

**PSA DISCUSSION DOCUMENT ON PREPARING ITS NEXT CODE OF PRACTICE  
REPORT PREPARED BY FLADGATE LLP FOR THE ASSOCIATION FOR INTERACTIVE MEDIA AND  
MICROPAYMENTS**

**1 Introduction and Background**

1.1 This report has been prepared by Fladgate LLP on behalf of the Association for Interactive Media and Entertainment (**aimm**) in connection with aimm's response to a 'Discussion Paper' published by the Phone paid Services Authority (**PSA**) on 27 February 2020 (**Discussion Paper**).

1.2 The Discussion Paper effectively marks the start of the PSA's formal consultation on the development of a New Code of Practice for the phone paid services (**PRS**) industry, the 15th such version of that instrument. It provides an overview of the review and includes:

- the review's objectives and scope;
- an assessment of the market and consumers' behaviours, experiences and expectations;
- the PSA's proposed assessment framework; and
- the PSA's early thinking on its future regulatory strategy.

1.3 As David Edmonds, PSA's Chair states in his introductory comments to the Discussion Paper, the phone-paid services market has (and continues to) change at a rapid pace in response in particular to changing consumer behaviour and demands. Against that background, the PSA has recognised that it needs to take a careful look at the regulatory framework for phone-paid services in the UK in order to ensure it is "fit for purpose", meaning not only that it meets the needs of consumers but also that it "minimises the barriers to the introduction of valuable and innovative services".

1.4 These sentiments are to be welcomed, as are Mr Edmond's assurances that the PSA is "very open to new ideas and approaches", especially given the fact that the PSA has essentially (through its 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> Code of Practice) maintained the same, "outcomes focussed" regulatory approach for more than a decade.

1.5 International liaison and sharing of best practice amongst those tasked with the regulation of any specific industry or market(s) is undoubtedly a feature of "good regulation". As far as aimm understands it, the PSA (and its predecessor entities) have historically been part of loose international groupings of similarly placed regulators. However, it is not clear the frequency with which those groupings meet (whether informally or formally).

1.6 In 2011, the PSA commissioned the consultants Analysys Mason to produce a "comparative analysis" of various premium rate service markets and regulatory structures across various countries around the world. Their report (the **Analysys Mason Report**), published in May 2011, provided an overview of each market considered, likely trends and a summary of the regulatory system of governance. Its stated purpose was to:

*"provide a comparison of regulation and market trends between countries, and to provide an insight into the [then] current situation and future developments of the phone-paid market for regulators of PRS...[The Report also] aims to highlight examples of successful policy implementation and areas of innovation in services offered."*

- 1.7 It is not clear how, if at all, the Analysys Mason Report has informed the PSA's approach in the period since its publication.
- 1.8 In any event, it is now more than 9 years since the Analysys Mason Report was conducted. As such, aimm and its membership consider there is significant value in considering once more International Best Practice as part of the PSA's Regulatory Review. Moreover, as opposed to simply considering the way in which PRS regulation works elsewhere, PSA should, in collaboration with industry, take a more focussed look at what works well in other jurisdictions and why with a view to taking up Mr Edmond's challenge to seek out new ideas and approaches.
- 1.9 Against this background, Fladgate LLP has been asked by aimm to conduct a focussed review of phone paid services regulation in a number of jurisdictions outside of the UK with a view to considering how experiences elsewhere might inform the PSA's approach in the UK.

## 2 Executive Summary

- 2.1 As outlined above, the purpose of this report is to inform PSA's approach to its revised Code of Practice and, more fundamentally, help it assess whether the structure of PRS regulation in the UK needs to be revisited. To that extent, our review of the countries covered below has demonstrated that there are a number of differing approaches to the fundamental question of how to ensure regulation protects consumers and also contributes to (rather than hindering) a vibrant and dynamic PRS industry.
- 2.2 There are a number of themes that emerge very clearly from our discussions with those intimately involved in PRS regulation outside of the UK and are considered to have led to successful outcomes in those jurisdictions:
- PRS regulation tends to work most effectively where there is **genuine collaboration** between industry and the "regulator", in particular in the design and evolution of the regulatory regime. Giving industry representatives **a seat at the decision making table** has been successful in generating absolute buy-in from industry to the regulatory regime. See, for example, MORGAN's role in Sweden and the construction of the decision making organs of AFMM in France and WASPA in South Africa.
  - Given the fast pace of technological change and also "bad apples'" propensity to try to take advantage of any perceived loopholes/gaps in enforcement:
    - it is sensible, where possible, to adopt a **dynamic approach to regulation** which ensures that the Codes/rules can readily be adapted to **deal with events** – for example South Africa, where a formal review of the Code of Practice takes place every 3 months by means of workshops between WASPA and industry and changes can be proposed and voted on by those present;
    - there is benefit to be had from engaging in collaborative regulation between different agencies (PRS and non-PRS) to take advantage of those agencies' complimentary consumer protection efforts – as demonstrated, for

example, by the success of the partnership between AFMM and the Internet Rights Forum in France in dealing with child protection matters;

