



0871 Services: An ICSTIS Consultation

A PUBLIC CONSULTATION

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Executive Summary

The 0871 number range is a sub-set of Number Translation Services ('NTS') where call charges from BT lines are generally above 5p per minute and can be up to 10p per minute. 0871 calls involve a form of micro-payment which is usually shared with a third party. The 0871 number range has a variety of uses from some forms of entertainment service to telephone help lines, interactive ticket booking lines, holiday and flight booking services, as well as many other applications.

On 19 April 2006, Ofcom, the communications regulator, published its policy statement on Number Translation Services entitled *NTS – A Way Forward*. That document, which is available from the Ofcom¹ website, sets out a number of changes that it has decided to make to the regulation of NTS. These changes include putting the regulation of the 0871 number range within ICSTIS' regulatory remit, as well as removing the regulatory support for revenue share on the 0870 number range.

Ofcom stated that it had two particular objectives in extending premium rate service regulation to the 0871 number range:

- to increase the level of consumer protection provided for calls to these numbers
- to improve pricing transparency for 0871 calls.

As an obvious starting point, we are suggesting that the current Code of Practice (now in its 11th Edition) is used to develop a regulatory framework for the 0871 number range. However, we recognise that, generally, the current interpretation of the Code in the context of higher charged premium rate services may not be proportionate to the issues and consumer protection requirements for the 0871 number range. We, therefore, believe that separate proposals for how we apply the Code to the 0871 number range would be fair and in keeping with good regulation.

This consultation seeks stakeholders' views on the proposed application of ICSTIS' regulatory regime to the 0871 number range. It also seeks views on the contents of a draft Statement of Application.

Additionally, while we believe that the current funding model, as set out in **Annex 1** of the Code of Practice (attached as **Appendix C** in this document), is appropriate for the 0871 number range, we are consulting on our proposals regarding the application of that model to the 0871 number range.

We recognise that the parties affected by this issue are many and varied. Many consumers and consumer groups have an interest in the regulation of the 0871 number range. Many companies and organisations across the UK rely on the 0871 number range for some aspect of their business.

They will all be affected by any regulatory proposals that we bring forward. Additionally, due to the forthcoming removal of regulatory support for revenue share on the 0870 number range, there is likely to be migration from that range to the 0871 number range.

Our pre-consultation research has indicated that the 0871 market is currently worth over £300m per annum, and the 0870 market is larger than this. However, due to the nature of the changes that will occur in both market places over the forthcoming year, it is not possible for us to make

¹ www.ofcom.org.uk/consult/condocs/nts_forward/statement/

accurate estimates of the future market sizes of these number ranges. ICSTIS welcomes stakeholder assistance regarding how they believe the markets will change over future years.

In addition to seeking stakeholder views on the various options for the application of the Code, we are seeking input on funding and the branding of 0871 regulation.

This consultation period is due to last eight weeks. It is our normal practice to have a 12-week period for receipt of responses to our consultations. However, as the implementation time for our assumption of regulation of the 0871 number range has been fixed, an eight-week consultation will allow us to respond much earlier to stakeholders' requirements for certainty in relation to the form of the regulatory framework. This will greatly assist those stakeholders who are faced with pressing decisions regarding which number ranges to use in the future. Indeed, a key finding of our pre-consultation market research exercise was that all stakeholders are concerned about the relatively short timetable for implementation of the regulation.

Section 1

Background to Our Regulation of 0871

Background

On 19 April 2006, following extensive consultation, Ofcom published its policy statement on Number Translation Services entitled *NTS – A Way Forward* ('the NTS document'). That document set out a number of changes which Ofcom has decided to make to the regulation of NTS. This consultation document is concerned specifically with one of these: the decision by Ofcom to extend the regulation of premium rate services to the 0871 number range.

In particular, Ofcom came to the following conclusions:

- *"0871 numbers should be brought within the current regulatory regime for PRS, which will, in effect, mean that services using the 0871 number range would have the same obligations as those using 09 numbers."*
- *"ICSTIS has signalled its agreement in principle to extend the scope of its regulation through its approved Code to 0871 numbers and intends to consult on:*
 - *the provisions of its Code of Practice that should apply to 0871 numbers,*
 - *the funding mechanism, and*
 - *whether a new 'brand' should be adopted for 0871 regulation."*

In order to bring the 0871 number range within the scope of ICSTIS' regulation, Ofcom will be extending the definition of those services which are currently defined as Controlled PRS, as set out in Ofcom's PRS Condition. We expect this to happen later in 2007.

The NTS document made it clear that the level of imposition of ICSTIS' regulation would be proportionate, taking into account the nature of the services and the risks to consumers arising from the provision of 0871 premium rate services. Ofcom also went on to observe, however, that it was seeking, in particular, an improvement in price transparency and the level of consumer protection. Ofcom made the point that ICSTIS regulation for the 0871 number range should include a requirement for service providers to include information about the price of calls in advertisements and promotional material.

At the same time, Ofcom's regulatory support for revenue share is to be withdrawn from the 0870 number range, and the linkage between 0870 call charges and geographic call charges will be repaired and extended to all originating communications providers. As a consequence, we expect that the 0870 number range will be either priced at a level equal to normal geographic rates or will require a free-to-caller price announcement at the start of a call if it is priced at a higher rate.

From our pre-consultation research, it has become apparent that the result of these changes will be a degree of migration between various geographic and non-geographic number ranges. The extent of this migration is not, however, possible to calculate at this time.

Ofcom is committed to delivering these changes within 18 months of the publication of its statement on numbering policy on 27 July 2006. This will, therefore, mean that the proposed regulation of the 0871 number range should commence at the start of February 2008.

Market conditions

Prior to this consultation, ICSTIS commissioned an extensive market research exercise in order to assess the nature of the 0871 market place. The final report is available from the ICSTIS

website and contains a quantitative and qualitative assessment of the market. In particular, the conclusions of this are set out in Section 6 of the report.

Other 087X number blocks

It is to be noted that, because almost all 0871 number blocks have been allocated to communications providers, Ofcom will be opening up other number ranges on 087X to accommodate future growth, starting with 0872 and 0873. Therefore, where this consultation makes reference to the 0871 number range, respondents should read this as relating any 087X number range which ICSTIS may regulate, which will not include the 0870 number range.

Attached to this document, at **Appendix B**, is an overview of the new numbering regime announced by Ofcom.

Sexual entertainment services

Following an announcement by Ofcom on 8 March 2007, ICSTIS now regulates all premium rate sexual entertainment services (SES) from 5 April 2007. This is regardless of price and will mean that any SES on any 08X or other number range will be subject to the full application of the Code of Practice regardless of whether a Statement of Application is issued to encompass regulation of non-sexual 0871 services. It should be noted that Ofcom also decided that, from 8 November 2007, SES should no longer be permitted to use numbers other than those designated for SES, namely the 0908, 0909 and 098 number ranges.

Pre-consultation research

Our market research exercise has helped us to identify which areas of the Code will be of particular relevance and the results of this are available from the ICSTIS website.

Additionally, on 31 July 2006, ICSTIS released a pre-consultation paper on this issue to all stakeholders, the results of which can be obtained from ICSTIS' website, and have fed directly into this paper.

From our pre-consultation research, it has become apparent that the use of the 0871 number range has some differences to that of other ranges currently within our regulatory remit. In particular, much 0871 number use is for customer service and contact centres where the outpayment to service or information providers may not be the main reason for use of the number.

ICSTIS believes that its current regulatory framework will be proportionate if it is applied to the 0871 number range with sufficient flexibility of application with regard to the context, use and cost generally of numbers on the 0871 number range. Due to the generally lower amount of outpayment available, as well as the fact that frequently outpayments are foregone in favour of enhanced network-level services, including such things as call routing facilities, call statistics and enhanced call queuing facilities ('benefits in kind'), there may be less incentive for unscrupulous service and information providers to use the 0871 number range as a money-making 'scam'. Equally, we recognise from our research that there is some consumer concern about these services, especially with perceptions of 'delay' as a means of generating extra revenues.

Additionally, the lower cost to consumers will mean that where financial harm occurs, it accumulates at a lower rate than on other Controlled Premium Rate Service number ranges. However, call price and outpayment levels are only some factors which affect the potential consumer harm of a service. While it may be the case that a majority of services provided on the 0871 number range are low risk, this will be principally due to the routine transactional nature of the services.

Section 2

Scope of this Consultation

The purpose of this consultation is to obtain views, not on the decision by Ofcom to bring the 0871 number range within our remit, which has now been taken, but on the scope and type of regulation that should be applicable to the 0871 number range.

The Code of Practice

From our pre-consultation research, we have identified a number of areas in the existing Code which require consideration in the context of the proper level of its application and enforcement in relation to services provided on the 0871 number range.

Where issues have been identified for consideration, we have sought to identify the reason for this, what our proposals are and the probable consequences of implementing those proposals.

Funding

In general, ICSTIS believes that the current funding model is appropriate to apply to the 0871 number range. Under this model, a levy is applied on the amount of outpayment paid to service providers. At present, the levy is 0.34% and is collected from network operators on behalf of service providers.

However, we are aware that, in many cases, benefits in kind are provided rather than as a cash payment. This consultation, therefore, sets out our proposed method of calculating a notional outpayment so that the levy may be applied appropriately.

