

ICSTIS' RESPONSE TO THE GOVERNMENT CONSULTATION ON THE LAW ON PRIZE COMPETITIONS

Executive Summary

ICSTIS welcomes the opportunity to respond to this consultation and agrees with the aim of trying to establish a clear distinction between lotteries and prize competitions. ICSTIS' experience of dealing with premium rate competition services is well documented and outlined in the response to the DCMS Gambling Review Report¹.

The main points that ICSTIS feels the DCMS must concentrate on are:

- A consumer harm test to form the basis of any analysis of prize competitions and of the necessary legislative and regulatory input that they may need.
- Regulation of prize competitions should, in line with Government philosophy, be the lightest possible and only resort to statutory solutions where an alternative, effective industry solution cannot be identified.
- Premium rate competitions are currently well regulated. The number of complaints generated about them annually is small given their circulation across radio, TV, the Internet, SMS and the print publications, albeit a small number of services can sometimes cause consumer harm.

Key issues

In formulating any potential definitions of lotteries and prize competitions, the DCMS needs to be clear on the harms it aims to prevent. Once potential harms have been established, it should become easier to identify the appropriate and proportionate response.

The Gambling Review Report identified and highlighted the fact that the law, as it currently stands, is both confusing and unclear. ICSTIS wholeheartedly agree with this analysis. The current problems experienced by ICSTIS in regulating certain prize competitions arise mainly as a result of a lack of clarity in the law. If there was absolute certainty as to the legality or otherwise of services then ICSTIS would be able to move quickly in stopping any services causing consumer harm. ICSTIS possesses the equivalent of 'Stop Now Orders' and their use would be greatly enhanced by clear and unequivocal direction through legislation permitting ICSTIS to concentrate on terminating those services which cause consumer harm. This ability to prevent harm is key when one looks at the equivalent measures other regulators and bodies such as the police can take. For example, the police cannot stop a competition service from operating in the same way that ICSTIS can. Of course, the power of prosecution under the realms of the law lies with the police authorities. ICSTIS does not 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. As

¹ Please find attached a copy of the response to the DCMS Gambling Review Report in Appendix 1 (the response can also be viewed at www.icstis.org.uk).

identified by the Gambling Review Report however, there seems to be little appetite for prosecution in the current uncertain climate.

In order to aid the DCMS in determining the risks and harms associated with prize competitions, ICSTIS has highlighted below the key potential consumer harms as ICSTIS sees them. We outline some of the concerns that the DCMS appear to have in relation to prize competitions and the effective manner with which ICSTIS has dealt with the issues².

- *Consumer deception and the nature of the promotion*

Paragraph 3.3.1 of the Ninth edition of the ICSTIS Code of Practice prohibits misleading services and promotional material. ICSTIS has acted against service providers when promotional material for prize competitions apparently misled consumers, for example, by showing ‘£’ signs when there was no cash prize, by suggesting a low value prize was less likely than was the case or by omitting key information in the terms and conditions of the promotion. Examples include conditions on the use of a voucher or on any additional costs associated with a prize.

The ICSTIS Code has extensive provisions (set out in paragraphs 5.2.1 – 5.2.9) relating to the conduct of competitions covering the closing dates, the equal chances on entries by alternative means and arrangements for the allocation of prizes. Service providers can be required to make available information on criteria for judging entries, how prize winners will be informed and the availability of alternative prizes. Amongst other conditions ICSTIS prohibits the use of misleading language (e.g. “winners” when everyone who enters will receive a prize). In cases where subjectivity is involved in selecting a winner ICSTIS requires full or partial independence of the process.

Most premium rate prize competition services (certainly in the broadcast world) have a low cost of entry and are widely regarded as a ‘fun’ form of audience participation. Broadcasters confirm to ICSTIS the arrangements in place for the selection of winners if there is a draw associated with a competition involving the use of an element of skill. Operators of ‘pre-drawn’³ prize competitions such as scratch cards generally use an independent law firm to manage prize allocation. Of course, there have been problems relating to such services where real doubt has existed over either the availability of the prizes or their independent distribution. In cases of doubt over availability ICSTIS has required service providers to make auditable arrangements with an independent third party such as a law firm or a trading standards organisation for the distribution of winning cards or promotions and for distribution of the prizes. ICSTIS has also conducted thorough investigations when required to ensure that the prizes exist, that the distributions have been impartial and confirmed that the distributions have taken place.

