



Commission for
Communications Regulation

Vodafone Ireland Limited

Undertaking pursuant to Section 73 of the Consumer Protection Act

Information Notice

Reference: ComReg 19/103R

Date: 20/11/2019

Undertaking pursuant to Section 73 of the Consumer Protection Act

1. Following an investigation, ComReg has found that Vodafone Ireland Limited (“Vodafone”) was not in compliance with the European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013 (S.I. No. 484 of 2013) (“the Consumer Information Regulations”), because it did not provide customers of its “Extra” Pay as You Go (“PAYG”) product with their contract on a durable medium for the period September 2016 until March 2018, contrary to Regulations 5, 10 and 12.
2. Pursuant to Section 73 of the Consumer Protection Act 2007 (as amended), where ComReg finds 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 Undertaking from that trader in relation to the contravention containing terms and conditions that are, in ComReg’s determination, appropriate in the circumstances.
3. Where subscribers to the PAYG offerings (known as ‘Chat Extra’, ‘Smart Extra’ and ‘Extra’) topped up by the tariff monthly price (€20 or €30) anytime during the 28 day offer, their offer would re-set and they would lose any remaining allowances. In particular, the investigation relates to the manner in which customers were advised that their offer would reset.
4. ComReg has accepted from Vodafone the Agreement and Undertaking contained at Appendix 1 of this Information Notice.
5. Amongst Vodafone’s commitments are the following:
 - a. Vodafone will refund 72,774 customers that may, in the past, not have intended to reset their offer when they topped up. The total amount to be refunded is €416,971.79.
 - b. Vodafone will advise customers in their contract at the point of sale that their offer will reset if the customer tops up by the amount of the offer.
 - c. Vodafone will amend the SMS sent to customers that top up by the amount of their offer to clearly inform the customer that their offer has been reset.
6. The Undertaking also contains commitments on the dates by which Vodafone’s actions are to be carried out; and on Vodafone’s future practice with respect to advising customers of Key Features of their offers. See Appendix 1 for more details.

Annex 1: Full text of Undertaking by Vodafone Ireland Limited



AGREEMENT AND UNDERTAKING

The Commission for Communications Regulation

-and-

Vodafone Ireland Limited

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

WHEREAS:

- A. Vodafone makes available in the course of its business Electronic Communications Services (ECS) to members of the public.
- B. Vodafone is an authorised undertaking pursuant to the provisions of the European Communities (Electronic Communications Networks and Services)(Authorisation) Regulations, 2011.
- C. It is a function of ComReg pursuant to Section 10(1)(ab) of the Communications Regulations Act 2002(as amended)("the Act"):

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)]

- D. Section 10 of the Act further 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.*

- E. The Commission entered into a Co-Operation Agreement with the Competition and Consumer Protection Commission (formerly “the Agency” within the meaning of section 21 of the Consumer Protection Act, 2007 (as amended)) on 11 November 2015, which agreement was renewed for a three year period in November 2018.

Therefore, ComReg is empowered to ensure compliance with the 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 Consumer Protection Act 2007 (as amended).

- F. ComReg commenced an investigation into Vodafone's compliance with its legal obligations, including the provisions of the Consumer Information Regulations. Vodafone has a total of three PAYG offers branded as “Extra”.

They are "Chat Extra", "Smart Extra" and "Extra". The applicable period of the Extra offers is 28 days, except where a customer tops up by the amount of the Extra offer or tops up by more than that amount (at a single time) within the 28 day offer period. Where a customer so tops up, the Extra offer period is reset and the customer loses any remaining allowances at the time top up is performed. Allowances will not carry forward.

- G. ComReg investigated how Vodafone informed consumers of the contractual terms underpinning these arrangements, information that Vodafone is required to provide pursuant to the Consumer Information Regulations and, in particular Regulations 5 and 10 thereof.
- H. As a result of its investigation, ComReg has found that Vodafone did not inform customers of these terms before the customers were bound by the relevant on-premises and distance contracts in breach of regulations 5 and 10 of the Consumer Information Regulations. With regard to distance contracts in particular, ComReg also found that the terms were not provided to customers in the confirmation of concluded contracts that were provided to customers on a durable medium in breach of regulation 12 of the Consumer Information Regulations.
- I. As a result of this investigation, the Parties have reached an agreement, as more particularly described below, wherein ComReg accepts Vodafone's undertaking, which undertaking is given pursuant to section 73 of the Consumer Protection Act, 2007 (as amended), of certain obligations in respect of consumers affected by the wrongdoing described herein.

IT IS HEREBY AGREED AS FOLLOWS:

- J. In accordance with its obligations under the Consumer Information Regulations and in respect of its Extra Offers, Vodafone will give and make available to its customers the following information before they are bound by an on-premises, off-premises or distance contract:
 - (i) A statement that their offer will reset if the customer tops up by the amount of the Extra offer or tops up by more than that amount at a single time, and that they will lose any remaining allowances. This is to be carried out with immediate effect. The precise statement to be used has been agreed with ComReg.

- (ii) Vodafone will amend the SMS that is sent to customers that top up to the amount (or greater at a single time) of the offer and whose offer is thereby reset to clearly inform the customer that their offer has been reset and that they have lost any remaining allowances. Vodafone will advise the customer in that text to contact Vodafone if this outcome was not intended by the customer when the customer topped up. The precise statement to be used has been agreed with ComReg.
 - (iii) Vodafone will refund 72,774 customers that the parties have agreed may in the past not have intended to reset their offer when they topped up. The total maximum amount that will be refunded by Vodafone by way of call credit to the customers account is €416,971.79.
 - (iv) Subject to the qualifying criteria agreed with ComReg, Vodafone will also refund customers who contact Vodafone within 3 months of the date of publication of this undertaking by ComReg, where Vodafone can confirm that those customers are entitled to a refund. . The relevant refund period is the previous 12 months from the date of the publication of this undertaking..
 - (v) Any residual amount of the €416,971.79, not refunded to, or claimed by customers under clause (iii) or (iv) above will be paid to ComReg. Any such payment will be made on or before April 2020.
- K. In consideration of the undertakings furnished by Vodafone as set out herein, ComReg agrees that it will not institute civil proceedings against Vodafone pursuant to Section 71 of the Consumer Protection Act 2007(as amended). Notwithstanding the foregoing, if Vodafone fails to comply with the terms and condition of this Undertaking, ComReg may, in accordance with Section 73(7) of the Consumer Protection Act 2007 (as amended) or otherwise, apply for an Order of Prohibition against Vodafone in respect of breaches of the Consumer Information Regulations.
- L. For the avoidance of doubt, ComReg reserves the right to institute criminal proceedings in accordance with Regulations 5(3), 10(10) and/or 12(5) as appropriate of the Consumer Information Regulations against Vodafone for any relevant breach if the refunds and the remedies as set out 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.

- M. 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.
- N. The undertakings provided herein shall be binding on the directors, officers, employees, servants, agents, and successors and assigns of Vodafone.
- O. The terms "and" and "or" as used herein have both conjunctive and disjunctive meanings.

Dated this 7th day of November, 2019 in _____