- regulation can benefit from **simplicity of approach**: in Sweden the Code of Practice is just 11 pages long and not prescriptive, but nevertheless through the efforts of the ERB as regulator and those at the top of the PRS supply chain, expectations are clearly signposted and understood by all concerned;
- it is worthwhile paying **particular attention to the registration process** to be undertaken by content providers. This is best illustrated by the Netherlands where the regulator (through the Compliance Officer) requests and carefully vets specific information on each content provider wishing to provide PRS, such information including not only the outline of the service(s) they wish to promote but also their corporate structure, including details of all UBOs.

2.3 As well as a dynamic and collaboratively put together regulatory framework, another noticeable feature of the systems in place in other territories is their emphasis on having an effective enforcement regime, meaning :

- Cases are dealt with as quickly as possible: in Sweden within a week, in the other countries surveyed up to a maximum of 3-4 months – this speed of approach lessens the possibility for the bad apples to avoid taking responsibility and/or evade prosecution all together.
- The communication chain between consumers, operators, content providers and the regulators is well managed and clearly defined – consumers know exactly who to contact and when and are closely involved in any remediation process – see for example South Africa where the complainant has the opportunity to make representations. The Netherlands’ centralised service which enables consumers to see precisely who they are dealing with/receiving services from and ask for any STOP commands to be affected centrally, etc is a particularly good example in this regard.
- Regulators should, where possible, conduct their own monitoring of service. In doing so, they should have in mind not only the need to look out for deviant services, but also to use their doing so as an opportunity to engage with PRS providers and ensure each is fully aware of what the other is doing.

2.4 In sum, the comparative exercise we have carried out has been somewhat eye opening and should, we consider, be the precursor to PSA considering more closely (as it has appeared willing to in the past) what “works elsewhere”.

### 3 Methodology employed to produce this report

3.1 Fladgate, with the assistance of industry contacts, approached regulators and/or key stakeholders across a number of jurisdictions, seeking to conduct an in-depth interview (with follow-ups where necessary) as to the state of regulation in their particular jurisdiction. Each was provided with a questionnaire setting the framework for the discussion. Alongside these

interviews, Fladgate has also undertaken a significant amount of “desk” research in order to better inform its understanding of the national systems in question.

3.2 The focus of the discussions with (and questions provided to) each country correspondent was identical, being:

- the size and health of the local phone-paid markets;
- the structure of regulatory body(ies) concerned (including funding model and budget);
- the method of regulation used, including the evolution of that method;
- where available, the cost of regulation/the regulatory body;
- strengths and weaknesses of the regulatory system being used.

The Annex to this report includes a copy of the “questionnaire” which was sent to each of the country correspondents concerned and which formed the basis for an initial interview, proceeded where necessary by follow-up emails and correspondence to clarify points raised, obtain any further information required, etc.

3.3 Those countries ultimately surveyed/considered were carefully chosen in order to represent a range of models of regulation against a baseline of being (fairly) well aligned with the UK market for PRS.<sup>1</sup> In this way, the results of the research conducted are likely to be of most use to help inform the PSA’s approach going forward.

3.4 The people whom we have conducted interviews/follow-up correspondence and discussions with are listed below:

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<sup>1</sup> It is worth noting that the definition of “PRS” differs from country to country. Where applicable, we have identified such points of difference and the relevant terminology employed in the country in question, but, unless otherwise stated, the term PRS is used in this report to refer to phone paid services (ie voice and mobile based services).

Country	Persons interviewed	Role in the local phone-paid services market
France	Nadia Verrier Daif and Farid Taha (Evina)	<p>Evina, is a French headquartered company which secures over twelve million daily transactions across 60 world markets. Evina specifically provides telecoms providers, merchants and payment gateways with proprietary DCB technology dedicated to preventing malicious mobile apps or fraudulent ads from making payments.</p> <p>Evina works very closely with the <i>Association Francaise du Multimedia Mobile (AFMM)</i>, the association whose Code of Conduct regulates the French PRS market – see section on France below.</p>
Netherlands	Frank Van Rotterdam	<p>Compliance Officer at the Dutch PRS Code of Conduct Foundation.</p> <p>Frank has run the Compliance Office since 2011. The Compliance Office takes responsibility under a Code of Conduct for PRS provider registration, monitoring of marketing campaigns and fraud detection, as well as any penalties for polluters in the market – see section on Netherlands below.</p>
South Africa	<p>Ilonka Badenhorst</p> <p>James McNab</p>	<p>Ilonka is the General Manager and Lobbying Committee Chairperson at the Wireless Applications Service Providers Association (WASPA) – the South African regulator of mobile based value added services, colloquially referred to as WASPs.</p> <p>James is on the board of WASPA where he has the “Telco Affairs Portfolio”. He is also group CEO of the Basebone Group, an international telecoms company.</p>
Sweden	Joakim Rolander	Joakim is the Secretary of the Ethical Council for Premium Rate Call Services (ERB) who regulate PRS in Sweden – see section on Sweden below.