² Please find attached in Appendix 2 a summary of recent cases ICSTIS has dealt with relating to competition services.

³ The pre-drawn element refers to the fact that the allocations have already been made. All the consumer is required to do is call a premium rate number to find out the prize that has been allocated to them.

- *Insufficient Information*

In addition to the provisions relating to misleading promotional material and services, the Code also requires that certain types of information are provided to consumers by the service provider. Paragraph 3.4 of the Code requires that pricing information is clearly stated and is easily legible, prominent and presented in a way that does not require close examination. ICSTIS also has a supplemental guideline on how the various provisions on pricing information will be interpreted by the Committee. ICSTIS is likely to and has, in the past, found service providers in breach of the Code where the pricing appears to be tucked-away – e.g. on the back rather than the front of a scratch-card or in a form or in colours which make it hard to read. However, this is a difficult area to regulate and ICSTIS is committed to conducting a review of pricing information later this year. We will be looking at, amongst other things, the nature of the information that should be provided, the form in which it is presented and the location of the information provided. Such reviews are an integral part of ICSTIS' dedication in ensuring that consumers are better protected from companies wishing to deliberately circumvent the regulations.

Paragraph 3.5 of the code requires that contact information be provided on the promotional material. This permits consumers to know whom to contact should they wish to make an enquiry or lodge a complaint.

Non-Fulfilment

The ICSTIS Code of Practice allows action to be taken if a service provider fails to meet the promises in the promotion. In practice, this has only been found to be necessary on a few occasions and each time has resulted in access to services being terminated and steps taken with the service provider and (exceptionally) the associated Network Operator to arrange refunds to affected consumers. The ICSTIS Code of Practice contains a specific sanction for redress where the Committee feels that consumer harm has taken place.

- *The improper targeting of Children*

The ICSTIS Code has a series of conditions contained in Section 5.1 that restrict the types of services that can be targeted at children and states the maximum cost (£3) that can be charged. The Code prohibits services that encourage repeat calling.

Children's services run on all broadcast television channels and in a wide variety of youth magazines. ICSTIS has had very few complaints about these services. ICSTIS has regard also to services that might be particularly attractive to children – even if not expressly targeted at them. Such services can find themselves subject to the above provisions and to monitoring. ICSTIS is looking, for example, at highly popular interactive games (e.g. on the Sky Digital platform) to ensure, amongst other things, that the pricing and other information is adequate. There is a relatively low level of consumer understanding in this area and we are working with leading broadcasters on providing supplemental consumer information.

- *Addiction*

ICSTIS has no evidence to suggest there is an issue with addiction to premium rate-based competition and game-play services. Complaints to ICSTIS do rise when a problematic service is operating but complaint levels are generally very low in relation to the activity in the sector and no complaints refer in any way to concern over addiction.

There have been cases of unauthorised use by children and the ICSTIS Code addresses such cases. ICSTIS routinely assists consumers with data on premium rate numbers. In particular, interactive games are popular with consumers and appear regularly on telephone bills but the bills are low in cost and the consumer usually wants to determine the nature of the service and such queries seldom recur. There is a limit to the prescription possible on individual service providers when consumers have the option of calling a large number of premium rate services and participating in non-PRS equivalents. ICSTIS' focus has been in ensuring the provision of clear pricing information and any other relevant information on the nature of the competition that may affect a decision by a consumer to participate in the service.

- *Money Laundering*

ICSTIS exists to protect the interests of the consumers. Its focus is not on money transference. Broadcasters, leading national newspapers and privately listed or publicly quoted companies operate the vast majority of premium rate prize competition services. We have no evidence to believe these businesses are engaged in anything other than the legitimate provision of a popular and widely used range of services. If ICSTIS had any suspicions over premium rate services being used for money laundering purposes we would bring the matter to the immediate attention of the police. We see no reason to believe this arrangement would be anything other than satisfactory.