Branding

During our pre-consultation research, the subject of branding has been identified by stakeholders as an area requiring particular consideration. Additionally, Ofcom has indicated that ICSTIS will include this issue in its consultation.

It is our opinion that it is not appropriate to use a separate brand for the regulation of the 0871 number range. ICSTIS has already made a separate decision to re-brand in order to improve public understanding and reflect more accurately the range of value-added services it regulates. As part of this exercise, we are mindful of the need to create a brand that can capture the 0871 number range. We consider that a separate brand is not necessary either to regulate these services in a fair and proportionate way, or to maintain consumer confidence in the 0871 number range.

There is nothing to prevent the industry from applying and promoting a brand of its own to the 0871 number range.

Section 3

Change of Code or Statement of Application

As noted above, ICSTIS has carefully considered its Code of Practice, currently in the 11th Edition, and taken legal advice on the appropriateness of that Code to cover the 0871 number range.

We believe that no substantive amendment need be made to the Code in order to achieve the objectives set by Ofcom. The current Code already accommodates a wide range of services from high-price competitions and games to directory enquiry services, technical helplines and charitable giving. The Code has been designed to encompass different forms of service and is goal-based wherever possible, allowing scope for interpretation in a manner that is sensible, proportionate and targeted.

However, since there are a number of areas of our regulation which have merited consideration specifically in relation to services accessed on the 0871 number range, we deem it appropriate to issue a Statement of Application to stakeholders. This Statement will set out how ICSTIS intends to apply its current Code in the context of the 0871 number range.

While it is to be read in conjunction with the current Code, this Statement of Application is intended to be a plain English document explaining how ICSTIS' requirements in this area will apply in the context of the 0871 number range.

On a practical level, a Statement of Application would retain the flexibility required of this changing market place as it is easier and faster to change as and when required to reflect market developments. Additionally, users of numbers regulated by ICSTIS would only need to be familiar with a single Code of Practice, which will apply to the whole of our remit.

A draft Statement of Application is attached for consideration at **Appendix A**.

Q1: Do you agree with our proposal to create a Statement of Application for the 0871 number range? If not, please provide your reasons and alternative suggestions.

Section 4

Our Proposals and Regulatory Impact Assessment

Attached to this consultation document, at **Appendix A**, is a draft Statement of Application. This sets out our proposals with regard to how we will apply our current Code of Practice to regulation of the 0871 number range.

This Section sets out our proposals for the Statement of Application and our Regulatory Impact Assessment for the areas of the Code which have been identified as requiring particular consideration and consultation.

ICSTIS always seeks to develop and apply its rules in a manner consistent with the principles of good regulation, as set out by the Better Regulation Commission. These principles are that regulation should be:

- Proportionate: regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.
- Accountable: regulators must be able to justify decisions, and be subject to public scrutiny.
- Consistent: government rules and standards must be joined up and implemented fairly.
- Transparent: regulators should be open, and keep regulations simple and user-friendly.
- Targeted: regulation should be focused on the problem, and minimise side effects.

More information on this is available from the Better Regulation Commission website.

In reaching its conclusions, ICSTIS has considered the following criteria: consumer risk, cost (including administrative burden), risk to the 0871 market, and Ofcom's intentions in asking ICSTIS to extend its regulation to the 0871 number range.

CODE OF PRACTICE

Section 1 – Introduction

Section 1 of the Code introduces and establishes our regulatory remit. It is proposed that Section 1 of the Code is equally applicable to the 0871 number range. This Section sets out, *inter alia*, the principles of good regulation. It is to these principles that ICSTIS always seeks to adhere when considering application of the Code.

Q2: Do you agree that the current application of Section 1 of the Code is appropriate to apply to the 0871 number range? If not, please give your reasons.

Section 2 – Network Operators

Section 2 of the Code of Practice sets out the obligations on network operators. In particular, this Section sets out the due diligence checks required of network operators who provide connections to the regulated number ranges.

Following stakeholders' input into the pre-consultation research exercise, ICSTIS has considered various options surrounding the due diligence requirements and the '30-day rule' set out in paragraph 2.3 of the Code.

Due diligence

Under paragraph 2.3.1 of the Code, it is required that network operators:

- collect a variety of contact information about the service providers with whom they have connection agreements

- have robust due diligence checks to ensure this information is correct
- obtain satisfactory evidence to ensure that service providers have the necessary financial and other resources to carry out their services
- retain this information, and make copies available to ICSTIS on request
- make service providers aware of the ICSTIS Code of Practice, and retain a copy of the service providers' registration with ICSTIS
- satisfy themselves that service providers have adequate customer service and refund mechanisms, including a non-premium rate UK telephone number.

ICSTIS has the power, under paragraph 2.3.1 of the Code to waive the above due diligence provisions. Our pre-consultation research has indicated that we should consider the following:

1. Whether paragraph 2.3.1 of the Code is appropriate with regard to the 0871 number range.
2. Whether, if it is so enforced, network operators should be required to undertake due diligence checks on service providers with whom they already have contractual relationships.

Consumer risk

The requirement for network operators to conduct due diligence checks is a new addition to the 11th Edition of the Code. It was introduced as the result of growth in the number of instances of cases where service providers had on occasion provided fictitious contact or financial details to networks. These details were not then verified by those networks prior to granting their connection. Such service providers were invariably engaged in causing consumer detriment through the provision of 'scams'.

This caused consumer detriment, and caused ICSTIS considerable difficulty when investigating breaches when we tried to verify accurate details or contact routes for the service providers concerned. In some cases, the service providers would then change their name or contact details in an attempt to evade ICSTIS' investigations. This increased the likelihood of continued consumer harm.

By making the network operators responsible for verifying service provider details, and thus open to sanction where a service provider has been dishonest and the network operator did not take reasonable care to prevent this, we aim to minimise the likelihood of dishonest service providers providing premium rate services in a way that is not compliant with the Code.

The application of paragraph 2.3.1 of the Code to the 0871 number range would mirror the current requirement for all other services which ICSTIS regulates. This would, therefore, prevent a minority of service providers from providing false details or changing identity to evade investigation when they may be causing consumer harm.

It has been suggested during our pre-consultation research that there is little evidence of consumer harm on the 0871 number range. This could be explained as, given the smaller financial returns available as outpayments, it is unlikely that service providers who choose to act in breach of the Code would do so on the 0871 number range rather than for greater financial return on the 090 range.

However, although regulation of the 0871 number range is not yet within our remit, both ICSTIS and Ofcom have logged a sufficient number of complaints to provide evidence that service providers have attempted to operate services on the 0871 number range which would be in breach of the Code had it been applicable. Our research also suggests that the current market value of the 0871 number range is over £300m per annum, which is sufficiently large and lucrative to encourage unscrupulous service providers to operate deceitful practices.

Cost

Requiring due diligence checks on the 0871 number range will enable ICSTIS to obtain accurate service provider details from networks as soon as we begin an investigation. This will reduce opportunities for 'scams' and assist in reducing our staff and administration costs.

Where network operators already deal with both 090 and 0871 number ranges, they are already required to have systems in place to undertake due diligence checks. Network operators that only run 0871 numbers will have to introduce such systems, but we consider that the extra administration is unlikely to be too onerous given that service providers often operate large blocks of numbers on each network and, therefore, will only need to be checked once by the network operator.

Some network operators have indicated that to perform such checks on 0871 service providers would burden them with considerable extra administrative costs. However, we consider that a due diligence check could be performed on each service provider as part of the usual 12-month contract review with the network operator concerned.

When the current Code came into force, network operators for premium rate services were given a 10-month period in which to ensure that the appropriate checks were undertaken in relation to service providers with whom they had had a contractual relationship for at least eight weeks prior to the Code coming into force. It is proposed that a similar period of grace will be allowed for due diligence checks on 0871 service providers, to commence at the same time as the regulation is assumed by ICSTIS in February 2008.

Risk to the 0871 market

While the requirement for due diligence checks is new to the 0871 number range, service providers will have to provide a limited amount of information. Once compiled, this can be provided in duplicate to all the network operators with whom they contract. It is unlikely that this will have a long-term effect on their operating costs. If stakeholders disagree, we would welcome evidence.

Conclusions and proposals

The current system for due diligence checks on the 090 number range will be embedded in many network operators' processes by January 2008. While the addition of similar checks on the 0871 number ranges may create some extra administrative burden, we believe that in most cases it will not create the need for a new system.

We also consider that any extra administrative burden placed on network operators and service providers is outweighed by the benefits derived from having processes designed to ensure that service providers are prevented from providing inappropriate premium rate services.

Therefore, it is our proposal that paragraph 2.3.1 of the Code be applied in full to the 0871 number range when it falls within our regulatory remit.

Q3: Do you agree that this is a fair and proportionate application of the network operators' due diligence requirements to the 0871 number range? If not, please give your reasons.

ICSTIS would welcome further information regarding quantification of costs.

30-day rule

Under paragraph 2.3.3 of the Code:

"Network operators shall not make, and shall withhold, payments to service providers for a period of at least 30 days after the use of a premium rate service to which the payments relate."

Our pre-consultation research has indicated that we should consider the following:

1. How paragraph 2.3.3 of the Code should be applied with regard to the 0871 number range.
2. How, if it is so applied, the requirements to withhold payment should be reduced to an amount less than 30 days.

