

Observations on Consultation on Articles 19 & 22 of the Consumer Rights Directive (“the Consultation”)

Introduction

The Commission for Communications Regulation (“ComReg”) is responsible for the regulation of the Telecommunications, Premium Rate Services (PRS) and Postal industries.

The Communications Regulation Act, 2002, as amended, provides that one of ComReg’s objectives is to protect and promote consumer welfare¹ and to ensure compliance by electronic communications service providers with the various obligations regarding the supply of and access to electronic communications services² (“ECS”) and electronic communications networks³ (“ECN”). ComReg’s remit also includes the regulation of postal services, radio spectrum and premium rate services⁴ (“PRS”)⁵. This response focuses on ComReg’s powers in respect of ECS, ECN and PRS.

¹ Section 12(1) of the Communications Regulation Act, 2002, as amended.

² ECS is defined in section 2 of the Communications Regulation Act, 2002, as amended, as being: “electronic communications service” means a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services, publicly available telephone services and transmission services in networks used for broadcasting, but does not include—

(a) services providing, or exercising editorial control over, content transmitted using electronic communications networks and services, and

(b) information society services within the meaning of Article 1 (inserted by Directive 98/48/EC of 20 July 1998 (O.J. No. L217, 5.8.98, p.18.)) of Directive 98/34/EC of 22 June 1998 (O.J. No. L204, 21.7.98, p. 37) which do not consist wholly or mainly in the conveyance of signals on electronic communications networks;

³ ECN is defined in section 2 of the Communications Regulation Act, 2002, as amended, as being: “electronic communications network” means transmission systems including, where applicable—

(a) switching equipment,

(b) routing equipment,

(c) other resources,

which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, and such conveyance includes the use of—

(i) satellite networks,

(ii) electricity cable systems, to the extent that they are used for the purposes of transmitting signals,

(iii) fixed terrestrial networks (both circuit-switched and packet-switched, including the Internet),

(iv) mobile terrestrial networks,

(v) networks used for either or both radio and television broadcasting, and

(vi) cable television networks,

irrespective of the type of information conveyed;

⁴ PRS is defined in section 3 of the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act, 2010 as being:

“premium rate service” means a service having all of the following characteristics:

(a) it consists in the provision of the contents of communications (other than a broadcasting service)

through an electronic communications network or by using an electronic communications service, which

may include or allow the use of a facility made available to the users of the service,

Article 19

ComReg recognises and promotes the need for consumers to be able to make informed decisions. ComReg is of the view that the availability of transparent information is an important factor that helps to ensure that the consumer is informed so as to enable consumer choices, which in turn drives competition within the market. The European Communities (Electronic, Communications Networks and Services) (Universal Service and Users' Rights) Regulations, 2011, ("the Regulations") transposes the Universal Service Directive⁵ and provides consumer protection and transparency for the consumer.

In particular, Regulation 14(2)(d) of the Regulations relates to Contracts and provides that a contract:

"shall specify in a clear, comprehensive and easily accessible format..

details of prices and tariffs, the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained, payment methods offered and any differences in costs due to payment method."

To assist in ComReg's role to protect and inform consumers and in particular to ensure transparency, ComReg's interactive website, www.callcosts.ie allows consumers to compare the various services and bundles of services available in the market. It allows consumers to evaluate which package offers the best value (in terms of price, features, services, etc) for their specific usage.

In respect of the aspects of the consultation regarding Article 19 and in particular in response to Question 1 of the consultation, ComReg is aware of emerging practices in the telecommunications industry whereby providers advertise different service plans and packages at a certain headline price, but in order to avail of this headline price, payment by direct debit is mandatory. In this scenario a charge for non-direct debit payments sometimes called 'administration' charges are then levied if payment, by any other means, is used.

ComReg agrees with the concern articulated in the paper that the advertising and presentation of some of these headline prices, without any clear indication of the payment means required to get this price, and the respective payment charges levied on payment by other means, is not transparent and may distort a consumer's purchasing decision. ComReg also has similar concerns that non-direct debit payment charges may be inflated in order to lower the headline price offered. Another area of concern is in respect of the potential for the practice to exclude

(b) there is a charge for the provision of the service which exceeds the cost attributable to communications carriage alone, and

(c) the charge referred to in *paragraph (b)* is paid by the end user of the service directly or indirectly to the provider of the electronic communications network or electronic communications service used in connection with the provision of the service by means of a billing or other agreed payment mechanism;

⁵ Section 10 of the Communications Regulation Act, 2002, as amended.

