

## ICSTIS' response to the FSA's consultation 172 on Electronic money: Perimeter guidance

### Introduction

ICSTIS, the Independent Committee for the Supervision of Standards of Telephone Information Services, is the independent regulatory body for premium rate telecommunications services that are accessible in the UK. Its primary task is to set standards for the content and advertising of premium rate services. A copy of our latest *Activity Report* and Code of Practice are available at our website: [www.icstis.org.uk](http://www.icstis.org.uk). ICSTIS is an independent regulatory body whose Code of Practice will shortly be recognised by OFCOM – the new Communications regulator currently being established by Parliament. Insofar as ICSTIS has remit, powers and effective powers of sanction over premium rate services, the FSA may be minded to have regard to his when determining the necessary level of regulation it requires in the area of E-Money where prepaid airtime is used to purchase Premium Rate Services.

“Premium rate” is a term that describes a particular way of paying for information or entertainment services delivered via a telephone network. The call charge is billed to the customer by the network operator, on behalf of the service provider who provides the content, product or service. Call charges appear on the customer's ordinary (mobile) telephone or bill. The call revenue from the service is shared between the network operator and the service provider at a previously agreed rate. Increasingly, these content-rich and value-added services are being delivered on a variety of platforms beyond conventional telephony. Services are now being accessed on mobile/WAP and SMS platforms, on the Internet and via the return path on interactive television.

The UK market for premium rate telephony is now believed to be the largest in the world and generates revenues annually of £600m from nearly 800m calls to premium rate services. This market is set to grow following plans by Ofcom to liberalise the market for Directory Enquiry Services, which ICSTIS also regulate. Many of the service offerings are so successful that they are also exported to other countries.

ICSTIS is very pleased to have the opportunity to respond to the above consultation paper. Insofar as ICSTIS has a remit in this area, we will be limiting our response to matters relating to prepaid airtime on mobile telephones used to purchase Premium Rate Services. We will not comment on matters relating to electronic travellers' cheques and e-money backed by funds held in trust accounts.

### ICSTIS' comments on the specific questions

#### ***Q1 Do you agree with our proposed approach, outlined above, to determining whether a scheme is or is not e-money?***

In broad terms ICSTIS agrees with the proposed approach in determining whether a scheme is or is not e-money. We specifically agree that the FSA should not be influenced by artificial features of a scheme that seek to disguise the payment function as the supply of some service.

**Q2 Is this guidance clear and comprehensive?**

We are not sure what specific guidance is being referred to. If the guidance at Annex 2, then please see our answers to Questions 4,5 and 6 below.

**Q3 Are there any additional areas you would like us to address under this heading?**

There are none that we can specifically identify at this stage.

**Q4 Do you agree with our proposed guidance on e-money, prepaid airtime and Premium Rate Services?**

We do not agree with the guidance as it relates to the regulation of Premium Rate Services by ICSTIS. Paragraph 3.10 (and Annex 2, Para. 3.5.4) makes reference to ICSTIS' Code of Practice limiting calls to services costing less than £20. This is not correct. ICSTIS does prescribe certain upper limits for a limited range of services where the potential for consumer harm is judged as greater than the norm, but otherwise most PRS calls can operate on an open-ended basis. The guidance should be amended to reflect the correct position.

Under paragraph 3.9 the FSA has provided for an explanation of PRS services based on the definition of such services as set down in the 9<sup>th</sup> Edition of the ICSTIS Code. The FSA should be aware that this definition will alter later this year as a consequence of the Communications Bill currently passing through Parliament. This contains (at Clauses 117-121) new definitions of Premium Rate Services. The draft bill is available at [www.communicationsbill.gov.uk](http://www.communicationsbill.gov.uk)

**Q5 Is this guidance clear and comprehensive?**

In ICSTIS' view the guidance is not as clear as it could be. In paragraph 3.7 the FSA have acknowledged that "airtime" can be used for "SMS messaging", but elsewhere reference is extensively made to "calling" PRS. There have been many debates as to whether a "call" constitutes the sending of a text message and the FSA may wish to ensure that the guidance covers both "calls" and text services" if that is what is intended. Where reference to text services is made, it would also be helpful if the FSA were to distinguish between the two current forms of Premium Rate SMS charging, namely Mobile Origination (MO) – that is where the consumer pays a premium for sending a SMS - and Mobile Termination (MT) – that is where the consumer pays a premium upon receiving a SMS message that s/he initiated at ordinary cost.

Under Para 3.19 (second bullet) the FSA say that PRS numbers do not constitute e-money where the supply of airtime and the supply of PRS takes place in the *same action* (italics applied). It would be helpful if the FSA could clarify what they mean by "the same action". If for example you were to dial a PRS service from a pre-paid mobile using a 090 number in order to request, for example, a ringtone and if this ringtone was then delivered after the event via SMS, does this constitute the "same action"? Under the guidance as read, we believe that it would constitute the same action as the definition of "same action", by inference does not suggest that it occurs at the same time. Clarification on this would be helpful.

**Q6 Are there any additional areas you would like us to address under this heading?**

This guidance recognises (in Para 3.6) that there will be considerable developments in electronic communications networks over the next few years and that future consultation papers will address

this. We would agree and would remind the FSA that these new developments are already underway: all mobile phone operators have launched new Multi-media Messaging Services (MMS) recently and the first third generation (3G) mobile service has also been recently launched in the UK market. We trust therefore that such guidance will be forthcoming sooner rather than later in order that it will provide certainty to regulators, consumers and industry about the precise scope of e-money services in the context of PRS on pre-paid mobile telephones.

**ICSTIS Ltd**  
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