



Office of the Director of
**Telecommunications
Regulation**

DECISION NOTICE

The role of resellers in Carrier Pre-Selection
& the block transfer of customer accounts.

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1 Introduction

In July 2001, the Office of the Director of Telecommunications Regulation (ODTR), launched a consultation process in relation to *The role of resellers in Carrier Pre-Selection (CPS) and the block transfer of customer accounts* (ODTR document 01/51). The consultation paper addressed the role and responsibilities of CPS Resellers and how they operate within the CPS environment, focussing on: -

- Definition and obligations of a CPS Reseller
- Inter-operator processes required to support the CPS Reseller business model

This Decision Notice is largely structured in the same manner as the earlier consultation document. Each section is divided into three parts: -

- A summary of the section in the consultation document, together with a listing of the relevant questions
- A summary of the responses to these questions
- The ODTR's analysis of the issues and the Director's decisions.

Eleven organisations responded in writing to the consultation document, as listed below:

- Bord Gáis
- Chorus
- eircom
- Esat
- HiberCall
- Interoute Ireland
- Minutebuyer
- nevadatele.com
- NewTel Communications
- Swiftcall
- WorldCom

The Director wishes to thank everyone who contributed to the consultation. With the exception of the responses marked as confidential, their written comments are available for inspection at the ODTR's offices in Dublin.

2 Definitions of a CPS Reseller

The consultation paper proposed definitions for a ‘Tied CPS Reseller’ and an ‘Independent CPS Reseller’, as two of the most likely reseller business models. The proposed definitions are repeated here for convenience: -

- ***Tied CPS Reseller***

Tied CPS Resellers sell branded subscriptions and calls on their parent network. The reseller purchases them at wholesale rates and has some freedom to vary packaging and tariffing. The key point is that the customer’s contract is with the reseller but it is the wholesaler - the CPS Operator who is eligible to provide the CPS service - that is responsible for processing the orders and trafficking the calls. The CPS Reseller handles the customer service, tariffing and billing.

- ***Independent CPS Reseller***

Independent CPS Resellers are similar to the Tied CPS Resellers in that they purchase wholesale from CPS Operators and resell to their contracted customers. The difference is that Independent CPS Resellers are not tied to an individual CPS Operator and can make a choice between networks. For example, the CPS Reseller could negotiate several agreements for different areas and/or for different call types. As with the Tied CPS Reseller, the customer’s contract is directly with the Independent CPS Reseller itself rather than a CPS Operator and the CPS Operator is responsible for processing orders and trafficking calls.

The consultation document indicated that these proposed definitions represented the most likely forms that a CPS Reseller might take. However, other variations of the relative roles and responsibilities of reseller and operator were possible (e.g. the CPS Operator might provide the customer service function in relation to fault handling).

The proposed definitions presented flexible variations for the reseller business model but they were further defined with the statement that: -

A Tied or Independent CPS Reseller does not operate any part of a telecommunications network infrastructure and relies wholly on the CPS Operator for the transmission and/or routing of all call traffic. As such, the CPS Reseller does not offer to the public a licensable service as defined by the ODTR.

Consultation Question

Q2.1 *Are the definitions of the Tied CPS Reseller and the Independent CPS Reseller correct and sufficient? If you disagree, please specify alternative definitions in detail.*

Response

There was general agreement amongst the respondents that the proposed definitions for the Tied and Independent CPS Reseller were correct and sufficient. Three of the respondents additionally suggested that it might be preferable to leave these definitions more open-ended to facilitate any future variants of the reseller business model. One respondent also questioned whether these definitions would be appropriate to *eircom* in the event that they themselves should enter the switchless resellers' market.

One respondent found that the headings were sufficient but that the definitions did not represent the current situation in Ireland or in other deregulated markets abroad. This respondent offered an alternative definition for a Tied Reseller, stating that the Tied CPS Reseller merely acts as sales channel for the CPS Operator, reselling a branded service but that the customer's contract remains with the CPS Operator as opposed to the Independent CPS Reseller where the customer enters into a service contract directly with the reseller.