## 4 Country Analysis

### A France

#### *Market Context and evolution of regulatory approach*

4.1 France has a well-developed market for the exploitation of PRS which have previously been defined by the Autorité de Régulation des Communications Électroniques et des Postes (**ARCEP**) as:

*“special services of value-added services (VAS) that are charged at a premium, and accessible with 10-digit numbers..., or with short four-digit numbers...”*

4.2 Data published by the Association Française du Multimédia Mobile (**AFMM**) and collated by the three main mobile networks (Bouygues, Orange and SFR) shows a significant decline in mobile PRS from €657 million in 2011 to €390 million in 2018.<sup>2</sup> Those in the market have attributed this decrease to (amongst other things):

- a major cleaning up of the market to discourage fraud and phishing;
- several market players having switched their services from premium SMS to mobile billing to seek out non-disruptive flows with better commercial conditions but also because we had some massive frauds episodes and most known was the phishing;
- A decline in media services as a consequence of a corresponding decline in TV & Radio audiences.

4.3 Market participants are, however, confident that the decline in mobile PRS is reversible. For example, Evina has been working closely with the French MNOs to work out how best to re-engage with this payment method safely by utilising Evina’s in-built security solution. The impact of those discussions and other actions to combat fraud and increase confidence in PRS taken have been reflected in the revenue figures for 2019 which show that the mobile PRS market rebounded to €440 million, an increase of 14% on 2018.<sup>3</sup>

4.4 ARCEP is the regulatory authority tasked with overseeing and regulating the telecommunications and postal sectors in France. As such, its remit includes PRS. However, as explained further below, ARCEP leaves much of the market to regulate itself.

4.5 In 2005, the AFMM was created to represent the French mobile operators, gateways (aggregators) and content providers operating across the PRS industry. AFMM is a membership organisation: anyone wishing to operate via a premium rate short code/number (ie each aggregator and content provider) is obliged to register with AFMM and pay the initial registration fee of €300, on top of which there are other fees payable depending on the number of connections the provider has with the MNOs. Fixed (voice) based providers pay a fixed fee to AFMM per service they operate.

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<sup>2</sup> [https://www.afmm.fr/wp-content/uploads/2019/04/Observatoire-Paiement-sur-facture-2018-AFMM\\_DEF.pdf](https://www.afmm.fr/wp-content/uploads/2019/04/Observatoire-Paiement-sur-facture-2018-AFMM_DEF.pdf)

<sup>3</sup> <https://www.telecoming.com/blog/natalie-jouen-arzur-af2m-dcb-will-undoubtedly-continue-growing/>

- 4.6 Each of the mobile operators are members of AFMM. Aggregators/Content Provider and others who carry out PRS related activities are obliged to be members of “associations” who have a set number of seats at the AFMM’s decision making table, for example *GESTE*<sup>4</sup> which is the primary Content Provider association. This is particularly important when it comes to the AFMM Code of Practice (**AFMM Code**) which is reviewed annually and changed only following a vote of the decision-making organ of AFMM.
- 4.7 By representing the entirety of the sector and creating a transparent and open structure, AFMM has been able effectively to self-regulate the mobile PRS market in France without any encroachment by ARCEP or any other government agency. Correspondingly, in relation to voice PRS, whilst ARCEP sets the overarching law and guidelines, AFMM enforces and applies those rules.

### *Regulatory structure*

#### Mobile PRS

- 4.8 As noted above, AFMM is the regulator for premium SMS and MMS and carrier billing services (Mobile Billing & ISP Billing) which sit outside the purview of ARCEP (who leaves the role of regulation solely to AFMM). AFMM carries out this role through the AFMM Code, the most recent version of which is available in English at <https://www.afmm.fr/wp-content/uploads/2019/02/Internet-Plus-mobile-Charters-applicable-as-of-01012019.pdf> (modifications made to the AFMM Code since its initial publication in January 2019 appear in yellow).
- 4.9 As well as the requirements noted above to register with AFMM on obtaining a short code or PRS number or a carrier Billing service, the AFMM Code is given force by contract – all those who contract with MNOs agree to ensure that they and anyone they contract with down the chain will abide by it.

#### Voice based PRS

- 4.10 By contrast, ARCEP sets the framework rules and has principal regulatory responsibility for voice based PRS. This regime is then complimented by AFMM whose Code of Conduct applies to such services alongside the rules set down by ARCEP.

