



## Consumer Protection Act 2007

### Compliance Notice (Section 75)

Company Secretary

UPC Communications Ireland Limited

Building P2

Eastpoint Business Park

Clontarf

Dublin 3

Competition and Consumer

Protection Commission

4 Harcourt Rd

Dublin 2

I, Aonghus O'Cuilinn, an authorised officer of the Competition and Consumer Protection Commission, duly authorised under Section 35 of the Competition and Consumer Protection Act 2014, hereby give you notice, pursuant to Section 75(2) of the Consumer Protection Act 2007, that I am of the opinion that you have contravened an enactment specified in Schedule 5 to the Consumer Protection Act 2007.

The contravention herein relates to the UPC website, [www.upc.ie](http://www.upc.ie) and another means of distance communication (E-Mail) used by UPC to conclude a distance contract between UPC and a consumer.

*Statement of alleged contravention:*

That you UPC Communications Ireland Limited, a trader, as of 10<sup>th</sup> March 2015 and 13<sup>th</sup> May 2015, for the purposes of the European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013 (the relevant enactment specified in Schedule 5 to the Consumer Protection Act 2007, as amended by Regulation 33(f) of S.I. No. 484 of 2013) (hereinafter 'the Regulations'), have failed to give or make available the following information to a consumer before he or she is bound by a distance contract:

1. Information on the right to cancel as set out by paragraph (l) of Schedule 2 to the Regulations in plain and intelligible language and in a way appropriate to the means of distance communication used. [Regulation 10(1)(a)]

*My opinion*

I am of the opinion that by failing to give or make available such information as required by Regulation 10(1)(a) you have contravened Regulation 10(1) of S.I. No. 484 of 2013, an enactment specified in Schedule 5 to the Consumer Protection Act 2007. The contravention of Regulation 10(1) is an offence as described by Regulation 10(10).

The reasons for my opinion in this regard are based on the following:

1. Your company, UPC Communications Ireland Limited (hereinafter 'UPC'), as a legal person can be described as a 'trader' for the purposes of the Regulations.
2. Your company, UPC, uses E-Mail and its website to provide a facility for consumers to conclude distance contracts with UPC. A 'distance contract' is described in Regulation 2(1) as meaning 'a contract concluded between a trader and a consumer under an organised distance sales or service provision scheme without the simultaneous physical presence of the trader and the consumer, and with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded'.
3. I believe that the contracts you conclude with consumers through the website and E-Mail can be classified as 'distance contracts' to which Part 3 of the Regulations apply. Part 3 specifies mandatory information requirements that a trader must provide to a consumer before they are bound by a distance contract.
4. As this is a distance contract a right of cancellation applies pursuant to Part 4, Regulation 14. The trader is required to give or make available to consumers information on their right to cancel as set out in paragraph (I) of Schedule 2 before they are bound by a distance contract. Such information must include the conditions, time limits and procedures for exercising that right in accordance with Regulation 17. Such information must be expressed in plain and intelligible language and in a way appropriate to the means of distance communication used.
5. I have reviewed UPC's website and the Terms and Conditions which can be accessed by consumers using the site. In particular I have reviewed the cancellation rights that UPC has provided in these Terms and Conditions. I have also reviewed the additional documentation provided by UPC relating to their other means of distance communication. Based on these reviews, I do not believe that the information specified in paragraph (I) of Schedule 2 has been provided to consumers before they

are bound by a distance contract in plain intelligible language and in a way appropriate to the means of distance communication used.