Consumer risk

Prior to the introduction of the 30-day rule, some network operators paid out to service providers almost straight away. This led to increasing instances of cases where service providers, or individuals associated with a service provider, would collect payments from a short-term, fraudulent operation then change their company name or move premises in order to evade investigation by ICSTIS. They would frequently then begin the same process again. This undermined effective enforcement of the Code and led to many 'scams'.

The introduction of the 30-day rule has tied service providers to the same company name and contact address in order that they can collect payments from networks at 30-day intervals. This 30-day period gives consumers sufficient time to make complaints about consumer detriment, and ICSTIS to investigate the service provider without them having profited from the consumer harm they may have caused.

During our pre-consultation research, it has been suggested to us that the lower revenue levels in the 0871 number range indicate a lower level of risk than that which existed in the 090 range before ICSTIS introduced the 30-day rule.

Cost

By requiring the 30-day rule to apply to the 0871 number range, ICSTIS would have more time to investigate and potentially reduce the number of breaches of the Code caused by a service provider or associated individual who changes identity. ICSTIS is aware that many network operators already make payments on a 30-day basis to 0871 service providers. If this is so, the rule would result in minimal administrative burden if it is to be applied.

It has been suggested during our pre-consultation research that applying the 30-day rule to the 0871 number range may cause greater financial risk to 0871 service providers because of the lower revenue levels involved, some of which are required to cover operational costs on a week-to-week basis. As noted earlier, our research indicated that the market for the 0871 number range is over £300m per annum.

Q4: Do you have any further information and evidence regarding usual payment times?

Additionally, it would be helpful to have responses that indicate to what extent service providers rely on immediate payments from network operators to cover their operational costs.

Risk to the 0871 market

While the 30-day rule may be new to the 0871 market, ICSTIS considers that the majority of network operators already make payment to 0871 service providers on a 30-day basis. Where this is the case there will be no change to current payment administration systems or increase in financial risk to the service provider.

Conclusions and proposals

ICSTIS considers that 30-day payment is currently the norm for network operators as regards their payments to 0871 service providers. Thus, the added administrative burden and risks for both network operators and service providers will be minimal, and will be outweighed by the increase in consumer protection derived from applying the rule to the 0871 number range.

Therefore, it is our proposal that paragraph 2.3.3 of the Code be applied in full to the 0871 number range when it falls within our regulatory remit.

Q5: Do you agree that this is a fair and proportionate application of a delayed payment mechanism to the 0871 number range? If not, please provide your reasons.

Section 3 – Service Providers

Section 3 of the Code sets out the obligations on service providers. These obligations include service providers taking responsibility for the services they provide, and the obligation to provide certain information to ICSTIS should it so require. We do not consider that there is anything unique about the 0871 number range that would suggest that service providers should be subject to a different set of requirements in this respect.

It should be noted that, under paragraph 3.3.5 of the Code, service providers are required to have in place adequate customer service arrangements, which include a non-premium rate UK customer service number. ICSTIS currently allows this number to be operated on the 087X number range, and it is proposed that this should continue.

Q6: Do you agree that the current application of Section 3 of the Code is appropriate to apply to the 0871 number range? If not, please provide your reasons.

Section 4 – Information Providers

Section 4 of the Code sets out the obligations on information providers to adhere to the provisions of the Code. It is proposed that the current application of Section 4 of the Code is applicable to the 0871 number range. This section sets out the obligations on information providers and we do not consider that there is anything unique about the 0871 number range that would require information providers to be subject to a different level of regulation in this respect.

Q7: Do you agree that the current application of Section 4 of the Code is appropriate to apply to the 0871 number range? If not, please provide your reasons.

Section 5 – General Provisions Applicable To All Premium Rate Services

Section 5 of the Code sets out some general provisions. These provisions include rules for the prior permissions regime, for pricing information requirements and content of services. Following stakeholders' input into the pre-consultation research exercise, ICSTIS has considered various options surrounding the prior permissions regime (as set out in Section 5.1 of the Code), the content requirements (as set out in Sections 5.2–5.5 of the Code), the pricing information requirements (as set out in paragraph 5.7 of the Code) and the undue delay prohibition (as set out in Section 5.4 of the Code).

Prior permissions

Under paragraph 5.1 of the Code, it is required that:

- services do not operate in certain categories without prior written permission from ICSTIS to the service provider,
- the service provider must apply for such permission to ICSTIS,
- ICSTIS reserves the right to grant prior permission subject to additional conditions from time to time,
- ICSTIS reserves the right to withdraw permission or vary conditions providing reasonable notice is given.

The categories of service that currently need prior permission under paragraph 5.1 of the Code are as follows:

- a) services that involve two-way 'live conversation' – for example one-to-one chat, professional advice and connection services for live conversation that involve calls to international destinations,
- b) chatline (multi-party chat) services.
- c) consumer credit services – for example, credit brokerage, debt counselling – including live, recorded, and faxed services,
- d) counselling services,
- e) services charged at more than £1 per minute where the total cost of the call can exceed £30,
- f) services charged at more than £1.50 per minute,
- g) remote gambling services – enabling gambling or betting to take place by delivery at a distance, electronically, or by voice telephony,
- h) any premium rate service utilising a dialler, regardless of price.

A number of live services – i.e. those involving two-way conversation – are exempt from the list above. They are as follows:

- customer support services,
- directory enquiry services,
- data capture services (i.e. where callers' details are taken so a service or product can be provided following the call),
- connection services for live conversation for UK end destinations only – these services include those that enable cheap (typically between 10ppm and 60ppm) calls to hospitalised relatives and friends,
- classified advertisement services (usually take the form of data capture services),
- alarm services – typically where calls are made at a premium rate to the police by alarm monitoring centres following notification that an alarm has been activated,
- racing tipster services.
- advice services – where they do not relate to professional services such as legal or medical advice, or provide any kind of counselling.

Prior permission is normally granted within four to six weeks of the application being made, and the company applying is charged a fee of £300 plus V.A.T. In addition, live entertainment services (except where in the 'exempt' list above), such as sexual entertainment services and tarot services, require a non-refundable payment of £7,500 into a compensation fund and a bank bond to cover redress payments should a service cease with outstanding sanctions against it.

Information received pre-consultation indicated that ICSTIS should consider the following:

1. How Section 5.1 of the Code should be applied to the 0871 number range.

Consumer risk

The requirement for certain categories of service to seek prior permission before they can operate allows ICSTIS to verify that they are appropriate, and to monitor new classes of services closely for the first period of their existence.

An example of a service category that has been through this process in the past is the Directory Enquiry ('DQ') service category. During their prior permissions period, we recorded a low level of complaints and consumer harm. The prior permission requirement was therefore removed. However, the prior permission requirement has been retained for some other services, such as live chat due to an identified increased risk and frequency of consumer harm.

It should be noted that, while regulation of the 0871 number range is new to ICSTIS' regulatory framework, services on this range should not be regarded as falling into a single category of service. A number of different categories operate across the 0871 number range, as is the case with the 090 number range.

We consider that the categories identified above as needing prior permission are those which pose the greatest risk of causing consumer harm. This will be the case regardless of which number range a service operates on. On this basis, many 0871 services will not require permission prior to operating and most live services will also fall within the exempt category for permission (see above).

Cost

ICSTIS considers that, due to the nature of services which fall under the prior permission requirements, the majority of these services will operate on the 090 range. This is because these services generally use a business model built around greater revenue share available from the 090 number range, which allows service providers to be more able to cover their operational costs, leaving very few similar services operating on the 0871 number range. Requiring a small number of services provided on 0871 numbers to register for prior permission is unlikely to produce a greatly increased administrative burden on ICSTIS when considering and granting prior permission certificates.

ICSTIS would welcome responses that provide further evidence on the number of services on the 0871 number range that are likely to require prior permission under Section 5.1 of the Code if it is applied in full.

Regardless of whether 0871 service providers are required to seek prior permission, they will be expected to register with ICSTIS. Such registration can be performed online through the ICSTIS website in only a few minutes. ICSTIS therefore considers that any increased administrative burden on service providers will be minimal.

Risk to the 0871 market

It has been suggested to ICSTIS during pre-consultation research that the requirement to apply for prior permission may cause an increased financial risk to service providers. It has been suggested further that this increased financial risk could cause them to switch to another number range and precipitate a collapse of the 0871 market.

While the lower revenue shares involved in the 0871 market would increase the financial risk to service providers who needed to post bonds for live conversation services (as above), ICSTIS considers it unlikely that a large number of such services will operate on the 0871 number range. Therefore, most 0871 service providers would find themselves with no increased financial risk and only the minimal administration cost associated with registering their services with ICSTIS.

Conclusion and proposal

ICSTIS considers that the majority of services provided on the 0871 number range will fall outside the Code's criteria for the prior permission requirement. Therefore, to apply those criteria to the 0871 number range would create little risk to the market, and would increase the financial and administrative burdens by a small amount and for only a minority of service providers.

Therefore, it is our proposal that Section 5.1 of the Code be applied in full to the 0871 number range when it falls within our regulatory remit.

Q8: Do you agree that it is fair and proportionate to apply ICSTIS' current application of the prior permission regime under Section 5.1 of the Code to the 0871 number range? If not, please provide your reasons.

