



Commission for
Communications Regulation

Annual Report

Wholesale Compliance Annual Report 2010

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1 Introduction

This document provides statistics on the compliance and enforcement function undertaken by the Commission for Communications Regulation's ("ComReg") Wholesale Compliance¹ team. This team is responsible for compliance action in respect of the obligations of undertakings.

ComReg is the statutory body responsible for the regulation of the electronic communications² and postal sectors in Ireland. In accordance with Irish and EU legislation, ComReg's responsibilities include setting regulatory policy and the monitoring and enforcement of regulatory obligations.

Within the telecommunications sector, ComReg's Wholesale Compliance team is responsible for monitoring and enforcing compliance with any regulatory obligations and also handling formal disputes between undertakings.

The activities of the Wholesale Compliance team are undertaken in line with ComReg's three main objectives:

1. to promote competition
2. to contribute to the development of the internal market, and
3. to promote the interests of users within the community.

There are several reasons for opening investigations. These include monitoring compliance by undertakings with existing obligations; investigations based on information coming to the attention of ComReg through such mechanisms as complaints from consumers or other entities, or more formal complaints from undertakings. The mechanism by which an undertaking should submit a complaint to Wholesale Compliance is detailed at Appendix A.

2 Disputes

As noted above, ComReg's Wholesale Compliance team is responsible for handling any formal disputes arising between undertakings.

ComReg's role in dispute resolution is set out at Section 31 of the Framework Regulations³. The procedures for dispute resolution are defined in ComReg Decision D03/10, 2010⁴. Regulation 31(1) of the Framework Regulations provides that a dispute must be determined within four months of being notified of the dispute, except in circumstances which ComReg considers exceptional.

During 2010, one dispute was raised under Section 31 of the Framework Regulations however; it was subsequently withdrawn by the complainant after 16 days on the basis that the dispute had been resolved to its satisfaction.

¹ The Wholesale Compliance team investigations are not restricted to wholesale obligations however some compliance cases are taken by other areas of ComReg where appropriate.

² The electronic communications sector includes Telecommunications, Radiocommunications, Broadcasting Transmissions and Premium Rate Services.

³ European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003 (S.I. No. 307 of 2003), amended by the European Communities (Electronic Communications Networks and Services) (Framework) (Amendment) Regulations 2007 (S.I. No. 271 of 2007).

⁴ Response to Consultation and Decision Notice: Dispute Resolution Procedures - Framework Regulations (Response to Consultation Document No. 09/85) (Decision: D03/08, Document No: 10/18 R, Date: 29 March 2010).

3 Recent Compliance and Enforcement Action

ComReg's monitoring and enforcement of compliance is undertaken in accordance with Sections 10(1)(a), 10(1)(d) and 10(2) of the Communications Regulation Acts 2002 – 2010⁵ ("the Acts").

The Wholesale Compliance team takes compliance or enforcement action using a range of statutory powers granted by, amongst others, the Acts, the Access Regulations⁶, the Authorisation Regulations⁷, the Framework Regulations, the Universal Service Regulations⁸, the Competition Act⁹, and the Data Protection and Privacy Regulations.¹⁰

In 2010, the Wholesale Compliance team has opened a total of 61 new investigations and closed 60. The detail of the number of investigations opened and closed each month in the period can be seen in Figure 1 below.

