



268 - Investigation into Eircom Limited's compliance with Regulation 17(4) of the Universal Service and Users' Rights Regulations, 2003.

Complainant: Consumer Complaint

Respondent: Eircom Limited ("Eircom")

Case opened: April 2010

Issue:

To assess Eircom's compliance with Regulation 17(4) of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations, 2003 ("the Regulations")¹

Legal Basis:

This investigation was conducted by the Commission for Communications Regulation ("ComReg") in accordance with its functions set out in Section 10 of the Communications Regulation Acts 2002 - 2010.²

Regulation 17 (4) of the Regulations provides:

- (4) *An undertaking referred to in paragraph (1) or a provider of electronic communications services referred to in paragraph (3) shall, not less than one month prior to the date of implementation of any proposed modification, notify its subscribers to that service –*
- (a) *of 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.*

Case Summary:

In April 2010, ComReg received a number of complaints from Eircom customers who had alleged that their broadband had been upgraded as part of a promotion/trial and that they were then charged by Eircom to downgrade their broadband to its original speed once the promotion had ended.

¹ European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2003 (S.I. No. 308 of 2003), amended by European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) (Amendment) Regulations 2007 (S.I. No. 374 of 2007).

² Communications Regulation Act, 2002 (No. 20 of 2002), as amended by the Communications Regulation (Amendment) Act 2007 (No. 22 of 2007), and as amended by the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010 (No. 2 of 2010).



ComReg conducted an investigation to confirm if Eircom had a broadband promotion/trial in January and February 2010 to upgrade its customers broadband service for free, if this promotion/trial included a broadband downgrading charge and if Eircom had in accordance with Regulation 17(4) of the Regulations notified its customers of the proposed modification to its conditions (introduction of a downgrade charge), and their right to withdraw without penalty from such contract if they do not accept the modification.

ComReg through correspondence and meetings with Eircom confirmed the following information:

- Eircom Retail had a promotion from 01 January to 28 February 2010.
- When the customers signed up for the promotion there was no downgrade fee. Eircom introduced the Broadband downgrade charge on 26th March 2010.
- Eircom changed the terms and conditions of the Broadband products and published a notification on the 26 February 2010 informing its customers that an administration fee would apply to broadband downgrades from the 26 March 2010 and customers had the right to cancel without penalty.
- Eircom has advised ComReg that it would not apply a downgrade charge under the following circumstance:

“Due to the fact that there seems to be some confusion in relation to this promotion (01 January to 28 February 2010) as a trial and the possibility that the customer were told that there was no downgrade fee (which there was not when they signed up), eircom will rebate the downgrade fee for Customers who availed of this promotion only if they say state that they thought this was a trial or if they were told there was no downgrade fee”

Eircom in accordance with Regulation 17(4) of the Regulations notified its customers of the proposed modification in the conditions of the contract for that service, and their right to withdraw without penalty from such contract if they do not accept the modification.

The investigation was closed as ComReg found no evidence of non-compliance by Eircom with regard to Regulation 17(4) of the Regulations.

Case closed: 25 June 2010

Case Officer: Declan Leamy

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