- *Illegality*

The ICSTIS Code clearly prohibits illegality (Code paragraph 3.1). If ICSTIS is either informed formally or finds out through an investigation that a service provider was involved with any form of illegality, ICSTIS has the ability (under emergency powers in the Code) to terminate access to a service within hours. The Metropolitan Police have spoken with ICSTIS in relation to only one promotion in 1999. Notwithstanding comment made at the time and subsequently over this service being an illegal lottery no action was taken by the police – again perhaps as a result of the lack of clarity in the law. The service in question (and successors) was, however, dealt with under provisions in the ICSTIS Code of Practice. When a subsequent, similar, promotion appeared in late 2001, access to the service was barred by ICSTIS within 24 hours of notification to the network operator.

The Premium Market

Consumers spent some 772 million minutes on premium rate services in 2001, generating approximate revenue of £580 million. 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. Over 2000 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. Premium rate competition services are widely available on all of the mentioned delivery mechanisms. It is estimated that, at any one time, there are some 20,000 premium rate services available.

Some 120,000 calls were handled by the helpline during 2001. Calls about premium rate services accessed on interactive TV now account for about 25% of all calls to the helpline. However, the vast majority of these calls are general enquiries relating to the identification of premium rate numbers on telephone bills.

As a guide to the size of the market, Sky TV published on 1 August 2002 its Results for the year ended 30 June 2002. Interactive revenues increased by 100% to £186 million in total, of which £95 million related to betting via interactive television, the internet and the telephone. Surrey Sports, Sky's wholly-owned bookmaker, now has 93,000 interactive TV betting registrations and receives over 60,000 bets per week on average. Sky Active and subsidy recovery revenues comprised the majority of the remaining £91 million. Whilst it is unknown from the figures how much of the revenue generated related specifically to interactive competition services, it is worth bearing in mind that in October 1999 More that 1.1 million people entered the bonus round of a premium rate service called 'Trivial Pursuit' in a seven week period leading up to Christmas. In this interactive game 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.

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 2001 remained relatively low at 8,081. Complaints relating specifically to competition services reached 1,172 – again, given the many hundreds of premium rate competition services operating at any one time, this is a relatively low figure. Most complaints were actually generated by a minority of service providers. Trading standards departments across the country collectively received 500 complaints about one specific direct mail competition. Some competition services do cause widespread consumer harm, but in ICSTIS' view this is a tiny number compared with the number of services operating at any one time.

Regardless of the comparatively small number of complaints to ICSTIS regarding certain prize competition services in relation to the number of services operating, ICSTIS feels that there is a specific need to address the complaints directly. The complaints that have been received have been not just been from members of the public – but from Members of Parliament and there has been huge media interest fuelling public concerns. The complaints have been aimed at certain services and

complainants have had serious objections to receiving personally addressed competition mailshots where it appears that the service provider is based abroad. By tackling these issues head on, ICSTIS hopes that any certainty provided through legislation will permit all competition services operating legitimately to continue to provide 'fun' competition services and prevent complaints from arising in the first instance.

Specific Questions

Question 1: *How can we establish a clear distinction between prize competitions and lotteries?*

While ICSTIS considers it is inappropriate to draft definitions for the DCMS, we would agree that any definition must be clear and unambiguous. The clarity of this distinction is made more important given the decision by the Government to retain a ban on commercial lotteries. The main problem that ICSTIS sees is that the law which applies today still has its roots firmly placed in the thinking referred to by Lord Widgery in *Reader's Digest Association -v- Williams* 1976 3 All ER at 739. Lord Widgery stated that the three essential elements in the definition of a lottery are:

- A distribution of prizes
- The fact that a distribution was done by means of chance
- There must be some actual contribution made by the participants in return for obtaining the chance.

The DCMS has the opportunity to move away entirely from this test or, if it feels the test is still relevant, update the test and apply it through legislation. ICSTIS would suggest that it would perhaps be most helpful to determine the definition of a lottery and then any service falling outside that definition could be classified as a prize competition. Some of the characteristics, which ICSTIS feels may be helpful in distinguishing a lottery from a prize competition, are the following:

- Is there a free route of entry?
- Do all the entrants or participants get a prize?
- Is there an element of skill or knowledge involved?
- Is there a combination of at least two of the above criteria?

Premium rate competitions already exist which exhibit some or all of the above characteristics and cause very little cause for concern.

