



Commission for
Communications Regulation

Yourtel Limited

Undertaking pursuant to Section 73 of the Consumer Protection Acts

Information Notice

Reference: ComReg 15/08

Date: 30/01/2015

An Coimisiún um Rialáil Cumarsáide

Commission for Communications Regulation

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1. Following an investigation ComReg has found that Yourtel is not in compliance with the Consumer Information Regulations because it did not inform customers of their right to cancel their contracts pursuant to Regulations 10, 14, 15, 17 and 19 of the Consumer Information Regulations.¹
2. Pursuant to Section 73 of the Consumer Protection Acts,² where ComReg believes that a trader has acted in contravention of the Consumer Information Regulations it has the power in accordance with Section 10 (1B) of the Communication Regulations Act 2002 (as amended) to accept a written Undertaking³ from that trader in relation to the contravention containing terms and conditions that are, in ComReg's determination, appropriate in the circumstances.
3. ComReg has accepted from Yourtel the Agreement and Undertaking contained at Appendix 1 of this Information Notice.
4. Amongst Yourtel's commitments are the following:
 - a. Yourtel will send to all of its customers who have entered an agreement with Yourtel since the coming in to force of the Consumer Information Regulations on 13 June 2014, a letter informing those customers of their right to cancel their contract with Yourtel. This shall happen no later than 14 days from **23 January 2015**, the date of signature of the Undertaking.
 - b. Yourtel's letter shall include a cancellation form (in the form provided for at Schedule B Part 3 of the Consumer Information Regulations) and consumers shall be informed that the sending of a completed version of this form within 14 days (deemed to have commenced on the date on which a consumer receives the notification letter referred to at a. above) shall constitute the giving of notice of the exercise of a consumer's right to cancel. Yourtel shall be deemed to have been informed of the exercise of the right to cancel on the date on which a cancellation letter has been sent by a consumer.
 - c. In accordance with Regulation 17(2) of the Consumer Information Regulations, Yourtel will accept as a notice of cancellation any other unequivocal statement by a consumer to Yourtel setting out decision to cancel the contract where such statements are received within the notice period including but not limited to where such unequivocal statement can be made over the telephone to Yourtel to its customer service number.

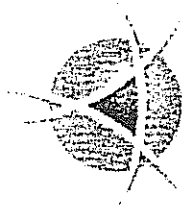
¹ SI 484 of 2013: European Union (Consumer Information, Cancellation and other Rights) Regulations 2013

² The Consumer Protection Acts of 2007 and 2014

³ Pursuant to Section 73, "a written undertaking that is signed by the trader in the form and which contains the terms and conditions the Agency determines are appropriate in the circumstances."

- d. In accordance with Regulation 19 of the Consumer Information Regulations, Yourtel will provide refunds to customers who exercise their right to cancel of the full amount paid by the customer and will provide details of customer cancellations and refunds provided to ComReg no later than 30 days from the sending of the letter referred to at a. above.
5. The Undertaking also contains commitments on the dates by which Yourtel's actions are to be carried out; and on Yourtel's future practice with respect to entering into distance contracts with consumers over the telephone. See Appendix 1 for more details.

Annex: 1 Full text of Undertaking by Yourtel Limited



Commission for
Communications Regulation

AGREEMENT AND UNDERTAKING

The Commission for Communications Regulation

-and-

Yourtel Limited

This Agreement and Undertaking is made by and between The Commission for Communications Regulation ("ComReg") and Yourtel Limited ("Yourtel") on the date set forth below. The Undertaking of Yourtel contained herein is accepted by ComReg pursuant to Section 73 of the Consumer Protection Acts 2007 and 2014 ("the Acts of 2007 and 2014"). ComReg and Yourtel are referred to collectively as "the Parties".

WHEREAS:

- A. Yourtel makes available in the course of its business Electronic Communications Services (ECS) to members of the public.
- B. Amongst the functions of ComReg pursuant to Section 10(1)(ab) of the Communications Regulations Acts 2002, as amended are:

10(1)(ab) to ensure compliance by undertakings and premium rate service providers with the European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013 (S.I. No. 484 of 2013)]

Section 10 also provides:

10 (1A) The functions of the Agency specified in subsection (1B) are (insofar as they relate to the provision of electronic communications networks, electronic communications services, associated facilities and premium rate services) also functions of the Commission, and subsections (1B) to (1E) have effect for the purposes of this subsection

10 (1B) The functions of the Agency referred to in subsection (1A) are the functions of the Agency under section 67, section 71, section 73, sections 75 to 77, section 80, sections 83 to 87 and section 90 of the Consumer Protection Act 2007 in relation to the European Communities (Consumer Information, Cancellation and other Rights) Regulations 2013 (S.I. No. 484 of 2013)

- 10 (1C) *Subsection (1A) operates to vest in the Commission, concurrently with the vesting in the Agency of those functions by the Consumer Protection Act, 2007, the functions specified in subsection (1B)*
- 10 (1D) *Accordingly –*
- (a) functions so specified are, subject to any relevant co-operation agreement entered into under section 21 of the Consumer Protection Act 2007, capable of being performed by either the Agency or the Commission, and*
- (b) subject to subsection (1E), references to the Agency in the provisions of the Act specified in subsection (1B) are to be read as including references to the Commission and those provisions otherwise apply*
- 10 (1E) *Where any section of the Consumer Protection Act 2007 specified in subsection (1B) provides for anything to be done in relation to the Agency (whether the giving of notice to it, the submitting of a thing to it or the doing of any other thing) then, if a co-operation agreement entered into under section 21 of that Act so specifies, it is sufficient compliance with the section concerned if the thing is done in relation to the Agency or the Commission as is specified in that agreement.*

Therefore ComReg is empowered to ensure compliance with European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013 (S.I. No. 484 of 2013) ("the Consumer Information Regulations") and to apply the relevant provisions of the Acts of 2007 and 2014.