Another respondent was concerned that the consultation stated that the CPS Reseller *does not operate any part of a telecommunications network infrastructure* and that this was not the case in the Irish market at present, nor was it likely to be in the future.

ODTR Analysis

The Director intended that the proposed definitions were simply to provide a common industry understanding of Tied and Independent CPS Reseller. The definitions are not exhaustive, offering no specific exclusions, nor should they prevent the emergence of novel solutions and business models in the future. CPS Operators and Resellers remain at liberty to exercise commercial discretion on the packages that they negotiate, in terms of the burden of responsibility for customer service, tariffing and billing etc. As stated in the consultation paper, these definitions represent the most probable reseller business models, but the Director will continue to support new and innovative solutions in the reseller market.

A common feature of the definitions for both the Tied and Independent CPS Reseller is that the customer's contract is directly with the reseller and not with the CPS Operator. The alternative definition proposed by one respondent that *the Tied CPS Reseller merely acts as sales channel for the CPS Operator, reselling a branded service* constitutes an agency agreement and is not resale as defined by the Director, since the customer's contract is with the underlying CPS operator.

The stipulation that the CPS Reseller *does not operate any part of a telecommunications network infrastructure* is not to imply that a licensed operator is not eligible to become a reseller but that they do not operate any part of their own telecommunications network infrastructure in their capacity as a reseller. Therefore the CPS Reseller does not offer to the public a licensable service as defined by the Director.

3 CPS Reseller Obligations

The obligations of a CPS Operator are defined in Decision Notice D2/99 - *Introducing Carrier Pre-Selection in Ireland* and in the CPS Code of Practice, to which they are signatories. The Director wishes to ensure that CPS customers receive at least the same quality of service from a CPS Reseller as they are guaranteed from a CPS Operator and that sufficient consumer safeguards are in place.

The consultation paper proposed new and existing means through which CPS Resellers could be integrated into the CPS process to provide the same standard of service as CPS Operators themselves. Proposed measures included amendment to the CPS Code of Practice and the registration of CPS Operator / Reseller pairings. The level of visibility a customer should have of the underlying CPS Operator was also examined.

Consultation Questions

Q 3.1 *Do you agree that the CPS Code of Practice should be amended to allow CPS Resellers to become signatories? If you disagree please give your reasons in detail.*

Q 3.2 *Do you agree that signature of the Code of Practice should form an integral part of the process of establishing a commercial agreement between the CPS Operator and Reseller? If you disagree please give your reasons in detail.*

Response

The majority of the respondents were in agreement that the CPS Code of Practice should be amended to allow resellers to become signatories and that this should form an integral part of the process of establishing a commercial agreement between the CPS Operator and Reseller. Two of those respondents in agreement with this proposal also felt that, as signatories, CPS Resellers should be eligible to contribute to any amendment and future development of the Code of Practice.

Two of the respondents were not in favour of the proposals on the grounds that the resellers were already bound to the same conditions of the Code of Practice through their existing commercial agreements with the CPS Operator. One of the respondents stated that *the agreements between Resellers and CPS Operators require Resellers to abide by all laws, regulations and other agreements or requirements in order to [provide] CPS with the CPS Operator*. Both respondents also stated that the original Code of Practice was negotiated by the CPS Committee's Consumer Working Group, which had no representation from resellers at that time and as such it would be unfair to impose this mandate on them at this stage.

ODTR Analysis

The Director is satisfied that CPS Code of Practice should be amended to allow CPS Resellers to become signatories and that CPS Operators should ensure that it forms an integral part of their reseller agreements as it guarantees a flow through of responsibilities from the operator to the reseller. A condition of a CPS operator's interconnection agreement with the CPS Access Provider (currently *eircom*) is that they agree to be bound by the conditions of the annexed CPS Code of Practice. A similar arrangement for CPS Resellers will ensure a common set of industry standards for all players in the market.

Several respondents expressed concerns about CPS Resellers not being involved in the development of the Code of Practice. The Director considers that the measures currently contained in the Code are reasonable. Nevertheless, she considers that all parties subject to the measures contained in the Code should have an opportunity to provide input to any future development of the Code. The Director is therefore pleased to widen the CPS Committee and Working Group membership to CPS Resellers and to encourage their active participation in any future development of the Code of Practice.