The DCMS has suggested a monetary value to cap services with a service with a cost less than the set cap being considered not to be a lottery. ICSTIS thinks it difficult to mix and match definitions and financial cross over points. If the DCMS wishes to pursue a monetary aspect to any definition, ICSTIS believes it should reflect the findings of a risk assessment. ICSTIS is mindful of the cost of services and the Committee will take such a factor into account when adjudicating on a particular case. It would also be prudent to reflect on our competition provisions at paragraph 5.2.3 relating to interactive competition services and the manner in which the pricing structure for services costing over £5.00 is presented.

- *Alternative/Free route Entry*

Paragraph 28 of the consultation states that: “The current legal requirement that prize competitions must provide a free entry route unless they involve a ‘substantial degree of skill’ begs the question of what ‘substantial’ means in this context.” ICSTIS asks whether the inclusion of the ‘substantial’ element can be eliminated making the application of the rule simpler. One could argue that, in fact, any question could be considered to be ‘substantial’. ICSTIS feels that concentrating on ‘substantial’ maybe unhelpful – if a prize competition has an alternative free entry route which is badly publicised/not prominent enough and/or is difficult to use, then it becomes an issue not solely of legislation but also one of enforcement. ICSTIS would be likely to consider an alternative, free route that was badly publicised or difficult to use, to be contrary to the misleading provisions of the ICSTIS Code of Practice.

- *Two Stage Competitions*

Historically, complications are faced when presented with two stage competitions i.e. where a caller enters a competition and success depends on the consumer exercising a degree of skill. Thereafter, the participants who have been successful from the competition are entered into a pool from which a winner is drawn. *The Law of Betting, Gaming and Lotteries* by Smith and Monkcom (1987) p.416 states that:

“Skill in the early stages of a competition will not suffice to prevent it from being a lottery if it can be said that chance has, in reality, intervened between the exercise of skill and winning of the prize.”

ICSTIS would urge the DCMS to look again at two stage competitions and whether there is any scope for allowing such competitions to fall outside the definition of a lottery.

Question 2: *Is there a need for further regulation of prize competitions? What form should this take?*

As stated, ICSTIS agrees with the need for greater regulatory clarity of definition. Legislation introducing this clarity may require consequential amendments to the ICSTIS Code of Practice. Services exist in various forms – if the primary concern is ‘for profit’ competitions with some form of entry cost, it is necessary to look at the range and adequacy of powers and enforcement under existing consumer law – including, but not just, the Misleading Advertising Regulations. In relation to any proposed legislation, it is important that a degree of flexibility is maintained to ensure longevity. ICSTIS cannot stress enough the crucial difference a clearly stated definition would make in terms of defined or proposed regulation. It would permit regulators to act immediately where services are illegal lotteries or appear to be causing consumer harm.

Question 3: *If further regulation is needed, who should do it? Could there be more than one regulator?*

ICSTIS shares the Governments view that regulation should be the lightest possible, based on self-regulatory arrangements where possible. Statutory regulation should only be used as a last resort and where alternatives are not available or effective.

ICSTIS is a highly effective co-regulatory body with underpinning support from OFTEL. It also is well respected and trusted by the industry and consumer bodies alike. The telecommunications world is a fast-paced and ever changing medium and requires a body capable of adapting quickly. Experience across the premium rate services sector shows that a self or co-regulatory body is better able to keep up with this level of change.

For the reasons given, and subject to a fuller risk assessment, ICSTIS does not think it necessary or beneficial from a consumer protection point of view to make any new Commission responsible for services which are already subject to an effective regulatory regime. The speed and effectiveness of enforcement are also important considerations. In supporting evidence we enclose our Code of Practice, Guideline and recent reports of enforcement action. As we have already stated, ICSTIS can use emergency procedures to stop harmful services within hours. Our 'standard' procedure for cases of less apparent immediacy brings cases to adjudication in approximately 2 months. ICSTIS believes this compares very favourably with existing statutory bodies and any successor regimes operating under statute.

In terms of clarity of regulation, ICSTIS believes that it is feasible that all services defined as gambling to be within the remit of the proposed Commission and all those that are gambling and use a premium rate charging mechanism⁴ or those services that are not considered to be gambling falling under the remit of ICSTIS where a premium rate charging mechanism is used in the operation of the service. This would mean that a certain degree of overlap will exist between the two regulatory bodies, but that this overlap, providing it is clearly planned for through a memorandum of understanding will enforce consumer protection by not permitting any loopholes to exist. ICSTIS is currently in the process of introducing such memoranda of understanding with the Office of Fair Trading and the Telecommunications Ombudsman. Overlap with other regulatory authorities has been resolved through case handling and day to day practice.

