

# ICSTIS' RESPONSE TO THE DCMS GAMBLING REVIEW REPORT

## SECTION 1:

### Background and overview about ICSTIS and premium rate competitions

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 Practice<sup>1</sup>. 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 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 effective Codes 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"

### What is a premium rate service?

Premium rate services are charged on a different basis to ordinary telephone calls. They are services where the revenue from the overall charge to customers is shared between the telephone company (for the carriage of the call) and the service provider (payment for the content or resulting product or service to the individual or organisation providing service for the content). Customers pay for premium rate calls through their telephone bills in the normal way.

### The Premium Rate Industry

Revised figures detailed in OFTEL's *Market Information Fixed Update: September 2001* show that the premium rate industry generated an estimated £420 million in revenue in 2000 from fixed telephones alone. Over 2,000 companies currently provide a wide range of entertainment and information services which can be accessed by telephone, fax, PC, mobile or interactive TV. Services range from weather, voting and advice lines to competition, chat and business information services and adult services. The cost of the services currently varies from 10 pence per call to £1.50 per minute. Competition services, in their various guises, are very popular with consumers and are estimated to constitute a substantial portion of the entire premium rate market.

During 2000, the ICSTIS helpline handled over 95,000 calls demonstrating significant consumer demand for information and advice about premium rate services. In the same year, ICSTIS received 6,067 complaints about premium rate services with competition services attracting 818 complaints. The vast majority of competition services raise very few complaints or questions by consumers. The

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<sup>1</sup> Please find included with this response a copy of the Code of Practice (Eighth Ed.), and the 2000 ICSTIS Activity Report.

complaints ICSTIS receives tend, as the Gambling Review Report identifies in paragraph 28.67, to be as a result of one or a few service providers and services.

## **How Does ICSTIS Deal With Competition Services?**

The Codes of Practice contain a range of provisions about the content and promotion of premium rate services. Examples would include pricing information and contact details. In addition, the Codes of Practice contain specific provisions relating to particular service types. Section 4 of the General Code of Practice, Eighth Edition, relates specifically to competition services. The provisions are as follows:

### **4.2 Competitions and other games with prizes**

**4.2.1** *Services in this sector ('competition services') fall into five basic categories:*

- *lotteries,*
- *competitions,*
- *other games with prizes,*
- *an entry mechanism into a draw,*
- *information about prizes.*

*Most of these are subject to legal restrictions. Before setting up such services, service providers are strongly advised to seek advice on legal and excise duty implications.*

**4.2.2** *Promotional material for competition services which can cost more than £1.00 must clearly display:*

- a the cost per minute and likely playing time, or the full cost of the call,*
- b details of how the competition operates and an indication of any tie-breakers.*

**4.2.3** *Competition services which may cost more than £5.00 must, as soon as is reasonably possible after the caller has spent £2.50, and after each £2.50 of call spend thereafter, require an active confirmation that the caller wishes to continue with the call. The method used to obtain this confirmation must have been granted permission by ICSTIS. Failure to provide the correct responses must, after the provision of any necessary prize claim information, cause the service to be terminated immediately by forced release.*

**4.2.4** *Competition services which are aimed at or would reasonably be expected to be particularly attractive to persons under 16 years of age must not:*

- a offer cash, or anything which can be readily exchanged for cash, as a prize,*
- b feature long or complex rules.*

**4.2.5** *Promotional material must clearly state any information which is likely to affect a decision to participate, in particular:*

- a any closing date,*
- b any significant terms and conditions, including any restriction on the number of entries or prizes which may be won,*
- c an adequate description of prizes, including the number of major prizes,*
- d any significant age, geographical or other eligibility restrictions.*

**4.2.6** *The following additional information must also be made readily available to potential competitors. If not contained in the original promotional material, it must be available free to anyone sending a stamped, self-addressed envelope:*

- a* how and when prize winners will be informed,
- b* how prize-winner information may be obtained,
- c* any criteria for judging entries,
- d* any alternative prize that is available,
- e* the details of any intended post-event publicity,
- f* any supplementary rules which may apply.