Undue delay

Under paragraph 5.4.2 of the Code, services:

“... must not be unreasonably prolonged or delayed.”

During our pre-consultation research, the issue of how this paragraph will apply to the 0871 number range has been raised by stakeholders frequently. In particular, concerns have been raised by service providers who, due to the nature of their services, may have difficulty in complying with a rule that does not take account of their individual circumstances. It is also a real concern for consumers who, for whatever reasons, can suffer delays when calling customer services for businesses on NTS numbers.

Current system

At present, judgment is made by ICSTIS on a case by case basis as to what constitutes an unreasonable delay, and whether such delay was caused through the deliberate intent of the service provider. Generally, in the context of 090 calls costing up to £1.50 per minute, a delay of 15 seconds or more is considered to be unreasonable.

However, it is recognised that this may not be an appropriate length of time in relation to the 0871 number range. In particular, this would be a difficult requirement to adhere to for many service providers of 0871 numbers. This is especially the case in a call centre environment, where caller demand and agent supply may not always match, especially during unforeseen peak periods. The issue here is seldom a deliberate attempt to delay a service, but rather results from a range of issues involved in providing a call centre service where consumer use can and does fluctuate in ways not always easily anticipated.

In addition, the conclusions of our independent market research exercise note the following:

“... without considerable increases to funding it may not be feasible to adequately regulate call waiting. The complexity of the issue means that a blanket regulation will not suffice and therefore would require a case by case approach.”

Information received from the pre-consultation exercise indicated that ICSTIS should consider the following:

1. Whether ICSTIS should set parameters to define undue delay that better reflect the market for call centre-based operations.
2. Whether ICSTIS should set a threshold, based on the number of complaints about one service, below which it will not open an investigation.
3. Whether ICSTIS should set a price threshold below which it would not open an investigation.

Therefore, although the possibility of using the current ‘15 second’ guide for delay with 0871 calls has been considered, we are of the view that applying such a rule to the 0871 number range would be disproportionate to the vast range of services which use 0871 numbers.

The issue

As with the earlier section on pricing information, ICSTIS considers that the 0871 number range is differentiated from the 090 number range in that use of the 0871 numbers is rarely the core source of revenue for those who operate them. Many 0871 services fall into the categories of either customer service/support or data capture, which are call centre-based.

During our pre-consultation research, it has been suggested by industry members that, in the context of a call centre operation, demand and supply will seldom match perfectly. Therefore,

delays in service – i.e. where the customer is put on hold – may result for reasons beyond the control of the provider, and not driven by the revenue-generating potential of the call.

We consider that these delays are seldom deliberate, and result from either an imbalance between the number of callers and the capacity available to take them or poor customer service, rather than a deliberate attempt to make money by inflating call durations. This has been borne out by the research Ofcom conducted as part of its review of NTS numbers.

However, we also consider that prevailing consumer and media perception is that a clear link exists between ‘delay’ and ‘profiteering’ from the revenue share on 0871. This was borne out by our market research:

“Individuals that have made calls for these services in the last six months are likely to have experienced some annoyance related to being kept waiting and around half believe that they have been deliberately kept on hold to raise money for the organisation called, or believe they have been overcharged.”

ICSTIS will also need to address cases of clear abuse, in particular where delays on 0871 numbers appear to be deliberately used as a source of income generation.

Options identified

For the purposes dealing with complaints of undue delay, a number of options have been identified:

- Option A: Set guideline parameters for undue delay that better reflect the market for call centre-based operations*
- Option B: Set no parameters for undue delay and consider each case arising from the 0871 number range on its merits*
- Option C: Set a threshold, based on the number of complaints to ICSTIS about one service, below which ICSTIS will not consider opening an investigation*
- Option D: A hybrid solution combining the useful features of some or all of the first three options*

Each of these options is considered below.

Option A: Set guideline parameters for undue delay that better reflect the market for call centre-based operations

At present, live recording of services is not a requirement for the 0871 number range. In the absence of this measure, investigating and enforcing any parameters may be difficult as the only measure ICSTIS would have is an itemised telephone bill. This would provide a record of the length of a call but not the nature of it, the service provided or how much of the call could be considered to be undue delay.

In order to facilitate investigations of this type, ICSTIS could require that all live calls to 0871 numbers are recorded. However this would create a disproportionate financial burden on service providers.

A further difficulty with this option is that we currently have no information on acceptable lengths of delay. Without this information, it is not possible for us to set a starting point for reference.

We therefore conclude that this option is not objectively viable.

Option B: Set no parameters for undue delay and consider each case arising from the 0871 number range on its merits

Under this option, ICSTIS would open an investigation of a complaint of undue delay in the same way in which we would open any other investigation.

While this approach allows for individual consideration of each complaint on its merits, it would require ICSTIS to consider and investigate every complaint in some detail, and at a cost to both ourselves and the investigated party, in order to establish whether or not a complaint of undue delay could be upheld. Given that we expect few complaints to be upheld, we think that the cost of this option is disproportionate to the likely benefits.

This approach also provides little certainty or guidance for the service providers using 0871 numbers. This could create an unnecessary administrative burden for the industry as it attempts to deal with all eventualities and it would also delay customer redress.

We therefore conclude that this option is not objectively viable.

Option C: Set a threshold, based on the number of complaints to ICSTIS about one service, below which ICSTIS will not consider opening an investigation

This would require ICSTIS to keep records of all complaints alleging undue delay. Once the threshold is reached, the complaints would then be investigated. However, we believe that this is a crude approach and, without a preliminary investigation, it would not be possible to determine which complaints are legitimate or otherwise.

Additionally, this approach, once publicised, may encourage complainants to spur others to complain, possibly without foundation, in order to prompt us to open an investigation.

It is also suggested that larger companies are more likely to trigger such a threshold than SMEs, and that this is due to sheer volume of 0871 call volumes rather than actual risk to consumers. This may result in a disproportionate administrative risk where those larger companies will have to respond to ICSTIS enquiries more often.

We consider that the 0871 market is likely to resist the setting of investigation thresholds based on the total time or cost of undue delay. This is on the grounds of an increased financial and/or administrative burden, and the perception that ICSTIS is setting arbitrary measures that do not reflect the reality of much of the use of the 0871 number range.

As such, we consider that to set thresholds for investigation may encourage businesses or service providers to exit the 0871 number range and seek to provide their services on other revenue share NTS numbers not regulated by ICSTIS.

We therefore conclude that this option is not objectively viable.

Option D: A hybrid solution combining the useful features of some or all of the first three options

ICSTIS considers that none of the options considered above would, at present, achieve a greater level of consumer protection without a disproportionately increased financial or administrative burden to both ICSTIS and the 0871 market. In addition, ICSTIS considers that undue delay is most often a customer service issue, rather than a premium rate issue, in the context of use of the 0871 number range.

Therefore, we consider that we should not seek to establish, at the outset of regulation, artificial benchmarks for adequate customer service timings for 0871 calls, but note that reasonable benchmarks may emerge through the passage of time.

We are of the view that the providers of services on the 0871 number range should be managing complaints of undue delay as a customer service dispute. Since service providers are required by paragraph 3.3.5 of the Code to have in place customer service arrangements, this should place a limited additional administrative burden on them and, in any event, this approach reflects reasonable business practices.

Under this scenario, a complainant who complains about an unduly delayed service, resulting in an inflated call charge, would in the first instance be advised by ICSTIS (if necessary) as to how they can take up their dispute as one of poor customer service against the service provider, along with advice about what remedies are available and could be considered by the service provider. We would thus empower the customers to seek remedies to such disputes.

Under paragraph 3.3.5 of the Code, we will expect 0871 service providers to make a full consideration of any referred complaint. We will advise customers that we would normally expect such a complaint to be dealt with in 30 days. If at the end of that time the consumer remains dissatisfied, they can contact ICSTIS again.

At that point, we would make contact with the service provider on behalf of the consumer and advise that there is a telephony dispute and invite the service provider to reconsider how the matter has been resolved and notify us in 14 days of the outcome.

If the service provider does not respond or is not prepared to reconsider, we may open an investigation, under paragraph 5.4.2 of the Code, and consider the issue on its merits. Where evidence of systematic undue delay arises, it would be open to us to raise this matter and widen any investigation. Any sanction imposed by ICSTIS would be likely to include an order for a refund to affected customers.

Conclusion

ICSTIS considers that the preferred option is that outlined above in Option D, the benefits of which are:

- Consumers will be empowered in the pursuit of their customer service disputes which are not primarily premium rate-driven.
- Consumers will be adequately protected.
- The industry will have an incentive to consider seriously the complaints we refer back, as well as the underlying service quality issues. The service providers have the opportunity to avoid the costs associated with an ICSTIS investigation.
- In the first instance, the 0871 industry will be invited to deal with its own disputes on matters of undue delay, where ICSTIS has no evidence of a systematic problem. Industry members are given the opportunity to handle their own customers and disputes, and ICSTIS' investigative costs and resource uses are minimised.
- ICSTIS will still be able to identify and consider systematic breaches where the provider has intended to unduly delay its services.

Q9: Do you agree that Option D is a fair and proportionate application of the undue delay requirements in paragraph 5.4.2 of the Code to the 0871 number range? If not, please provide your reasons and alternative preferred option.