The DCMS is presumably aware of existing consumer protection law and the roles of the Trading Standards Departments, Office of Fair Trading and the Advertising Standards Authority. The DCMS will also be aware of the Injunctions Directive and the Enterprise Bill (before Parliament) to strengthen and extend Stop Now injunctive powers applicable to competition services operated from the UK or other EU countries.

Question 4: *Is there a need for further controls on transparency, price, prizes, and fairness in prize competitions, or an issue about possible addictive behaviour, fraud or other abuse?*

ICSTIS would re-iterate that any controls should be a product of risk assessment. In relation to Premium rate services, ICSTIS does this as a matter of course. As mentioned earlier, ICSTIS is committed to reviewing its Code when required and is currently focusing on the pricing provisions. However, ICSTIS is not complacent – particularly when new technologies arrive requiring new provisions and Guidelines.

⁴ At present ICSTIS regulates Internet services accessible via UK premium rate numbers. 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. Please check our submission to the Gambling Review Report for more details.

Question 5: *Is there a better way to distinguish between competitions which have to provide a free entry route and those which do not? How far should those running a competition go to offer a free route of entry?*

Please refer to our submission for question 1.

Conclusions

1. ICSTIS has long recognised the need for the laws surrounding prize competitions and lotteries to be clarified and updated.
2. Discussions on any extension of statutory legislation should be based on a thorough risk assessment and an analysis of the effectiveness of existing regulations.
3. Regulation of prize competitions should be the lightest possible and only resort to statutory solutions where an alternative, effective industry solution cannot be identified.
4. ICSTIS believes its Code of Practice and day-to-day operations are targeted, fast, effective as a deterrent and capable of adaptation.
5. Parallel actions to build consumer protection more generally may address no premium rate services (e.g. OFT).
6. ICSTIS believes it is the best authority to have remit over premium rate competition services.
7. To this end, ICSTIS is willing to liaise with the DCMS.

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

Appendix 1

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 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 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

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

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 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 Guideline² 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 number³. 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

² Please find the Guideline attached in Annex A.

³ 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 reasonable⁴. 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’⁵. 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 impossible⁶.

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

⁵ 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.

⁶ 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 services⁷. 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.

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

Appendix 2

ICSTIS MONTHLY REPORT NO. 91 (August 2002)

Service Provider

Monsternob, Lancaster

Service Type & Tariff

Competition: £1.50 per minute

Complaint Source

Anonymous (1)

Network Operator(s)

Totem Communications

Complaint

A complaint was received about an unsolicited text message which invited the recipient to call a premium rate number to enter a fruit machine-style competition. After the call had been made and the mobile phone number registered, the caller received three non-chargeable text messages to their mobile phone with fruit machine-style pictures.

The pricing information given in the promotional text message did not appear to be sufficiently prominent as the recipient was required to scroll down through a blank screen to view it (3.4.2 eighth edition). The message also failed to provide the total call cost or playing time of the service, and failed to provide details of how the competition operated and when it closed (4.2.2 and 4.2.5 eighth edition). Call revenues, together with full promotional and operational details were requested (5.2.3 eighth edition).

Investigation and Decision

Monsternob disputed that call costs had not been given sufficient prominence, and stated that, at the time of the promotion, ICSTIS had not yet released its Guideline for SMS (text message) promotions. They did not dispute that the total call cost or playing time information had been omitted, and explained that this was due to human error.

They added that, because of the limited number of characters available in a text message, it was not always possible to include all of the information required for competition services. In addition, they stated that the promotional text message had been test-marketed on a small number of existing Monsternob customers. The requested information was supplied.

The Committee upheld breaches of paragraphs 3.4.2, 4.2.2 and 4.2.5 of the eighth edition of the ICSTIS Code of Practice. A breach of paragraph 5.2.3 was not upheld. Monsternob were fined £500.

