



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Three Ireland Services (Hutchison) Limited and Three Ireland (Hutchison) Limited (trading as “48”)

Undertaking pursuant to Section 73 of the Consumer Protection Act 2007

Information Notice

Reference: ComReg 23/64

Version: Final

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1. On 25 May 2023, 48 issued a contract change notification to customers announcing, in relevant part, that *“From 5th July 2023 we are changing our overall membership and add-on renewal cycle. Instead of charging on a monthly basis, this will be done every 4 weeks.”*
2. Prior to issuing this notification 48 had promoted its prices as “for life” or “forever” through its website and on social media. 48 also stated that its membership ran per calendar month as opposed to every 28 days and promoted that the customer had more days with 48 than other service providers.
3. ComReg commenced an investigation into 48’s compliance with its obligations under sections 41, 42, 43, and 46 of the Consumer Protection Act, 2007 (as amended) (**“the 2007 Act”**) which concern unfair or misleading commercial practices.
4. As 48 had promised to provide its customers with a price “for life” or “forever” but later decided to increase the frequency at which customers would be required to pay, ComReg was concerned that 48 would be changing the manner in which the price was calculated and consequently the price itself. By departing from its commitments in promotional material, ComReg had reason to believe that 48 would not be compliant with its obligations under the 2007 Act in respect of unfair or misleading commercial practices had it proceeded with the proposed contract change.
5. An unfair or misleading commercial practice is a “prohibited act or practice” under the 2007 Act. Pursuant to Section 73 of the 2007 Act where ComReg has reason to believe that a trader is committing or engaging in a prohibited act or practice, is about to do so, or has done so, it may accept a written undertaking from that trader containing terms and conditions that are, in ComReg’s determination, appropriate in the circumstances.
6. ComReg has accepted an undertaking from 48 as set out in Annex 1 to this Information Notice.
7. Among 48’s commitments are that, in respect of services offered on terms expressed to be “for life” or “forever”, it will not proceed with its original contract change to shorten the length of the billing cycle and it will comply with sections 41, 42, 43, and 46 of the 2007 Act.
8. In consideration of the undertaking and commitments made by 48, ComReg does not intend to take further action in respect of this matter.
9. ComReg will continue to monitor compliance by all undertakings with their obligations under the 2007 Act and other consumer legislation and, where necessary, will investigate any matters arising.

Annex 1: Full text of Undertaking by Three Ireland Services (Hutchison) Limited and Three Ireland (Hutchison) Limited

AGREEMENT AND UNDERTAKING

The Commission for Communications Regulation

And

Three Ireland Services (Hutchison) Limited and Three Ireland (Hutchison) Limited

This Agreement and Undertaking is made by and between The Commission for Communications Regulation ("**ComReg**") and Three Ireland Services (Hutchison) Limited and Three Ireland (Hutchison) Limited trading as 48 ("**48**") on the date set forth below. The Undertaking of 48 contained herein is accepted¹ by ComReg pursuant to Section 73 of the Consumer Protection Act, 2007 (as amended) ("**the 2007 Act**"). ComReg and 48 are referred to collectively as "the Parties."

WHEREAS:

- A. 48 is a corporate entity which provides telecommunications services to members of the public. 48 is required to be authorised by ComReg pursuant to Regulation 6 of the European Union (Electronic Communications Code) Regulations 2022 and at relevant times prior to 9 June 2023, pursuant to Regulation 4 of the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011 (S.I. No. 335 of 2011).
- B. 48 is acting for purposes related to its trade or business making it a trader subject to the obligations specified in the 2007 Act.
- C. ComReg is the statutory body responsible for the regulation of the electronic communications sector (telecommunications, radio communications, broadcasting transmission and premium rate services) and the postal sector, as described in Section 10 of the Communications Regulation Act, 2002 (as amended) ("**the Act**").
- D. ComReg has statutory powers and functions under the 2007 Act relating to the provision of electronic communications networks, electronic communications services, associated facilities and premium rate services.

¹ The Undertaking shall be signed on behalf of 48 and then returned to ComReg. ComReg's acceptance of the Undertaking will occur only at the point of signature by or on behalf of the Commission. A copy of the Undertaking signed by or on behalf of the parties shall be provided by the Commission to 48. By signing the Undertaking 48 agrees to these conditions.

