



Number Translation Services: A way forward

A response by ICSTIS

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Contents Page

	Page
1. Background	3
2. Comments on the proposals with respect to ICSTIS' remit	5

Section One - Background

ICSTIS welcomes the opportunity to respond to this further consultation on the NTS Framework. We also welcome the evident value placed on our initial response to the October 2004 consultation paper on this subject.

The current consultation document summarises at section 1.7 the broad concerns that both consumers and industry have with the current NTS Framework. For consumers the main concerns identified relate to:

- ❑ **Consumer protection:** Some consumers argue that revenue share should be stopped on 08 numbers because there are no adequate consumer protection measures in place to prevent consumers being potentially overcharged or otherwise exploited on 08 services.
- ❑ **Price transparency:** Ofcom research demonstrates low consumer awareness of the price of 084 and 087 calls
- ❑ **Misleading advertising:** Most customers now pay more for 0845 and 0870 numbers than they do for local and national geographic calls thus giving rise to the potential for misleading advertising when describing 0870 as “national rate” and 0845 as “local rate”.
- ❑ **Adult services:** There are concerns about the proliferation of adult services on 0870 and 0871 and the consequential impact on call barring.
- ❑ **Internet diallers:** There are increasing complaints and problems with rogue diallers on 0871 (and other number ranges) and these are not currently regulated by ICSTIS.
- ❑ **Call centre waiting times:** Where call centres obtain a revenue share from operating a call centre consumers can be concerned that any poor service is directly attributable to the ability to obtain extra revenues. Some of the problems here may be related to perception.
- ❑ **Provision of public services:** There have been concerns over the provision of some public services using revenue share arrangements.

In addition to these concerns, Communication Providers raised additional commercial concerns about the current NTS framework.

We are able to directly comment on the concerns above relating to adult services and Internet diallers. In both cases we are aware of the proliferation of services that have all the appearances of being a premium rate service (PRS) but on a 087 dialling code and therefore currently out of scope for ICSTIS' regulation. We note that Ofcom suggest in the consultation paper that ICSTIS has a current policy of not regulating services on 08. For clarification we should make clear that our mandate to regulate beyond the scope of the Controlled Premium Rate Services (CPRS) Condition is limited by the agreement of voluntary arrangements with industry. Currently we have only one arrangement in relation to the regulation of Internet Diallers which use International Direct Dial (IDD) numbers on which to revenue share. There is a view also that the CPRS Condition could include PRS Services where the price to the consumer exceeds 10p, such as from a mobile phone. ICSTIS' view however is that to capture a service in this way would be arbitrary and not a pragmatic means for regulating services which may give rise to consumer harm and detriment. We would also observe that the current distinction that has emerged between that which is CPRS on 09 (largely) and that which falls outside the CPRS

definition is largely arbitrary and we see today service operating on 0871 which share the same broad characteristics of CPRS – namely they involve the delivery of some content or service, involve some form of revenue share between operator and service provider and are charged to the consumers telephone bill or pre-pay account. Removing this distinction between different forms of paid-for content would remove the artificial boundary between different consumer protection regimes based solely on price which is not always a good justification for such differences.

Adult and Internet Dialler services

With respect to adult services and Internet diallers on 087, we already receive enquiries and complaints about these services sometimes in the mistaken believe that since they have all the characteristics of a PRS that we do regulate them. We are aware therefore that today in the market there is consumer detriment and other concerns about the content that these services can deliver which give rise to concerns and arguments that further regulation by ICSTIS would be appropriate. To that end we note and welcome the recently published consultation on revising the CPRS Condition to ensure that ICSTIS can regulate all diallers; not just those on 09.

We believe that in the areas of Adult and Internet diallers Ofcom's consultation paper makes the case for further regulatory intervention and that as such these should fall under ICSTIS' remit and be regulated through our Code of Practice. In all other areas we are not best placed to judge the proportionality of the case being made. Given the growing problems about Internet diallers in particular and the level of detriment arising today in the market, we agree it is necessary to bring forward implementation proposals for bringing diallers within ICSTIS' remit sooner than the suggested approach.

