

15/007 Findings of Non-Compliance with the Premium Rate Services (“PRS”) Licence Conditions

Context and Background

1. Following a review of information gathered during compliance monitoring and following a review of consumer complaints received by ComReg in relation to Mobilenobo Ltd (“Mobilenobo”) Competition and Content premium rate service (“PRS”), ComReg commenced an investigation into the provision of Competition and Content PRS in accordance with Section 9 of the Communications Regulations (Premium Rate Services and Electronic Communications Infrastructure) Act, 2010¹ (“the Act of 2010”) and Sections 10(1)(d)(ii) and 12(1)(d) of the Communications Regulation Act, 2002, as amended² (“the Act of 2002”).
2. The Competition and Content PRS is a service operated on a subscription basis, whereby end users are primarily offered the chance to win various different prizes, such as an iPad or an iPhone. The service is charged €12 per week through 6 reverse-billed³ SMS at €2 per message.
3. On 15 October 2013 ComReg made a finding that there has been misuse of Irish premium rate short code number 57495 by Mobilenobo within the meaning of Regulation 23(2) of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations, 2011⁴ (this requirement is referred to herein as “the Regulation 23(2) Requirement”).
4. On the basis of such finding, and pursuant to the Regulation 23(2) Requirement, ComReg required;
 - a. Mobile Network Operators (“MNOs”) and the associated Aggregator Provider (“AP”) to block access by Mobilenobo to 57495 short code number; and
 - b. the MNOs and the AP to withhold all interconnection payments and other service revenues associated with the relevant calls associated with this short code number.
5. ComReg engaged in correspondence with Mobilenobo detailing the alleged breaches of the Code of Practice⁵ (“the Code”) and the Communications

¹ <http://www.oireachtas.ie/documents/bills28/acts/2010/a0210.pdf>

² <http://www.irishstatutebook.ie/pdf/2002/en.act.2002.0020.pdf>

³ “Reverse-billed” SMS, sometimes referred to as “mobile terminated” or “MT”-billed SMS are SMS for which the recipient incurs a charge when receiving an SMS.

⁴ S.I. No. 337 of 2011

⁵ http://www.comreg.ie/_fileupload/publications/ComReg1229.pdf

Regulation (Licensing of Premium Rate Services) Regulations, 2012⁶ (“the Regulations of 2012”).

6. In this case, ComReg followed the process outlined in the European Communities (Directive 2000/31/EC) Regulations 2003, (the "E-Commerce Regulations") (S.I. No. 68/2003), which transposes Article 3(4) of the E-Commerce Directive.
7. Accordingly, ComReg forwarded its request for measures to be taken in relation to Mobilenobo by the competent authority in Cyprus, where Mobilenobo is established. ComReg recently received notification that the competent authority in Cyprus was not in a position, in this instance, to take any action in relation to Mobilenobo and, therefore, having observed the steps required to derogate from the requirements of the E-Commerce Directive, ComReg has now exercised the powers conferred on it by the Act of 2010.

Findings of non-compliance

8. Following the investigation, ComReg found that the Competition and Content PRS was not compliant with certain requirements of the Code and the Regulations of 2012 as detailed below.
9. Accordingly, on 29 October 2015⁷, ComReg notified Mobilenobo of the findings⁸ that it had not complied with the Code for PRS providers and the Regulations of 2012 and, therefore, was in breach of a condition of its PRS licence⁹.

Sections 3.12(b), 3.18, 4.1, 4.2, 4.3 and 4.26 of the Code

10. ComReg found that Mobilenobo was offering a competition or prize promotion without awarding the prize described. As no prizes were awarded to subscribers, it is ComReg’s view that Mobilenobo has, in effect, not provided any service to the subscribers of the Competition and Content PRS and that the consumers were charged for a service that was not supplied to them.

Sections 3.2, 3.12(b), 3.17, 3.19, 3.22, 4.1, 4.2, 4.3, 4.6, 4.7(b), 4.8, 4.9, 4.11, 4.18, 4.21 and 4.22(d) of the Code

11. ComReg found that Mobilenobo had sent end users unsolicited and misleading text messages, as illustrated in Figure 1 below, to end users which resulted in

⁶ http://www.comreg.ie/_fileupload/publications/SI_111_of_2012.pdf

⁷ In accordance with Section 17(1) of the Act of 2010

⁸ In accordance with its powers at Section 9 of the Act of 2010

⁹ Mobilenobo is a licensed PRS provider in Ireland, in accordance with Section 6(1) of the Act of 2010 and Regulation 4 of the Communications Regulation (Licensing of Premium Rate Services) Regulations, 2012

those end users who responded being inadvertently being subscribed to the Competition and Content PRS.

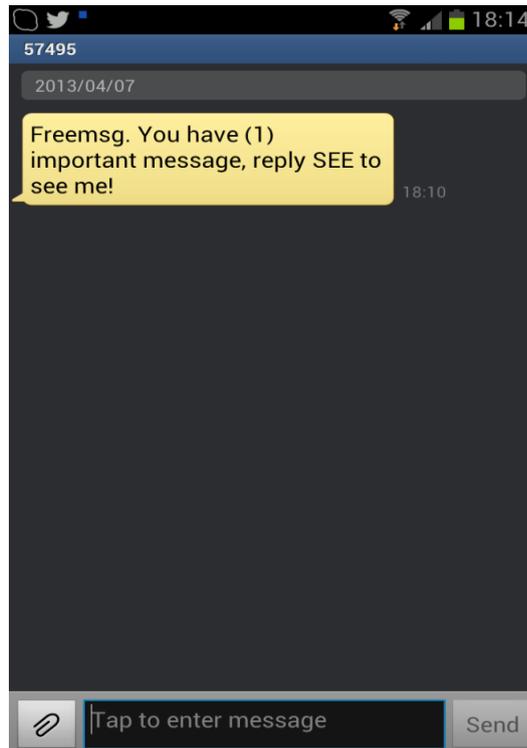


Figure 1: Example of screenshot of the unsolicited text message received by consumers

Sections 5.16, 5.17 and 5.18 of the Code

12. The Code requires that following a consumer's confirmation of his / her intention to subscribe, the PRS provider must confirm the commencement of the subscription by sending an SMS outlining the main terms of the service, such as cost, and providing details how to unsubscribe from the service.
13. ComReg found that some subscribers to Mobilenobo's Competition and Content PRS, following confirming their subscription to the PRS, were not provided the contract and terms of the service.

Section 5.24 of the Code

14. ComReg found that Mobilenobo failed to automatically unsubscribe end users after a 40 day period of no successfully delivered premium rate charged messages.

Sections 6.1, 6.2, 6.3 and 6.7 of the Code and Regulations 7(1)(c) and 9(1) of the Regulations of 2012

15. ComReg found that Mobilenobo has failed to provide appropriate customer service and information to consumers and ComReg.

Regulations 7(1)(c) and 9(1)(r) of the Regulations of 2012

16. ComReg found that during the course of its investigation Mobilenobo had not provided true, complete and accurate information to ComReg.

Conclusion

17. Mobilenobo is required to remedy the finding of non-compliance in respect of the breaches of the Code by 28 November 2015 and to make refunds to end users connected to the non-compliance by 28 December 2015.