

Revised application for New European Telephony Numbering Space – Consultation Response by the Independent Committee for the Supervision of Standards of Telephone Information Services

Executive Summary

ICSTIS, the independent regulator for premium rate services in the UK, welcomes the opportunity to respond to the consultation document on the revised application from Network for Online Commerce for designation of part of the ETNS for a telemedia service.

While supporting the objective in pursuing the application by the NOC, ICSTIS believes that the revised application, while specifically excluding adult and children's services, still does not provide sufficient information relating to a number of issues listed below.

ICSTIS believes that, in its current format the application is still incomplete and that the supporting arrangements are uncertain. ICSTIS is concerned that the proposal and regulatory regime as described could result in regime-shopping by those seeking to circumvent national requirements and consumer protection measures including call-barring and consequential consumer harm. We do not think it appropriate to open 388 premium rate (telemedia) numbers on the basis proposed.

The issues that still have not been dealt with and the information that has not been provided within the application are:

- Any real assessment of the commercial demand for such services or the likely areas of application.
- Any assessment of the risks in opening pan-European numbers for content services, specifically any assessment of the adequacy of content regulation, consumer protection and other measures generally thought to be necessary when premium rate charging is used.
- Any assessment on the jurisdiction and effectiveness of national authorities, sectoral regulators, ethical councils and others in dealing with services offered across and from beyond national borders.
- Any explanation of arrangements proposed at a central or national level for redress, service termination or other sanctions to deter malpractice and reduce the economic incentive for it.
- Any explanation of how a regime would address important national policies in relation to particular categories of services.

- Any explanation of how per minute pricing can be assessed given the known and acknowledged problems of access from mobile and other originating network operators.
- Any explanation of the role it may be necessary for the ETO and Neustar to play in enforcing regulatory action against problem networks or service providers. For example, if a service provider does operate an adult service, who would have the authority to remove the service?
- Any explanation of the resource implications available for any such enforcement or any legal constraints on such action.

Background

Set up in 1986, ICSTIS (the Independent Committee for the Supervision of Standards of Telephone Information Services) is responsible for setting and reviewing the standards relating to the content and promotion of premium rate services through its Codes of Practice¹. It investigates public complaints, monitors services, recommends measures to achieve compliance with the Codes and publishes information relating to its work. It is a non-profit making organisation, funded by the telecommunications industry, and consists of nine part-time remunerated Committee members, supported by a full-time Secretariat. ICSTIS' purpose is:

"To establish, maintain and ensure compliance with appropriate standards of protection for users of premium rate information and entertainment services and, in doing so, contribute towards the development of the industry. In seeking to achieve this, ICSTIS will:

- * Draw up and enforce an effective Code of Practice.
- * Ensure that consumers are given adequate information to enable them to take sensible decisions about the use of premium rate services.
- * Operate in an independent, fair and transparent way.
- * Reflect its accountability to the public and industry by operating with measurable efficiency and effectiveness.
- * Be adaptable and responsive to developments within a changing industry environment."

The UK Premium Rate Market

As stated on the previous page, ICSTIS regulates the content and promotion of premium rate services through its Code of Practice. Consumers spent some 772 million minutes on

¹ Full details of the Committee, the Codes of Practice and the 2001 Activity Report can be found at www.icstis.org.uk.

premium rate services in 2001, generating approximate revenue of £580 million². Of these, an estimated 71 million call minutes were made from mobile phones, generating approximate revenue of £55 million. In addition to this, 2001 also saw massive growth in the use and popularity of premium rate SMS and reverse-billed SMS. This growth has continued over 2002 and we are in the process of compiling the statistics. Over 3500 companies, ranging from large media-owned organisations to smaller specialist operations, provide a wide range of entertainment and information services, which can be accessed by phone, fax, PC (e-mail, Internet, bulletin board), mobile (SMS/WAP) or interactive TV. It is estimated that, at any one time, there are over 30,000-premium rate services available. Services are usually advertised on 090 dialling codes, although certain services on mobile phones may also use short access codes - typically four or five digit numbers, often followed by a key word describing the service (for example, 87878 VOTE or 62626 CHAT). As a result of Oftel's liberalisation of the Directory Enquiry (DQ) services market in December 2002, ICSTIS also regulates all new DQ services (offered on 118XXX numbers). Taking account of developments, ICSTIS believes that, UK consumers are spending in excess of £1 billion per annum on services defined as "premium rate".