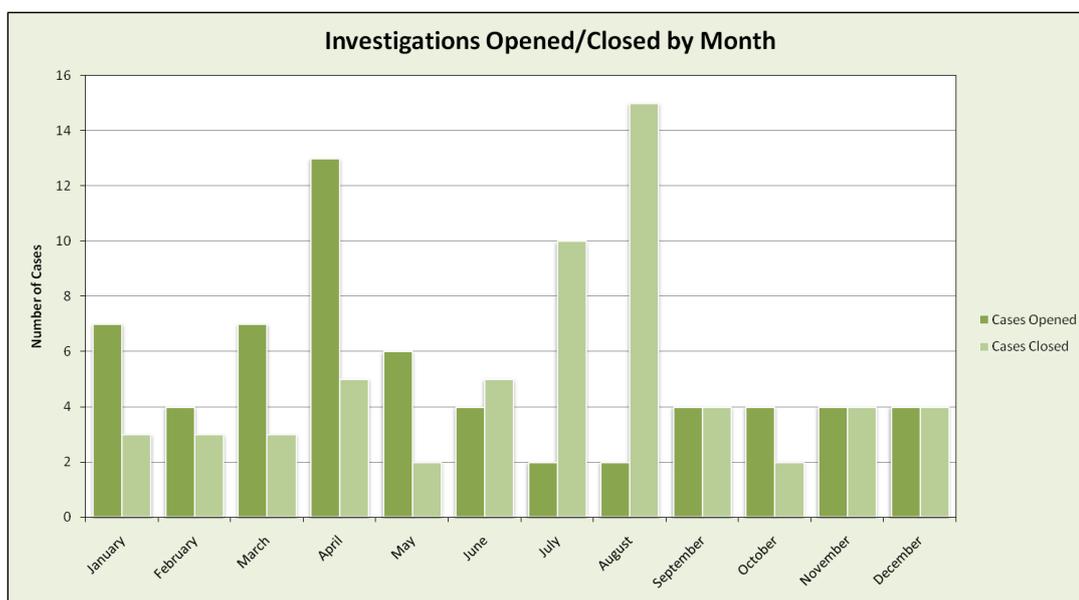


Figure 1: Wholesale Compliance Investigations Opened/Closed by Month

The first 6 months of 2010 saw the total caseload of the Wholesale Compliance team increase from 22 to 39 active investigations (an increase of 73%). This was successfully

⁵ 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).

⁶ European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003 (S.I. No. 305 of 2003), amended by the European Communities (Electronic Communications Networks and Services) (Access) (Amendment) Regulations 2007 (S.I. No. 373 of 2007).

⁷ European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2003 (S.I. No. 306 of 2003), amended by the European Communities (Electronic Communications Networks and Services) (Authorisation) (Amendment) Regulations 2007 (S.I. No. 372 of 2007).

⁸ 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).

⁹ Competition Act, 2002 (Number 14 of 2002) as amended by the Competition (Amendment) Act, 2006 and the Communications Regulation (Amendment) Act, 2007.

¹⁰ European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003 (S.I. No. 535 of 2003).

reduced to 19 open cases by December. The total number of open investigations per month is shown in Figure 2 below.