#### *The AFMM Code*

- 4.11 The construction of the AFMM Code reflects the fact that it is very much a “living” document which receives regular input and feedback from industry and is adaptable to changes in circumstances/trends in regulatory enforcement and the like. As such, it contains a number of “Ethical Recommendations” applicable to PRS services which focus on providing users with full information prior to purchase, not using misleading advertising, protecting vulnerable consumers, and content provision is appropriate to the service in question. Where appropriate, the Code gives specific examples of conduct which would be considered to infringe the recommendations provided, in particular in relation to advertising.

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<sup>4</sup> <https://www.geste.fr/>

4.12 As well as these general rules, there are specific (and detailed) rules in the AFMM Code governing (i) Subscription Services, and (ii) Service Names (ie avoiding misleading the consumer by the name and description used). The rules on Subscription Services have been recently amended and added to following review carried out by AFMM and its members with the inception of more detailed requirements as to the way in which these services are presented to potential users.

4.13 Another advantage of the approach adopted by AFMM is that it is open to (and frequently does) collaborate with other regulatory organisations in specific areas that are relevant to the PRS industry. For example, in relation to services which are relevant only to adults (those aged 16+), AFMM has adopted a scheme created by the Internet Rights Forum which categorises those services which should be regarded as adult and puts in place various protections for consumers including the affixation of a special “16+” symbol which makes clear that the service is adult-only.

#### *Enforcement and consumer redress*

4.14 A consumer receiving unwanted messages or content is encouraged to take one of the following actions:

- send a "STOP" message to the sender of the SMS text message, who should reply in turn with a SMS text message confirming the request;
- send a "CONTACT" message to the sender of the SMS text message to receive an SMS text message with the contact details of the sender;
- in the case of a Carrier Billing service, to contact the Content Provider directly; or
- use the 33700 service to which unwanted SMS text messages can be forwarded. This service platform is run by AFMM who, upon receiving any information from consumers, contact the content provider or aggregator concerned for more details and action (and if needed inform the MNO(s) well).

4.15 Consumers can also complain directly to their MNO or AFMM. Where it receives complaints, AFMM will investigate and, if necessary, request that a content provider or aggregator takes remedial action. However, if AFMM deems further action is necessary against any actors in the supply chain, it will inform the MNO or MNOs concerned who have the sole right to impose any sanctions.

## **B Netherlands**

### *Market Context and evolution of regulatory approach*

4.16 There are no public figures available for the size of the Dutch PRS market. However, it is well developed with a particular focus on direct carrier billing. Voice based PRS is a very small part of the overall market. Products sold via PRS are mainly content based -

4.17 The regulation of PRS in its present form in Netherlands stems from a threat by the Dutch government in 2003 to impose a new regulatory regime to govern the industry if it did not clean itself up. This gave rise to the creation, by industry of the Code of Conduct Foundation for Premium SMS and Direct Carrier Billing (the **Foundation**) to impose and enforce regulations on market participants, specifically through certain codes of conduct

4.18 The Authority for Consumers and Markets (**ACM**) has ultimate responsibility for the regulation of communications markets - it took over this role from Onafhankelijke en Post en Telecommunicatie Autoriteit (**OPTA**). However, its role in the PRS market in the Netherlands is limited to issuing and managing premium rate telephone numbers (those in the 09xx series). Otherwise, the success of the Foundation and the PRS industry in policing itself has meant that ACM (and OPTA before it) has left regulation of PRS and the provisioning of short-codes (the latter being undertaken by the MNOs) to industry.

#### *Regulatory structure*

4.19 The Foundation comprises three industry groupings, each of whom are given equal votes in amendments to/approval of the Foundation Codes of Practice: MNOs, Gateways (ie aggregators) and content providers. In practice, this takes effect through a Board on which each interest grouping has representation.

4.20 Enforcement of the Foundation Codes of Practice has been outsourced to an independent provider – Blue Star – generally referred to as the Compliance Officer. Interestingly, the Compliance Officer’s powers extend also to the short-code provisioning process – anyone wishing to provision a short-code is obliged to make certain due diligence information available to the Compliance Officer who will undertake certain background checks on the applicant and report back to the MNOs on its findings.

4.21 As well as being responsive to market demands and collaborative with industry, the Foundation is also very financially efficient. Its annual budget is €250,000 per annum which is met by registration fees (determined in accordance with the Foundation’s annual budget) together with any financial penalties which are collected by the Enforcement Committee – see further below.

#### *The Foundation’s Codes of Conduct*

4.22 As mentioned above, the Foundation has since 2003 operated through two Codes of Conduct: The Paid SMS and Mobile Internet Services Code of Conduct (**CoC**) and the SMS Service Provision Advertising Code (**Advertising Code**)<sup>5</sup>.

4.23 At the time of the last amendments to the CoC in November 2019, the Foundation merged another Code of Conduct – the Paid Mobile Internet Services Code of Conduct – into the CoC. Signatories to the CoC are the three main MNOs in the Netherlands (KPN, T-Mobile and Vodafone/Ziggo), gateways/aggregators and a number of content providers, reflecting the co-operative and communal structure of the Foundation referred to above.