The ICSTIS help line handled some 150,000 calls during 2002. Calls about premium rate services accessed on interactive TV accounted for about 25% of all calls to the help line. However, the vast majority of these calls are general enquiries relating to the identification of premium rate numbers on telephone bills.

Given the growing number of ways to access premium rate services, the thousands of services available and the millions of calls made each year, the number of complaints received by ICSTIS during 2002 remained relatively low at 12,000.

Despite the low number of complaints, it is clear that some cases can result in significant consumer harm with offensive, inappropriate or misleading leaving consumer faced with telephone bills in the hundreds, and on occasion, thousands of Euros.

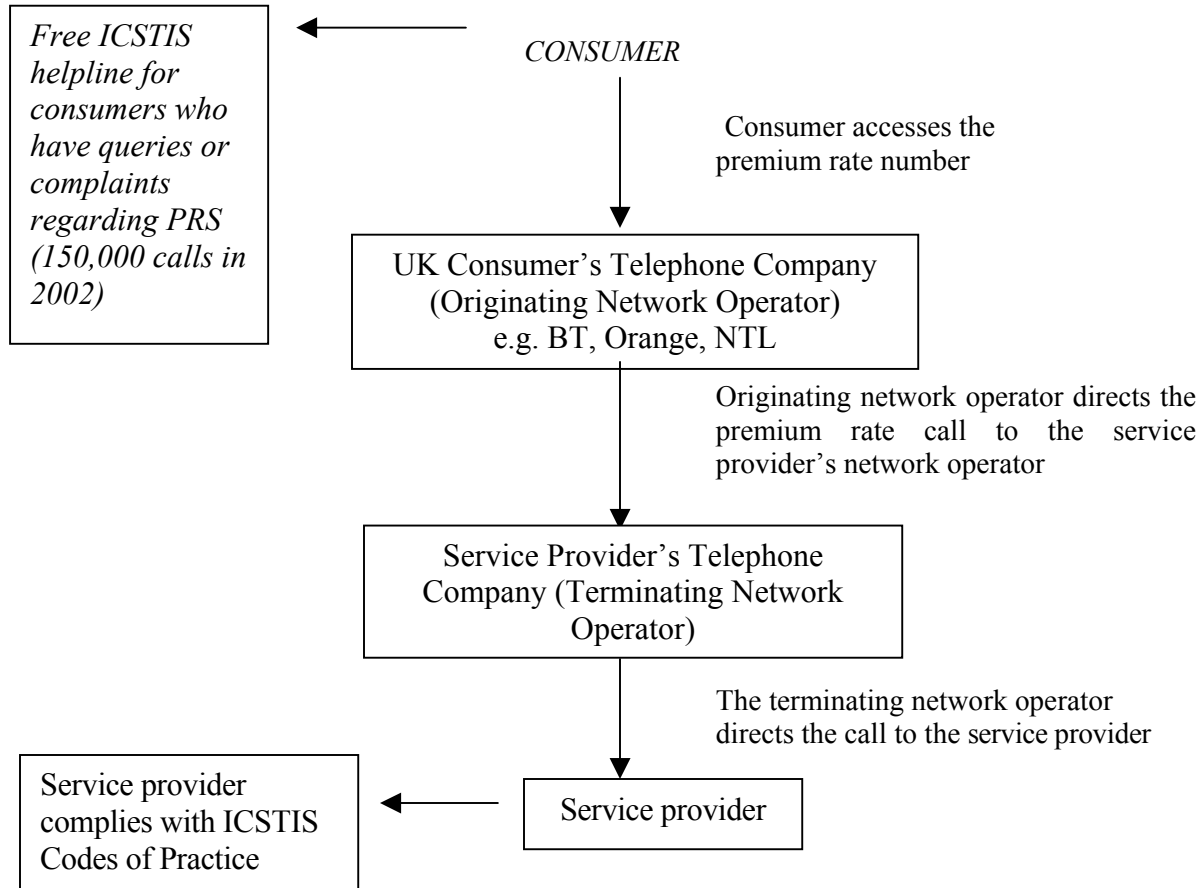
Current situation with regard to accessibility of cross border premium rate services

Currently, it is possible for a service provider to be based outside the United Kingdom while operating a premium rate service utilising a UK premium rate number and vice versa. At the moment, the service provider must adhere to the provisions of the ICSTIS Codes of Practice regardless of which Member State they are based in. In compliance with Article 3 of the E-Commerce Directive, information society services operating in the UK are subject to the country of origin principle.