With this analysis in mind and taking account of responses, the Director has decided: -

Decision 3.1

The CPS Code of Practice will be amended to allow CPS Resellers to become signatories and individual CPS Operators are required to ensure that adherence to the CPS Code of Practice is a condition of any resale agreements between the CPS Reseller and the CPS Operator.

Decision 3.2

Membership of the CPS Committee and Working Groups will be extended to include CPS Reseller representatives and the newly extended Committee and Working Groups will review and if necessary amend the CPS Code of Practice.

Q 3.3 *Do you agree that CPS Operator / Reseller pairs should be registered with the ODTR by the CPS Operator and circulated by the ODTR, as described above? If not, please give reasons in detail.*

Response

Four of the respondents were not in favour of the proposal for CPS Operator / Reseller pairs to be registered with the ODTR and circulated. They asserted that the relationship between the operator and the reseller was a commercial agreement and that registration would offer no additional transparency or safeguards to the customer but may result in some degree of confusion. One of these respondents suggested that *the process of registration would remove the competitive nature of the market* and envisioned a scenario where Independent CPS

Resellers would have agreements with all the operators in a deliberate attempt to cloud the commercial reality.

Over half of the respondents were supportive of the proposal, although some of these respondents were concerned about how this might affect the commercial sensitivities of such partnerships. As a compromise, two respondents proposed that a list of registered CPS Resellers could be circulated but not the reseller / operator pairings. One respondent also suggested that this CPS Reseller list could be posted on the ODTR website, which would give customers visibility of CPS Resellers who had a commercial agreement with a licensed operator.

ODTR Analysis

While being mindful of the commercial sensitivities of CPS Operator / Reseller agreements, the Director is persuaded that it will be necessary for CPS Operators to at least register details of CPS Resellers with the ODTR. The ODTR needs to be aware of all CPS Resellers and their underlying CPS operator to deal effectively with queries and complaints from members of the public. These details will also be made available to the CPS Access Provider (currently *eircom*), particularly to facilitate effective fault handling for CPS Resellers' customers. (For example, a reseller's customer, with no visibility of the underlying CPS Operator, may report a fault to *eircom*, who in turn may need to pass the fault over to the CPS Operator).

The Director will further consider the merits of publishing details of registered CPS Resellers and will consult with the CPS Committee on this issue shortly. She does not see any additional benefit in the circulation of CPS Operator / Reseller pairings to the industry at this time and has decided: -

Decision 3.3

All CPS Operators will be required to register details of their CPS Resellers with the ODTR. A register of CPS Operator / Reseller pairings will be made available to the CPS Access Provider (currently *eircom*), only to facilitate efficient inter-operator processes, but will not be circulated to industry as a whole.

Q 3.4 *Can the provision of visibility of the Licensed Operator to the customer be left to the discretion of each CPS Reseller / Operator pair? If not, please give reasons in detail.*

Response

The majority of respondents agreed that visibility of the underlying CPS Operator should be left to the discretion of each CPS Operator / Reseller pair. There were some concerns about customer confusion over the correct point of customer contact if there was third party visibility and others felt that the commercial value of anonymity in the Independent CPS

Reseller agreement could be compromised. One respondent commented that the consumers' priorities were service and price and that there was no meaningful benefit in providing visibility of the CPS Operator. Another stated that they were not aware of any commercial precedent in which a service provider is obliged to disclose its supplier to its customers. However, one of the respondents, whilst agreeing with the proposal, also believed that the name of the CPS Operator should remain on the Customer Authorisation Form (CAF) for the CAF to remain contractually binding.

Only one respondent disagreed with this proposal on grounds of consumer protection, arguing that a customer should be fully informed of the underlying operator when contracting for CPS service.

ODTR Analysis

The Director agrees with the overwhelming majority of respondents that the visibility of the Licensed Operator can be left to the discretion of each CPS Operator / Reseller pair in relation to the extent to which they choose to publicise their association.