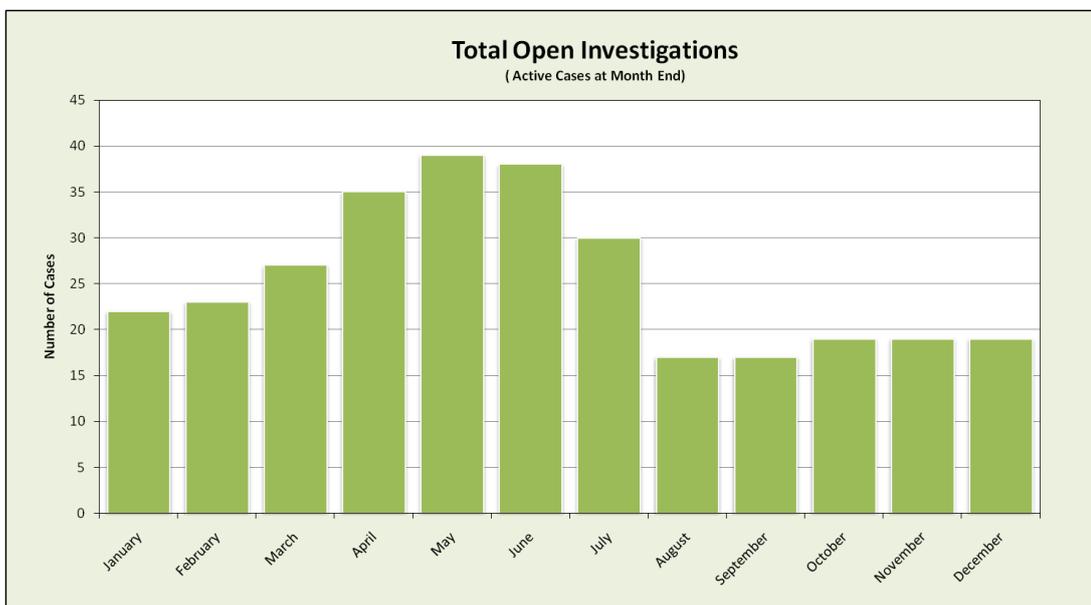


Figure 2: Wholesale Compliance Total Open Investigations

Of the 61 investigations initiated by the Wholesale Compliance team since 1 January 2010, 43 were completed and closed before the end of December. In the same period, the Wholesale Compliance team closed 17 investigations that had been opened prior to January 2010. In total, Wholesale Compliance concluded 60 investigations in the period.

Summary reports for many of the closed cases, together with reports for a number of cases closed prior to 2010 are available at:

http://www.comreg.ie/telecoms/closed_cases.561.1042.html¹¹. In future, investigations which are closed will have associated summary reports published on this link unless there are operational reasons for withholding the report for individual cases.

The durations of the closed investigations are shown in Figures 3 and 4 below.

¹¹ The Closed Case summaries are not directly linked to the cases in the Wholesale Compliance Annual Report 2010. However, Closed Case summaries for some of the case closures noted in this report are available at the link shown.