Additionally, please provide details of any other options you feel may be appropriate for ICSTIS to consider.

Pricing information

Under Section 5.7 of the Code, various requirements relating to pricing information are set out. These requirements are that:

- service providers make users aware of the cost of their services, in a clear and straightforward way, prior to the user incurring any charge,
- written pricing information (i.e. in advertising) is easily legible and presented in a way that does not require close examination, and that spoken pricing information is clearly audible and discernible,
- a short distinct pricing message is given at the start of services where advertising is unlikely to have been seen by the consumer,
- if the cost of a call is likely to exceed £2, where such services are advertised in broadcast media, pricing information must be spoken as well as visually displayed,
- any operational or instructional messages necessary to obtain access to a service, and provided separately to the service, must be available free of charge to a user (excepting basic network carriage rates),
- services where the total cost of a call is generally less than 50p are exempt from these requirements, unless the services are children's services, accessed by automated equipment (e.g. alarm services) or subscription services.

In practice, where the cost of a call is generally greater than 50p in total, pricing information is required on all promotional material. This is likely to apply to most 0871 calls. Service providers should also be aware that the need to provide the cost of communications services is required in certain circumstances under the Distance Selling Regulations².

It has been agreed with Ofcom that ICSTIS should consider the following:

1. Whether Section 5.7 of the Code should be applied to the 0871 number range.

Consumer risk

While the 0871 number range shares some characteristics with the 090 number range, in that both are frequently advertised in print or on broadcast media, they differ in that 090 numbers are usually utilised as the sole or main source of revenue for the end users, or information providers, that operate them, whereas 0871 numbers are rarely the core revenue source for the information providers that operate them.

Our pre-consultation research suggests that a large percentage of the 0871 number range is utilised by the following types of service:

- customer support services,
- data capture services (i.e. where callers' details are taken in order that a service or product can be provided to them afterwards).

Thus, a large percentage of information providers will not see income from running a service on an 0871 number as a core income, and are likely to be businesses that offer non-premium rate services or goods for sale. Examples of this are mail order or ticket booking services, trade services such as plumbers or electricians, or customer support lines for vendors of cars, electrical equipment or white goods.

We consider that misleading promotion is less likely to occur frequently where information providers do not derive the bulk of their income from 0871 revenue as the incentive to mislead is reduced.

² www.opsi.gov.uk/si/si2000/20002334.htm

Cost

If Section 5.7 of the Code is applied to the 0871 range, it is likely that the majority of its requirements would fall on the information provider rather than the service provider. Businesses that provide services on the 0871 number range where calls are likely to cost more than 50p in total would be required to add pricing information to marketing literature or where telephone numbers appear in company livery.

We consider that, while this would create an extra cost to businesses, they will eventually change stationery and vehicle displays regardless of the requirements within Section 5.7 of the Code. Even if businesses switched to another number range, they would still incur the cost of this change. However, the cost of doing so in time for February 2008 will be an increased financial burden to businesses over the coming year.

Additionally, the cost of investigating unintended breaches immediately following our assumption of the regulation is likely to be significant to ICSTIS. This may be considered to be a drain on resources which would be more efficiently and appropriately used elsewhere.

Risk to the 0871 market

In our pre-consultation research, it has been suggested to us that the requirement to change company stationery and livery could cause some of the biggest companies currently running 0871 numbers to switch to other ranges and either forgo revenue share or accept a reduction in it.

A three-month implementation period could be given from the time of our assumption of the regulation. This is likely to give businesses extra time to update company livery as part of normal business process.

Conclusion and proposal

It is ICSTIS' view that Section 5.7 of the Code should apply to the 0871 number range. However, to apply it with immediate effect from the time of our assumption of the regulation may cause unnecessary financial burden, especially on information providers.

It is proposed that we give a period of three months from the time of our assumption of the regulation. When setting this period, ICSTIS has taken into account that in the NTS Statement, Ofcom clearly indicated that ICSTIS regulation of 0871 numbers should include a requirement to include pricing information in advertisements/promotions. Service providers have, therefore, had over one year of advanced notice of the introduction of this requirement.

Q10: Do you agree that this is a fair and proportionate application of the pricing information requirements under Section 5.7 of the Code to the 0871 number range? If not, please provide your reasons.

Q11: Do you agree that it is appropriate to allow a three-month implementation period, as outlined above?

Content of services

Under our current regulatory framework, we regulate both premium rate service promotions and the content of services themselves. Our remit for regulation of content runs throughout the Code, rather than being limited to any one section or paragraph. In particular, the paragraphs in Section 5 of the Code are concerned with this issue.

However, as recognised above, there are differences between conventional premium rate services where the service is wholly paid for by the cost of the call and those provided on the 0871 number range where the number is often a facility to provide contact with a company.

While some revenue may be derived from the cost of the call, frequently the primary source of revenue is related to a separate purchase of goods or services.

These goods or services will usually be paid for by means other than the cost of the telephone call – i.e. a credit or debit card. Thus, based on information gained during pre-consultation, ICSTIS believes it should consider the following question:

1. Whether, if a consumer has cause to complain about a service provided on an 0871 number, ICSTIS should consider complaints that extend to the totality of the transaction – i.e. should ICSTIS consider complaints about content that relate to services purchased by non-premium rate payment mechanisms?

Consumer risk

One approach is that the remit of ICSTIS in this context extends only to the provision of the 'secondary service' – the issues involved in making a telephone call and the oral service provided by that means.

Disputes about 'primary purchase' are covered by other consumer protection bodies, which have credit card purchases and primary purchase as their main focus of operation. As such, ICSTIS considers it more appropriate that consumers direct complaints of inadequate content of the service which relates to the primary purchase to those other bodies.

In such a situation, our role would be firstly to deal with telephony issues, and then to advise the consumer as to their rights and methods for addressing their wider primary dispute, making clear the limits of our investigative powers. This may involve referrals to Consumer Direct or other consumer protection organisations.

In addition, we consider that to investigate complaints relating to non-premium rate service transactions may result in a situation of 'double jeopardy' or regulatory overlap for businesses in their provision of goods and services.

Cost

Investigating all complaints about primary purchase involving a non-premium rate transaction is likely to result in a disproportionately increased cost to ICSTIS, especially as these issues are not currently an area on which ICSTIS focuses.

An increase in the regulatory burden is also likely to fall on the 'point of sale' end of the 0871 market, as it expends resources in responding to ICSTIS enquiries and investigations.

Risk to the 0871 market

We consider that many businesses currently providing services on the 0871 number range will feel that they are already regulated as regards the primary purchase, and that for ICSTIS to regulate this also would increase their administrative and financial burden due to regulatory overlap.

Ofcom's intent

We have confirmed with Ofcom that they did not intend us to regulate the content of services provided on the 0871 number range outside our existing remit of telephony issues.

Conclusion and proposal

It is ICSTIS' proposal that it deals with all telephony issues arising from a complaint about a service provided on an 0871 number. However, if the complaint is beyond those issues involving issues relating to a non-premium rate service transaction, such as through a credit or debit card, we will advise the consumer as to their rights and methods for addressing their wider

dispute, making clear the limits of our investigative powers. Where necessary, we will refer them on to a more appropriate consumer protection organisation.

Q12: Do you agree that this is a fair and proportionate application of ICSTIS' scope of regulation in respect to content of services provided on the 0871 number range? If not, please provide your reasons.

Section 6 – Provisions Relating Specifically To Live Services

Section 6 of the Code sets out various obligations associated with the provision of live services and we do not consider that there is anything unique about the 0871 number range that would require a different application in this respect.

ICSTIS considers that, while a number of categories of live services are provided on the 0871 number range, the majority of these will already fall within the exemptions from prior permission which have been recognised by ICSTIS.

Q13: Do you agree that the current application of Section 6 of the Code is appropriate to apply to the 0871 number range? If not, please provide your reasons.

Section 7 – Additional Provisions Relating To Specific Categories of Service

Section 7 of the Code sets out various obligations associated with the provision of specific categories of service and, again, we do not consider that there is anything unique about the 0871 number range that would require a different application in this respect.

Q14: Do you agree that the current application of Section 7 of the Code is appropriate to apply to the 0871 number range? If not, please provide your reasons.

Sections 8 to 11

These Sections of the Code set out ICSTIS' powers of investigation, adjudication and its terms of reference. ICSTIS considers that there is nothing unique about the 0871 number range which would require different application of these rules.

Q15: Do you agree that the current application of Sections 8 to 11 of the Code is appropriate to apply to the 0871 number range? If not, please provide your reasons.

Funding

The current funding model is described in Annex 1 of the Code. A copy of Annex 1 is attached at **Appendix C**.

There is, however, an issue over the manner in which the outpayments by network operators are calculated in a situation where there is only a partially identifiable or no identifiable outpayment.

Under paragraph 10 of Annex 1 of the Code (attached as **Appendix C**), ICSTIS has the power to determine a notional outpayment calculated as a portion of the revenue generated by network operators. It is by this mechanism that ICSTIS intends to apply the funding model to the 0871 number range.