The Director further considers that a requirement to name the underlying CPS Operator on the CAF is inconsistent with this principle. The CAF is an instruction from the customer to *eircom*, delivered by the CPS Operator to which the customer is contracted. When a customer contracts to a CPS Reseller, they authorise the Reseller to initiate CPS via the reseller's CPS Operator of choice. Therefore it is the CPS Reseller who at minimum must be identified on the CAF and beyond that, the disclosure of the identity of the underlying CPS Operator is a matter for the CPS Operator / Reseller pair. The CPS Committee should amend the process documentation to reflect this.

Decision 3.4

The Director has decided that providing visibility of the underlying CPS Operator to the customer can be left to commercial negotiations between the individual CPS Operator / Reseller pair.

Q 3.5 *Do you consider that there should be any additional provisions to ensure a flow through of obligations from the CPS Operator to the CPS Reseller? If so, please give details.*

Response

The majority of respondents felt that the provisions as outlined were sufficient to ensure a flow through of obligations from the CPS Operator to the Reseller. However, three of the respondents expressed concerns about consumer and data protection issues in the case of a 'block transfer' (see section 4), where customer information (e.g. *eircom* account number) is being moved between CPS Operators without customer knowledge. As a starting point, they

proposed that the gaining CPS Operator should not be provided with any further information than is necessary to provision the customer (i.e. eircom account number, CLI and CPS option) as any further requests could infringe the Data Protection Act 1988, as amended.

ODTR Analysis

The Director is presently satisfied that the measures outlined above in Decisions 3.1, 3.2, 3.3 and 3.4 ensure a flow through of obligations from the CPS Operator to the CPS Reseller. The ODTR has also consulted with the Data Protection Commissioner's Office to ensure that any proposed modification to the CPS process, to facilitate block transfer of customers, is in compliance with the Data Protection Act. Under the current legislation the principal parties are the: -

- Data Subject - the telecommunications subscriber. The subject contracts for the provision of a CPS service and in doing so provides personal information to the CPS Reseller or data controller.
- Data Controller - the CPS Reseller. The data controller is responsible for the use of all private data provided to them by the subject and may not disclose this information or use it in any way other than that defined in the original contract with the subject. However the data controller is at liberty to engage a third party, or data processor, to carry out work and use this information as defined by their contract with the subject.
- Data Processor - the CPS Operator. The data processor is contracted by the data controller and is authorised to act as their agent to use the subject's data in a specified manner in order to carry out the work of the controller i.e. to provide the customer with a CPS service.

There are two key relationships, the first between the data subject and the data controller and secondly between the data controller and the data processor. The contract between the customer and the CPS Reseller authorises the reseller to use the customer's information to provide them with a CPS service. When the CPS Reseller contracts to the CPS Operator, they are obliged to ensure the protection of the customer's privacy and must explicitly state how the CPS Operator can use the data. The CPS Operator, in acting as an agent of the CPS Reseller, is not free to make any use of the personal data for purposes other than those authorised by the CPS Reseller (i.e. the provision of a CPS telecommunications service).

As stated in Decision 3.4 the CPS Reseller is not required to disclose the identity of their chosen CPS Operator. However in the interests of openness and transparency, the ODTR strongly recommends that CPS resellers should advise customers, through their customer contracts, that they engage (disclosed or undisclosed) third parties to provide CPS telecommunications services, and information provided by the customer will be passed on to those third parties only to effect the provision of the CPS service.

4 Inter-Operator Processes

The consultation document proposed that in order for CPS Resellers to operate effectively in the market, they should have the ability to change their underlying CPS Operator, swiftly, effectively and at their discretion - within the bounds of their contract with the CPS Operator. This process of effectively moving a block of customers (a Block Transfer) between CPS Operators requires the co-operation of all parties concerned to ensure that the transfer of service between CPS operators is transparent to the customer and that no loss of service results. In order to facilitate the Block Transfer of a CPS Reseller's customer accounts between CPS Operators some of the existing inter-operator processes need to be amended and new processes introduced. The key issues considered in the consultation document were:-

- Whether there is a requirement for newly signed CAFs in the block transfer scenario
- The possibility of freezing the terms and conditions of the customer's original contract for a defined period, particularly in merger/acquisition situations
- Identifying CPS Reseller orders within the order-handling process
- Customer notification requirements in the event of a block transfer

Consultation Questions

Q 4.1 *Do you agree that the block transfer facility, with no requirement for a new or re-signed CAF should be introduced? If you agree, please indicate how you think it should operate. If you disagree please give your reasons in detail.*

Response

The majority of the respondents were in favour of introducing a block transfer facility, indicating that the process should not require a newly signed CAF, but the original CAFs should be relocated to the gaining CPS Operator.