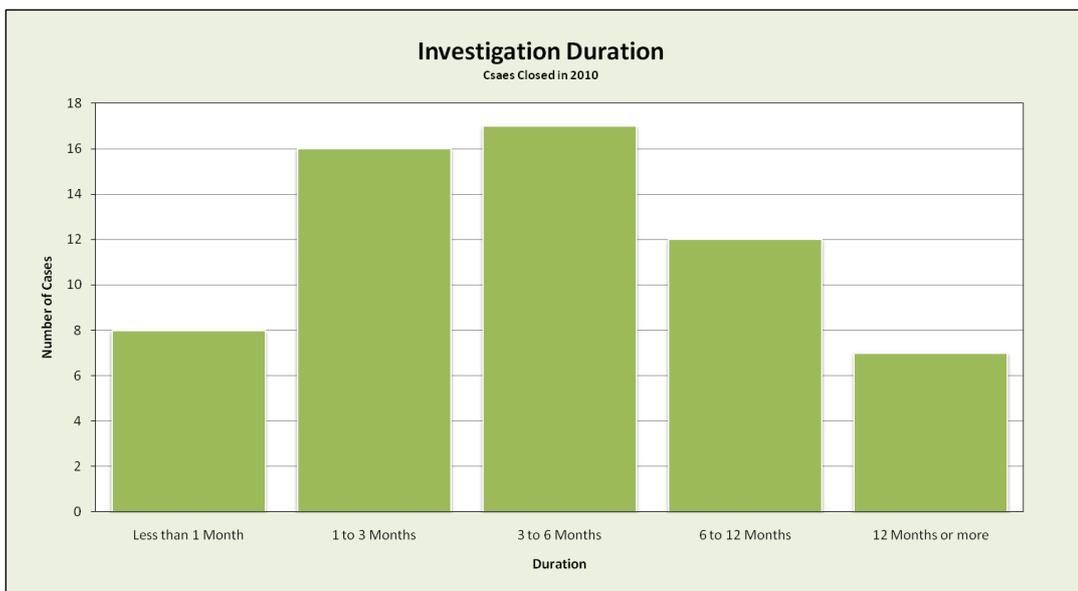


Figure 3: Investigation Duration

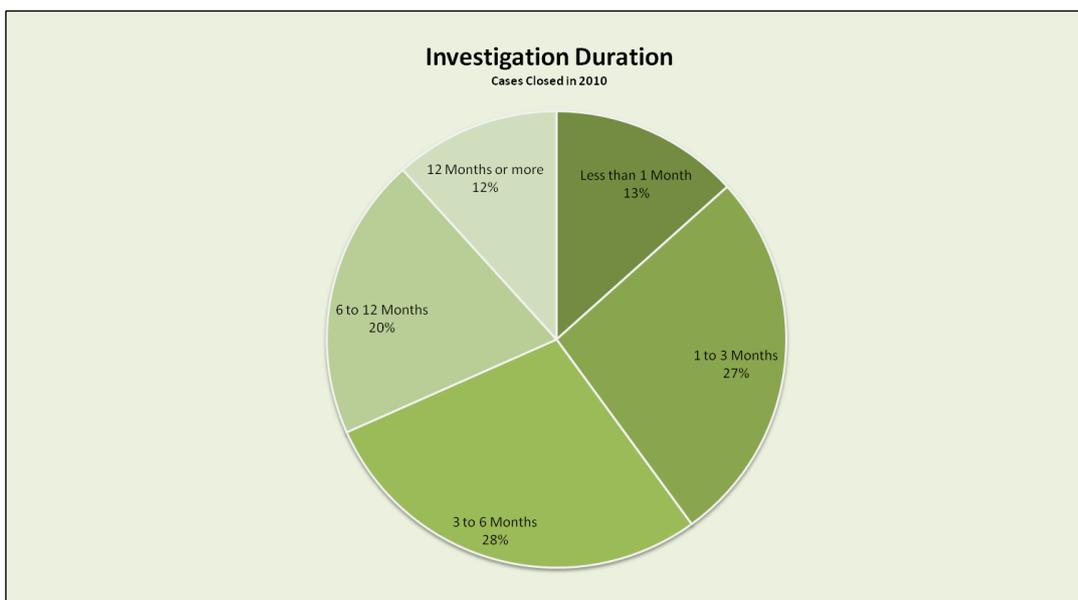


Figure 4: Investigation Duration

During 2010, Wholesale Compliance took the following formal compliance and enforcement action:

- Two notifications, pursuant to Section 18(1) of the Access Regulations, were issued to undertakings where, following investigation, ComReg found that the undertaking had not complied with its regulatory obligations.
- One opinion, pursuant to Section 18(4) of the Access Regulations, was issued to an undertaking where, following the issuance of a notification, pursuant to Section 18(1) of the Access Regulations, and the subsequent submission of

representations by the undertaking in response, ComReg was of the opinion that an undertaking had not complied with its regulatory obligations.

- One notice, pursuant to Section 44(1) of the Acts, was issued to an undertaking stating that, following investigation, ComReg had reasonable grounds to believe that an offence had been committed under section 13D of the Acts.

In addition to the formal compliance action noted above, 14 potential regulatory breaches were remedied by the respective undertakings as a direct result of Wholesale Compliance investigations without the need to resort to further action.

A year-on-year analysis shows that 2010 saw a higher caseload with more investigations being opened and closed than during 2009. In 2009, Wholesale Compliance initiated 46 new investigations. In the same period in 2010 Wholesale Compliance initiated a total of 61 new investigations. A comparison of the cumulative count of new investigations for 2009 versus 2010 is shown in Figure 4 below:

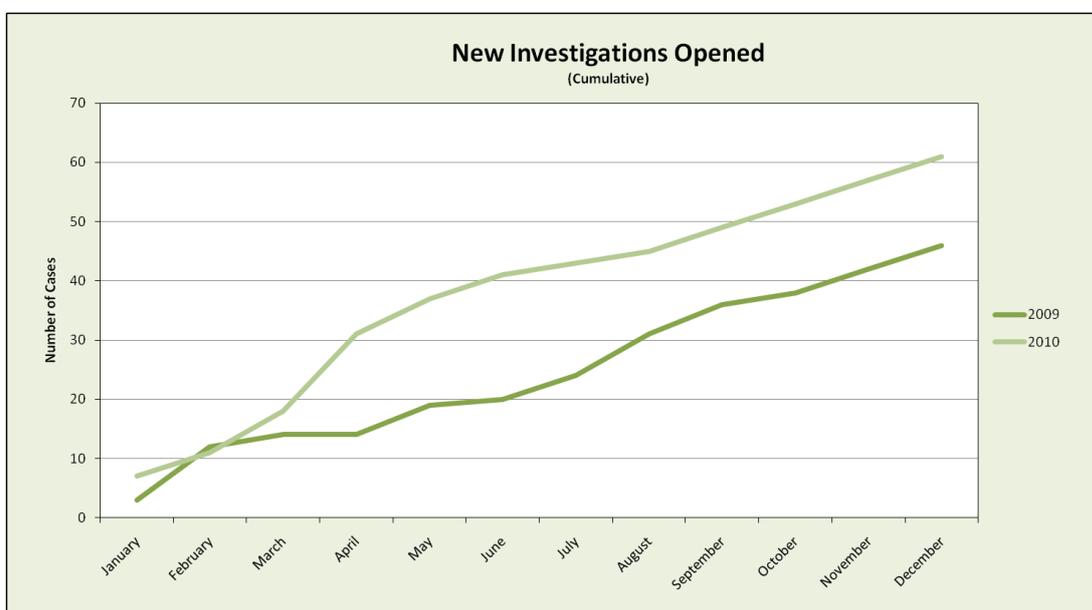


Figure 4: New Investigations Opened 2009 vs. 2010

In 2009, Wholesale Compliance closed 56 cases while in 2010, Wholesale Compliance closed 60 cases. A comparison of the cumulative count of closed cases for 2009 versus 2010 is shown in Figure 5 below:



Figure 5: Cases Closed 2009 vs. 2010

While the Wholesale compliance team initiated more investigations in 2010, improvements in closure rates and reduced investigation durations (see Figure 7) resulted in net increase in active cases at the year end of only +1 in 2010.

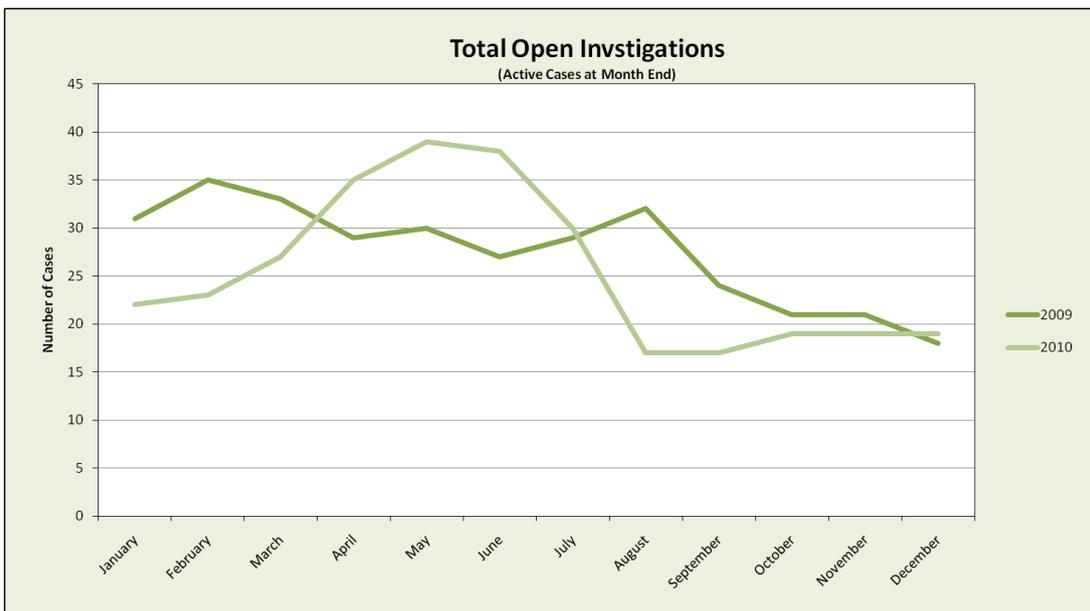


Figure 6: Total Open Q1Q2 2009 vs. Q1Q2 2010

Finally, in 2010, 68% of cases were closed in 6 months or less in comparison to 52% in 2009, as shown in Figure 7 below. The average case duration fell from 9 months in 2009 to 6 months in 2010.