ICSTIS will announce both the percentage notional outpayment and the percentage levy to be applied to that outpayment at the time of announcing its general industry levy. In the interim, ICSTIS will apply the following rates based on our initial research suggesting that approximately 6p from a maximum revenue of 10p per minute is:

Notional outpayment = 60% of total revenue generated
Levy on 0871 = 0.34% of notional outpayment

Where there is an actual outpayment, the levy will be applied in the normal way in lieu of the levy on the notional outpayment.

Q16: Do you agree that this is a fair and proportionate application of the funding model in Annex 1 of the Code to apply to the 0871 number range? If not, please provide your reasons.

Collection of the levy

Our research has indicated that, due to the lower revenues generated on 0871 number use, a significant number of network operators will be required to pay over very small sums to ICSTIS as a levy.

As collection of the levy carries a significant administrative cost to ICSTIS, we consider that a minimum amount of levy payment should be applied to contribute to those administrative costs.

This amount will be reviewed from time to time according to the prevailing market conditions. At this time, it is proposed that the minimum payment amount from each network operator will be £500 per annum.

Q17: Do you agree that this is a fair and proportionate method of collection of the funding levy to apply to the 0871 number range? If not, please provide your reasons.

Q18: Do you agree that a minimum payment amount from each network operator should be £500 per annum? If not, please provide your reasons.

Branding

In the conclusions to its NTS document, Ofcom stated that ICSTIS would consult on whether a new 'brand' should be adopted for 0871 regulation.

It is to be noted that this is a separate issue to whether or not ICSTIS intends to apply a new brand to the range itself. This is discussed further below.

ICSTIS is currently undertaking a rebranding exercise for its own name and activity as a whole. There are several reasons for this, including the intention to raise its public profile with a more recognisable name. It is intended that this exercise will be completed later in 2007. In undertaking this exercise, ICSTIS is conscious that the new brand needs to be flexible enough to accommodate regulatory change, such as the extension of our remit to encompass the 0871 number range.

The result of this rebranding exercise will be the promotion of the organisation as a regulatory body with a portfolio of 'services' within its remit. The 0871 number range will be one of these services, along with mobile short codes and other controlled premium rate numbers on 09 and 070. There is, therefore, no compelling reason why regulation of 0871 numbers should be undertaken under the umbrella of a separate brand.

Insofar as the branding of the number range itself as opposed to the regulation of the range is concerned, although it is our opinion that this was not an issue for consultation, it has been raised frequently during our pre-consultation research.

ICSTIS considers that it is not appropriate for it to apply a brand to the number range, although we recognise that it is open to industry to do so of its own volition. Our remit is to regulate premium rate services in the UK – it is not for us as a regulator to promote the use of premium rate services or to endorse any particular number range over another. Indeed, should we do so and it transpires that the range in question has a tendency to cause consumer harm, ICSTIS would be open to criticism on this front.

As a further consideration, notwithstanding the above, it would not be financially viable for ICSTIS to run the requisite national consumer awareness campaign that would be associated with a successful branding exercise of this type. Since we are funded by a levy on industry, as discussed above, the cost of such a campaign would be indirectly borne by industry in any event.

It is proposed, therefore, that ICSTIS will not be applying a separate brand to either its regulation of the 0871 number range or to the number range itself.

ICSTIS will, however, set up a separate area on its website to provide information on 0871 regulation. This is because it considers that services provided on the 0871 number range and users of those services may have needs or requirements not met by other aspects of the ICSTIS website alone.

Q19: Do you agree that it is not appropriate for ICSTIS to create and promote a separate brand for regulation of the 0871 number range? If not, please provide your reasons.

Areas not discussed

Respondents will note that there are many provisions of the Code that have not been explicitly addressed by this consultation. The reason for this is that ICSTIS considers these provisions to be appropriate and applicable to the 0871 number range without modification or reinterpretation.

However, we still welcome respondents' views on any aspect of our regulatory framework, including these Code provisions not discussed.

Q20: Is there any other way in which ICSTIS' regulatory framework should be amended or otherwise so as to regulate the 0871 number range in a way that is fair and proportionate?

Section 5

Summary of Consultation Questions

We are seeking the views of all stakeholders on the proposals and questions contained in this paper. These responses are to be received by ICSTIS no later than **Monday 28 June 2007**.

While an external consultation is normally expected to last 12 weeks, due to the constrained time period available for implementation of the regulatory requirements, ICSTIS feels that a compressed time period of eight weeks is justified in this instance.

Furthermore, since the proposed changes to our regulatory framework are not substantively different from those set out in our current Code, we feel that an eight-week time period is appropriate.

In particular, we are inviting views on the following:

- a. The proposals to apply the existing Code in the ways suggested in this paper.
- b. The proposal to implement a funding regime as set out in this paper.
- c. The proposal to apply no separate branding to the regulation of the 0871 number range.
- d. Any other ways in which it may be appropriate to amend or otherwise our regulatory framework so as to ensure it is appropriate to cover the 0871 number range.

Summary of consultation questions

On the proposal to create a Statement of Application to apply to the 0871 number range (see page 8):

Q1: Do you agree with our proposal to create a Statement of Application for the 0871 number range? If not, please provide your reasons and alternative suggestions.

On the proposed application of Section 1 of the Code (see page 9):

Q2: Do you agree that the current application of Section 1 of the Code is appropriate to apply to the 0871 number range? If not, please give your reasons.

On the proposed application of the due diligence requirements in Section 2 of the Code (see page 11):

Q3: Do you agree that this is a fair and proportionate application of the network operators' due diligence requirements to the 0871 number range? If not, please give your reasons.

ICSTIS would welcome further information regarding quantification of costs.

On the 30-day payment rule in Section 2 of the Code (see page 12):

Q4: Do you have any further information and evidence regarding usual payment times?

Additionally it would be helpful to have responses that indicate to what extent Service providers rely on immediate payments from network operators to cover their operational costs.

On the proposed application of the 30-day payment rule in Section 2 of the Code (see page 13):

Q5: Do you agree that this is a fair and proportionate application of a delayed payment mechanism to the 0871 number range? If not, please provide your reasons.

On the proposed application of the obligations for service providers in Section 3 of the Code (see page 13):

Q6: Do you agree that the current application of Section 3 of the Code is appropriate to apply to the 0871 number range? If not, please provide your reasons.

On the proposed application of the obligations of information providers in Section 4 of the Code (see page 13):

Q7: Do you agree that the current application of Section 4 of the Code is appropriate to apply to the 0871 number range? If not, please provide your reasons.

On the proposed application of the prior permissions regime in Section 5.1 of the Code (see page 15):

Q8: Do you agree that it is fair and proportionate to apply ICSTIS' current application of the prior permission regime under Section 5.1 of the Code to the 0871 number range? If not, please provide your reasons.

On the proposed application of the undue delay provision in Section 5.4.2 of the Code (see page 19):

Q9: Do you agree that Option D is a fair and proportionate application of the undue delay requirements in paragraph 5.4.2 of the Code to the 0871 number range? If not, please provide your reasons and alternative preferred option.

Additionally, please provide details of any other options you feel may be appropriate for ICSTIS to consider.

On the proposed application of the pricing requirements in Section 5.7 of the Code (see page 21):

Q10: Do you agree that this is a fair and proportionate application of the pricing information requirements under Section 5.7 of the Code to the 0871 number range? If not, please provide your reasons.

Q11: Do you agree that it is appropriate to allow a three-month implementation period, as outlined above?

On the proposed application of those Code provisions which enable ICSTIS to regulate the content of services (see page 23):

Q12: Do you agree that this is a fair and proportionate application of ICSTIS' scope of regulation in respect to content of services provided on the 0871 number range? If not, please provide your reasons.

On the proposed application of Section 6 of the Code (see page 23):

Q13: Do you agree that the current application of Section 6 of the Code is appropriate to apply to the 0871 number range? If not, please provide your reasons.

On the proposed application of Section 7 of the Code (see page 23):

Q14: Do you agree that the current application of Section 7 of the Code is appropriate to apply to the 0871 number range? If not, please provide your reasons.

On the proposed application of Sections 8 to 11 of the Code (see page 23):

Q15: Do you agree that the current application of Sections 8 to 11 of the Code is appropriate to apply to the 0871 number range? If not, please provide your reasons.

On the proposed application of the funding requirements in Annex 1 of the Code (see page 24):

Q16: Do you agree that this is a fair and proportionate application of the funding model in Annex 1 of the Code to apply to the 0871 number range? If not, please provide your reasons.

On the proposed method of collection of the levy (see page 24):

Q17: Do you agree that this is a fair and proportionate method of collection of the funding levy to apply to the 0871 number range? If not, please provide your reasons.

Q18: Do you agree that a minimum payment amount from each network operator should be £500 per annum? If not, please provide your reasons.

On branding (see page 25):

Q19: Do you agree that it is not appropriate for ICSTIS to create and promote a separate brand for regulation of the 0871 number range? If not, please provide your reasons.

On inviting views on any other issue (see page 25):

Q20: Is there any other way in which ICSTIS' regulatory framework should be amended or otherwise so as to regulate the 0871 number range in a way that is fair and proportionate?

On the draft Statement of Application in **Appendix A** (see page 30):

Q21: Do you agree that this is an appropriate wording for a Statement of Application based on ICSTIS' proposals? If not, please provide your reasons and alternative wording.