We agree with Ofcom's analysis of how we would expect to regulate all of these areas namely:

- Services would be subject to the ICSTIS Code of Practice just as any other CPRS is. However, a review of the proportionality of applying the current Code of Practice would need evaluating – see Section Two to this response for further information on this point.
- Services which fell within the current definition of a Sexual Entertainment Service under the ICSTIS Code (so called "Adult services"), would in accordance with the Code and Ofcom's Numbering Plan, be expected to operate in the designated numbering space namely 0909 or 0908 and if provided on a SMS short code then to operate within the terms of the MNO arrangements delivered through self regulation by the MNOs.
- Live Entertainment (voice only) services would be expected to obtain permission before they operated and made the necessary financial contributions to the compensation fund and put in place necessary bonds with ICSTIS.
- Internet diallers on 0871 would be permitted to continue to operate subject to the prior permission regime in place for diallers in the 09 area which appears to have been very effective in reducing considerably the consumer harm and detriment that these software programmes did cause in 2004.

Section Two – Comments on the proposals with respect to ICSTIS’ remit

Ofcom propose and evaluate in the consultation document a range of scenarios for dealing with the many issues arising from the NTS Framework review. Overall Ofcom conclude that it would be proportionate and justified for ICSTIS’ remit to be extended to the regulation of 0871 services which will continue to allow revenue share, but not 0870 services where Ofcom propose that revenue share in effect cease.

Overall, and in respect of 0871, Ofcom consider that the tests that they apply under section 60(2) of the Communications Act can be met, namely that the proposals are (a) objectively justifiable (b) not unduly discriminatory (c) proportionate and (d) transparent. On this basis, and assuming that there is stakeholder support for this view and a mandate for ICSTIS to take on the responsibility for regulating 0871 services under a wider CPRS Condition which encompasses such services, then we would be willing to give our agreement to extend our remit in such a way. A widening of ICSTIS’ remit would offer the opportunity to industry to assist in the creation of a non-statutory and co-regulatory framework for the regulation of this paid for content activity as well as offering greater regulatory flexibility to deal with new issues that may arise with 0871 as that market matures over time.

Ofcom will appreciate that at this stage ICSTIS’ Committee has not given any detailed consideration as to quite what the implications of any decision to extend our scope in this way would be. This is in terms of (a) the proportionality and appropriateness of the application of ICSTIS’ Code to the various types of services that may utilise 0871, (b) the operational impacts that could result from absorbing an increased workload of a scale and quantity as yet to be determined and (c) the implications for the funding regime. On each of these three issues we would make the following general observations:

The proportionality and appropriateness of the application of ICSTIS’ Code when applied to services using the 0871 number range: We recognise that whilst many services that do use, or may migrate to use, the 0871 number range have characteristics that can be similar to current PRS in the 09 area, we equally recognise that there can be more corporate use of 0871 to provide customer services. We believe it would be appropriate to review the ICSTIS Code in the context of these new services having regard for the risk of detriment and consumer harm in order to determine whether any current Code provisions would be disproportionate if applied in full to a 0871 environment. On this basis we would consider disapplying provisions where judged as proportionate to do so. We also believe that our regulatory remit of issues relating to customer services provided by call centres on 0871 numbers should focus on the detriment arising from the cost of calls. This is especially where the actual services are being provided through other contractual or payment methods and/or where the actual service is also being regulated by a regulator with specialist expertise in the area such as the Financial Services Authority in respect of financial services. We would also expect to work with recognised trade bodies and associations in this area to develop and promote best practice for call centre customer service to help reduce problems and complaints arising in the first place. As well as considering the proportionality of any regulation, we would also have regard to other regulatory best practice, including ensuring that any rules were transparent, targeted, accountable and consistent.

The operational impact to ICSTIS resulting from absorbing an increased workload: Neither we, Ofcom nor any stakeholders would want our effectiveness in the area of regulation over which we have a current remit to be jeopardised or diluted by absorbing this extra responsibility. To that end we would expect to work closely with industry and Ofcom to develop the appropriate arrangements for both modelling the potential impact and then planning for it in

such a way that preserved the best of our current regulatory effectiveness whilst allowing us to be equally effective with regulating 0871 services. Insofar as this may require expertise that need purchasing then we would expect to discuss these costs with Ofcom on the basis that our current resources are fully allocated for the provision of regulation of services currently within remit.

The implication of the funding regime: There is a link here to the above point insofar as the modelling undertaken to determine the likely scale and impact of the workload that may need to be absorbed will help provide data on the likely costs that arise and on which some industry funding (levy) would be required. Our starting point is that the costs born by regulating 0871 services should be properly charged to that sector and that wherever possible ICSTIS should maximise the “polluter pays” principle.