



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 are engaging in a misleading commercial practice under Part 3 of the Consumer Protection Act 2007, such a misleading commercial practice being a prohibited act or practice as defined by Section 67(a) of the Consumer Protection Act 2007.

The contravention contained herein relates to the UPC website, www.upc.ie.

Statement of alleged contravention:

That you UPC Communications Ireland Limited, a trader, as of 10th March 2015, for the purposes of Section 43(2) of the Consumer Protection Act 2007, are engaging in a misleading commercial practice by misleading consumers in relation to the legal rights of a consumer, such being a matter set out in Section 43(3)(j) of the Consumer Protection Act 2007, and that such a misleading practice would be likely to cause the average consumer to make a transactional decision that the average consumer would not otherwise make.

My opinion

I am of the opinion that your website is misleading consumers in relation to the legal rights that a consumer may exercise in order to cancel a contract for the supply of digital content not supplied on a tangible medium during the cancellation period, such a practice being a prohibited commercial practice for the purposes of the Consumer Protection Act 2007.

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 Consumer Protection Act 2007.
2. Your company, UPC, has a website which provides a facility for consumers to enter into distance contracts with UPC. A 'distance contract' is described in Regulation 2(1) of the European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013 (hereinafter 'the Regulations') 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 enter into with consumers through the website can be classified as 'distance contracts' to which Part 4 of the Regulations apply.
4. The UPC general terms and conditions at Para 21.4 state the following: 'You acknowledge and agree that once an event has been ordered, the Event has commenced and cannot be cancelled, you therefore agree to waive any cancellation rights that you might have under the European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communication) Regulations 2001 as amended or any other legislation.'
5. The UPC general terms and conditions at Para 21 refer to 'On Demand TV and Pay Per View Programming'. I believe that contracts for such products are contracts for the supply of digital content not supplied on a tangible medium.
6. As this is a distance contract a right of cancellation applies pursuant to Regulation 14. In the case of a contract for the supply of digital content not supplied on a tangible

medium, Regulation 15(2)(b) provides that the cancellation period expires after 14 days from the day on which the contract is concluded. Within that time a consumer may cancel the contract without having to give any reason. Regulation 13(2)(b) provides that this right to cancel does not apply to contracts for the supply of digital content not supplied on a tangible medium where the performance has begun with the consumer's prior express consent and with the consumer's acknowledgement that he or she thereby loses the right to cancel the contract.

7. I believe that the said Para 21.4 is misleading as to the legal rights of a consumer for the following reasons:

- a. If an event has been ordered and has not commenced a consumer may exercise a right of cancellation within the cancellation period.
- b. If an event has been ordered and has commenced before the expiry of the cancellation period without the consumer's prior express consent the consumer will not be liable for the cost of that supply.
- c. If an event has commenced with the consumer's express consent before the expiry of the cancellation period and the trader fails to provide confirmation of the consumer's acknowledgement of the loss of the right to cancel the contract, the consumer will not be liable for the cost of that supply.
- d. The European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communication) Regulations 2001 (SI No. 207/2001) have been revoked since 13th June 2014 by Regulation 40(b).
- e. The right of cancellation is provided for under the Regulations. The exercise of the right of cancellation and the loss of such a right are specifically provided for. There are no provisions in the Regulations to waive such rights in the manner contemplated by Para 21.4.

Compliance direction and requirements

1. **UPC Communications Ireland Limited, a trader, is hereby directed to cease engaging in the prohibited commercial practice as outlined in this Compliance Notice.**
 2. **UPC Communications Ireland Limited, a trader, is hereby required to amend its general terms and conditions in order to accurately set out the legal rights that consumers can avail of under the European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013 (S.I. No. 484 of 2013) when contracting for the supply of digital content not supplied on a tangible medium.**
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1. You must comply with this compliance direction and requirements by **20th May 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: 24 April 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)

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| 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"> a) the day after the day on which the notice is confirmed or varied on appeal, b) if the appeal is withdrawn by the appellant the day after the day it is withdrawn, c) the day specified in the notice. |
| 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"> a) 14 days after the notice is served. b) the day specified in the notice. |
| 4. | An Authorised Officer may: <ul style="list-style-type: none"> a) withdraw a compliance notice at any time, or 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. |
| 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. |

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| 8. | Any person who, without a reasonable excuse, fails to comply with a direction or 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. |
| 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"> a) a fine not exceeding €3000 or up to 6 months imprisonment or both, b) on any subsequent summary conviction a fine not exceeding €5000, or imprisonment for a term not exceeding 12 months or both. <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. | According to section 75(14) the issuing of this notice does not prevent the commencement of proceedings for an offence. |