

## Appendix 1

### PSA Code 15 Consultation BT Response

#### 1. Executive Summary

**1.1** We are grateful for the opportunity to comment on the PSA's proposals in respect of the 15<sup>th</sup> Code of Practice. We welcome minimum standards and clarity on regulatory compliance and best practice. We believe the codification of an informal resolution framework will be particularly helpful in making it easier and quicker to identify and resolve regulatory breaches. We have some suggestions outlined in the response below which could improve the process still further.

**1.2** However, we believe there are three areas in particular where the PSA could improve outcomes for consumers or avoid negative unintended consequences associated with the existing proposals:

**1.2.1 Charge to Bill<sup>1</sup>** Further clarity that App Store providers are required to comply with PSA rules relating to DDRAC and Customer Care would be welcome. We think this will help protect consumers by making it clear who is accountable to them when things go wrong.

**1.2.2 ICSS<sup>2</sup>** We believe the new Transparency proposals will not address the increasing harm from ICSS, and we ask the PSA to consider testing the effectiveness of the new rule in a control environment. In the event the controlled testing suggests that the proposals will not sufficiently protect consumers from harm, the PSA should at that point evaluate the full range of options available to tackle this issue ahead of introduction of the new rules.

**1.2.3 12 month opt-in** We are concerned the new rule could have negative unintended consequences for consumers (including reduced choice) and disrupt market dynamics. As current rules that help customers avoid unwittingly signing up to premium rate service subscriptions are highly effective, we consider the PSA's proposals to be disproportionate.

**1.3** We would also request a 12-month implementation period to allow sufficient time for necessary work to be carried out to update our systems and processes.

#### 2. We broadly support the objectives of the new Code but would welcome greater clarity with respect to how the Supervision framework will operate in practice.

**2.1** We welcome minimum standards for industry and a regulatory approach that clearly sets out best practice and compliance standards at market entry, with enforcement procedures that will quickly and efficiently deal with areas of regulatory non-adherence causing consumer harm. We think, particularly for the Network Operators, this will allow industry to focus on future innovation rather than playing Whack-A-Mole closing down pockets of harm disproportionately caused by a small number of Level 2 providers.

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<sup>1</sup> Charge to bill is an online payment method which allows for the purchase of digital content on a mobile phone bill such as apps, music and movies.

<sup>2</sup> Information Connection and Signposting Services (ICSS) are defined as "Premium rate services, excluding full national directory enquiry services, that provide connection to specific organisations, businesses and/or services located or provided in the UK; and/or which provide information, advice, and/or assistance relating to such specific organisations, businesses and/or services". PSA ICSS Statement 9 October 2019, paragraph 3.

**2.2** We note that the previous regime had many positives but a lack of effective enforcement powers has meant the PSA can often be slow responding to market trends causing poor outcomes for consumers, with the current Code easily ‘gamed’ by a few bad actors within industry. As a result, it has often been left to industry to build consumer trust by implementing innovative solutions to address practices which had unacceptable consequences for customers. An example of this is the industry-driven initiative to improve phone payment platform security in the form of the Consent to Charge project and the introduction of multi-factor authentication (“MFA”) for subscription services, which EE introduced some 18 months in advance of the PSA introducing related Special Conditions.

**2.3** We would also welcome further discussion, early engagement, and greater clarity in respect of how the Supervision framework will operate in practice, similar to the approach used by the FCA<sup>3</sup>.

**3. The PSA’s new approach to enforcement is likely to result in a more effective process, however we think the PSA can go further to create efficiencies which deliver consumer benefits through quicker/simpler remediation, and promote positive future engagement between the PSA and industry, while also removing the incentives for bad actors to enter the market.**

**3.1** We are supportive of changes, such as the codification of an informal resolution framework, designed to make detection and resolution of regulatory breaches simpler and quicker. Today we often find Level 2 providers can enter and exit the market before enforcement action can be taken. The proposed changes will not only help address this current feature of industry and regulator engagement but should also result in better co-operation more generally, as well as reducing the cost and time spent addressing areas of regulatory concern for the PSA and the value chain.