² Following the liberalisation of Directory Enquiry services by OFTEL, it is estimated by ICSTIS that, this year, the premium rate industry will be worth over £1 billion in the UK alone.

Structure of the UK Premium Rate Industry

The basic structure of the UK premium rate industry can be illustrated by the flow chart below:



All network operators in the UK are currently licensed and are contractually bound to the ICSTIS Code of Practice. Ordinarily, network operators do not provide the actual content or run the premium rate services. ICSTIS requires that all network operators' contracts with service providers contain a provision stipulating that the service provider must comply with the ICSTIS Codes of Practice. ICSTIS enforces the Code of Practice against the service providers.

Traditional service providers would contract for the premium rate lines from a network operator and then run the service. In some instances a service provider would contract to purchase the content from a third party (information provider) but the service provider remains the owner of the premium rate line and ICSTIS continues to enforce its regulations against the service provider.

The Consultation Process

ICSTIS is not opposed to Pan EU 388 PRS and is ready to join in discussions on how this could be achieved safely. We are, however, still concerned to see no reference in the consultation on matters specifically relating to consumer protection, issues of fraud, high bills and the effects of various EU Directives and Regulations. We would reiterate that, in the past, when new services or new tariffs have been introduced into a thriving market – whether it is premium rate based or not – without the full consideration of these factors, the market has collapsed as a result of widespread harm.

Given the potential widespread effects of the existence of Pan EU 388 PRS – in particular for ICSTIS’ regulatory regime - we have particular reservations regarding the manner in which this revised application has been presented. We were concerned that we have still not seen evidence of any consumer harm tests or the adequacy of regulatory arrangements. In order that 388 numbers are introduced safely and effectively, the potential harms have to be established first and then it should become easier to identify the appropriate and proportionate measures that need to be put in place to ensure that the services operate both safely and successfully. ICSTIS has a great deal of experience in organising the introduction of new types of services and charging mechanisms. We were responsible for the successful introduction of DQ services – which have proved to be problematic in other EU countries. We have also successfully and safely managed the use of services such as premium rate Internet and SMS. The introduction of these services required a great deal of consultation with stakeholders and, at all times, consumer protection and the success of the industries was paramount for all concerned. ICSTIS is very concerned that the application by the NOC still fails to provide basic assurances, evidence or any form of qualitative or quantitative research as to the effects on individual regulatory bodies and areas and with regard to Europe as a whole.

Calculating the Impact of Pan EU 388 PRS in the UK

The starting point for the introduction of any new services or number ranges in the UK is based on the following premises:

- The risks involved
- The benefits associated with the introduction
- Securing compliance

ICSTIS always bears in mind the level of impact or sensitivity of the proposed regulation and ensures that, in all of its activities, it has regard to the five principles of better regulation, namely:

- Transparency
- Accountability
- Proportionality
- Consistency
- Targeting

Before we would be able to agree to any Pan EU 388 PRS operating, we would like to see all of the above implemented and adhered to.

Potential problems for the Regulation of Premium Rate Services

ICSTIS is very concerned that very little information is available regarding jurisdictional matters should complaints be received on any Pan EU 388 PRS service. Only four Directives are listed under which services supplied under must adhere and comply with. This list is incomplete – there are new Directives and Regulations being developed at the time of writing (for example, the Sales Promotion Regulation). The jurisdictional arrangements vary between Directives and, depending on the regulations under which the service operated might fall, there will be situations in which jurisdiction will be shared or uncertain within individual Member States. The 388 numbers could be operated from a country outside the EU and it is not clear which regulatory body would have jurisdiction to act in relation to a service where the service provider and/or the network operator was elsewhere in the ETO area.

The regulatory arrangements for premium rate services vary from country to country. In some cases the bodies and commercial or non-statutory and unable to exercise any form of jurisdiction beyond national boundaries.

ICSTIS Code of Practice

The ICSTIS Code of Practice contains both general provisions to which service providers must adhere – these are based on the principles of promotional material and services being legal, decent and honest. Very specific Code provisions for specific types of services – for example, consumer credit services and competition services etc, follow the general provisions. We would require that service providers who operate Pan EU 388 PRS comply with these requirements if UK consumers could access the services. The UK premium rate market is well established, fast progressing and well regulated. ICSTIS has grave reservations on opening avenues that may permit service provider to deliberately circumvent the national regulation.