ICSTIS MONTHLY REPORT NO. 91 (August 2002)

Service Provider

Telecom Advertising & Promotions Ltd, Borehamwood

Service Type & Tariff

Competition: £1.50 per minute

Complaint Source

Intra-industry (4)

Network Operator(s)

Opera Telecom

Complaint

Two scratchcard competition services, one offering a top prize of £1,000,000 and the other £5,000,000, suggested that winning a prize was a certainty by stating that all participants were “guaranteed winners”. The scratchcards used the word “win” to describe a ‘bonus’ item which was available to all callers, while one of the scratchcards did not provide an adequate description of some of the other prizes available (4.2.8a and c, and 4.2.5c eighth edition).

In addition, the scratchcards’ use of ‘£’ symbols to denote the items available to be claimed suggested that cash items had been won. On calling the service, however, some of the items available were holiday vouchers (3.3.1a eighth edition). Call revenues, together with full promotional and operational details, were requested (5.2.3 eighth edition).

Investigation and Decision

Telecom Advertising & Promotions Ltd did not dispute that they had used the word ‘win’ or that they had suggested that winning a prize was a certainty, and agreed to make the appropriate changes to future promotions. They disputed that the ‘£’ symbols suggested that cash items had been won, claiming that they simply denoted prizes. They stated, however, that they would use other symbols in future to denote other prizes. They disputed that some of the other prizes had not been adequately described and claimed that their descriptions were similar to those used in other scratchcards. The requested information was supplied.

The Committee upheld breaches of paragraphs 4.2.8a and c, 4.2.5c and 3.3.1a of the eighth edition of the ICSTIS Code of Practice. A breach of paragraph 5.2.3 was not upheld. Telecom Advertising & Promotions Ltd were instructed to seek copy advice for all promotions for a period of six months.

ICSTIS MONTHLY REPORT NO. 91 (August 2002)

Service Provider

Telecom 4, Bushey

Service Type & Tariff

Competition: £1.00 per minute

Complaint Source

Public (6) – Nationwide

Network Operator(s)

Opal Telecommunications

Complaint

Members of the public complained about receiving one of two text messages, one of which was sent prior to the Ninth Edition of the Code of Practice coming into force and one after. The first promotional text message failed to provide sufficiently clear call costs by using the phrase “cc100ppm” and failed to explain how the service operated (3.4.2 and 4.2.2b eighth edition).

Both messages failed to indicate the total call costs of the service (4.2.2a eighth edition and 5.2.2a ninth edition), and both failed to state the closing date and any restrictions on eligibility. The description of the prizes as “hols” also failed to adequately convey the facts that the holidays on offer did not include flights and that interested parties would have to make several additional payments in order to claim their prizes (4.2.5 eighth edition and 5.2.5 ninth edition).

The omission of much of this information in the promotional text messages was likely to influence recipients’ decisions about whether to call the service and was arguably misleading as all recipients would have believed themselves to be eligible having received the message (3.3.1a eighth and ninth edition). Call revenues were requested, together with full promotional details (5.2.3 eighth edition and 6.2.3 ninth edition).

Investigation and Decision

Telecom 4 disputed that call costs had not been sufficiently clear, claiming that recipients would have understood the meaning of “cc100ppm” as it was a commonly-used phrase in the promotion of premium rate numbers. They also claimed that they could not use the ‘£’ symbol as some mobile phones did not recognise it. They did not dispute that total call costs had been omitted and explained that this had been due to an error by their information provider. They disputed that the promotional text message had not explained how the service operated and stated that it clearly indicated that it was a pre-drawn prize draw.

They did not dispute that terms and conditions had been omitted from the promotional text message but claimed that this information could not be provided in full in a text message promotion because of the limited number of characters. They disputed that the omission of information about eligibility restrictions had been misleading, claiming that the text message had stated that recipients had won a ‘prize’ in a holiday

competition and not that a holiday itself had been won. The requested information was supplied.

The Committee upheld breaches of paragraphs 3.4.2, 4.2.2a and b, 4.2.5 and 3.3.1a of the eighth edition of the ICSTIS Code of Practice, and paragraphs 5.2.2a, 5.2.5 and 3.3.1a of the ninth edition. Breaches of paragraphs 5.2.3 and 6.2.3 (eighth and ninth editions respectively) were not upheld. Telecom 4 were fined £500.

