

CO-OPERATION AGREEMENT
BETWEEN
THE COMPETITION AND CONSUMER PROTECTION COMMISSION
AND
THE COMMISSION FOR COMMUNICATIONS REGULATION

This Agreement is made on the 11th day of November 2015 pursuant to section 19 of the Competition and Consumer Protection Act 2015

Between

The Competition and Consumer Protection Commission of P.O. Box 12585, Dublin 1

And

The Commission for Communications Regulation of Block DEF, Abbey Court, Irish Life Centre, Lower Abbey Street, Dublin 1.

1. Definitions

1.1. In this Agreement the following definitions shall apply:

“Agreement” means all provisions of this Agreement, as from time to time amended by agreement between the Parties in accordance with Clause 11 of the Agreement;

“CCPC” means the Competition and Consumer Protection Commission;

“Communications Regulation Act 2002” means the Communications Regulation Act 2002 (No. 20 of 2002), as amended and as may further be amended from time to time;

“Competition and Consumer Protection Act 2014” means the Competition and Consumer Protection Act 2014 (No. 29 of 2014), as may be amended from time to time;

“ComReg” means the Commission for Communications Regulation;

“Consumer Protection Act 2007” means the Consumer Protection Act 2007 (No. 19 of 2007), as amended and as may further be amended from time to time;

“CRD Regulations” means the European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013 (S.I. No. 484 of 2013), as may be amended from time to time;

“Electronic Communications Network(s) (ECN)” has the same meaning as under Regulation 2 of the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011), as may be amended from time to time;

“Electronic Communications Service(s) (ECS)” has the same meaning as under Regulation 2 of the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011), as may be amended from time to time;

“Party” means the CCPC and/or ComReg, and “Parties” shall be construed accordingly;

“Premium Rate Services (PRS)” has the same meaning as under Section 3 of the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010, as may be amended from time to time;

“Specific Regulations” means the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011), the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011 (S.I. No. 335 of 2011), the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011 (S.I. No. 334 of 2011), the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011 (S.I. No. 337 of 2011) and the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (S.I. No. 336 of 2011), as may each be amended from time to time;

“Unfair Terms Regulations” means the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 (S.I. No. 27 of 1995), as amended by *inter alia* the European Communities (Unfair Terms in Consumer Contracts) (Amendment) Regulations 2014 (S.I. No. 336 of 2014) and as may further be amended from time to time.

- 1.2. Terms not defined in this Agreement shall, unless the contrary intention appears, have the same meaning as given to such terms under the Consumer Protection Act 2007, the Communications Regulation Act 2002, the CRD Regulations and/or the Unfair Terms Regulations, as the case may be.

2. Purposes of this Agreement

- 2.1. **WHEREAS** the purposes of this Agreement, relating to ECN/ECS/PRS, are:

- (i) To facilitate co-operation between the Parties in the performance of their respective functions in so far as they relate to consumer protection and welfare issues;
- (ii) To avoid duplication of activities by the Parties in so far as consumer protection and welfare issues are concerned;
- (iii) To ensure, as far as practicable, consistency between decisions made or other steps taken by the Parties in so far as any part of those decisions or steps consists of or relates to consumer protection and welfare issues, or issues of concern to consumers;
- (iv) To enable the CCPC to be consulted, where ComReg considers it relevant, in relation to any decisions by ComReg which affect consumers pertaining to ECN / ECS / PRS;
- (v) To enable ComReg to be consulted, where the CCPC considers it relevant, in relation to any decisions by the CCPC which affect consumers pertaining to ECN / ECS / PRS; and
- (vi) Where appropriate, to enable the Parties to conduct joint studies or analyses of matters relating to consumer protection and welfare, or issues of concern to consumers.

2.2. **WHEREAS** the Parties wish to establish a framework which will facilitate a relationship between them in the performance of their respective functions in so far as they relate to consumer protection and welfare issues in connection with (i) the provision of ECS, ECN or associated facilities, and (ii) the provision of PRS.

2.3. **WHEREAS**, in particular, the Parties wish to facilitate the performance of their concurrent functions under (i) the CRD Regulations and (ii) the Unfair Terms Regulations.

2.4. **WHEREAS** the Parties also wish to enter into this Agreement in order to regulate the supply of information between them and to maintain controls on the uses of and the confidentiality of any information so shared.