⁶ 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services, as amended by Directive 2009/136/EC.

certain customers from availing of services because the payment method(s) they have access to are either too expensive or unavailable for payment to their service provider. This practice has the potential to limit consumer choice and be particularly detrimental to vulnerable consumers.

To improve transparency in this area, ComReg is planning to present charges for different payment methods offered by service providers on its website www.callcosts.ie and ComReg is also considering stipulating⁷ that headline prices displayed on its website www.callcosts.ie must include any 'administration' charges levied. Non direct debit or other administration fees may then be presented as rebates, in line with the proposals in the consultation.

Given the emergence of such practices and the related concerns, detailed above in respect of the telecommunications industry, ComReg is in agreement with the proposed measures for the purposes of the implementation of Article 19. ComReg considers that such provisions would unambiguously mean that all traders, including electronic communications providers, are obliged to either increase the headline price and then offer a rebate or discount for payment by a particular method or alternatively, to ensure that the non direct debit fee is no greater than the actual cost of administering that payment.

ComReg has not evaluated if the prices charged for other payment means in particular direct debit, if applicable, exceed the cost borne by the electronic communications providers. ComReg notes that there may be claims by service providers of an 'efficiency' loss/cost arising due to payment by means other than direct debit including due to debt management issues etc. ComReg understands that the consultation proposes that only costs arising **directly** from the use of a given means of payment should be taken into account in determining the cost borne by the trader for the purpose of Article 19 and therefore, such indirect costs would not be considered applicable. ComReg is of the view that if 'indirect' costs were to be considered, the implementation of the provisions may be inconsistent, difficult to evaluate and difficult to enforce and agrees with this proposal to only include direct costs when considering costs borne by the trader. (Question 8)

ComReg also notes that in relation to Article 19, the consultation refers to future payment methods. In this respect, ComReg notes that in the future PRS may be used as a payment method for a range of services in a range of sectors including parking, tolls, on-line gambling, payment for vending machine items etc. This is further detailed in the next section. In this respect and in response to Question 11 of the consultation, ComReg agrees that the provisions of Article 19 and 22 should be applicable to all sectors.

⁷ ComReg approves the plans before they are included on the www.callcosts.ie website.

Article 22

Introduction

As discussed above, ComReg believes that the consumer should be in a position to make an informed choice before entering into a contract for the purchase of goods and services, in particular with respect to ECN, ECS and PRS. However, in addition to protecting this consumer right, it is important to ensure that the consumer provides express consent before entering into a contract and before accepting any additional costs.

Section 45 of the Communications Regulation Act, 2002, as amended

In respect of Article 22, ComReg would note the provisions of section 45 of the Communications Regulation Act, 2002, as amended. Section 45 (which is attached in full at Annex A) generally provides that it is an offence for an undertaking to impose or purport to impose a charge for supplying an ECS or electronic communications product that was not requested or that was not supplied.⁸ In particular and in respect of Article 22, section 45(1)(a) provides:

*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,

or

*(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

[Emphasis added]

As such, ComReg has the ability to bring a prosecution against an undertaking where that undertaking charges more than what is promoted or charges for a service that was not requested. The specific detail provided in Article 22 also relates the issue of express consent from the consumer which further promotes the consumer's rights in this regard.

⁸ Supplied or charged to a person to whom an electronic communications service or electronic communications product is supplied, otherwise than for the purpose of resupply (consumers and other end-users);

Premium Rate Services (“PRS”)

In respect of the consultation proposals relating to Article 22, and in addition to the comments above, ComReg is particularly interested in the provision in so far as it may be relevant to PRS.

By way of background, below is a brief summary of the PRS industry and the issues that arise for consumers.

PRS are typically goods and services that a consumer can buy by charging the cost to their fixed line or mobile telephone bill. At present PRS are mostly provided via premium rate telephone numbers (starting with the prefix 15XX) and short-codes (in the form 5XXXX) although recent developments make it possible for mobile network operators (MNO’s) to charge the cost of the RPS directly to the consumers bill (“direct carrier billing” or “direct to bill”) without the use of shortcodes. PRS usually offer information and entertainment services and some examples include quiz television services, chat-line services, ringtones, sports alerts, weather alerts, television voting and competitions. A more detailed description of the operation and promotion of PRS can be found in Annex B.