4.24 The objectives of the CoC are set out in Recital H and focus, as one would expect, on consumer transparency and accountability. However, it is also noticeable that a significant focus is placed on consumers being able to obtain redress easily and effectively.

4.25 As in the other jurisdictions reviewed for the purposes of this report, the CoC and Advertising Code are enforced by contract. Article 2(1) of the CoC provides specifically:

*“The Parties to this Code of Conduct undertake to comply with the provisions of this*

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<sup>5</sup> Available in English at <https://www.payinfo.nl/over/de-gedragcodes>

*Code of Conduct. If a Party to this Code of Conduct enters into an agreement with a party not associated with this Code of Conduct and that agreement relates to Services associated with this Code of Conduct, the former Party will make compliance with this Code of Conduct and any amendments and supplements to such obligatory in said agreement.”*

4.26 Chapter II of the CoC sets out a series of rules applicable to all service types including no misleading advertising, spam/breach of privacy, informed consent, and pricing transparency. Chapter III then contains rules which relate to specific services including subscription, “once-only”, and chat services. Subscription services are, in particular, subject to several rules which focus on obtaining informed consent with particular instructions to be followed on the set-up and flow of “welcome screens” and the means by which consumers can “de-register”.

4.27 The Advertising Code<sup>6</sup> sits alongside the CoC and is designed to complement the provisions of the CoC. Article 4 of the Advertising Code sets out a series of “minimum requirements”, being information which must be made available by all services providers in their advertising materials. The Code pays specific regard to landing pages – a set of templates are provided in the Appendices, usage of which is deemed to automatically denote compliance with the Advertising Code.

*Enforcement and consumer redress*

#### Registration process

4.28 As mentioned above, an independent Compliance Officer plays a central role in the enforcement of the CoC and Advertising Code. In particular, his role extends to the registration of content providers, the process for which is set out in detail under the CoC. Under Article 11 of the CoC, before being able to provide services to end users, content providers have to register with the Foundation which involves their providing prescribed information as set out in Annex 1 to the CoC which covers the corporate organisation, specified individuals within the organisation **all direct and indirect ultimate beneficial owners**, plus background information on the proposed service including:

- References from another Gateway, Operator or Sales Channel
- References of two compliance auditors
- Description of services offered outside the Netherlands..
- Marketing Plan ( Marketing Mix, Budget and Sales Channels)
- the KPI’s that will be shared with the Compliance Office on fraud management.
- Product description / example
- Content Portal
- Licensing contract
- Price Range ( One off, weekly or monthly).

The applicant also has to sign a statement of truth confirming the information provided is accurate and correct.

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<sup>6</sup> <https://www.payinfo.nl/media/gedragcodes/ee7ad0a3-d865-49d9-b34e-ed349f79484d.pdf>

4.29 Based on the information received and the payment of the registration fee, the Compliance Officer will decide (a) whether to approve the applicant, and (b) which risk rating to afford to them: low, medium or high – the factors for which are set out in the CoC according to a scoring system. This process is completed within a maximum of 3 weeks and the results passed on to the Service Providers up the chain (as well as the Content Provider. Content Providers are entitled to appeal their classification, but otherwise this then provides the basis for Service Providers to determine what level of oversight to subject the Content Provider to.

4.30 Prior to registration, Content Providers are also entitled to seek advice from the Compliance Officer as to how their service would be viewed if formally registered with the Foundation.

### Consumer complaints and redress

4.31 Under the CoC, end users are effectively given a choice as to whether to contact their MNOs, the Service Provider (L1/Aggregator) or the Content Provider concerned in relation to any complaints. Whichever party receives any such complaint is duty bound to deal with that complaint in accordance with the provisions of Article 31 of the CoC. Article 32 contains special provisions to deal with complaints which arise from the actions of any affiliates and ensure that Content Providers impose contractual obligations on those affiliates to maintain compliance with the CoC.

4.32 In practice, most consumer complaints are referred directly to the MNOs and they oversee the complaint handling process directly, obtaining any input as may be necessary from those down the chain.

4.33 In addition to a curated consumer complaints process, the Netherlands also has in place a centralised system which enables consumers, through a dedicated website, to:

- opt-out of receiving PRS;
- view all PRS transactions relating to their MSISDN from the past 2 months;
- block their receiving any content from specific services.

4.34 Blue Trust/the Compliance Officer also plays a very active role in policing use of PRS in the Netherlands, acting both on specific reports of potentially infringing behaviour from MNOs, Service Providers or Content Providers and on his own initiative. In relation to the latter, the Compliance Officer scans the Internet and engages with PRS as a “dummy consumer” to check flows and seek out services which may not be complying with the CoC. He also receives regular reports from Service Providers as to revenues being generated from individual services and will act upon any “spikes” which might suggest unusual levels of activity.