**3.2** However, while we welcome the introduction of settlement incentives, which include a defined discount scheme, we think that there are some simple additional actions that the PSA can take to drive further efficiencies such as revising its Supporting Procedures to better outline the investigatory “lifecycle”. For example, we consider there to be value in the PSA sharing preliminary findings in respect of formal investigations at an earlier juncture within the process allowing for quicker remediation and resolution. The PSA could also consider, similar to the Advertising Standards Authority, a mechanic for informally resolving breaches of a less serious nature without publication of a forensic analysis of the facts to discourage adversarial interactions and incentivise proactive engagement and cooperation. Both of these examples would result in resource savings for the PSA as well as industry.

**4. However, regarding charge to bill value chain responsibilities and the operation of ICSS, we are concerned that the new Code is neither sufficiently forward looking to address emerging and future trends within the market nor addresses existing practices that we know cause consumer harm.**

#### **4.1 Charge to Bill**

**4.1.1** Application-based payments are a key growth area for charge to bill (“CTB”) with [X] revenue reported for the financial year 2020/21; this accounts for approximately [X] of total

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<sup>3</sup> [FCA Mission: Approach to Supervision final report](#)

CTB revenues for BT's Consumer Business, registered under EE Limited for the purposes of the PSA's registration. BT Consumer expects revenue for App Store CTB payments to grow by up to [REDACTED] this financial year, with total revenue projected to be [REDACTED] based on organic growth and planned marketing activity.

**4.1.2** The main App Stores operate different business models across multiple parties in the value chain, this can lead to a lack of clarity regarding roles and responsibilities in respect of DDRAC and Customer Care Standards. As a result, there can be confusion as to who is responsible to the customer when things go wrong. In the case of customer care, greater clarity on the rules supported by ownership from L1 and L2 providers would likely lead to simpler, better consumer outcomes. As an example, in the case of App Store bill shock queries consumers are confused about who in the value chain is responsible for resolving Customer Care issues. This results in BT Consumer fielding a high number of monthly enquiries from customers querying bill charges or App Store refund policies, which we are unable to resolve and which can lead to a poor customer care experience.

**4.1.3** For the rules to be truly effective and prevent consumer harm, the PSA needs to work with industry to assess likely consumer harms within an important growth market. We ask that upcoming Guidance in respect of DDRAC and Customer Care considers the appropriate guard rails to ensure the regulatory framework provides sufficient certainty and clarity for all stakeholders.

**4.1.4** Furthermore, the PSA should clarify its expectations for the rule at 3.9.11 for Network Operators and Intermediaries to take "reasonable steps" to confirm DDRAC standards are restricted to directly contracting parties only. This will ensure the obligation is not unduly burdensome and applied consistently across the value chain.

## **4.2 ICSS**

**4.2.1** In respect of ICSS, the new Code Transparency and overarching Fairness rules do not go far enough to address the harm experienced by consumers using these services.

**4.2.2** ICSS is the most complained about premium rate service type and, despite the various interventions by industry to increase the visibility of pricing information, PSA and BT complaint data shows:

- In the financial year 2018/2019 there were [REDACTED] ICSS complaints or [REDACTED] of total 09 complaints.
- In the financial year 2019/2020, there were [REDACTED] ICSS complaints or [REDACTED] of total 09 complaints.
- So far in this financial year, there have been [REDACTED] ICSS complaints recorded or [REDACTED] of total 09 complaints, despite the introduction of Code 14 special conditions in December 2019 and a Google advertising ban for desktop operating systems in March 2020.

**4.2.3** Analysis of BT wholesale call volumes for the top 5 ICSS number ranges in the 12 months to May 2021 shows the majority of ICSS service users are also smartphone users. We expect this is why the current interventions have been unsuccessful in fully addressing the consumer harm associated with ICSS, and why the new proposals are expected to be ineffective. To explain, internet browsers must adapt digital content to fit within the small screen of a smartphone and do so in a way that minimises frustrating 'screen scrolling' and facilitates one touch dialling. Efforts to increase the prominence of ICSS service charges pre-call are more effective for desk top users, where information

can be presented more clearly and where there is a 'break' in the dialling experience which allows for information comprehension, but those measures do not translate in the smartphone environment. The proposals in the new Code, increasing the prominence of ICSS service costs during the call, will not address or stop diallers being stung with expensive bills because ICSS service providers are not prohibited from using 'drop charges' or required to free rate the call until the dialler has been made aware of the associated service charges. However, the increasing problem which exists is that consumers are often unaware they have dialled an ICSS despite existing rules, due to inattention in respect of pricing advertising or recorded messages, or perhaps on account of being vulnerable. Key headlines from the BT data are as follows:

- [REDACTED] of 1.2million calls made to the top 5 ICSS number ranges are made from mobiles. Only [REDACTED] are made from landline numbers;
- the average call lasts [REDACTED] with single call costs ranging from [REDACTED] up to as much as [REDACTED]; and
- [REDACTED] of calls last less than 30 seconds, indicating consumers hang up once they've heard the onward cost of connection. At this point, at least for one of the ICSS providers analysed, the customer will have automatically incurred a £6 'drop charge' despite not actually using the service.