However, recent technological advances now make it possible for consumers to pay for goods and services, such as road tolls and vending machines, through PRS i.e. by charging the cost to their telephone account. In this context, PRS may be regarded as “distance and off-premises contracts”, particularly when the purchase involves a subscription of indefinite duration.

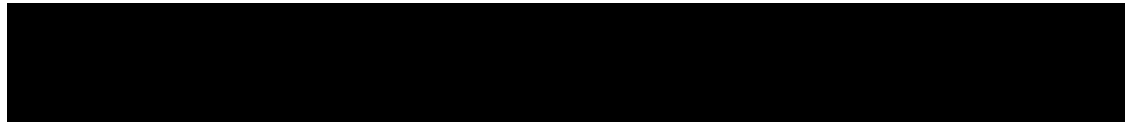
ComReg’s experience of regulating the PRS sector since the enactment of the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act, 2010 (“the PRS Act”) on 12 July, 2010 clearly demonstrates that many consumers of PRS were unwittingly subscribed to a PRS without their knowledge and expressed consent. The number of consumers who contacted ComReg’s customer care helpline were overwhelmingly raising issues related to subscription PRS.

In accordance with the requirements of the PRS Act, ComReg, following a consultation with PRS providers, other interested parties and, as it considered relevant, other regulatory bodies in the State, published a new Code of Practice (“new Code”) on 5 April 2012⁹.

[REDACTED]

[REDACTED]

⁹. This new Code was due to come into effect on 5 June 2012 but as a result of a last-minute application to the High Court on Friday 31 May by two PRS providers and industry trade association, the High Court granted a stay on the implementation of certain sections of the new Code, particularly those requiring consumers to provide a positive confirmation of their intention to subscribe to a PRS. On 25 July 2012, the High Court lifted the stay and the new Code came into force in its entirety.



The Consultation on the Directive on Consumer Rights

As can be seen from the detail provided above, PRS have many unique features that are above and beyond “normal” contracts between a trader and a consumer e.g. a consumer may purchase from a vending machine by sending an SMS to the PRS provider and receiving a unique PIN by reply. This PIN may then be entered via a keypad on the vending machine to complete the purchase. It is unclear if this scenario would be categorised as an off-premises or distance contract.

Additionally, the ubiquity of the mobile handset makes it possible for children to make purchases, which are not limited to content delivered to their handset, and may include a subscription of indefinite duration.

For these reasons, ComReg believes that there should be no exemptions for transactions below €50, which would have the effect of exempting most PRS.

Enforcement Powers - Questions 13-16

Introduction

ComReg considers that for the purposes of enforcement of these important consumer rights that it would be appropriate for it, as the expert sectoral regulator, and in line with ComReg's statutory functions and obligations, to be given enforcement powers, required by the Consumer Rights Directive, in relation to the ECN, ECS and PRS industries.

In this regard, ComReg notes the provisions of the Privacy Regulations, 2011, that empower both ComReg and the Office of the Data Protection Commissioner ("the ODPC") to monitor specific provisions of the Privacy Regulations. In this regard, please see the relevant provisions laid out in Annex C. Regulation 30 of the Privacy Regulations provides that, subject to the ODPC's powers of enforcement, it is a function of ComReg's to monitor compliance with certain provisions and to issue directions as may be necessary from time to time. This is to be done in consultation with the ODPC and ComReg has the power to bring civil actions against non-compliance with any direction it makes that are ultimately enforceable by the High Court. ComReg's specialist knowledge of the industries it regulates means that it is able to work successfully with the ODPC to ensure that end-users privacy rights are monitored and enforced appropriately.

Finally and in addition to the above, ComReg has shared powers with the National Consumer Agency in respect of certain matters and this is provided for at Regulation 32 of the Regulations. Please see Annex D.

Question 13

ComReg agrees that the ability to be able to bring enforcement actions by way of criminal or civil channels is an important flexibility to be incorporated into an enforcement regime.

In most enforcement situations that ComReg deals with, it has the flexibility, in its legislation, to choose between civil and criminal enforcement actions.