Respondents are also asked to indicate their preferred option in applying the undue delay provisions of the Code to the 0871 number range.

Section 6 Consultation

Where possible, comments should be submitted in writing and sent by email to nmarshall@icstis.org.uk by no later than **Thursday 28 June 2007**. Copies may also be sent by mail or fax to:

Mr Nathan Marshall
Project Manager
ICSTIS
Clove Building
4 Maguire Street
London SE1 2NQ

Tel: 020 7940 7426
Fax: 020 7940 7456

If you have any queries about this consultation, please telephone or email Nathan Marshall using the above contact details.

Confidentiality

We plan to publish the outcome of this consultation and to make available all responses received. If you want all or part of your submission to remain confidential, you must make a specific request for this, along with your reasons for making the request.

Appendix A

Statement of Application

This Appendix contains ICSTIS' proposed wording for a Statement of Application. This wording is based on the proposals put forward in the consultation document and will be amended to reflect the final framework that will be adopted following the results of the consultation.

Q21: Do you agree that this is an appropriate wording for a Statement of Application based on ICSTIS' proposals? If not, please provide your reasons and alternative wording.

Respondents are also asked to indicate their preferred option in applying the undue delay provisions of the Code to the 0871 number range.

DRAFT STATEMENT OF APPLICATION

Background

This Statement sets out ICSTIS' policy on the application of the Code of Practice (currently in its 11th edition) in relation to the 0871 number range. Where in the future number ranges are opened up on 087X, and are to be regulated by ICSTIS, this Statement will also apply.

This Statement should be read in conjunction with, and is subject to, the Code and details the likely application of the Code by ICSTIS when considering complaints. Where particular Code provisions are not addressed, there will be no change to ICSTIS' application of those provisions in relation to the 0871 number range.

Section 1 – Introduction

This Section sets out the principles of good regulation, to which ICSTIS always adheres when applying its Code. It also sets out the scope of the Code.

There are no specific and unique applications of changes to our interpretation of Section 1 of the Code of Practice that apply to this number range.

Section 2 – Network Operators

This Section sets out the obligations of network operators under the Code. In particular, the requirements for due diligence checks and any withholding of outpayments are worthy of special note.

The requirements for due diligence checks by network operators under paragraph 2.3.1 of the Code will remain applicable in all cases, including for services provided on the 0871 number range.

However, for a period of 10 months following assumption of the regulation by ICSTIS, this requirement does not apply so as to require the network operators to carry out the due diligence checks in relation to any service provider to whom the network operator has made its network and/or services available not less than eight weeks prior to this regulation coming into force.

The requirement for withholding outpayments by network operators to service providers for 30 days under paragraph 2.3.3 shall remain applicable in all cases.

Section 3 – Service Providers

This Section sets out the general provisions and obligations relating to service providers. It is to be noted that, under paragraph 3.3.5, service providers are obliged to have in place adequate customer service arrangements.

There are no specific and unique applications of changes to our interpretation of Section 3 of the Code of Practice that apply to this number range.

Section 4 – Information Providers

This Section sets out the obligation of information providers to comply with the Code. There are no specific and unique applications of changes to our interpretation of Section 4 of the Code of Practice that apply to this number range.

Section 5 – General Provisions Applicable To All Premium Rate Services

This Section sets out the general provisions applicable to all premium rate services. There are several areas of this Section which require particular note.

Prior permission

Under paragraph 5.1, certain categories of service may not be provided without having obtained prior permission from ICSTIS. A list of these categories of service is available from ICSTIS.

This requirement shall remain applicable to services provided on the 0871 number range and, as a consequence, it is expected that many services provided on the 0871 number range will fall within the published exceptions to this rule.

Undue delay

The Code states, in paragraph 5.4.2, that “services must not be unreasonably prolonged or delayed”.

ICSTIS will not investigate complaints of undue delay in the first instance where it considers the issue to be one of poor customer service. In that case, it will refer the complainant back to the service provider with a direction to the service provider that, if the complaint has not been resolved within 30 days, ICSTIS may open an investigation.

Service providers are reminded that, under paragraph 3.3.5 of the Code, they are expected to have in place arrangements for considering claims of refunds where appropriate.

Pricing information

The provisions of paragraph 5.7 of the Code in relation to pricing transparency will apply in full.

It is to be noted that, as a result of the Distance Selling Regulations 2000, a supplier of goods or services which fall within the Regulations is required to provide in advance the price and delivery costs of those goods or services.

Regulation of the content of a service

Under Section 5 of the Code, ICSTIS will normally restrict itself to investigating complaints about poor service only where that does not directly relate to complaints about the primary purchase of goods or services.

Where ICSTIS declines to investigate a complaint, it will direct the complainant to a more appropriate body if one is available and/or advise the complainant as to their rights.

Should ICSTIS receive a level of complaints about a particular service that indicates a danger of potential consumer harm, it may choose to commence an investigation into that service.

Section 6 – Provisions Relating Specifically to Live Services

This Section sets out various obligations associated with the provision of live services and we do not consider that there is anything unique about the 0871 number range that would require a different level of regulation in this respect.

ICSTIS considers that, while a number of categories of live services are provided on the 0871 number range, the majority of these will already fall within the exemptions from prior permission which have been recognised by ICSTIS.

Section 7 – Additional Provisions Relating To Specific Categories Of Service

This Section sets out various obligations associated with the provision of specific categories of service.

ICSTIS does not consider that there is anything unique about the 0871 number range that would require a different level of regulation in this respect. There are therefore no changes to our application of Section 7 of the Code of Practice.

Sections 8 to 11

These Sections set out ICSTIS' powers of investigation, adjudication and its terms of reference.

ICSTIS does not consider that there is anything unique about the 0871 number range that would require a different application of these rules. There are therefore no changes to our application of Sections 8 to 11 of the Code of Practice.

Appendix B

Public Telephone Network Numbers

(11 digits long, including the '0', unless otherwise stated)

Number Beginning	Designation
01 and 02	Geographic Numbers
030	UK-wide numbers at a geographic rate: to be used by public sector bodies and not-for-profit bodies, calls charged at up to the same rate the customer would pay to call a UK Geographic Number, with calls to 030 numbers counting towards inclusive call minutes if the customer has remaining inclusive minutes to UK Geographic Numbers, and included in any discount structures that apply to UK Geographic Numbers
033	UK-wide numbers at a geographic rate: calls charged at up to the same rate the customer would pay to call a UK Geographic Number, with calls to 033 numbers counting towards inclusive call minutes if the customer has remaining inclusive minutes to UK Geographic Numbers, and included in any discount structures that apply to UK Geographic Numbers
034	UK-wide numbers at a geographic rate: migrating numbers from matching 084 numbers, calls charged at up to the same rate the customer would pay to call a UK Geographic Number, with calls to 034 numbers counting towards inclusive call minutes if the customer has remaining inclusive minutes to UK Geographic Numbers, and included in any discount structures that apply to UK Geographic Numbers
037	UK-wide numbers at a geographic rate: migrating numbers from matching 087 numbers, calls charged at up to the same rate the customer would pay to call a UK Geographic Number, with calls to 037 numbers counting towards inclusive call minutes if the customer has remaining inclusive minutes to UK Geographic Numbers, and included in any discount structures that apply to UK Geographic Numbers
055	Corporate Numbers
056	Location Independent Electronic Communications
070	Personal Numbering Service: from 1 September 2007, calls to these numbers that are charged in excess of either 20p per minute or a fixed fee of 20p per call, inclusive (in either case) of Value Added Tax, must be notified to callers at the start of the call before any call charges start to apply, by means of a free-to-caller pre-call announcement which at least states the maximum charge that could be incurred for a call to a personal number by a customer of the Originating Communications Provider
076	Radiopaging Service

Number Beginning	Designation
071 to 075 inclusive and 077 to 079 inclusive	Mobile Services
080	Special Services - no charge to customer (except where charges shall be notified to callers at the start of the call)
082	Special Services: Internet for schools
0844	Special Services basic rate: charged at up to and including 5p per minute or per call for BT customers, set by Terminating Communications Providers inclusive of Value Added Tax (the price charged by other Originating Communications Providers may vary)
0845	Special Services basic rate: charged (before discounts and call packages) at BT's Standard Local Call Retail Price for BT customers inclusive of Value Added Tax (the price charged by other Originating Communications Providers may vary)
0870	Special Services higher rate: charged (before discounts and call packages) at BT's Standard National Call Retail Price for BT customers inclusive of Value Added Tax (the price charged by other Originating Communications Providers may vary)
0871	Special Services higher rate: charged at up to and including 10p per minute or per call for BT customers, set by Terminating Communications Providers inclusive of Value Added Tax (the price charged by other Originating Communications Providers may vary)
090 and 091	Special Services at a Premium Rate: that is charged at rates for customers of BT which are generally either (a) higher than 10p per minute up to and including £1.50 per minute including Value Added Tax or (b) fixed fee calls costing over 10p, up to and including £1.50 including Value Added Tax (including 0908 and 0909 for Sexual Entertainment Services at a Premium Rate)
098	Sexual Entertainment Services at a Premium Rate, that are charged at rates for customers of BT which are generally either (a) higher than 10p per minute up to and including £1.50 per minute including Value Added Tax or (b) fixed fee calls costing over 10p, up to and including £1.50 including Value Added Tax
118XXX	Six-digit numbers used to access a Directory Enquiry Facility ('Type B Access Codes')
124 to 140, 143 to 146, 148 to 149, 160 to 169 and 181 to 189 inclusive	Numbers of up to five digits used to access an Indirect Access Provider ('Type B Access Codes')

(Source: www.ofcom.org.uk/telecoms/loi/numbers/numplan0207.pdf)

Appendix C

Annex 1 of the ICSTIS Code of Practice – Funding Arrangements

General provisions

- 1.1 Information obtained by ICSTIS under these provisions shall be confidential, save that ICSTIS may share it with Ofcom to the extent that is reasonable for the proper regulation of premium rate services.
- 1.2 For the purposes of these funding provisions, the following definitions shall apply:
 - a 'Outpayments' are sums payable by network operators to service providers in respect of revenue generated by premium rate services.
 - b 'Revenue' is the sum received by a network operator in respect of or attributable to the provision of a premium rate service, gross of any sum that may be due to third parties arising out of the provision of the said service.

