



Consumer Protection Act 2007

Compliance Notice (Section 75)

Company Secretary
Vodafone Ireland Limited
Mountainview
Leopardstown
Dublin 18

Competition and Consumer
Protection Commission
4 Harcourt Rd
Dublin 2

I, Vivienne Ryan, 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 website, www.vodafone.ie.

Statement of alleged contravention:

That you, Vodafone Ireland Limited, a trader, as of 27th May 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 Vodafone Ireland Limited's website, www.vodafone.ie, is misleading consumers in relation to the legal rights that a consumer may exercise in order to cancel distance contracts, 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, Vodafone Ireland Limited (hereinafter 'Vodafone Ireland'), as a legal person can be described as a 'trader' for the purposes of the Consumer Protection Act 2007.
2. Your company, Vodafone Ireland, has a website which provides a facility for consumers to enter into distance contracts with Vodafone Ireland. 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 Vodafone Ireland enters into with consumers through the website can be classified as 'distance contracts' to which Part 4 of the Regulations apply.
4. As this is a distance contract a right of cancellation applies pursuant to Part 4, Regulation 14. How a consumer exercises that right of cancellation is detailed in Regulation 17.
5. My inspection of your website revealed the following examples of misleading information:

- a. Vodafone's returns policy, available at www.vodafone.ie/df/assistance/, states as follows:

"Our returns policy

Less than 7 days

Get a full refund on any mobile broadband modem if you return it within 7 working days of receipt. Just call 1907 first to let them know it's on its way back.

Less than 14 days

Changed your mind? No problem – you can get a full refund on a phone, tablet or accessory if you return it, unused, within 14 working days of receipt. This is in accordance with Distance Selling regulations. [...]

How to arrange returns up to 14 ... days:

- Online returns form for accessories, pay as you go phones & tablets, mobile broadband modems
 - Bill pay customers: please call us on 1907 to arrange a return ...”
- b. The terms and conditions of the Vodafone online shop, available at www.vodafone.ie/terms/shop, state *inter alia*:

“Making a purchase

10. Once we give you online confirmation of your purchase your order cannot be cancelled at that stage. However, we do operate a returns policy compliant with the Distance Sales Regulations (see below, further information on the returns policy is provided on the ordering page). [...]

11. When you submit details to make a purchase, a credit card check is carried out by our third party credit card payment agent with our partner bank. We will send you an email confirming receipt of your order, this email shall not constitute an acceptance of your order. Your order will not be accepted and an agreement concluded between us and you until the relevant Goods have been shipped to you. Your credit card will be charged with the price of the Goods.

12. We may reject your order if the partner bank refuses to authorise your credit card for payment, if Goods are out of stock or for any other legitimate reason. You will be advised if this occurs.

13.1 Making an Offer to purchase - We promote a range of Goods for sale via the Online Store, these promotions constitute invitations to treat and they are not an offer from us to you. Any order that you submit for Goods represents an offer by you to contract with us. We reserve the right to accept or reject any such offer from you.

13.2 Accepting the Offer - We will confirm our acceptance to you by sending you an e-mail that confirms that the Products have been dispatched (Dispatch Confirmation). The Contract between us will only be formed when we send you the Dispatch Confirmation. [...]

Returns

18. Vodafone operates a returns policy which is compliant with the Distance Sales Regulations. Subject to you not using any service supplied to you as part of your purchase (e.g. buying a handset and using it to make calls, send text or picture messages, etc) the Goods may be returned within 14 days for a full refund (within 14 days). Further details of the returns policy are supplied on the online ordering page. We can only refund return postage costs if a return is as a result of our error or for the return of defective products. If you are making a return you should print the returns form from the website, complete the form

and send it to us with your return. Please note that all returns will be sent to our quality department for testing. Any handset which has been used to avail of mobile services will not be accepted as a return under the Distance Sales regulations and will be returned to you within 7 working days (this does not affect your statutory rights under the Sale Of Goods Acts).