Question 14

ComReg would agree that for consumer law matters to have the effect of benefiting the consumer and actually giving effect to consumer's rights, speed and efficiency is required in dealing with such matters. It is unlikely that the majority of cases will qualify for entry onto the Commercial list and subsequently may get included on the general High Court list; this could lead to a protracted judicial process that may take years. Such a delay in bringing effect to consumer's rights could negate against the bringing of a case in the first place.

Question 15

ComReg would agree that consumers should be enabled, via contractual terms to be able to bring an action themselves in respect of a breach of Articles 19 and 22, to ensure their rights of redress. Although ComReg deals with individual consumer cases, it may be that not every consumer issue raised with the respective agency is

able to be dealt with on an individual case by case basis. So as to ensure that a consumer is not dependent on any respective agency bringing an enforcement action giving effect to their rights, a consumer should also be able to do so for themselves.

Regulation 14 of the Regulations is helpful in this regard as it contains the minimum contractual terms that are required in an end users contract. Please see Annex E.

Question 16

ComReg would agree with the proposition in the consultation that the burden of proof is on the trader and does not see any reason why this position, as is enshrined in the Consumer Protection Act 2007, should be changed for the purposes of the Consumer Rights Directive.

ANNEX A

Section 45 of the Communications Regulation Act, 2002, as amended.

(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, or

(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.

(2) An undertaking that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding €5,000.

(3) In carrying out an investigation under this Act to ascertain whether an undertaking may be contravening or may have contravened subsection (1), the Commission may conduct an audit of the undertaking's billing system.

(4) In this section—

'consumer' means a person to whom an electronic communications service or electronic communications product is supplied, otherwise than for the purpose of resupply;

'tariff of charges', in relation to an undertaking, includes any list setting out the prices charged by the undertaking for providing electronic communications services or electronic communications products to consumers.

ANNEX B

- Methods of Completing a PRS Contract

Consumers initiate the first interaction with a PRS in response to a promotion, which may be conveyed through a number of different media, as follows;

- Broadcast on TV or radio
- In print
- Online through the use of a PC (or Smartphone)
- Mobile handset – promotions may be;
 - “pushed” directly to selected consumers - i.e. sent directly by the PRS provider to designated handsets, where the recipients phone numbers have been stored on a database. These promotions are referred to as “WAP-push” messages,
 - Viewed by consumers who browse the mobile Internet. It is important to note that the make and model of consumer's handset is fundamentally important as to how PRS promotions are initially found by consumers and subsequently viewed. (This matter is set out in greater detail below)

ComReg has provided in the new Code that in order to subscribe to a PRS, consumers must, firstly, receive an SMS, which sets out in clear and prescribed text, the cost of the subscription. Secondly, consumers must reply to the SMS from the PRS provider with an SMS sent from their own handset, thereby providing their informed consent to subscribe and a verifiable audit trail of their confirmation SMS with their Mobile Network Operator (MNO). The new subscription process required under the new Code is illustrated below;

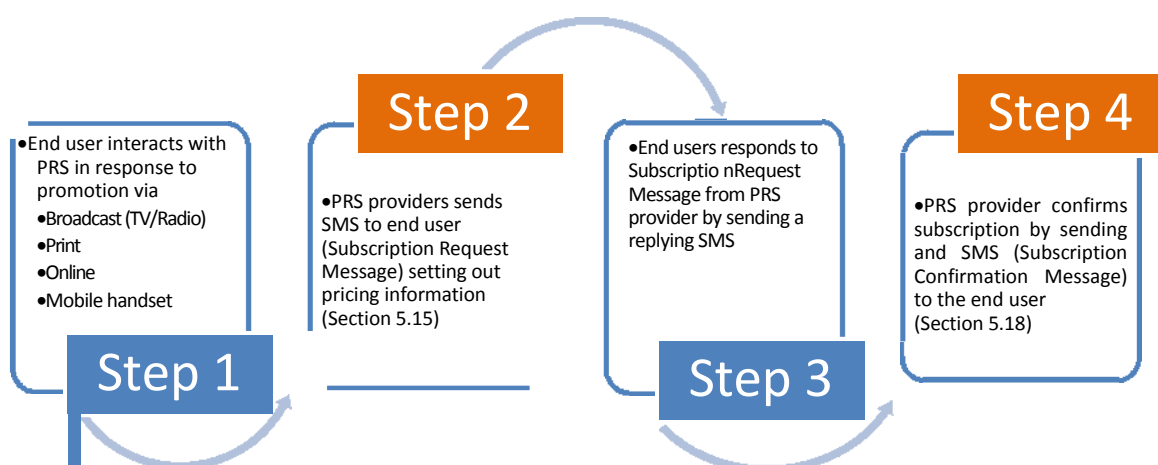


Figure 1: Double Opt-In requirements under new Code

These requirements are consistent with the provisions of Article 8.2 of the Directive but were the subject of the High Court challenge by certain PRS providers in June 2012. The High Court initially imposed a stay on the provisions which included Steps 2 and 3 above but this was subsequently lifted on 25 July 2012.