E. Section 10(1A) – (1E) of the Act provide, among other things, as follows:

(1A) The functions of the Competition and Consumer Protection Commission specified in subsection (1B) are (in so far as they relate to the provision of electronic communications networks, electronic communications services, associated facilities and premium rate services) also functions of the Commission for Communications Regulation, and subsections (1B) to (1E) have effect for the purposes of this subsection.

(1B) The functions of the Competition and Consumer Protection Commission referred to in subsection (1A) are the functions of that Commission under—
(a) sections 71 to 73, 75, 77, 80 to 82, 85 to 88 and 90 of the Consumer Protection Act 2007 in relation to Part 3 of that Act,
(b) sections 71 to 73, 75, 77, 80, 85 to 88 and 90 of the Consumer Protection Act 2007 in relation to Parts 4 and 5 of the Consumer Rights Act 2022...
(...)

(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).

(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 Consumer Protection Act 2007 specified in subsection (1B) are to be read as including references to the Commission and those provisions otherwise apply.

(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 cooperation 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.

- F. ComReg entered into a Co-operation Agreement with the Competition and Consumer Protection Commission on 11 November 2015, which agreement was periodically renewed thereafter for three year periods and remains in force. Therefore, ComReg is empowered to ensure compliance with the relevant provisions of the 2007 Act.
- G. 48 had proposed to change its terms and conditions by shortening its billing period, from monthly to every 4 weeks, effective from 5 July 2023 ("**the proposed change**"). 48 sent a contract change notification regarding the proposed change to its customers pursuant to Regulation 14(4) of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011 (S.I. No. 337 of 2011).
- H. ComReg suspected that 48 may not have been compliant with its obligations imposed under sections 41, 42, 43, and 46 of the 2007 Act if 48 had implemented the proposed change because it had previously committed to providing its customers with a price for life/forever in promotional material. For a number of years and on many occasions, 48 had prominently promoted its prices as "for life" or "forever" through its website and on social media. In ComReg's view, if 48 shortened the billing cycle, it would change the manner by which the customer's price was calculated and therefore would also change the price itself and this would have been a departure from 48's commitments to provide certain prices "for life" or "forever" or on similar terms.
- I. ComReg opened an investigation and wrote to 48 on 8 June 2023 regarding its concerns about the proposed change (the "Investigation").
- J. The Parties have reached an agreement, as more particularly described below, wherein ComReg accepts² 48's undertaking, which is given pursuant to section 73 of the 2007 Act.

IT IS HEREBY AGREED AS FOLLOWS:

- K. 48 will comply with its obligations under sections 41, 42, 43, and 46 of the 2007 Act in respect of services offered on terms expressed to be "for life" or "forever", or on terms expressed in a manner having equivalent meaning.

² Subject to the condition set out in footnote 1.

- L. 48 will not proceed with the proposed change of the billing period (from monthly to every 4 weeks) in its 48 terms and conditions, in respect of customers who subscribed to services offered on terms expressed to be “for life” or “forever”, or on terms expressed in a manner having equivalent meaning.
- M. In consideration of the undertakings furnished by 48 as set out herein, ComReg agrees that it will not institute proceedings against 48 pursuant to sections 71 or 84A of the 2007 Act and will close the Investigation. Notwithstanding the foregoing, if 48 fails to comply with the terms and conditions of this Undertaking, ComReg may, in accordance with section 73(7) of the 2007 Act, apply for an Order of Prohibition against 48 in respect of breaches of the 2007 Act.
- N. For the avoidance of doubt, ComReg reserves the right, to institute proceedings in accordance with sections 71 or 84A of the 2007 Act as appropriate against 48 for any relevant breach if the commitments in this Undertaking are not made. 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.
- O. ComReg will publish this Undertaking in accordance with section 73(3) of the 2007 Act in conjunction with an Information Notice. Subject to ComReg’s obligations concerning the proper treatment of confidential information, ComReg may publish additional information related to this Undertaking, the proposed change, and ComReg’s investigation.
- P. 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.
- Q. The Undertaking provided herein shall be binding on the successors and assigns of 48.
- R. The terms “and” and “or” as used herein have both conjunctive and disjunctive meanings.