*Compliance direction and requirements*

**UPC Communications Ireland Limited, a trader, is hereby directed to comply with the obligations as provided for under Regulation 10(1)(a) of S.I. No. 484 of 2013 by giving or making available to the consumer before the consumer is bound by a distance contract, the information on the right to cancel as set out in paragraph (l) of Schedule 2 to the Regulations in plain and intelligible language and in a way appropriate to the means of distance communication used.**

1. You must comply with this compliance direction and requirements by **10<sup>th</sup> June 2015**.
2. You may appeal this Compliance Notice to the District Court in the district court district in which the notice is served **within 14 days after its service**.
3. The form and manner of such an appeal is that to be found in the District Court Rules, Schedule D, Form No: 100.1. This is available from the registrar at your local District Court office.
4. In the event that you decide to appeal the Compliance Notice, you must, at the same time, notify the Competition and Consumer Protection Commission at the above address. You must also notify the Competition and Consumer Protection Commission of the grounds for the appeal.
5. If an appeal is not made in accordance with Section 75 of the Consumer Protection Act 2007 and within 14 days after service of the Compliance Notice, this notice will be treated as not disputed, you will be deemed to have accepted the notice and have agreed to comply with the compliance direction and requirements and any failure or refusal to so comply is an offence and, on summary conviction, you will be liable to the fine and penalties set out in Part 5, Chapter 4 of the Consumer Protection Act 2007.

Signature: Aonghus O'Cuilinn

Aonghus O'Cuilinn

Authorised Officer

Competition and Consumer Protection Commission

Date: 15 May 2015

This information is intended for information purposes only and does not constitute part of the Compliance Notice.

### Compliance Notice Notes

#### Consumer Protection Act 2007 (CPA)

1.	Section 75(6) CPA requires a person, when lodging an appeal, to, at the same time, notify the Competition and Consumer Protection Commission of the appeal and the grounds for the appeal. The Commission is entitled to appear, be heard and adduce evidence on the hearing of the appeal.
2.	If on appeal the compliance notice is not cancelled, the notice takes effect on the later of the following: <ul style="list-style-type: none"> <li>a) the day after the day on which the notice is confirmed or varied on appeal,</li> <li>b) if the appeal is withdrawn by the appellant the day after the day it is withdrawn,</li> <li>c) the day specified in the notice.</li> </ul>
3.	If there is no appeal under Section 75(5) CPA, the compliance notice takes effect on the later of the following: <ul style="list-style-type: none"> <li>a) 14 days after the notice is served.</li> <li>b) the day specified in the notice.</li> </ul>
4.	An Authorised Officer may: <ul style="list-style-type: none"> <li>a) withdraw a compliance notice at any time, or</li> <li>b) if no appeal is made or pending under Section 75(5) CPA, extend the date by which the recipient is to comply with the compliance direction and requirements.</li> </ul>
5.	Withdrawal of a compliance notice does not prevent the service of another compliance direction or requirement specified in a compliance notice, whether it relates to the same matter or a different matter.
6.	Under Section 75(13) CPA, if a compliance notice takes effect, the Commission is required to publish the compliance notice, or cause it to be published in any form or manner it considers appropriate.
7.	Section 86 CPA requires the Commission to maintain a "Consumer Protection List" of names and addresses together with a description of their trade, business or profession in respect of any enforcement actions taken by the Commission. This includes persons against whom compliance notices have taken effect.
8.	Any person who, without a reasonable excuse, fails to comply with a direction or

	<p>requirement specified in a compliance notice commits an offence and, on summary conviction, is liable to the fines and penalties set out in Section 79 CPA.</p>
9.	<p>Section 79(1) CPA provides that a person guilty of an offence under the Consumer Protection Act 2007 is liable on summary conviction to the following fines and penalties:</p> <ul style="list-style-type: none"> <li>a) a fine not exceeding €3000 or up to 6 months imprisonment or both,</li> <li>b) on any subsequent summary conviction a fine not exceeding €5000, or imprisonment for a term not exceeding 12 months or both.</li> </ul> <p>If, after being convicted for an offence, a person continues to contravene the requirement or prohibition to which the offence relates, the person is guilty of a further offence on each day the contravention continues and for each such offence is liable on summary conviction to a fine not exceeding €500.</p>
10.	<p>According to section 75(14) the issuing of this notice does not prevent the commencement of proceedings for an offence.</p>