As illustrated above, there are several means by which a PRS contract, whether a single purchase or a subscription, may be completed, which are not specifically

- addressed in the Directive. It is, therefore, important that the transposition and enforcement of the Directive does not remove the basic principles that apply to Distance Contracts, including but not limited to,
- Information requirements to ensure consumer's prior express consent - in this regard the provisions of Article 8.2, 8.4 and 8.6¹⁰ are particularly relevant to PRS
- Provision of confirmation of contract on a durable medium - Article 8.7¹¹ is relevant in this regard

The consumers right of withdrawal – Article 9 refers

¹⁰ 2. If a distance contract to be concluded by electronic means places the consumer under an obligation to pay, the trader shall make the consumer aware in a clear and prominent manner, and directly before the consumer places his order, of the information provided for in points (a), (e), (o) and (p) of Article 6(1). The trader shall ensure that the consumer, when placing his order, explicitly acknowledges that the order implies an obligation to pay. If placing an order entails activating a button or a similar function, the button or similar function shall be labelled in an easily legible manner only with the words 'order with obligation to pay' or a corresponding unambiguous formulation indicating that placing the order entails an obligation to pay the trader. If the trader has not complied with this subparagraph, the consumer shall not be bound by the contract or order.

4. If the contract is concluded through a means of distance communication which allows limited space or time to display the information, the trader shall provide, on that particular means prior to the conclusion of such a contract, at least the pre-contractual information regarding the main characteristics of the goods or services, the identity of the trader, the total price, the right of withdrawal, the duration of the contract and, if the contract is of indeterminate duration, the conditions for terminating the contract, as referred to in points (a), (b), (e), (h) and (o) of Article 6(1). The other information referred to in Article 6(1) shall be provided by the trader to the consumer in an appropriate way in accordance with paragraph 1 of this Article.

6. Where a distance contract is to be concluded by telephone, Member States may provide that the trader has to confirm the offer to the consumer who is bound only once he has signed the offer or has sent his written consent. Member States may also provide that such confirmations have to be made on a durable medium.

¹¹ 7. The trader shall provide the consumer with the confirmation of the contract concluded, on a durable medium within a reasonable time after the conclusion of the distance contract, and at the latest at the time of the delivery of the goods or before the performance of the service begins. That confirmation shall include:

(a) all the information referred to in Article 6(1) unless the trader has already provided that information to the consumer on a durable medium prior to the conclusion of the distance contract; and

(b) where applicable, the confirmation of the consumer's prior express consent and acknowledgment in accordance with point (m) of Article 16.

ANNEX C

Relevant provisions from the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011:

Directions

29. The Regulator may, for the purpose of further specifying requirements to be complied with relating to an obligation imposed by or under these Regulations, issue directions to an undertaking to do or refrain from doing anything which the Regulator specifies in the direction.

Enforcement of Regulations by the Regulator

30. (1) Subject to the performance by the Commissioner of the functions under Regulation 17, it shall be a function of the Regulator to monitor compliance with Regulation 7, 8, 9, 10, 11, 12, 13, 14 or 15 and to issue such directions as may be necessary, from time to time, for their effective implementation. The Regulator, in consultation with the Commissioner, may also specify the form and any other requirements regarding the obtaining, recording and rescinding of consent of subscribers for the purpose of these Regulations.

(2) The functions of the Regulator under this Regulation shall be deemed to be included in the functions conferred on the Regulator under the Act of 2002.

(3) The Regulator may give directions to an undertaking to which Regulation 7, 8, 9, 10, 11, 12, 13, 14 or 15 applies requiring the undertaking to take specified measures or to refrain from taking specified measures for the purpose of complying with the provision.