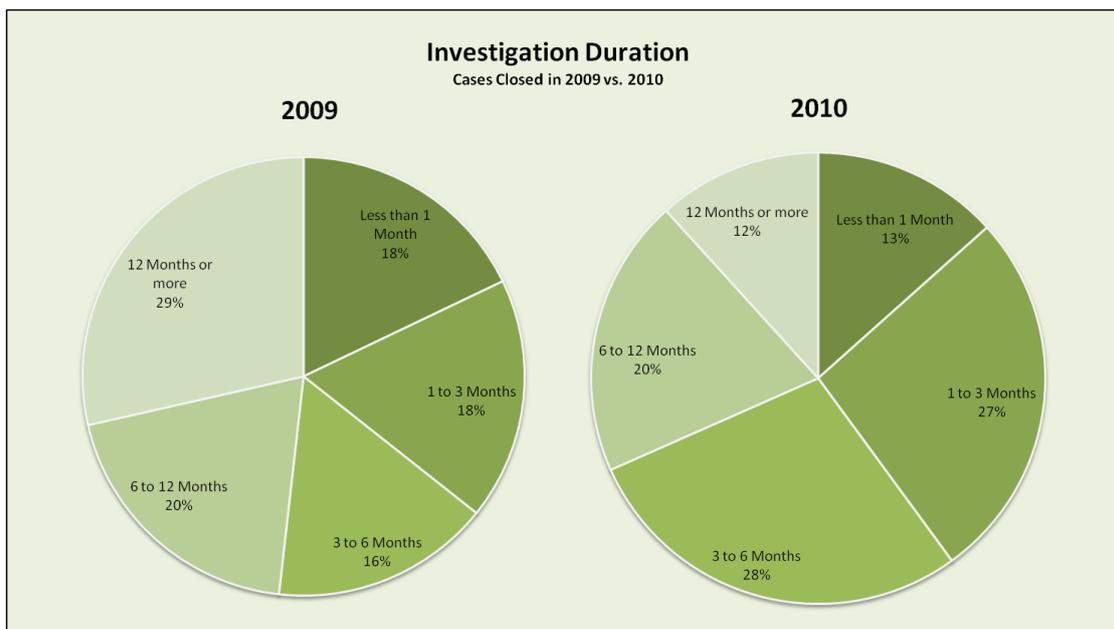


Figure 7: Investigation Duration 2009 vs. 2010

4 End note

ComReg in publishing this report and the associated summary of closed cases, available on our website (as referenced on page 5 of this report), is endeavouring to provide transparency of the volume and type of compliance cases undertaken. However, we would note that individual cases vary greatly in complexity, and may also attract differing levels of prioritisation in terms of resource allocation. Hence caution should be exercised in comparing overall throughput and efficiency year-on-year.

Appendix A

Should an undertaking wish to submit a complaint to the Wholesale Compliance team this should be sent, in writing to Paul Conway, Head of Wholesale Compliance, Commission for Communications Regulation, Abbey Court Irish Life Centre, Lower Abbey Street, Dublin 1¹². Information in electronic format may be sent to paul.conway@comreg.ie. All submissions should include the following:

- Submitting Operator name
- Submitting Operator contact
- Date of submission
- Responding Operator name(s)
- Summary of complaint/allegation
- The relevant obligation(s) under the regulatory framework which are alleged to have been breached.
- Details of any attempts to resolve the matter with the Responding Operator(s).
- Supporting evidence¹³

¹² Complaints from others, such as consumers can also be raised. The method for doing this is addressed at <http://www.askcomreg.ie>.

¹³ All complaints/allegations should be supported by documentary evidence where possible.