4.35 Under article 33(5) of the CoC, the Compliance Officer will, upon opening any investigation into a service, request information from the parties involved and determine whether or not it is fully compliant. If not, there are various options set out in the CoC. In most cases, the infringing party is informed of their conduct and given a very short period of time (2 working days) to fix the breach, whether by amending their service or taking it offline all together until the problem has been rectified (if necessary, instructing the Service Provider to activate the suspension). The Compliance Officer also has powers to instruct withholds by Service Providers to be activated within 24 hours, where appropriate.

- 4.36 In more serious cases, the Compliance Officer will conduct a detailed investigation and prepare a “file” which will be put before the **wholly independent** Enforcement Committee of the Foundation, whose constitution and powers are set out in Article 34 of the CoC. The Enforcement Committee is made up of three independent members each appointed for 3 year terms – one being legally trained and least one of the remaining two having appropriate industry knowledge. Its powers are significant and include the ability to impose fines of up to €100,000 per breach, suspend services, prevent offenders from providing PRS and order compensation of end users affected (see articles 35 and 36 of the CoC).
- 4.37 Cases dealt with through the Enforcement Committee process are dealt with effectively and efficiently: the whole process from instigation of an investigation to final decision is completed within 3-4 months at most. It is also noticeable that most cases which are investigated by the Compliance Officer never go to Enforcement Committee (ie they are dealt with through the quicker process outlined above): on average the Enforcement Committee will hear 3-5 cases per year whereas the Compliance Officer will, on average, carry out 10 investigations per week.
- 4.38 Particularly noticeable from our discussions with those involved in the regulation of PRS in the Netherlands is that it is very much an “open book” operation. The sense is that people know what is expected of them, when to report issues and how to deal with them effectively. Moreover, the Compliance Officer plays a fundamental role in achieving this: because he is involved at all levels of the industry and plays an active role in registration, evaluation and investigation of all services, can genuinely operate in full knowledge of the market and any relevant developments.

## C Sweden

### *Market Context and evolution of regulatory approach*

- 4.39 The Swedish PRS market has long been regarded as an advanced and mature one with high levels of revenue per user and competitive market conditions. Sweden was also one of the first markets to leverage the opportunities made available by the advent of the PSD2 Directive and the ability to use mobile billing for ticketing services (eg bus and train ticketing).
- 4.40 The overall PRS market has seen a level of decline in recent years. In part this is explained by a decision made by the main MNOs in 2012 to form a joint venture which offered a wallet system controlled exclusively by those MNOs. That JV did not work as planned and led to overall revenues declining significantly. However, the period since has seen a gradual recovery in revenues, particularly over the last 18 months.
- 4.41 In terms of the mix of services making up the overall PRS market, it is estimated that the mix of mobile: fixed is 65:35%. Within the mobile sector, “traditional” services such as chat lines have declined whilst there has been an increase in the use of mobile PRS in sectors such as gaming.
- 4.42 The PRS regulator in Sweden is the Ethical Council for Premium Rate Services (**ERB**) which was created in 1994 as a wholly independent body and took on its current form in 2003, since when the MNOs have mandated through contract that all providers of PRS in Sweden should defer to ERB’s jurisdiction over PRS and the rules and regulation encapsulated in a Code of Conduct – which applies to all Mobile PRS and is drafted and amended by the ERB in conjunction

with MNOs and the industry body MORGAN which represents companies active within the Swedish mobile service industry (the **Code of Conduct**).

- 4.43 ERB is funded by a levy imposed on PRS providers. Its total annual budget is €200,000. MORGAN is a self-funding body (ie it operates as a trade association).
- 4.44 Fixed line PRS has, since ERB's inception been subject to a separate set of rules: the Ethical Rules for Premium Rate Call Service (**Ethical Rules**). There is, additionally, some overlap between the Code of Conduct and the Ethical Rules in so far as the provisions on marketing of services in the latter are also taken to apply to mobile PRS.
- 4.45 Number plans for PRS are handled by the Swedish Telecoms regulator, but otherwise there any governmental interference in the regulation of PRS is limited to instances where the Swedish Consumer Agency considers issues arising from the marketing of services. In 2013, Professor Torgny Hostand was mandated by the Swedish government to consider the regulation of PRS and concluded that self-regulation was working well under the aegis of ERB such that no additional government oversight was required.

#### *Regulatory structure: the ERB rules*

- 4.46 The Code of Conduct<sup>7</sup> is very much a “living” document which reflects the input into the document from industry (the MNOs and MORGAN). It is a relatively simple document (at 11 pages long) and contains a mixture of prescriptive and outcomes focussed rules and is based on a “permissive approach” which relies on constant and ongoing dialogue between ERB and provides of mobile PRS. Reviews of the Code of Conduct and Ethical Rules are carried out on a regular basis by ERB and MORGAN, the last such review having been concluded in November 2019.
- 4.47 More specifically, the Code of Conduct contains a series of “General Rules” in section 1, certain rules on marketing (as mentioned above, mobile PRS providers must also adhere to the marketing regulations contained in the Ethical Rules) and then, in section 3, set rules on purchase flows which must be adopted for specific services. The specific services covered are those involving any single purchase exceeding SEK 100 (approx. £8.50), and subscription services. For subscription services, PIN flow or SMS ordering are permitted subject to each of the relevant messages/screens adhering to the set standards/text.
- 4.48 The Ethical Rules are similarly straightforward in their construction. Section A sets out “instructions” for the marketing of services (also applicable to mobile PRS) and categorises those instructions by service type. Section B sets out the rules applicable to premium rate call services.