Two respondents who were strongly opposed to the proposal were concerned about the impact of removing the obligation to provide a resigned CAF, indicating that this could undermine the integrity of the order validation process. One of these respondents also suggested that in the absence of a newly signed CAF, that as an absolute minimum the reseller should be obliged to inform the customer that their account has been transferred to a new operator.

Some of the respondents in favour indicated that the need to re-sign the CAF would restrict the concept of the Independent Reseller. One respondent additionally suggested that the CAF should remain with the reseller and as such would not require another signature. Another respondent proposed that the CAF should be relocated to the new operator with no need to re-sign if the original contract had provided for the possibility of the process of Block Transfer. This respondent also suggested that any notification sent to the customer should offer an "opt-out" clause.

ODTR Analysis

The Director agrees that a Block Transfer process is essential to facilitate a competitive reseller marketplace. An Independent CPS Reseller must be able to investigate and evaluate the commercial deals on offer and contract to a new CPS Operator without restriction. The requirement for a newly signed CAF would place an unnecessary constraint on CPS Resellers and hinder their activity in the market. With these factors in mind, the Director has decided: -

Decision 4.1

In the event of a Block Transfer taking place, it will not be necessary for the reseller to provide a new or re-signed CAF, but the original CAF must be relocated to the gaining CPS Operator.

As a consequence of this decision, the Director charges the CPS Committee with establishing the details of this procedure and incorporating them into the existing CPS process documentation.

Q 4.2 *In the event of a block transfer, do you agree the terms and conditions of the original customer contract should be frozen for a defined period? If so how long would you consider appropriate? If you disagree please give your reasons in detail.*

Response

Only two of the respondents were in favour of freezing the terms and conditions of the customer's original contract, suggesting a period of one month after the transfer between operators. However, the majority of respondents saw no benefit to the consumer or the reseller, highlighting both business and operational difficulties for any new party to assume the terms and conditions of the original contract for a short period of time. One respondent stated that a Block Transfer should occur seamlessly and not disrupt the customer's service or impact on the terms of the contract at all. In the case of a company merger or acquisition, the customer should be informed of any change of legal entity with which they are contracted.

ODTR Analysis

The Director accepts that there is no requirement to freeze the terms and conditions of the customer's contract.

Q 4.3 *Does the block transfer process require any additional provisions to ensure a seamless transfer of service for the customer? If yes, please give details.*

Response

Most of the respondents were satisfied that at present no further provisions were necessary to ensure a seamless transfer of a customer block, although some did make the point that this may need to be reviewed at a later stage.

Some of the respondents identified the cost of the transfer as a primary point of concern and one suggested that there should be a single block transfer cost and that this should be unrelated to the volume of CLIs. Another respondent proposed that the gaining CPS Operator must be able to verify that the account number has not changed since the original order as this would generate unnecessary rejection costs.

ODTR Analysis

The ODTR shares respondents' views that no further provisions are required for the Block Transfer process to ensure a seamless transfer of service between underlying CPS operators for blocks of CPS Resellers' customers. If individual operators or resellers seek to make further amendments, they should follow the agreed change management process.

The ODTR will determine any Block Transfer charge when the details of the process have been agreed and systems modifications have been completely specified and costed by *eircom*.

Q 4.4 *Do you agree that additional CPS routing codes should be allocated to CPS Operators to identify CPS Resellers and facilitate their operation within the CPS environment? If you disagree, please give reasons in detail.*

Response

Over half of the respondents were in favour of the allocation of routing codes to CPS Operators to identify CPS Resellers and facilitate their operation in the CPS environment. However, three of the respondents were against this proposal and highlighted the considerable operational constraints and problems associated with the proposal. One of the respondents proposed an alternative solution where a reseller ID was allocated and this code would be associated with the routing code for the provisioning CPS Operator. This would facilitate identification of reseller orders and potentially allow for automation of block transfers by modifying *eircom*'s order handling 'hub'.