(4) An undertaking to whom Regulation 7, 8, 9, 10, 11, 12, 13, 14 or 15 applies shall furnish the Regulator with such information as the Regulator may reasonably require for the purpose of its functions under these Regulations.

(5) Where the Regulator issues a direction under this Regulation, such direction shall be in writing, state the reasons on which it is based and be addressed to the undertaking concerned and, as soon as practicable, be sent or given in any of the following ways—

(a) by delivering it to the undertaking,

(b) by leaving it at the address at which the undertaking ordinarily carries on business,

(c) by sending it by pre-paid registered post addressed to the undertaking at the address at which the undertaking ordinarily carries on business,

(d) if an address for the service of directions has been furnished by the undertaking to the Regulator, by leaving it at, or sending it by prepaid registered post to, that address, or

(e) in any case where the Regulator considers that the immediate giving of the direction is required, by sending it, by means of a facsimile machine or by electronic mail, to a device or facility for the reception of facsimiles or electronic mail located at the address at which the undertaking ordinarily carries on business or, if an

address for the service of notices has been furnished by the undertaking, that address, but only if—

(i) the sender's facsimile machine generates a message confirming successful delivery of the total number of pages of the direction, or

(ii) the recipient's facility for the reception of electronic mail generates a message confirming receipt of the electronic mail, and it is also given in one of the other ways mentioned in subparagraphs (a) to (d).

(6) In paragraph (5) and Regulation 20, a company within the meaning of the Companies Acts is deemed to be ordinarily resident at its registered office and every other body corporate and every unincorporated body of persons shall be deemed to be ordinarily resident at its principal office or place of business.

Application to the High Court

31. (1) Where the Regulator finds that an undertaking has not complied with an obligation or requirement under these Regulations or a direction under Regulation 29, 30(1) or (3), the Regulator shall notify the undertaking of those findings and give the undertaking an opportunity to state its views or, if the non-compliance can be remedied, to remedy the non-compliance within a reasonable time limit as specified by the Regulator.

(2) The Regulator 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.

(3) The Regulator may amend or revoke any notification under this Regulation.

(4) Where, at the end of the period specified by the Regulator under paragraph (1), the Regulator is of the opinion that the undertaking concerned has not complied with the obligation, requirement or direction, the Regulator may, whether or not the non-compliance is continuing, apply to the High Court for such order as the Regulator considers appropriate including—

(a) a declaration of non-compliance,

(b) an order directing compliance with the obligation, requirement or direction,

(c) an order directing the remedy of any non-compliance with the obligation, requirement or direction, or

(d) an order as provided for in paragraph (8).

(5) The High Court may, on the hearing of the application referred to in paragraph (4), make such order as it thinks fit which may include—

(a) a declaration of non-compliance,

(b) an order directing compliance with the obligation, requirement or direction,

(c) an order directing the remedy of any non-compliance with the obligation, requirement or direction, or

(d) an order as provided for in paragraph (8), or refuse the application.

An order of the High Court compelling compliance may stipulate that the obligation, requirement or direction must be complied with immediately or may specify a reasonable time limit for compliance and may also stipulate appropriate and proportionate measures aimed at ensuring compliance.

(6) The High Court when dealing with an application under paragraph (4) may make such interim or interlocutory order as it considers appropriate.

(7) The High Court shall not deny any interim or interlocutory relief, referred to in paragraph (6), solely on the basis that the Regulator may not suffer any damage if such relief were not granted pending conclusion of the action.

(8) (a) An application for an order under paragraph (4) may be for, or include an application for, an order to pay to the Regulator such amount, by way of financial penalty, which may include penalties having effect for periods of non-compliance with the obligation, requirement or direction, as the Regulator may propose as appropriate in the light of the non-compliance or any continuing non-compliance. Such an application for an order in respect of a financial penalty for a period of non-compliance may be made even if there since has been compliance with the obligation, requirement or direction.

(b) In deciding on such an application, the High Court shall decide the amount, if any, of the financial penalty which should be payable and shall not be bound by the amount proposed by the Regulator.

(c) Any financial penalty ordered by the High Court to be paid by an undertaking against whom an order may be sought shall be retained by the Regulator as income.

(d) In deciding what amount, if any, should be payable, the High Court shall consider the circumstances of the non-compliance, including—

- (i) its duration,
- (ii) the effect on consumers, users and other operators,
- (iii) the submissions of the Regulator on the appropriate amount, and
- (iv) any excuse or explanation for the non-compliance.