THE PARTIES NOW AGREE AS FOLLOWS, PURSUANT TO THE PROVISIONS OF SECTION 19(1) OF THE COMPETITION AND CONSUMER PROTECTION ACT 2014.

3. Statutory Functions of the Parties

3.1. The CCPC was established under Part 2, Chapter 1 of the Competition and Consumer Protection Act 2014. ComReg was established under Part 2 of the Communications Regulation Act 2002.

3.2. In so far as the subject matter of this Agreement is concerned, the respective statutory functions of the CCPC and ComReg are summarised below.

The CCPC

3.3. The CCPC is charged with (i) promoting and protecting the interests and welfare of consumers; (ii) enforcing the "relevant statutory provisions" (within the meaning of Section 2(1) of the

Consumer Protection Act 2007); and (iii) encouraging compliance with the said relevant statutory provisions.

ComReg

- 3.4. ComReg has the function, in relation to PRS, of ensuring compliance by PRS providers with their obligations in relation to the provision, content and promotion of premium rate services, and carrying out investigations into matters relating to the provision, content and promotion of PRS. ComReg has an objective, in relation to PRS, of protecting the interests of end users of PRS.
- 3.5. ComReg has the function, in relation to ECN / ECS, of ensuring compliance by ECN / ECS undertakings with obligations in relation to the supply of and access to ECN / ECS and the transmission of such services on such networks, and carrying out investigations into matters relating to the supply of, and access to, ECN / ECS and the transmissions of such services on such networks. ComReg has objectives, in relation to ECN / ECS, of promoting the interests of users within the Community including: ensuring that all users have access to a universal service; ensuring a high level of protection for consumers in their dealings with suppliers, in particular by ensuring the availability of simple and inexpensive dispute resolution procedures carried out by a body that is independent of the parties involved; contributing to ensuring a high level of protection of personal data and privacy; promoting the provision of clear information, in particular requiring transparency of tariffs and conditions for using publicly available electronic communications services; encouraging access to the internet at reasonable cost to users; addressing the needs of specific social groups, in particular disabled users, and; ensuring that the integrity and security of public communications networks are maintained.

Concurrent Functions of the Parties

- 3.6. As regards PRS and ECN / ECS, the CCPC and ComReg have certain concurrent enforcement functions under the CRD Regulations and the Unfair Terms Regulations ("Concurrent Functions").

4. General Co-operation

- 4.1. The Parties will seek to maintain strong and constructive relationships with each other in order to promote and protect the best interests of consumers of PRS and ECN / ECS. The Parties recognise the importance of close co-operation and communication between them for the purposes of using their respective investigative and enforcement powers under all applicable legislation relating to consumer protection and welfare issues in connection with (i) the provision of ECS, ECN or associated facilities, and (ii) the provision of PRS. In particular, the Parties recognise the importance of close co-operation and communication between them in the performance of their Concurrent Functions.

5. Information Sharing and Consultation

5.1. The Parties have agreed, to the extent permissible by law, to observe the following principles:

- (i) To seek to avoid duplication of activities as regards the Concurrent Functions.
- (ii) To consult at an early stage on any issues relating to the CRD Regulations in respect of ECN / ECS / PRS that might have implications for either Party.
- (iii) To consult at an early stage on any issues relating to the Unfair Terms Regulations in respect of ECN / ECS / PRS that might have implications for either Party.
- (iv) To achieve consensus between the Parties as to which Party is best placed to lead and/or act in a particular ECN / ECS / PRS compliance case involving the exercise of functions under the CRD Regulations or the Unfair Terms Regulations.
- (v) To agree consistency of approach and to avoid confusion or misunderstanding as to their respective roles.
- (vi) To seek to exercise their respective responsibilities in a complementary fashion to address issues and problems that affect consumers of PRS and ECN / ECS. This approach will also be extended to the exercise of their Concurrent Functions.
- (vii) To consult at an early stage on any issues relating to the ECN / ECS / PRS sectors that might have implications for either Party.
- (viii) Where considered appropriate by both Parties, to conduct joint studies or analyses of matters relating to consumer protection and welfare, or issues of concern to consumers.

5.2 With a view to observing the principles set out in Clause 5.1 above, the Parties will ensure that there is an appropriate and timely flow of information between them with respect to issues of common concern relating to consumer protection and welfare issues. This exchange of information will take place as the circumstances demand. However, should either Party request a meeting in relation to any matter pertaining to consumer protection or welfare issues, the other Party will facilitate such a request either at the time sought by the requesting party or at the earliest available opportunity thereafter.