**4.2.7** *Competition services must have a closing date, except where there are instant prize winners. An insufficient number of entries or entries of inadequate quality are not acceptable reasons for changing the closing date of a competition or withholding prizes.*

**4.2.8** *Competition services and promotional material must not:*

- a* use words such as 'win' or 'prize' to describe items offered to all participants,
- b* exaggerate the chance of winning a prize,
- c* suggest that winning a prize is a certainty,
- d* suggest that consumers must dial a premium rate number in order to participate if an alternative postal entry route is available.

**4.2.9** *Service providers must ensure that:*

- a* prizes are awarded within 28 days, unless a longer period is clearly stated in the promotional material,
- b* postal entries have the same chances of winning as telephone entries,
- c* if there is any subjective assessment in the selection of the winning entries (for example, tie-breakers) in a competition open to the general public, then judging is by a person independent of the service provider and any intermediaries involved, or by a judging panel including at least one independent member.

- In addition to the Code of Practice provisions, ICSTIS has issued a Guideline<sup>2</sup> to aid service providers in ensuring they operate their services in compliance with the Code of Practice. ICSTIS does not, however, provide legal advice on or provide interpretation of the Lotteries and Amusements Act 1976. If it appears that a service provider may be operating an illegal lottery, ICSTIS will pass on the details of the case to the competent authority. However, we are not aware of any prosecutions as a result of such referrals.

### **What Types of Competition Services Exist?**

The majority of the recommendations in the Gambling Review Report do not affect the workings of ICSTIS as the proposals fall outside its remit. The comments ICSTIS make, therefore, are confined largely to Chapter 28 of the Report. As the Report recognises in paragraph 28.60, competition services broadly fall into a number of different categories. As per the Report, ICSTIS will comment later on each of those categories and the recommendations made in relation to them.

In terms of the form in which a competition may take, ICSTIS deals with scratchcards, phone-in competitions involving an element of skill often linked to television and radio programmes, competitions advertised in magazines and competitions appearing in direct mailshots. In October 1999, Open, launched on the Sky Digital platform, offered consumers home shopping, banking, entertainment and e-mail services. One of their most successful premium rate services has been 'Trivial Pursuit', in which players are asked to answer five out of six questions correctly before getting the option to enter a bonus prize winning round via a premium rate number<sup>3</sup>. With the proliferation of mobile telephones, ICSTIS expects that the number of calls to premium rate numbers will increase dramatically and a new platform for competitions may be developed using SMS and reverse-SMS type

<sup>2</sup> Please find the Guideline attached in Annex A.

<sup>3</sup> More than 1.1 million people entered the bonus round in a seven week period leading up to Christmas in 1999.

services as a billing mechanism for charging customers a premium for content, such as competition services.

### **Value for Money**

The DCMS website makes reference to the fact that the cost of calling a premium rate scratchcard competition service is often in excess of the value of the prize. ICSTIS does not have a remit to determine the cost at which services should be charged and nor does it exercise a remit over whether a service represents good value for money. ICSTIS believes that this is a matter governed by market forces. However, ICSTIS does have an interest in ensuring that consumers receive the service that they pay for and that services are not misleading, delayed or inaccurate and that consumers are fully aware of the costs of the call before they commit themselves to dialling a premium rate number.

## **SECTION 2: The Gambling Review Report Recommendations**

### **Overview**

The Gambling Review Report identifies and highlights that the law, as it currently stands, is both confusing and unclear. ICSTIS wholeheartedly agrees with the finding that the law in this area is unclear. While agreeing with the need for reform, ICSTIS would also urge a degree of caution in ensuring that any future legislation clearly identifies the different types of competition services and how they are to be regulated. ICSTIS would agree with the general statement in paragraph 28.7 of the Gambling Review Report which states that there may not be a case for banning prize competitions altogether and that there needs to be an acknowledgement that prize competitions may be regarded as distinct from lotteries and hence treated differently. How this distinction will be worded and work in practice is perhaps key to the success of any future legislation on the operation of prize competitions.

