded that Eircom had contravened section 45(1) of the Act by overcharging customers in the past, may be overcharging customers, and was likely to overcharge customers in the future. On that basis ComReg applied to the High Court for a restraining order to stop Eircom from overcharging its customers.

8. These proceedings were fixed for hearing on 25 April 2023 in the Commercial List of the High Court. The parties have settled the proceedings.

9. ComReg has secured the following commitments in the Settlement with Eircom:

   a. Eircom will pay a Financial Penalty in the sum of €2,450,000

   b. Eircom will implement a series of "Backward-Looking Measures" to identify customers who have been overcharged historically and will refund these customers appropriately. There are an estimated 76,000 customers with an associated revenue value of approximately €6,700,000 in scope for these measures.

   c. The Backward-Looking Measures will focus on:

      • Customers that were incorrectly charged due to an issue with a "broken bundle" on the customers' account.

      • Customers that were charged in circumstances where the customer had requested their service be ceased and Eircom did not process the customers cease request.

      • Customers that were charged early cease charges in circumstances where the customer was permitted to cancel without penalty

   d. Eircom will implement a series of "Forward-Looking Measures" to improve their existing billing processes.

e. The Forward-Looking measures will focus on implementing processes and procedures which will include system upgrades (including the completion of a new billing system). The processes and procedures will also include Eircom proactively reviewing credits and disputes that could identify potential billing issues not already addressed.

f. Eircom will also appoint an Independent Auditor to review the effectiveness and implementation of both sets of measures referred to above.

10. Eircom has commenced the process of identifying customers impacted by the "Backward Looking Measures" and will commence the process of refunding all affected customers with immediate effect. That process will take some time to complete.

11. Eircom has undertaken to commence the implementation of the "Forward Looking Measures" as soon as is practicable with a view to having them fully implemented by 31 December 2023 at the latest.

12. ComReg will continue to monitor Eircom's compliance with its obligations and to investigate as appropriate consumer complaints whether arising in respect of Section 45 of the Act or otherwise.

13. ComReg expects all undertakings to ensure that they are compliant with Section 45 of the Act and are not overcharging consumers. ComReg is continuing its programme of monitoring compliance by all undertakings and will take all necessary enforcement action in respect of any such activity.