



Commission for  
**Communications Regulation**

## Information Notice

### **Information requirements to undertakings pursuant to section 13D(1) of the Communications Regulations Acts 2002 to 2010**

**Obligations for authorised operators in relation to  
providing data**

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The Commission for Communications Regulation ("ComReg") is empowered pursuant to section 13D(1) of the Communications Regulation Acts 2002 to 2010 (the "Act") to require an undertaking to provide it with written information which ComReg considers necessary to carry out its functions as set out in section 10 of the Act.<sup>1</sup> The full text of section 13D(1) and sections 13D and 13E of the Act (which set out the civil and criminal enforcement procedures for non compliance with a section 13D(1) information requirement) are set out in an annex to this Information Notice.

ComReg relies upon information required from undertakings pursuant to section 13D(1) of the Act to carry out its functions. Failure to comply with such information requirements can therefore impede ComReg in the exercise of its functions and can have wide-ranging impacts on consumers and the telecommunications industry in general. For these reasons ComReg cannot tolerate non-compliance with section 13D(1) information requirements and will take enforcement action, including issuing proceedings, as it considers appropriate.

In light of certain recent instances of non-compliance by undertakings with such information requirements, ComReg would like to remind undertakings of the consequences of such non-compliance.

An undertaking commits an offence if it: (i) fails to comply with a section 13D(1) information requirement within the period specified or within such extended time period as ComReg allows; or (ii) in purporting to comply with such a requirement it knowingly provides false or misleading information.

In certain circumstances a director or other officer of a non-compliant undertaking also commits an offence and is liable to be prosecuted in the same manner as the non-compliant undertaking.<sup>2</sup>

ComReg may initiate summary criminal proceedings where an undertaking fails to comply with a section 13D(1) requirement.<sup>3</sup> Alternatively ComReg may apply to the High Court for an order compelling compliance with the information requirement.<sup>4</sup>

ComReg is also empowered to issue a notice of intention to prosecute where it believes on reasonable grounds that an undertaking (or person) has committed an offence by failing to comply with a section 13D(1) information requirement.<sup>5</sup> Such a notice provides that if within 21 days the non-compliant undertaking/person responds to the section 13D(1) requirement, to the satisfaction of ComReg, and pays €1,500 to ComReg the undertaking/person will not be prosecuted for the offence.

Should an undertaking have any query or concern regarding a particular section 13D(1) information requirement ComReg recommends that it contact the author

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<sup>1</sup> ComReg is also empowered to request information from undertakings under section 13D(1) to comply with a requirement made to it by the Minister under section 13B of the Act.

<sup>2</sup> Section 42 of the Act.

<sup>3</sup> Section 43 of the Act.

<sup>4</sup> Section 13E of the Act.

<sup>5</sup> Section 44(1) of the Act.

of the requirement at the earliest opportunity and in any case before the expiry of the period for responding to the requirement.

## **Annex – Sections 13D and 13E of the Act**

### **Power of the Commission for Communications Regulation to obtain information from undertaking**

13D.—(1) The Commission may at any time, by notice in writing, require an undertaking to provide it with such written information as it considers necessary to enable it to carry out its functions or to comply with a requirement made to it by the Minister under section 13B.

(2) An undertaking commits an offence if it—

(a) fails to comply with a requirement made under subsection (1) within the period specified in the notice or within such extended period as the Commission allows, or

(b) in purporting to comply with such a requirement, provides to the Commission information that the undertaking knows to be false or misleading.

(3) In proceedings for an offence involving a failure by an undertaking to comply with a requirement made under subsection (1), it is a defence if the undertaking establishes—

(a) that it did not know and could not be reasonably expected to know or ascertain the required information, or

(b) that the disclosure of the information was prohibited by a law of the State.

(4) An undertaking that commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding €5,000.

(5) If, after being convicted of an offence under this section, an undertaking continues to fail to do the relevant act, the undertaking commits a further offence on each day or part of a day during which the failure continues and is liable on summary conviction to a fine not exceeding €1,000 for each such further offence. However, if an undertaking is tried for 6 or more such further offences that are alleged to have been committed on successive days, the maximum fine that can be imposed for those offences at the trial is €5,000.

**Alternative procedure for enforcement of section 13C or 13D**

13E.—(1) As an alternative to bringing a prosecution for an offence against section 13C or 13D, the Minister or the Commission may apply to the High Court to make a compliance order under subsection (4). Such an application is to be by motion.

(2) The High Court may hear the application only if it is satisfied that a copy of the application has been served on the undertaking concerned. On being served with such a copy, the undertaking becomes the respondent to the application.

(3) The High Court may make such interim or interlocutory order as it considers appropriate pending determination of an application made under subsection (1). The Court may not refuse interim or interlocutory relief merely because the Minister or Commission may not suffer damage if relief were not granted pending determination of the application.

(4) On the hearing of an application made under subsection (1), the High Court may make an order requiring the undertaking to comply with the relevant section or may refuse the application.

(5) If the High Court makes an order under subsection (4), it may make such ancillary orders as it considers appropriate.