ICSTIS is keen to see no ambiguity in future legislation. As a regulator of premium rate services, ICSTIS has seen services, which, although not illegal in nature have caused a considerable number of consumer complaints. In such circumstances ICSTIS and other competent authorities such as trading standards offices and the police can do little to prohibit such services, even when the public are complaining since the operator of such services does not appear to be contravening the law. A regulator such as ICSTIS can and does impose requirements on services which do cause consumer harm. However, there are limits to the amount of protection a regulator can provide consumers and ultimately it is the law which must be clear and precise for regulation to prove successful. It is as a direct result of the current confusion that there appears to be no appetite to prosecute companies which operate 'just within' the boundaries of the law – as rightly pointed out in paragraph 28.4 of the Report.

### **Specific comments on paragraphs in Chapter 28**

- **Paragraph 28.61 - Promotional Competitions**

ICSTIS can see no immediate concerns arising from implementing the model for promotional competitions adopted in New Zealand. However, it would appear that the two necessary criteria for these prize draws under such a scheme would be a 'minimal' entry fee and the absence of any element of skill. Such services at present would appear to ICSTIS to constitute an illegal lottery. Although extensive research will have been carried out by the Gambling Review Body with regard to the introduction of such a model, ICSTIS would need to see the research before it can fully comment on the proposal and how such services could be adopted in the United Kingdom.

- **Paragraph 28.63 – Competitions Linked to TV and Radio Programmes**

This paragraph states that the key element of a prize competition or draw is that the entry should be free or minimal. ICSTIS agrees that the 'real cost' of entering competitions should be transparent. To that end, the ICSTIS Code of Practice states that any competition services which cost over £1 in total must clearly display the cost per minute and likely playing time of the call or the full cost of the call. In addition to this requirement, it is not possible for a service provider to describe a premium rate service as being 'free' regardless of the cost of the call.

With regard to the issue of 'minimal' costs, ICSTIS has already stated that it does not determine the actual cost a service provider may wish to charge for calling their premium rate service. However, the use of the cost of a stamp as a measure of minimal cost seems reasonable<sup>4</sup>. The economic implications of setting of a maximum cost per competition service would need further consideration and research as the consequence of such a decision might be to make them commercially unviable and thus tantamount to being banned.

- **Paragraph 28.65 – Competitions Involving Skill**

ICSTIS would agree with the recommendation that a prize competition involving the exercise of a substantial degree of skill should be permitted. As identified in the Gambling Review Report, determining what constitutes a substantial degree of skill is not necessarily straightforward. However, it may be possible to determine if the degree of skill required is 'substantial' by looking at the target audience of the competition and how widely the competition is promoted.

At this moment, ICSTIS cannot foresee any major consumer concerns which would stem from the restriction in section 14(1)(a) of the 1976 Act being removed.

- **Paragraphs 28.54-28.69 – Competitions Run Principally for Commercial Gain**

Some services within this category have proved to be a problem area to regulate. In particular direct mailshot services, addressed to consumers by name, have created the greatest number of complaints to ICSTIS regarding competition services. In practice such services have not been considered to be competition services by ICSTIS, but rather 'pre-drawn prize draws'<sup>5</sup>. The 'Win a Brand New BMW' case specifically mentioned in the Gambling Review Report is a prime example of one such service. This case was investigated at length by the Secretariat and adjudicated on by the ICSTIS Committee. A copy of the final adjudication is attached in Annex B. ICSTIS was furnished with evidence that all the products were available to be claimed each month, trading standards offices were involved in ensuring that the leaflets for claiming the BMW were sent to consumers at random, and finally ICSTIS contacted the consumers sent leaflets allocating them significant prizes other than the mobile phones to verify that they had received the leaflets. ICSTIS is aware that the case was the subject of a police investigation and liaised with the police, but is not aware of any prosecution that has taken place.