#### *Enforcement and consumer redress*

- 4.49 The Code of Conduct specifies the procedures which content providers must have in place to deal with consumer complaints (Rule 1.7), including that they:
- offer a customer helpline during working hours;
  - ensure calls are answered promptly (within 10 minutes); and
  - respond to complainants within 24 hours.

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<sup>7</sup> Available at <http://www.morganforum.com/regler/>

- 4.50 ERB also has an important role in investigating PRS issues. The overall objectives of the consumer redress framework overseen by ERB is to seek an informal resolution wherever possible. As such, the vast majority of cases are dealt with by agreeing remedial terms with the content provider/gateways concerned through an open dialogue with the parties concerned. Those cases will arise either through the receipt of complaints or through ERB’s monitoring activities: anonymous checks are regularly carried out by ERB on PRS.
- 4.51 In a small minority of cases (5-10 on average per year), ERB will determine that formal action might be required. These cases are dealt with by a body within ERB known as the “Council” which is made up of 5 people and includes a former board member of Ericsson, a consumer rights journalist, a lawyer with consumer rights focus, a lay person and the Chairperson who is an Appeal Court judge. The Council has powers to take such remedial action as may be required to deal with any consumer harm caused, including ordering the suspension or shutting down of services, **but does not issue fines**. Rather, the effectiveness of this enforcement system lies in the fact that cases are dealt with extremely quickly: generally **within one week of breaches being uncovered**.

## D South Africa

### *Market Context and evolution of regulatory approach*

- 4.52 PRS are referred to in South Africa as Wireless Application Services or “WAS”. Because of low fixed line penetration in the country, the PRS market has always been principally focussed on mobile (and regulation focusses entirely on mobile). Particularly popular services include gaming, music and video based services. “Newer” services such as charity and voting are yet to take off in the same way as, for example, the UK.
- 4.53 Legislative responsibility for the telecoms industry in South Africa is vested in The Independent Communications Authority of South Africa (**ICASA**). However, ICASA does not play any active role in the regulation of PRS which is carried out by the Wireless Application Service Providers’ Association (**WASPA**), founded in 2004, which is a membership organisation comprising PRS providers across the supply chain: anyone providing PRS in South Africa must be a WASPA member (this is mandated by each of the MNOs).
- 4.54 WASPA regulates PRS through its Code of Conduct (WASPA Code)<sup>8</sup>, the first version of which was published in July 2005 and is formally reviewed every 3 months at a specially convened meeting where all members have the opportunity to put forward/comment on any changes required. Those changes are voted on by the membership and ratified by the WASPA Board which is elected by the membership, any of whom are entitled to stand for election at the AGM where new members/replacements are voted in.
- 4.55 Recently (in the last 12 months), certain MNOs (Vodacom and MTN) have developed their own “Business Rules” which are to be applied to Charge to Bill PRS operated on their platform and effectively take the place of the WASPA Code.<sup>9</sup> This has caused a certain amount of

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<sup>8</sup> Latest version available at <https://new.waspa.org.za/wp-content/uploads/2020/02/waspa-code-of-conduct-16-9-2.pdf>

<sup>9</sup> The MNOs’ Business Rules are not publicly available.

consternation within the industry. However, active discussions are under way between WASPA and the MNOs concerned to see how a single system can be agreed upon.

- 4.56 WASPA's annual budget is 11-12million RAND (approx. £500-550,000), the vast majority of which is accounted for by membership fees from those across the PRS supply chain (the rest coming from any recovered financial sanctions).

#### *Regulatory structure: the WASPA Code*

- 4.57 The stated objectives of the WASPA Code are to:

*“ensure that members of the public can use mobile services with confidence, assured that they will be provided with accurate information about all services and the pricing associated with those services....equip customers and consumers with a mechanism for addressing any concerns or complaints relating to services provided by WASPA members, and a framework for impartial, fair and consistent evaluation and response to any complaints made.”* (sections 1.3-1.4 of the WASPA Code)

- 4.58 Structurally, the WASPA Code operates by first setting out certain core outcomes that all members should abide by including acting professionally and lawfully, not promoting indecent content, and taking reasonable steps to prevent fraudulent activity. Those outcomes are then supplemented by specific sections dealing with Customer Relations (including the provision of full and fair information to end users and readily available customer support), Advertising and Record Keeping.

