

Of tel's consultation on Conditions Regulating Premium Rate Services

A response by the Independent Committee for the Supervision of Standards of Telephone Information Services

Executive Summary

Subject to minor comments and to the congruence that we believe currently exists between the Communications Bill and the draft Code of Practice, ICSTIS agrees with Of tel on the proposed scope and description of those persons to whom the Condition should apply. ICSTIS has a range of other comments on the consultation paper which it asks Of tel (and OFCOM in the future) to note and observe.

Background

ICSTIS welcomes the opportunity to respond to this consultation document. Clearly whilst we expect and are preparing to be the recognised "enforcement authority" under the relevant provisions of the Communications Bill once enacted, we nevertheless agree completely with Of tel's view that, from a policy perspective, the objective is to as far as possible preserve current arrangements underpinning the effectiveness of the ICSTIS self and co-regulatory regime. The Director-General remains committed to ensuring that the scope and level of regulation is the minimum necessary in order to obtain appropriate outcomes. ICSTIS supports this entirely.

Comments on scope and the description of such persons and such services to which the Condition should apply

We only have two comments on the Annex to the Draft Notification (Annex A):

- ❑ The scope and description of the Notification will need amending in light of any relevant amendments made to the Communications Bill as it finalises its passage through Parliament;
- ❑ The description of a "Controlled Premium Rate Service" under 2 (e) (i) – a charge rate which exceeds 10p per minute, makes no reference to calls where they are not time determined as described on pages 14/15 of the consultation paper (paragraph 2.14 (a) refers).

Other Comments

We have the following general comments on the consultation document and we identify these using the paragraph numbering system adopted in the consultation paper:

1.1 Whilst this explanation of a description of a premium rate service (PRS) is broadly accurate for simplicity sake, it is not wholly accurate and complete. The telephone company shares the money from the phone call with a third party and this will usually be the organisation responsible for the content, product or service. However, the value chain for PRS is, in the real world, more complicated than this and the party contracting with the network may be an intermediary involved in the provision of the service but may not be the content provider or owner. ICSTIS by necessity, and for the purposes of Code enforcement, does not make distinctions here and instead has successfully applied its Code by enforcing it on the party contracting directly with the

network and who is gaining revenue from the service, regardless of whether they actually delivered and sourced the content. The definition of a “service provider” in the Code of Practice (9th Edition as amended) makes this clear.

1.2 Whilst accepting that the main purpose of regulation in the premium rate sector is to secure the adequate protection of consumers from receiving high bills they cannot afford to pay, there should be recognition that the person who created the high bill may not have had the authority of the bill payer to make the calls or initiate the service. Telephony access by necessity is a line of credit which lends itself to easy abuse by other members (and sometimes non-members) of a household and other legal remedies and protections such that are available with credit cards do not arise in the same way.

1.4 Of tel has correctly identified a range of tasks undertaken by ICSTIS. These have recently been refined and have appeared in the draft Code of Practice (10th Edition) on which ICSTIS is consulting. In that document they appear as follows:

- (a) set and maintain standards and, as appropriate, requirements for the content, promotion, marketing and provision of premium rate services, and keep these standards under review,*
- (b) monitor premium rate services to ensure compliance with these standards,*
- (c) consult widely with interested parties before changing these standards,*
- (d) make arrangements and determine procedures for the proper support (including funding) of ICSTIS and the efficient and effective operation of its regulation of premium rate services,*
- (e) determine any categories of premium rate service which may only be provided on the basis of prior written permission from ICSTIS, identify conditions which should be attached to the grant of such prior permission, keep such categories and conditions under review, and receive, consider and determine applications for prior written permission,*
- (f) administer a system for the payment of claims for compensation for unauthorised use of Live Services, and provide a system for adjudications where such claims are disputed,*
- (g) investigate and adjudicate upon complaints relating to the content, promotion and marketing of premium rate services, and issue directions designed to achieve compliance with the Code which may include the imposition of sanctions,*
- (h) issue directions either generally or to individual providers of premium rate services to procure compliance with the Code and/or to secure enforcement of its provisions,*
- (i) publish reports on its work at regular intervals and generally publicise its role. This includes reports to Ofcom, as and when required, relating to the regulation of the premium rate industry and the adequacy and appropriateness of regulatory arrangements.*

There are some differences between this list and that which Of tel has alluded to here.

1.5 Given our comments above about your paragraph 1.1, we do not accept that “ICSTIS’ provisions only apply directly to those who provide information and “content services””. Our provisions apply to those who contract directly with network operators for the provision of PRS.

Sometimes these entities are the actual provider of the content and on other occasions what they have done is to enable the content provider in some way to bring the content to market in the form of a PRS and in return for this facilitation they enjoy a share of the revenue from the phone calls or Premium SMS messages sent.

1.6 Again, we would point to OfTel's mis-understanding insofar as the contract with the terminating network operator may not be with the PRS provider but with an intermediary party who we treat as the "service provider" for the purposes of ICSTIS' Code and so that it may have practical effect and be enforceable.

1.7 So that we may be clear, while ICSTIS will continue to regulate "PRS", the PRS being referred to here are the clauses as finally defined in Section 117 of the Communication Bill once enacted. We do not expect to have a broad definition of "Premium Rate Services" in the next edition of the Code as we do currently in the 9th Edition (as amended).

2.12 (second bullet) In broad terms we agree that we remain responsible for regulating providers of PRS – essentially those as set out in clause 117(9)(a) to (d) of the Bill. We would observe, however that the draft Code (10th Edition) sets out how ICSTIS has proposed to define ECNP's and service providers. This is as follows:

1.1.7 An 'electronic communications network provider' ('ECNP') means, for the purposes of this Code, a person who:

(a) is a provider of premium rate services within the meaning of section 117(9)(e) of the Act; and

(b) insofar as that person is a person falling within section 117(10) of the Act, is a person who bills subscribers directly for electronic communications services and is able to perform or can require the performance of all of the obligations that may be imposed by Section 2 of this Code from time to time.

For the avoidance of doubt, all references in this Code to ECNP or ECNPs are references to a person defined in this paragraph.

1.1.8 A 'service provider' is any person engaged in the provision of premium rate services who contracts with an ECNP for facilities enabling the provision of premium rate services.

Where an ECNP itself provides premium rate services other than as an ECNP, the ECNP or such part of its organisation as is responsible for the provision of the same will be treated as a service provider for the purposes of this Code.

We believe this is both consistent with the relevant clauses of the Communications Bill as currently drafted and with the desire to, as far as is possible, preserve current arrangements underpinning the effectiveness of the ICSTIS self and co-regulatory regime.

2.14 (c) For the purposes of clarity we are assuming that "Mobile Services" are those services currently identified as 077 to 079 (inclusive) services as identified in the Numbering Conditions and that they **cannot** be used for services charged at a premium, whether voice or SMS

2.16 We agree completely with the Director's approach and we will endeavour to ensure effective self-regulatory mechanisms are put in place for the regulation of premium rate services terminated overseas on international direct dial numbers. If such mechanisms cannot be put in

place then we believe that in the interests of consumer protection that such services should be brought within the definition of CPRS. We strongly believe this would reflect the will of Parliament as shown through debates about the Communications Bill, most recently at Committee Stage of the House of Lords.

2.22 (Second bullet) We would re-iterate the point we made under paragraph 1.5 above.

ICSTIS Ltd
July 2003