ICSTIS MONTHLY REPORT NO. 91 (August 2002)

Service Provider

Zintrax Ltd, London

Service Type & Tariff

Competition: £1.50 per minute

Complaint Source

Public (39) – Nationwide

Network Operator(s)

Intelliplus Group

Complaint

Numerous members of the public complained about receiving two unsolicited text messages. The first message stated that they had won a ‘prize’ worth £150 and invited them to call a premium rate number in order to collect it. The second message informed them that their ‘prize’ would be given to someone else if they failed to claim it.

The first message suggested that the promotion was being run in association with the recipients’ own networks, either One 2 One/T-Mobile or Vodafone. One of the phrases used was: “As a valued One 2 One user our c’puter has picked YOU to win a £150 prize to celebrate the name T-Mobile.” Both networks informed the Secretariat, however, that they were in no way associated with the promotion of the service (3.3.1a ninth edition). The first message also failed to provide call costs and company contact/identity details, and failed to provide the total call cost or likely playing time of the service (3.4.1, 3.5 and 5.2.2a ninth edition). It also failed to provide an adequate description of the prize – a make-over worth £150 – and failed to indicate any additional costs that might be incurred in claiming it (5.2.5c and e ninth edition).

The message also used the words “win” and “prize” to describe items that were available to all recipients, while the service itself appeared to be unreasonably delayed as callers were required to answer seemingly unnecessary questions. This interactive element was also likely to have resulted in a total call cost of more than £5.00, in which case active confirmation needed to be obtained from callers after each £2.50 of call spend that they wished to continue with the service (5.2.8a, 3.12 and 5.2.3 ninth edition). Call revenues, together with full promotional and operational details, were requested (6.2.3 ninth edition).

Investigation and Decision

Zintrax Ltd disputed that the first promotional text message had misled people into presuming that the service was being run in association with the named networks, and stated that the second message clarified the identity of the service promoter. They claimed that call costs and company contact details had been provided in the second message (which they believed to be sufficient), and added that the total call cost or playing time and the £2.50 confirmation warning were not required as the service was not, in fact, a competition but rather a “delivery mechanism“.

They disputed that the service was unreasonably delayed, explaining that the request for information from callers helped them to collect an accurate demographic. They also disputed that the words “win” and “prize” had been used incorrectly, and stated that the make-over on offer was described in full in the terms and conditions contained on their corresponding website. Some of the requested information was supplied.

The Committee upheld breaches of paragraphs 3.3.1a, 3.4.1, 3.5, 5.2.2a, 5.2.5c and e, 5.2.8a and 3.12 of the ninth edition of the ICSTIS Code of Practice. A breach of paragraph 5.2.3 was not adjudicated on. Zintrax Ltd were fined £10,000 and access to the service was barred for a period of six months.

ICSTIS MONTHLY REPORT NO. 90 (June 2002)

Service Provider

Funview Ltd, Brentford

Service Type & Tariff

Adult competition: £1.00 per minute

Complaint Source

ICSTIS

Network Operator(s)

Cable and Wireless

Complaint

A competition service offering a chance to win a date with a “debutante” was promoted by leaflets, containing images of an adult nature, which were handed out in the street (4.11.4 eighth edition). The leaflets, which omitted call costs and the likely playing time of the service, also failed to give a closing date and details of the number of prizes available. In addition, the service was not operating on the designated 0909 adult services dialling code (3.4.1, 4.2.2a, 4.2.5c and 2.2.2 eighth edition). Call revenues were requested and the service provider was asked to comment on the possible facilitation of prostitution (5.2.3 and 3.2.3 eighth edition).

Investigation and Decision

Funview Ltd responded to the breaches but stated that they were merely a bureau and that their information provider had been responsible for the service and its promotion. They disputed that the content of the service was of an adult nature and that it should

have operated on an 0909 prefix, and explained that, by stating in the leaflets that every sixty-ninth caller would win, the number of prizes was clearly given.

They did not dispute the remaining breaches and stated that their information provider had been instructed to make the appropriate changes. The information provider claimed that the service had only been promoted to men over the age of 21, who had been warned about the likely content before being given the promotional leaflet. The requested information was received and Funview Ltd stated that there was no evidence to suggest that the service facilitated prostitution.

