

## **14/002 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 Dragonfly Mobile Ltd (“Dragonfly”) Prize Club premium rate service (“PRS”), ComReg commenced an investigation into the provision of Prize Club PRS in accordance with Section 9 of the Communications Regulations (Premium Rate Services and Electronic Communications Infrastructure) Act, 2010<sup>1</sup> (“the Act of 2010”) and Sections 10(1)(d)(ii) and 12(1)(d) of the Communications Regulation Act, 2002, as amended<sup>2</sup> (“the Act of 2002”).
2. On 1 August 2013 ComReg made a finding that there has been misuse of Irish premium rate short code numbers 57080, 57575 and 57741 by Dragonfly within the meaning of Regulation 23(2) of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations, 2011<sup>3</sup> (this requirement is referred to herein as “the Regulation 23(2) Requirement”).
3. On the basis of such finding, and pursuant to the Regulation 23(2) Requirement, ComReg required;
  - a. Mobile Network Operators (“MNOs”) and other PRS providers, namely Oxygen8 Communications Ireland and Zamano Solutions (“aggregator providers”) to block access by Dragonfly to 57080, 57575 and 57741 short code numbers;
  - b. the MNOs to withhold all interconnection payments and other service revenues to the aggregator providers associated with the relevant calls associated with these short code numbers; and
  - c. the “aggregator providers” to withhold all interconnection payments and other service revenues to Dragonfly associated with the relevant calls associated with these short code numbers.
4. As the Prize Club is a PRS and the relevant parties hold PRS licences, an investigation in accordance with Section 9 of the Act of 2010 was also commenced.

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

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

<sup>3</sup> S.I. No. 337 of 2011

5. ComReg engaged in correspondence with Dragonfly detailing the alleged breaches of the Code of Practice<sup>4</sup> (“the Code”) and the Communications Regulation (Licensing of Premium Rate Services) Regulations, 2012<sup>5</sup> (“the Regulations of 2012”).
6. Dragonfly’s Prize Club PRS was a subscription service whereby the end user can access mobile content and enter competitions. The service was charged €12 per week through six reverse-billed SMS at €2 per message on the 57741 and 57080 short code numbers and at €12.50 per week through five reverse billed SMS at €2.50 per message on the 57575 short code number. In accordance with the details provided to ComReg on the E-Licensing system, the Prize Club PRS was promoted online.

### **Findings of non-compliance**

7. Following the investigation, ComReg found that the Prize Club PRS was not compliant with certain requirement of the Code as detailed below.
8. Accordingly, on 16 May 2014<sup>6</sup>, ComReg notified Dragonfly of the findings<sup>7</sup> that it had not complied with the Code for PRS providers and, therefore, was in breach of a condition of its PRS licence<sup>8</sup>.

#### **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, 5.9, 5.13, 5.14, 5.15, 5.16, 5.17, 5.18, 6.2 and 6.3 of the Code and Regulations 9(1)(a) of the Regulations of 2012**

9. ComReg found that Dragonfly had sent end users unsolicited and misleading text messages, as illustrated in Figure 1 below, to end users which resulted in those end users who responded being inadvertently being subscribed to the Prize Club PRS. ComReg found that end users of the Prize Club PRS did not receive the required subscription request and confirmation messages, which should contain the general terms of the service, such as the cost and the fact that this is a subscription service. ComReg also found that Dragonfly could not provide substantiating evidence that end users had subscribed to the Prize Club PRS validly.

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<sup>4</sup> [http://www.comreg.ie/\\_fileupload/publications/ComReg1229.pdf](http://www.comreg.ie/_fileupload/publications/ComReg1229.pdf)

<sup>5</sup> [http://www.comreg.ie/\\_fileupload/publications/SI\\_111\\_of\\_2012.pdf](http://www.comreg.ie/_fileupload/publications/SI_111_of_2012.pdf)

<sup>6</sup> In accordance with Section 17(1) of the Act of 2010

<sup>7</sup> In accordance with its powers at Section 9 of the Act of 2010

<sup>8</sup> Dragonfly 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

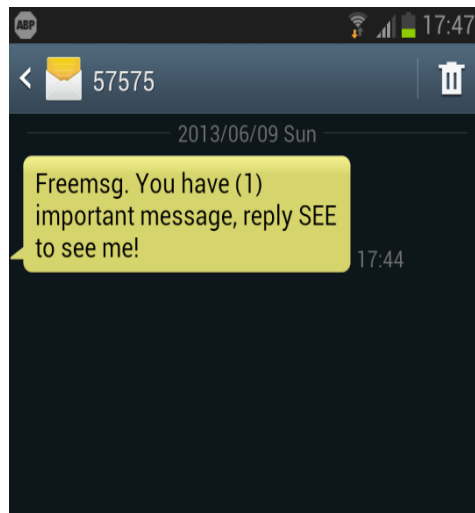


Figure 1: Examples of screenshot of the unsolicited text message received by consumers

### Sections 3.2 and 3.18 of the Code

10. ComReg found that some subscribers to Dragonfly's Prize Club PRS were charged for a service that was not provided. End users received blank billing and content messages and were therefore not able to avail of the service they had already paid for.

### Section 5.20 of the Code

11. ComReg found that some subscribers to Dragonfly's Prize Club PRS on the 57575 short code number did not receive the regulatory update messages, which should contain information on how to unsubscribe from the PRS, at the correct interval. End users received these regulatory reminder messages after they had incurred charges of €25 and not €20 as required under the provisions of Section 5.20 of the Code.

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

12. ComReg found that during the course of its investigation Dragonfly had not provided true and accurate information to ComReg.

### **Sections 6.2 and 6.3 of the Code and Regulations 7(1)(c) and 9(1)(g)((h)(i)(r) and (s) of the Regulations of 2012**

13. ComReg found that Dragonfly has failed to provide appropriate customer service and information to consumers and ComReg.

### **Conclusion**

14. Dragonfly is required to remedy the non-compliance in respect of the breach of the Code by 16 June 2014 and to make refunds to end users connected to the non-compliance by 16 July 2014.