- 4.59 The WASPA Code also contains sections dealing with specific service types (eg Adult, Dating, and Promotional services). As elsewhere, Subscription services are subject to specific rules. Where the subscription is initiated through the mobile web, an additional confirmation step is required prior to purchase (via a separate confirmation page or message), whereas purchases made by SMS similarly require an additional confirmation step. Welcome, reminder and termination messages are also mandated.

#### *Enforcement and consumer redress*

- 4.60 WASPA plays an active role in monitoring the PRS market with members of its compliance team (numbering 16 in total, all of whom are legally trained) regularly reviewing services to check for potential breaches of the WASPA Code. Most commonly, such issues are dealt with “Informally” by WASPA emailing the PRS provider(s) concerned and requesting remedial action/any relevant information within 48 hours. Only in more serious cases will a formal investigation be undertaken.

- 4.61 WASPA also operates and maintains a consumer complaints system whereby consumers can log any issues, which are then passed on to the service provider by WASPA to be remedied, again with a quick turn-around time (2-5 business days).

- 4.62 In cases that necessitate a formal investigation (being potentially serious breaches of the WASPA Code or issues which have been treated under the informal process described above but not satisfactorily dealt with), WASPA will set out its concerns to the subject of the investigation and give them up to 10 working days to produce a formal response with accompanying evidence. The original complainant will then be given an opportunity to submit their views on that

response following which the “case file” is passed to an Adjudicator who considers the file and, if necessary, seeks further information from the parties concerned. Adjudicators, of which there is at any one time a panel of 15-18, are all legally qualified persons who specialise in consumer protection matters.

4.63 The Adjudicator’s decision can be accompanied by any “appropriate sanctions” – the options available are set out in Rule 24.43 and 24.44. The WASPA Code (Rule 24.34) states that in determining sanctions, the Adjudicator must take into account:

- (a) any previous successful complaints made against the respondent in the past three years;
- (b) any previous successful complaints of a similar nature;
- (c) the nature and severity of the breach;
- (d) the loss suffered by the complainant;
- (e) any efforts made by the respondent to resolve the matter; and
- (f) any other factors that the adjudicator considers material.

4.64 In 2019, 60-65 cases were dealt with under the Formal procedure. This is a significant decrease on previous years, reflecting WASPA’s efforts to increase use of the Informal process wherever possible. Appeals against the decision of an Adjudicator can be made and are heard by a panel of three Adjudicators (which cannot include the Adjudicator who made the original decision).

**Fladgate LLP**  
**June 2020 (Ref: APH)**

## Outline Questions for Country Interviewees

1. Please could you give a brief overview of the Phone Paid Services Market in your jurisdiction, in particular as to:
  - a. Size of the market
  - b. How it breaks down as between Mobile & Fixed services
  - c. Breakdown by service type

Are you aware of any official/unofficial market reports setting out the above which are publicly available or to which you have access?

What are seen as main barriers?

2. How would you describe the phone-paid services market in your jurisdiction in terms of growth pattern over the past 3-5 years (the current economic crisis notwithstanding)? What services have grown or reduced in popularity/market penetration during that time?
3. How does your national regulation/legislation define Phone-paid Services?
4. Which of the following have jurisdiction to regulate phone-paid services in your jurisdiction and do they cover BOTH Fixed and Mobile or only ONE or the OTHER?
  - a. Specialist Phone-paid Services Regulator
  - b. National Telecoms Regulator
  - c. Industry based organisation
  - d. None of the above – eg regulated by contract only between provider and consumer
5. How is/are the body(ies) that carries out the regulatory functions mentioned above funded? Does industry (or consumers) have to make any contribution?

(Do you know how much the regulation costs to carry out?)

6. What is the primary focus of the aforementioned regulation? In particular, can you give a sense of the methodology being used by answering some/all of the following questions:
  - a. What are the specific aims of the regulation and how are these set out in the relevant rules/legislation?
  - b. Is the regulation prescriptive or more outcomes focussed?
  - c. What do the rules say about pricing and price transparency?
  - d. What types of consumer consent are permitted and/or mandated?
  - e. What mechanisms are mandated for consumer complaints – who has to be able to receive these and how do they have to deal with them?
7. Independent or Industry adjudication panel and what are their sanctions powers / fines (av size of fine)
8. Complaints breakdown: main issues

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9. Is the service standards / value questioned and does regulator take a view on service standards
10. When was the last major review carried out into the above mentioned regulation and what were the main changes made as a consequence?
11. From your perspective, what are the things that work well in terms of the regulatory structure described and what aspects need improvement and/or refinement?
12. How do you think other stakeholders would answer the same question (8) above?
13. What advice would you have for the PSA in connection with its review of its Code of Practice?

Many thanks in advance and I very much look forward to speaking with you.

**Alex Haffner**  
**Board Member and Partner at Flagdate LLP (Law Firm)**