**4.2.5** As the most vulnerable in society tend to be exclusively reliant on mobile services and smartphones for digital access, they are disproportionately impacted by ICSS bill shock. This cannot be acceptable. We encourage the PSA to undertake testing via randomised control trials to assess if the new rules will deliver the desired benefits the PSA expects and if not, it should evaluate the full range of options available (including those requiring support from Ofcom or DCMS to enact) for tackling the harm caused by ICSS. Such interventions could include: a full service ban, introduction of a service charge price cap and free rating of the first 30 seconds of the call to enable users to understand the cost of using the service before onward connection. Industry's own interventions have reached their limit but taking an approach that will test the effectiveness of any future intervention prior to enactment of the rules, will allow for the PSA to test and adapt the interventions more quickly than if they were to enact the new rules and then have to reconsult.

## **5. There are also some aspects of the new Code disproportionately focused on market practices that have significantly declined, rendering new rules disproportionate.**

**5.1** Paragraph 3.3.11 of Code 15 proposes a new 12-month opt-in rule to avoid customers unwittingly signing up to expensive subscription services. However, industry has already taken steps to tackle this harm, including the introduction of MFA, and as a result we have seen a [REDACTED] reduction in customer complaints. Today all PRS providers should:

- 5.1.1** send a text or e-receipt each time a charge is applied to their account, which also helps to remind the customer of the existence of their subscription;
- 5.1.2** allow customers to cancel subscription services free of charge at any point;
- 5.1.3** fix subscription periods to 30 days; and
- 5.1.4** offer a 14-day cooling off period pursuant to the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.

As such, we are not convinced the harm the new rule purports to tackle exists.

**5.2** While we acknowledge the European Electronic Communications Code (“EECC”) introduces new rules prohibiting the automatic prolongation of fixed term contracts, and we are expecting future legislative changes within the UK to tackle the loyalty penalty, consumer law does not automatically presume contract prolongation clauses to be unfair and the EECC will not require express consent to be captured where a customer can cancel their contract at any time without paying an early cancellation charge. As such the PSA is proposing the PRS industry be held to higher standards. This risks crippling the PRS industry, where CTB margins are already lower in comparison to other payment methods due to higher fees to reflect additional network operating costs.

**5.3** We anticipate actors to be forced out of the market based on a cost/benefit analysis of complying with the new rule and this also potentially creates a further barrier to entry for new CTB merchants. One major App Store provider [REDACTED] has confirmed it would exit the market based on estimated figures for a loss in subscription sales of [REDACTED] and payment initiation switching costs of [REDACTED], compounded by systems update costs for only one jurisdiction globally (the UK). The opt in would put PRS at a competitive disadvantage in respect of other payment mechanisms and the additional friction adversely impacts consumer choice and enjoyment of the service.

**5.4** We consider there to be alternative ways of tackling any residual concerns the PSA may have with subscription services and urge the PSA to engage with industry to find a more proportionate solution.

**6. We also have concerns that the proposed 3-6 month implementation window is not sufficient, and it is likely we will need 12 months to achieve compliance.**

**6.1** Without sight of the detailed guidance to supplement the Supervisory framework, we are unable to meaningfully comment upon our ability to achieve regulatory compliance within the implementation window proposed.

**6.2** However, business planning typically happens on a 12-month cycle, [REDACTED]. More substantive changes, such as staff hiring and training e.g. to ensure qualified review of intermediary security tests at 3.10.6, would likely [REDACTED], and [REDACTED]. The cost of making these changes also needs to be budgeted for. [REDACTED]. Regulatory changes driven by the PSA will require more than a few months’ notice to accommodate, even if we were to withdraw or suspend the delivery of other discretionary customer projects.

**6.3** In light of the above, we propose that a 12-month implementation window would be more appropriate to allow for appropriate resourcing, systems and operational uplifts.