- C. ComReg commenced an investigation into Yourtel's compliance with the provisions of the Consumer Information Regulations, and, in particular, whether Yourtel informed consumers about their right to cancel their contract (and the conditions, time limits and procedures for exercising that right) over the telephone and in plain and intelligible language before they purported to bind those consumers to a contract.
- D. ComReg investigated whether Yourtel was failing to inform consumers of their right to cancel their contract and whether or not there was a breach of the Consumer Information Regulations and, in particular Regulations 10, 14, 15, 17 and 19 thereof.

- E. As a result of its investigation, ComReg has found that Yourtel did not inform consumers of their right to cancel their contract and that this was a breach of the Consumer Information Regulations and, in particular Regulations 10, 14, 15, 17 and 19 thereof.
- F. By way of letter from Yourtel's Solicitors, Matheson, dated 28 November 2014, Yourtel has acknowledged that it has failed to comply with its obligations under the Consumer Information Regulations in this regard.
- G. As a result of this investigation, the Parties having reached an agreement, as more particularly described below, wherein ComReg accepts Yourtel's undertaking of certain obligations in respect of consumers who were not properly and duly informed of their right to cancel their contracts.

IT IS HEREBY AGREED AS FOLLOWS:

H. Yourtel undertakes that:-

- (i) Where it enters into distance contracts with consumers over the telephone it shall inform consumers over the telephone, and prior to the entering of a binding agreement, of their right to cancel (and the conditions, time limit and procedures for exercising that right in accordance with Regulation 17 of the Consumer Information Regulations) in a clear and intelligible manner.
- (ii) It will send to all of its customers who have entered an agreement with Yourtel since the coming in to force of the Consumer Information Regulations on 13 June 2014, the letter attached at Annex 1 to the Undertaking which informs them of their right to cancel, (and the conditions, time limit and procedures for exercising that right in accordance with Regulation 17 of the Consumer Information Regulations).
- (iii) The letter, as attached at Annex 1, shall include a cancellation form (in the form provided for at Schedule B Part 3 of the Consumer Information Regulations) and consumers shall be informed that the sending of a completed version of the said form by the consumer (to an Irish address specified by Yourtel) within 14 days shall constitute the giving of notice of the exercise of a consumer's right to cancel. The said 14 day period shall be deemed to have commenced on the date on which a consumer receives the said notification letter and Yourtel shall be deemed to have

been informed of the exercise of the right to cancel on the date on which a cancellation letter has been sent by a consumer.

- (iv) In accordance with Regulation 17(2) of the Consumer Information Regulations, to accept as a notice of cancellation any other unequivocal statement by a consumer to Yourtel setting out decision to cancel the contract where such statements are received within the notice period including but not limited to where such unequivocal statement can be made over the telephone to Yourtel to its customer service number.
 - (v) In accordance with Regulation 19 of the Consumer Information Regulations, and as set out in the letter attached at Annex 1, Yourtel will provide refunds to customers who exercise their right to cancel of the full amount paid by the customer to date.
 - (vi) The letter at Annex 1, shall be issued to relevant customers no later than 14 days after the signing of the Agreement and Undertaking.
 - (vii) Following the cancellation period of 14 days, Yourtel shall, no later than 7 days following the expiration of the 14 day cancellation period, provide ComReg with written confirmation that the letter at Annex 1 has issued to all relevant customers and shall also provide details as to the number of letters issued.
 - (viii) No later than 30 days following the issuing of the letter at Annex 1 to customers, it will confirm to ComReg, in writing, that it has refunded and cancelled the customers contracts whom requested such cancellation. It shall also provide to ComReg in writing the number of customers whom exercised their right of cancellation and provide written details as to the refunds made to each customer. Such details shall be provided in compliance with Data Protection laws.
- I. In consideration of the undertakings furnished by Yourtel as set out herein, ComReg agrees that it will not institute civil proceedings against Yourtel pursuant to Section 71 of the Acts of 2007 and 2014. Notwithstanding, this however, if Yourtel fails to comply with the terms and condition of this Undertaking, ComReg may, in accordance with Section 73(7) of the Acts of 2007 and 2014 or otherwise, apply for an Order of Prohibition against Yourtel in respect of breach of the Consumer Information Regulations.

- J. For the avoidance of doubt, ComReg reserves the right to institute criminal proceedings in accordance with Regulation 19(7) of the Consumer Information Regulations against Yourtel in respect of any matter and in particular if the refunds as set out in this Undertaking and the letter as attached at Annex 1, are not made in accordance with Regulation 19 of the Consumer Information Regulations. Nothing in this agreement shall be construed to impair ComReg's right to institute civil or criminal proceedings for any matter not specifically described herein.
- K. This Agreement and Undertaking shall be and is intended by the Parties to be a binding and enforceable agreement which may be enforced by action in an Irish Court of competent jurisdiction. This Agreement and Undertaking shall be governed by the laws of Ireland.
- L. The undertakings provided herein shall be binding on the directors, officers, employees, servants, agents, and successors and assigns of Yourtel.
- M. The terms "and" and "or" as used herein have both conjunctive and disjunctive meanings.

Dated this 23 day of January, 2015 in ~~_____~~