Timetable

- 2.1 ICSTIS will publish a timetable for its annual budgetary and forecasting procedures as set out below. It will specify the dates by which various activities should be carried out by network operators and/or ICSTIS.
- 2.2 ICSTIS may, upon giving reasonable notice to interested parties, vary some or all of the dates set out in the timetable.

Budget and activity plan

- 3.1 As far as is practicable, by 31 December each year, ICSTIS will publish a proposed budget and activity plan for wide consultation and scrutiny.
- 3.2 Having considered the comments received under paragraph 3.1, ICSTIS will review and then present its proposed budget and activity plan to Ofcom for comment within such a period of time as ICSTIS may specify.
- 3.3 After receiving comments from Ofcom, ICSTIS will make such amendments to the proposed budget and activity plan as are necessary to secure Ofcom approval.
- 3.4 ICSTIS will then announce its budget for the forthcoming financial year, specifying the amount it intends to collect ('the Budgeted Figure').

Forecasting

- 4.1 Subject to paragraph 4.3 below, network operators must, in accordance with the timetable, provide ICSTIS with a forecast of the value of outpayments (gross of the levy — see Section 5 below) that each of them anticipates making in or for the forthcoming financial year.
- 4.2 If a network operator fails to provide a forecast in accordance with paragraph 4.1 above, ICSTIS may issue a direction to the network operator requiring the provision of a forecast and/or may make its own forecast of the outpayments likely to be made by the relevant network operator during the forthcoming financial year. This will be based on such information as ICSTIS may have concerning the network operator's outpayments

- in previous years, information received from other network operators and ICSTIS' own knowledge of the industry.
- 4.3 Where a network operator intends to provide premium rate services over its electronic communications network and has not previously done so, the network operator is not obliged to provide forecasts pursuant to paragraph 4.1 above.

Levy

- 5.1 ICSTIS will determine the proportion of every outpayment that needs to be retained and paid to ICSTIS ('the levy'). ICSTIS may from time to time vary the rate at which the levy is set to ensure that it continues to receive adequate funding to carry out its activities.
- 5.2 ICSTIS will advise network operators (in writing) and other interested parties (by publication on its website) of the levy to be applied to outpayments from time to time and issue directions accordingly. The levy will be expressed as the proportion of each outpayment that must be retained (e.g. 0.XX pence per £1).
- 5.3 Following receipt of notification under paragraph 5.2 above, network operators must inform everyone to whom they make outpayments of the level at which the levy has been set and that they (the network operator) will deduct the levy at source from every outpayment that is made and pay the deducted amount to ICSTIS.
- 5.4 Network operators are responsible for deducting the levy notified under paragraph 5.2 from every outpayment that they make. Where a network operator fails to deduct the levy, the network operator will remain liable to ICSTIS as though it had in fact deducted the levy.

Payments

- 6.1 In accordance with the timetable, ICSTIS will advise each network operator whose outpayments for the forthcoming year have been forecast under Section 4 of this Annex of the total amount that the network operator is expected to collect in the forthcoming financial year by the application of the levy notified for the time being under paragraph 5.2 ("its contribution").
- 6.2 Each network operator's contribution will be calculated by multiplying its forecasted outpayments for the forthcoming year by the applicable levy for the time being (e.g. £1,000,000 x 0.XX).
- 6.3 Upon being advised of its contribution by ICSTIS pursuant to paragraph 6.1 above, a network operator must pay its contribution to ICSTIS by 12 equal monthly instalments payable by the last day of each month commencing on the following 31 March. Wherever possible, network operators should arrange to make payments by electronic transfer.
- 6.4 Where a network operator falls within paragraph 4.3 above, the network operator will make payments to ICSTIS calculated by multiplying its actual outpayments by the applicable levy each month during the balance of the first year of service provision.
- 6.5 All invoices provided by ICSTIS to network operators will add a charge for VAT.
- 6.6 All network operators must provide ICSTIS with quarterly reports upon the actual levels of outpayments that they are making as soon as is reasonably practicable following 30 June, 30 September, 31 December and 31 March.

- 6.7 Network operators may, in exceptional circumstances, seek ICSTIS' agreement to a recalculation of their forecasts and the consequential payments required of them under paragraph 6.3 above.

Late payment

- 7.1 If a network operator fails to pay to ICSTIS monies due in accordance with the timescales set out in this Code and/or in accordance with directions issued by ICSTIS, the network operator will be liable to pay interest in respect of such monies at the rate of 3% above the prevailing base rate for the time being of HSBC plc from the date on which the relevant payment became due.

Adjustments

- 8.1 At the end of each year and in any event by no later than 30 April, network operators must provide ICSTIS with a statement of the actual aggregate outpayments that they have made, and the revenue that they have received in their capacity as a network operator during the preceding year. The statement must identify all cases in which the network operator has provided premium rate services in respect of which there is no identifiable outpayment (see Section 10 of this Annex). Where it has supplied no such services, the network operator must state this in the statement.
- 8.2 Following receipt of the statement referred to in paragraph 8.1 above or an auditors' report pursuant to paragraph 9.1 below, ICSTIS will determine in respect of each network operator the aggregate amount that ought to have been collected pursuant to paragraph 5.4 above and the aggregate amount that has been paid pursuant to Section 6 of this Annex by that network operator.
- 8.3 Where a network operator's payment to ICSTIS based on forecast outpayments exceeds actual outpayment levels, the network operator will be entitled to have the excess amount repaid. ICSTIS will recalculate this sum based on information provided under paragraph 8.2 above.
- 8.4 Where ICSTIS concludes, pursuant to paragraph 8.2, that a network operator ought to have collected an amount in excess of that actually paid to ICSTIS, the network operator will be liable to ICSTIS for the difference which will be payable forthwith.
- 8.5 ICSTIS will not make a calculation pursuant to paragraph 8.2 in respect of a network operator which has not provided a declaration of its actual outpayments for the entire year pursuant to paragraph 8.1 above.

Auditors

- 9.1 The ICSTIS auditor for the time being ('the Auditors') shall have the power to request from a network operator direct confirmation by audited statement of the actual level of outpayments it made and the actual revenue it retained in respect of premium rate services supplied by it as a network operator during any relevant period. A network operator's auditors must provide such a statement within such reasonable time as the Auditors may request and/or ICSTIS may direct.
- 9.2 Network operators will not be subject to a request under paragraph 9.1 above more than once in every four years, save where previous audited statements have revealed significant inconsistencies or where information provided to or obtained by ICSTIS or the Auditors may give the Auditors cause for concern.

- 9.3 A network operator or a network operator's auditors shall, at the request of the Auditors, supply such further information and/or explanation of such matters as the Auditors may consider necessary to satisfy themselves as to the accuracy of the network operator's figures in such a format as may be prescribed (including by further statement).
- 9.4 If an auditors' report obtained under paragraph 9.1 above indicates that the actual outpayments made by a network operator during the relevant year were different from those declared under paragraph 8.1 above, the Auditors will make such adjustments as are necessary pursuant to Section 8.
- 9.5 If the Auditors advise it to be necessary for the proper administration of this part of the Code, ICSTIS may direct that a network operator subjects itself to assessment by an agreed independent auditor for the purpose of establishing whether the network operator has fully complied with its obligations under this part of the Code. The costs of any such assessment shall be borne by ICSTIS unless the independent auditor concludes that the network operator was not in all material respects complying with its obligations under this part of the Code or where the independent auditor was unable to reach any conclusion because of non-co-operation by the network operator, in which case the costs will be borne by the network operator.
- 9.6 Where an audit conducted under paragraphs 9.1 or 9.5 above has revealed material inconsistencies in the information previously supplied to ICSTIS by a network operator, ICSTIS may take enforcement action under Section 9 of the Code.

No identifiable outpayment

- 10.1 Where ICSTIS has received notification under paragraph 8.1 above that a network operator has supplied service(s) for which there is no identifiable outpayment, it may direct the relevant network operator to explain the reasons for the lack of any identifiable outpayment(s) and/or to supply details of the level of revenue it has generated in respect of those services.
- 10.2 If ICSTIS considers it appropriate to do so, it will direct the network operator to treat the revenue it has generated in respect of such service(s) or such a portion of that revenue as ICSTIS may determine as though it were in fact an outpayment.