Appeals

32. Part 2 of the Framework Regulations also applies to any user or any undertaking that is affected by a decision, designation, determination, specification, requirement, direction, notification and notice or any other act of an equivalent nature of the Regulator under these Regulations.

Co-operation between Commissioner and Regulator

33. The Commissioner and the Regulator shall, in the performance of their functions under these Regulations, cooperate with and provide assistance to each other.

ANNEX D

Regulation 32 of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011 (The Universal Service Regulations)

Enforcement by National Consumer Agency

32. (1) The National Consumer Agency, in a case of non-compliance with Regulation 18(3) or (5), may issue a direction to the undertaking concerned to comply with the Regulation and any stipulations contained in the direction.

(2) The National Consumer Agency may appoint a person to be an authorized officer for the purpose of Regulation 18(3) or (5).

(3) Section 39 (2), (3), (4) and (5) and sections 40 and 41 of the Act of 2002 apply in respect of an authorised officer appointed under paragraph (2) and, for the purpose of this Regulation, references to the Commission for Communications Regulation or Commission in those provisions should be read as including references to the National Consumer Agency.

ANNEX E

Regulation 14 of the the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011 (The Universal Service Regulations)

Contracts

14. (1) An undertaking that provides to consumers, and other end-users so requesting, connection to a public communications network or publicly available electronic communications services shall do so in accordance with a contract that complies with paragraph (2).

(2) A contract referred to in paragraph (1) shall specify in a clear, comprehensive and easily accessible form, at least—

(a) the identity and address of the undertaking,

(b) the services provided including, in particular—

(i) whether or not access to emergency services and caller location information is being provided and any limitations on the provision of emergency services under Regulation 20,

(ii) information on any other conditions limiting access to, or use of, services and applications where such conditions are permitted under national law in accordance with European Union law,

(iii) the minimum service quality levels offered, namely, the time for the initial connection and, where appropriate, other quality of service parameters as defined by the Regulator from time to time,

(iv) information on any procedures put in place by the undertaking to measure and shape traffic so as to avoid filling or overfilling a network link and information on how those procedures could impact on service quality,

(v) the types of maintenance service offered and customer support services provided, as well as the means of contacting those services, and

(vi) any restrictions imposed by the provider on the use of terminal equipment supplied,

(c) where an obligation exists under Regulation 19, the subscriber's options as to whether or not to include his or her personal data in a directory and the data concerned,


(d) details of prices and tariffs, the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained, payment methods offered and any differences in costs due to payment method,

(e) the duration of the contract and the conditions for renewal and termination of services and of the contract, including—

(i) any minimum usage or duration required to benefit from promotional terms,

(ii) any charges related to portability of numbers and other identifiers, and

(iii) any charges due on termination of the contract including any cost recovery with respect to terminal equipment,

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- (f) any compensation and refund arrangements which apply if contracted service quality levels are not met,
 - (g) the means of initiating procedures for settlement of disputes in accordance with Regulation 27, and
 - (h) the type of action that might be taken by the undertaking in reaction to security or integrity incidents or threats and vulnerabilities.

(3) The Regulator may require that a contract referred to in paragraph (1) shall include any information, which may be provided by relevant public authorities for the purpose of a contract under this Regulation on the use of electronic communications networks and services to engage in unlawful activities or to disseminate harmful content and on the means of protection against risks to personal security, privacy and personal data, referred to in Regulation 15(8) and relevant to the service provided.

(4) An undertaking referred to in paragraph (1) shall, not less than one month prior to the date of implementation of any modification to the contractual conditions proposed by the undertaking, notify its subscribers to that service of—
(a) the proposed modification in the conditions of the contract for that service, and
(b) their right to withdraw without penalty from such contract if they do not accept the modification.

(5) The Regulator may specify the format of notifications referred to in paragraph (4).

(6) A subscriber referred to in paragraph (4) may withdraw from his or her contract with the undertaking or provider without penalty if he or she does not accept a proposed modification referred to in paragraph (4).

(7) An undertaking that fails to comply with the requirements of paragraph (1) or (4) commits an offence.

(8) In proceedings for an offence under paragraph (7) it is a defence to establish that—
(a) reasonable steps were taken to comply with the relevant requirement, or
(b) it was not possible to comply with the relevant requirement