The Committee upheld breaches of paragraphs 4.11.4, 3.4.1, 4.2.2a, 4.2.5c and 2.2.2 of the eighth edition of the ICSTIS Code of Practice. Breaches of paragraphs 5.2.3 and 3.2.3 were not upheld. Funview Ltd were fined £5,000 and given a formal reprimand, and access to the service was barred for a period of six months.

ICSTIS MONTHLY REPORT NO. 90 (June 2002)

Service Provider

Jinder Kaur t/a Promotional Enterprises, Wednesbury

Service Type & Tariff

Competition: £1.00 per minute

Complaint Source

Public (1) – Redditch

Network Operator(s)

BT

Complaint

A member of the public complained about a leaflet which promoted a pre-allocated prize draw. The leaflet omitted the closing date of the competition, and the terms and conditions were not sufficiently prominent (4.2.5a and b eighth edition). The leaflet also described gold prizes as worth more than the other prizes, claiming that their value exceeded the £5.00 total cost of the call. It appeared, however, that the same gold prizes were also listed as being worth anything from £1.00 to £1,000 (3.3.1a eighth edition). Call revenues were requested, together with full promotional and operational details (5.2.3 eighth edition).

Investigation and Decision

Jinder Kaur t/a Promotional Enterprises did not respond to the breaches despite having confirmed receipt of the breach letter and being given ample opportunity to respond.

The Committee upheld breaches of paragraphs 4.2.5a, 3.3.1a and 5.2.3 of the eighth edition of the ICSTIS Code of Practice. A breach of paragraph 4.2.5b was not upheld. Access to the service was barred for a period of three months.

ICSTIS MONTHLY REPORT NO. 90 (June 2002)

Service Provider

Moby Monkey, Leeds

Service Type & Tariff

Competition: £1.50 per minute

Complaint Source

Public (6) – Nationwide

Network Operator(s)

Your Communications

Complaint

Members of the public complained about receiving unsolicited text messages, which offered prizes of £100,000 and a Ferrari. Despite offering different prizes and operating on different premium rate numbers, both numbers connected to the same service (3.3.1a eighth edition). The messages also failed to provide much of the information required of such services, such as a closing date, terms and conditions, and any entry restrictions (4.2.5a, b and d eighth edition). Call revenues and full operational details were requested (5.2.3 eighth edition).

Investigation and Decision

Moby Monkey did not respond to the breaches.

The Committee upheld breaches of paragraphs 3.3.1a, 4.2.5a, b and d, and 5.2.3 of the eighth edition of the ICSTIS Code of Practice. Moby Monkey were fined £1,000 and access to the service was barred for a period of three months.

ICSTIS MONTHLY REPORT NO. 89 (May 2002)

Service Provider

Data Research & Information Bureau, Leeds

Service Type & Tariff

Voting and competition fax-back: £1.50 per minute

Complaint Source

Public (9) – Nationwide

Network Operator(s)

Kingston inBusiness

Complaint

Nine members of the public complained about an unsolicited fax which invited them to fax back on a premium rate number to register their 'votes' on a number of current affairs issues. The promotional fax stated that calls cost "50p per min approx 1 min duration", when, in fact, they were charged at £1.50 per minute and could last in

excess of 10 minutes. In addition, the service provider did not have the required prior permission to operate such a service (3.3.1a and 2.3.1 eighth edition).

The promotional fax also invited recipients to enter a competition as an incentive to participate in the voting, but failed to provide the required maximum call duration (4.2.2a eighth edition). Monitoring of the service demonstrated that one A4 page alone took over 10 minutes to transmit. The Secretariat therefore believed that the fax transmission rate had been set at a considerably slower speed than the recommended 9,600 bps, therefore unreasonably prolonging the service (3.12 eighth edition). Call revenues were requested, together with full promotional and operational details (5.2.3 eighth edition).

Investigation and Decision

Data Research & Information Bureau did not respond directly to the breaches but requested an extra month in which to respond but gave no reason as to why this extension was needed. The Committee rejected the request and no further response was received. The requested information was also not received.

The Committee upheld breaches of paragraphs 3.3.1a, 2.3.1, 4.2.2a, 3.12 and 5.2.3 of the eighth edition of the ICSTIS Code of Practice. Data Research & Information Bureau were fined £5,000 and access to the service was barred for a period of six months.