Call Barring

ICSTIS believes that it is vitally important to look at Pan EU 388 PRS numbers in terms of their impact on national call barring. Currently, conventional premium rate numbers can be call-barrred from mobile phones, homes and work places. It is not clear to ICSTIS whether there has been any contact with UK network operators or Oftel regarding the practicality or ability or cost implications of call barring for Pan EU 388 PRS. There is a serious issue surrounding consumer education and how the use of the new numbers will be communicated clearly. The ETO would want to consider the implications for other 388 services if call-barring was possible but only at the universal level i.e. that a bar designed to prevent access to Pan EU 388 premium rate numbers would result in a bar on all 388 numbers and services.

Proposed Tariffs and Charges

The proposal is that a per minute maximum charge of two Euros should be introduced. This pricing structure fails to state whether there are any maximum call spends proposed across the 388 communities or whether national sectoral spend limits would apply. Various UK services are required to provide pricing on connection and all services are subject to rules regarding the presentation of pricing in promotions. Other countries require pricing be provided as part of a free or local call cost message before premium charging can commence. The NOC proposal is silent on how it is proposed services would or would not be required to comply with differing national requirement relating to price notification.

Differential Pricing

The application fails to address the issue of differential pricing – that is where mobile networks and cable networks charge extra for calls to premium rate services. Would, for example, the 2 Euro per minute be inclusive or exclusive of such a charge? If it is inclusive, what mechanisms are in place to ensure that a service provider can determine which network the consumer is calling from? If it is exclusive, has the fact that the ‘surcharge’ applied by networks could result in a charge significantly higher than the proposed 2 Euros per minute? What accompanying warnings would the promotional material have to state, if any? What assumptions, if any, have been made about the availability of a free introduction being provided to consumers on connection?

Again, none of these issues seem to have been contemplated.

Procedures, sanctions and redress

The Code also contains provisions allowing ICSTIS to act quickly and effectively when UK consumers are being harmed by premium rate services. If the emergency procedure is invoked, ICSTIS can require that a premium rate services have access terminated to it in a very short period of time – often as quickly as an hour. This power is used in cases where there is evidence or serious potential for significant consumer harm.

The ICSTIS Committee also has the ability to reprimand, bar access to services and fine service providers who breach the Code of Practice. The Code also contains a sanction that permits the Committee, where a service provider repeatedly breaches the Code of Practice, to ‘name’ the individual. This effectively means that no service providers or networks can knowingly engage that ‘associated individual’ in the provision of premium rate services.

In very serious cases the ICSTIS Committee can, at adjudication, impose redress as a sanction. In practice, service providers are often willing to compensate consumers who are not satisfied with either the content or a product delivered whilst calling a premium rate service.

The UK consumer has come to expect this type of targeted and efficient regulation. Consequently, ICSTIS has concerns over the status of Neustar and the company’s ability

to act decisively with network operators to prevent consumer harm in the event of problems with 388 premium rate services. If there is a constraint on our ability to direct networks outside the UK to comply with ICSTIS decisions, can Neustar “request” that networks bar access to services? Can Neustar require that networks withhold revenue payments to service providers responsible for improper and harmful services? What would happen if the network refused to do this? Would Neustar have the authority to compel networks to comply with a ruling? Would Neustar have power of authority and sanction against network operators – particularly those network operators which no (public) consumer base and (on occasion) no incentive to comply with a regulatory decision?

Appeals

The ICSTIS Code of Practice provides a right of appeal for service providers who are aggrieved by an ICSTIS decision or determination. The ICSTIS Code of Practice details the procedures of the Independent Appeals Body who will preside over the appeal and are independent of the ICSTIS Committee. Is Neustar ready to deal with the hearings, appeals and legal challenges that might follow? Can Neustar, like some of the IARN members, impose redress for consumers who have suffered a financial harm or loss?

These are significant and serious issues that must be addressed before any Pan EU 388 PRS services are allowed to operate.

Conclusion

ICSTIS is not opposed to technological change or product innovation – in fact we welcome it. However, we would do so only after sufficient time and effort has been spent ensuring that consumers are effectively protected. We have a particular concern in ensuring that public trust is maintained premium rate charging as a form of payment. The Committee still believes that the application by the NOC does not make a satisfactory case. ICSTIS would wish to see more structured thought and more open dialogue around the points and questions raised in our response and we are happy to discuss these points before any arrangements are introduced.