6. Confidentiality/Permissible Uses

6.1. Each Party will, upon request, as far as practicable and where it agrees that the request is reasonable, furnish to the other Party, information in its possession of the kind specified in a request for information. The request shall state that the information is required by the requesting Party for the purpose of the performance of its functions, subject to any legal constraints outlined below.

6.2. Requests for information shall be made in writing (for the avoidance of doubt, "writing" includes electronic mail). In cases of urgency, requests for information may at first instance be made

orally, and the responses given orally, provided that both the request and response are subsequently confirmed in writing.

- 6.3. The Party requesting the information may ask that the request itself be considered to be confidential.
- 6.4. The Parties recognise that the exchange of information between them will be an important contribution to the efficient and effective discharge of their duties in promoting and protecting the interests and welfare of consumers of PRS, ECN and ECS and in the exercise of their respective functions under the CRD Regulations and the Unfair Terms Regulations. Both Parties are equally conscious of the need for discretion and for the adoption of procedures that protect the following:
 - (i) The confidential nature of certain information, and
 - (ii) The confidentiality obligations of ComReg under the Specific Regulations and under any other applicable consumer protection legislation relating to (i) the provision of ECS, ECN or associated facilities, and (ii) the provision of PRS.
- 6.5. The Parties consider it prudent for them to commit to a level of confidentiality between them as regards the exchange of non-public information. They are able to assist each other through the sharing of certain information as provided for under the relevant statutory provisions.
- 6.6. Where one Party (the "Requesting Party") requests information from the other Party (the "Requested Party"), the Requesting Party shall state in its request the purpose of such a request and the proposed use by the Requesting Party of such information.
- 6.7. Where one Party provides information to another Party (whether pursuant to a request or otherwise), the Party receiving such information shall use the information only for the purpose of the performance by it of any of its functions, and only where agreed with, or consented to, by the Party providing the information. If it has not already done so under Clause 6.6, the Party receiving the information shall inform the Party which has provided the information of the purpose for the information request. The Requesting Party may use the shared information for the purpose of the performance by it of any of its functions, other than the purpose expressed in the request, only with the prior written approval of the Requested Party. Such approval shall not be unreasonably withheld or delayed.
- 6.8. A Party shall not disclose to a third party non-public information received from the other Party (whether pursuant to a request or otherwise) except with the consent in writing of the Party that provided such information, or pursuant to a legally enforceable demand or obligation. A Party that is subject to such demand or obligation shall inform the other Party of the legal provision(s) that require such disclosure within a reasonable time of such Party becoming aware of such demand or obligation.

- 6.9. The Parties acknowledge their legal obligations under the Data Protection Acts 1988 and 2003 and shall ensure that any exchange of personal data complies with their obligations, in their respective capacities as data controller/data processor as applicable.
- 6.10. The Parties acknowledge that, notwithstanding any other provision of this Agreement, they may only disclose information in accordance with this Agreement if permitted or required to do so, or not prevented from doing so, under any applicable laws.

7. Provision of Consumer Information

- 7.1. ComReg shall be the primary source of consumer information in respect of the application of the CRD Regulations and the Unfair Terms Regulations to all ECN / ECS and PRS matters.

8. Enforcement

- 8.1. For the avoidance of doubt, nothing in this Clause 8 or in this Agreement shall prevent either Party from exercising any of its powers under applicable legislation.
- 8.2. The Parties will seek to achieve consensus between them as to which Party is best placed to lead and/or act in a particular ECN/ECS/PRS compliance case involving the exercise of functions under the CRD Regulations or the Unfair Terms Regulations.
- 8.3. In accordance with Clause 8.2, a Party will agree to forbear to perform its Concurrent Functions in relation to a matter in circumstances where consensus has been achieved that the other Party is best placed to lead and/or act in relation to that matter.
- 8.4. Where a Party intends to forebear to perform its functions in the manner described in Clause 8.3, it shall first discuss the issue with the other Party, inform it of its intention to apply forbearance, and give the other Party an opportunity to respond.
- 8.5. Either Party may request the other to exercise forbearance in any particular case in accordance with the approach set out in this Clause 8. The other Party may agree to exercising forbearance where it is satisfied that the requesting Party is performing functions in relation to that matter. Such agreement as to forbearance shall not be unreasonably withheld or delayed.
- 8.6. Where one Party has agreed to forebear to perform its functions in any particular matter, it may so inform any relevant third parties as it sees fit.
- 8.7. The Parties will ensure that no person is the subject of:

- (i) proceedings (whether civil or criminal) under the Consumer Protection Act 2007, the CRD Regulations, the Unfair Terms Regulations or any other enactment, or
- (ii) the exercise of any power under section 73 or 75 of the Consumer Protection Act 2007,

in respect of an alleged contravention of a provision of the Consumer Protection Act 2007, the CRD Regulations, the Unfair Terms Regulations or any other enactment, by more than one of the Parties.

- 8.8. Any consultation or discussions entered into between the Parties pursuant to this Clause 8 will occur directly between the CCPC's Consumer Enforcement Division and ComReg's Retail and Consumer Services Division.

9. Meetings

- 9.1. The Parties will meet regularly (at appropriate levels of seniority), and not less than annually, to discuss matters of mutual interest and will communicate as required between meetings on such matters of shared interest that may arise in the course of day-to-day business.

10. Co-operation Agreement Binding

- 10.1. This Agreement is entered into pursuant to Section 19 of the Competition and Consumer Protection Act 2014 and enables a Party to furnish to the other Party information in its possession if the information is required by that other Party for the purpose of the performance by it of any of its functions.

- 10.2. This Agreement shall not operate to make a Party (or any employee, officer or agent thereof) liable to any person in damages or otherwise for anything done or omitted for which such person would not otherwise be so liable.

11. Variation of the terms of the Co-operation Agreement

- 11.1. Where a Party proposes a variation of the Agreement that Party shall submit, in writing, to the other Party the text of the proposed variation and the reasons thereof.

- 11.2. This Agreement may only be varied with the consent of both Parties in writing.

12. Implementation and Review

- 12.1. The Parties will continue to monitor the operation of this Agreement and will review it from time to time as necessary, with an initial review after it is in operation for six months.

13. Costs

- 13.1. Each Party agrees to bear its own costs, fees and expenses incurred on foot of a request for information under this Agreement, subject to the Parties agreeing to alternative arrangements in circumstances where the Party to whom the request is made incurs excessive costs, fees or expenses on foot of such a request.
- 13.2. The costs of, and arising from, any enforcement proceedings connected with PRS issues before the civil or criminal courts, initiated by either of the Parties, where the Parties had agreed that such enforcement proceedings would be pursued, will be shared equally between the Parties. Each Party agrees to cover its own investigative costs.

14. Miscellaneous

- 14.1. The CCPC shall furnish the Minister for Jobs, Enterprise and Innovation and the Minister for Communications, Energy and Natural Resources with a copy of this Agreement, including any variation of this Agreement, within one month after the date upon which this Agreement (or any variation of this Agreement) is made.
- 14.2. Where the requirements set out in Clause 14.1 have been met, the Parties shall, as soon as practicable, arrange for the Agreement (or any variation of it) to be published on the internet.

15. Severability

- 15.1. Should, at a future date, the whole or any part of any provision of this Agreement be found by a court of competent jurisdiction to be illegal or unenforceable, the other provisions of the Agreement and the remainder of the provision in question shall remain in full force and effect.

16. Governing Law and Jurisdiction

- 16.1. The Agreement shall be governed by and construed in accordance with the laws of Ireland and the courts of Ireland shall have jurisdiction to hear and determine any suit, action or proceedings that may arise out of or in connection with this Agreement.

17. Term of Agreement

- 17.1. This Agreement will commence on the later of the two dates signed below and will continue for a period of three years. It shall thereafter continue in force for further successive periods of three years, subject to the prior agreement in writing of both Parties to each such period of continuation in force.

Given under the common seal of the Competition and Consumer Protection Commission this 11th day of November 2015.

Present when the common seal of the Competition and Consumer Protection Commission was affixed hereto



Isolde Goggin

Chairperson

For and on behalf of the Competition and Consumer Protection Commission



Pat Kenny

Member

For and on behalf of the Competition and Consumer Protection Commission

Given under the common seal of the Commission for Communications Regulation this 11th day of November 2015.

Present when the common seal of the Commission for Communications Regulation was affixed hereto



Gerry Fahy
Commissioner

For and on behalf of the Commission for Communications Regulation