The concerns attributed to the police in paragraph 28.68 regarding the establishing of a BMW competition service are unclear. ICSTIS would point out that, in order to set up services, a service provider needs to approach a network operator and obtain a premium rate number from them. Furthermore, ICSTIS Code requirements mean that a service provider must include on their promotional material:

- a full postal address including postcode, or
- a PO Box number including postcode, or
- a telephone helpline number (to be charged at no more than UK national rate)

ICSTIS can verify that some service providers who operate competition (and other) services are based outside the UK. However, it is important to note that, whilst they may be based abroad, if they operate UK premium rate numbers then their promotional material and services fall firmly under ICSTIS' remit. ICSTIS already deals with service providers based abroad on a regular basis and although regulation of such companies is certainly more difficult, ICSTIS has not found it to be impossible<sup>6</sup>.

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<sup>4</sup> Note that premium rate services can cost as little as 10 pence per minute or per call.

<sup>5</sup> This is where a specific prize has already been randomly allocated to a consumer and, on receipt of the promotional material, consumers are required to call the premium rate number to determine which product has been allocated to them.

<sup>6</sup> ICSTIS has noted that services operated by companies based abroad have tended to cause greater amounts of public harm. The reasons for this are unclear, but factors such as language, a lack of understanding of the legislation and the regulations may play a part.

While ICSTIS understands that there may be good reason to restrict the use of lotteries to the funding of good causes as a matter of public policy, it would strongly urge the DCMS to look closely at the diversity of competition services before recommending a ban on all commercial lottery services. As stated previously, many competition services, including those operated solely for the profit of the operator, are very popular and it is only a limited number that have appeared to cause serious consumer harm. ICSTIS should also point out that the premium rate mechanism does permit competition services to donate a certain amount of the revenue generated to charity (as recognised in paragraph 28.62 of the Gambling Review Report). This is, of course, strictly governed by the Charities Act 1992, but such services can and do exist. These might be considered as 'hybrid' services exhibiting elements of both commercial gain and of providing revenue for charitable purposes. How does the DCMS view such services? Would they be allowed to be exceptions under any proposed ban? Alternatively, how much money from the revenue generated must be given to charity before the competition is not considered to be a commercial lottery?

### **On-line Gambling**

At present ICSTIS regulates Internet services accessible via UK premium rate numbers. Service providers who wish to operate such services must first apply for prior permission from the Committee and only then can they operate their services<sup>7</sup>. The permission certificate issued to the service provider to run such services will include general conditions such as:

- Calls must not cost more than £20 in total.
- Calls must be terminated by forced release once the £20 cost limit has been reached.
- A prominent and clear on-screen clock, or equivalent, which provides cumulative call cost information must be displayed on connection and for the duration of the service.
- Internet content accessed using premium rate must not allow any further access to the world-wide web until the consumer disconnects from the premium rate service (often referred to as a "walled garden").

Although there are no known on-line gambling services currently operating on premium rate numbers, ICSTIS can see no reason why this should remain to be the case. As and when they do come to fruition, ICSTIS would expect to regulate them accordingly. ICSTIS would agree on the safeguards highlighted in paragraph 1.34.

### **Conclusion**

ICSTIS welcomes the Gambling Review Report and has long recognised the need for the gambling laws to be clarified and updated. At the same time ICSTIS shares the views expressed by Tessa Jowell MP, the Secretary of State at the DCMS that any reforms must be well thought out, balanced, provide freedom for companies to operate popular competition services and provide adequate consumer protection measures. To this end, ICSTIS expects that officials from the DCMS will liaise with its Secretariat when taking forward detailed proposals for legislation in this area.

Further information on this submission can be obtained from Suhail Bhat on 020 7940 7412 or by e-mail at [sbhat@icstis.org.uk](mailto:sbhat@icstis.org.uk).

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<sup>7</sup> Obtaining prior permission from ICSTIS does not exempt service providers from the obligation that content must be legal in the UK.