ODTR Analysis

The Director is persuaded that the allocation of routing codes is not a viable option to identify CPS Resellers and facilitate the automation of block transfers, given the operational difficulties associated with this proposal. The allocation of an ID code, which will be associated with the routing code of a particular CPS Operator for the duration of the CPS Operator / Reseller pairing is deemed to be a more feasible solution.

The CPS Committee should therefore amend the CPS process manual to include the reseller ID facility, based on the following guidelines: -

- CPS Resellers who have concluded an agreement with a CPS Operator will be allocated a CPS Reseller ID code by the ODTR once their CPS Operator has registered them as a reseller.
- If the reseller concludes several agreements with different CPS Operators, one reseller ID will be allocated for each pairing.
- The block transfer process should facilitate the movement of all customer accounts with the same reseller ID.
- In the case of block transfer, the reseller ID will be transferred to the new Reseller/Operator pairing.

Decision 4.2

The Director has decided that CPS Reseller ID codes will be allocated to registered CPS Resellers so that they are identifiable to the Access Network Provider within the CPS ‘hub’.

The CPS Committee should amend the CPS Process Manual to include new processes derived from the reseller ID facility, and *eircom*, as the CPS Access Provider, are required to modify the CPS ‘hub’ to cater for block transfers based on the reseller ID concept. Existing CPS Operator / Reseller pairings, which are not initially identifiable within the ‘hub’ by a reseller ID, can still avail of the block transfer facility in line with the decisions and analysis in this Decision Notice.

Q 4.5 *Do you agree with the customer notification scenarios described in section 4.3? If you disagree, please give reasons in detail.*

Response

All but one of the respondents agreed with the customer notification procedures as outlined in section 4.3 of the consultation document, which indicated that if a customer had been made aware of the identity of their resellers underlying CPS Operator at the outset, then they should be informed of any subsequent change in that operator. However, if the customer was unaware of the original operator’s identity then the disclosure of the new operators identity

was solely at the discretion of the CPS Operator / Reseller pair and their contractual agreement.

Only one respondent was not in agreement with this procedure and maintained that the reseller should be obliged to inform the customer that his/her account would be transferred to a new operator prior to any transfer taking place.

ODTR Analysis

As discussed in the response to question 3.4, the level of customer visibility of the underlying CPS Operator is a matter that should be left to the commercial negotiations of the CPS Operator / Reseller pair. However, where the customer was initially made aware of the underlying CPS Operator, then any subsequent change in CPS Operator should also be communicated.

As part of the task to develop the details of the Block Transfer process, the CPS Committee should also provide guidance for CPS Resellers on communicating changes in the underlying CPS Operator to customers.

This Decision Notice requires meetings of the CPS Committee and as appropriate of its working parties. As stipulated in the Committee's Terms of Reference, in the event of the groups failing to come to agreement on the measures necessary to deal with the issues set out in this paper, the matters will be referred to the Director for determination.

APPENDIX

Legislative Background

The most relevant telecommunications legislation in this area is summarised below:

Interconnection Legislation

- *Directive 97/33/EC of the European Parliament and the Council of 30 June 1997 on interconnection in Telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (ONP).*
- *The European Communities (Interconnection In Telecommunication) Regulations, 1998. SI No. 15 of 1998, transposing the above directive.*
- *Directive 98/61/EC of the European Parliament and of the Council, of 24 September 1998, amending Directive 97/33/EC with regard to operator number portability and carrier pre-selection.*
- *The European Communities (Interconnection In Telecommunication) (Amendment) Regulations, 1999. SI No. 249 of 1999, transposing the above directive.*

Voice Telephony Legislation

- *Council Directive 98/10/EC on the application of open network provision (ONP) to voice telephony and on universal service for telecommunications in a competitive environment, and*
- *European Communities (Voice Telephony and Universal Service) Regulations, 1999, SI No. 71 of 1999, transposing the above directive and Directive No. 97/33/EC*