19. Please note if returning Goods we require the original invoice or your full name and address. Without this information we will be unable to identify a returned package as yours and we will not be able to process the return/refund.

Bill Pay Specific Conditions

[...]

Cancellation: Vodafone operates a cancellation policy which is compliant with the Distance Sales Regulations: Subject to you not using any service supplied to you as part of your purchase (e.g., buying a handset and using it to make calls, send text or picture messages, etc) the Goods may be returned and the service cancelled within 14 working days for a full refund of the Goods."

- c. When concluding a distance contract with Vodafone for bill pay services a consumer is required to confirm the following Terms and Conditions:

"I understand that I am entering into a binding contract with Vodafone. [governed by the Vodafone terms and conditions for bill pay services available at www.vodafone.ie/terms/paymonthly/imdex.jsp]

I understand that for the first 12 months I will be unable to move to a package of lower denomination.

I have read and accept the terms and conditions [of the Vodafone online shop]"

- d. The General Terms and Conditions (from 13 June 2011) set out in Vodafone's terms and conditions for bill pay services provide no information on cancellation rights under the CRD Regulations. With regard to termination, they state:

"The term of this Contract shall be for the minimum period set out on the application form or in the absence of any period on the application for a period of 12 months (the "Minimum Period"). The Minimum Period will be extended for a further period of 12 months or the period set out on your original application form following any upgrade of your equipment or switch to a new plan or tariff. This Contract may be terminated by either party giving to the other at least 28 days written notice or, in the case of porting, on the completion of the porting process. In the absence of such notice of termination this Contract shall be deemed to continue on from month to month based on these terms and conditions following expiry of the Minimum Period."

6. I believe that the above information provided to a consumer seeking to conclude a distance contract on the Vodafone Ireland website www.vodafone.ie is misleading as to the legal rights of a consumer for the following reasons:

- a. The European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communication) Regulations 2001 (S.I. No. 207/2001), referred to on the Vodafone Ireland website as the Distance Sales or Distance Selling Regulations, have been revoked since 13th June 2014 by Regulation 40(b).
- b. For distance contracts, the expiry of the cancellation period applies pursuant to Regulation 15. In the case of sales contracts, the cancellation period expires 14 days after the date on which the consumer takes physical possession of the goods. In the case of a service contract, the cancellation period expires 14 days after the date of conclusion of the contract. The information that you provide in relation to this cancellation period is not in accordance with Regulation 15 and is therefore, in my opinion, misleading.
- c. Information as to the conditions, time limit and procedures for exercising the right of cancellation is not in accordance with Regulation 17 and is therefore, in my opinion, misleading.
- d. Information concerning the return of goods in the event of a cancellation of a sales contract is not in accordance with Regulation 20 and is therefore, in my opinion, misleading.
- e. Information on the return of goods in the event of cancellation does not reflect the consumer's rights pursuant to Regulation 21 and is therefore, in my opinion, misleading.
- f. As part of the purchasing process the consumer is required to indicate that he or she understands that they are "entering into a binding contract with Vodafone". However, a subsequent hyperlink to the terms and conditions of the Vodafone online shop contradict this by indicating that no contract is concluded until the relevant goods have been shipped. This, in my opinion, is misleading as to when the contract is concluded thus misleading consumers as to when the cancellation period expires [Regulation 15].

Compliance direction and requirements

1. **Vodafone Ireland Limited, a trader, is hereby directed to cease engaging in the prohibited commercial practice as outlined in this Compliance Notice.**
2. **Vodafone Ireland Limited, a trader, is hereby required to amend the information available to consumers on its website regarding consumer cancellation rights and associated trader obligations so that it accurately reflects the legal rights of consumers under the European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013 (S.I. No. 484 of 2013).**

1. You must comply with this compliance direction and requirements by **5th August 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: Vivienne Ryan

Vivienne Ryan

Authorised Officer

Competition and Consumer Protection Commission

Date: 3rd July 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"> 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.

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.