



Response to ICSTIS pre-consultation paper on the regulation of 0871 (NTS) services

on behalf of Orange PCS Ltd

29 September 2006



Summary

Orange welcomes the opportunity to input into ICSTIS's pre-consultation on the implementation of Ofcom's objectives for the regulation of 0871 services, as set out in Ofcom's April 2005 NTS Statement¹. Our response outlines our views on the general principles for the regulation of 0871 numbers, with more detailed responses to specific questions, where appropriate. Orange looks forward to commenting on ICSTIS's more detailed proposals in early 2007. Please note this response is supplementary to the comments made on behalf of the mobile operators via the Mobile Broadband Group.

A fundamental review of the scope of Premium Rate Services (PRS) is due to be undertaken in the coming months, which will seek to define the services that fall into this category as well as assess the relevancy of existing PRS regulation. Although it is important for ICSTIS to begin work now on the treatment of 0871 numbers, it is paramount that ICSTIS considers this dossier in parallel with Ofcom's PRS scope review and that discussions there feed into ICSTIS's thinking. Furthermore, the scope review will have a direct impact on the direction of ICSTIS's re-branding project. Therefore, we would advise ICSTIS against establishing a rigid and prescriptive 0871 regime at this stage.

Orange believes that, in terms of 0871 regulation, ICSTIS should focus solely on preventing the abuse of unclear pricing. This would reflect a number of 0871 market realities: the fact that consumers have cited a lack of pricing clarity as their key concern; that 0871 incurs a lesser cost to the consumer than premium rate numbers and poses less of a consumer detriment threat; that the 0871 Internet dialler loophole has now been closed; and that a clear distinction needs to be drawn between PRS (which should be more extensively regulated) and 0871 regulation.

In terms of the most appropriate means of implementing the new regulatory regime, Orange disagrees that a separate Code of Practice needs to be drawn up, as is assumed by ICSTIS's timeline². It would seem more logical and practical – particularly in view of the PRS review, and the long process for reviewing the ICSTIS Code – to have one ICSTIS Code of Practice covering all areas under ICSTIS's remit. This single Code of Practice could include a sub-section specially dedicated to 0871.

On the other hand, Orange agrees that 0871 regulation should fall under the current ICSTIS governance structure to ensure a single point of contact for consumers, and clarity and consistency for industry. However, the "polluter pays" principle must apply; in other words, the costs of regulating 0871 numbers must be borne by those service providers utilising 0871 numbers.

¹ NTS: A way forward, Ofcom, 19th April 2006

² ICSTIS – A pre-consultation paper of the regulation of 0871 (NTS) services, pg 11



Responses to the questions raised by ICSTIS

Question 4: We would welcome feedback about consumer concerns that arise, particularly with the promotion and content of 0871 services, and we would welcome feedback about safeguards that stakeholders believe would be necessary and proportionate for the development of an effective consumer protection regime for 0871 numbers.

As identified by Ofcom in its NTS statement, consumer awareness of the cost of 0871 calls is low³. As consumers are wary of and less likely to use numbers if they are unsure of the costs involved, ensuring price transparency is of primary importance and Orange agrees that this needs to be the focus of ICSTIS's work in this area.

Orange does not believe that other proactive consumer protection measures are required at this stage. In Ofcom's assessment of responses to the September 2005 NTS consultation⁴ a comparatively small number of respondents cited issues with consumer protection for 087 and 084 numbers (7.6%); many more (30.4%) had concerns regarding price transparency. ICSTIS should therefore concentrate its efforts in this area.

Question 5: We would welcome thoughts on what approach we should take to formulating a Code of Practice and how far this should be separate from the current ICSTIS Code and, if so, why. Are there additional issues relating to 0871 numbers, not covered in the current Code and distinctive to 0871, that would to also be addressed?

Orange agrees with the two principles for the regulation of 0871 services set out on page 7 of the pre-consultation document: proportionality and consistency are key to fostering consumer confidence. We believe that by being the guardian of price transparency, ICSTIS would achieve both these aims.

In order to maintain proportionality and consistency as well as clarity for service providers, Orange believes it is important to have one, consolidated ICSTIS Code of Practice covering all issues within ICSTIS's remit (i.e. including a specific section on pricing transparency for 0871 advertising and promotions). This would allow a streamlined process for necessary code updates: rather than undergoing a number of code reviews at various points throughout each code's life cycle, stakeholders would only have to review one code.

More generally on the issue of the ICSTIS Code of Practice, Orange would reiterate its concerns about the detail and length of the Code. Our view is that a fundamental overhaul of the ICSTIS Code of Practice is necessary to refocus on its original objective – to prevent consumer harm. We believe the PRS scope review is an opportune time to conduct this review. Orange believes that the Code

³ Number Translation Services: A Way Forward: Consultation, 25th September 2005

⁴ Number Translation Services: A Way Forward, Final Policy Statement, 19th April 2006 Annex 1, P. 68



currently contains much complexity and a level of technical detail that renders the Code difficult to understand and amend. The review process for the ICSTIS Code of Practice is thus protracted (and indeed can seem continual). This is a time and resource intensive process for ICSTIS, industry and Ofcom alike.

Orange would propose that the content of the subsection on 0871 numbers within the ICSTIS Code of Practice be based on the *principles* for price transparency contained in the ICSTIS Code of Practice rather than a line-by-line transposition of the relevant sections of the Code. Moreover, in the spirit of ensuring a light touch to regulation when compared with premium rate services, the provisions should be drafted clearly and concisely, with technical details best included in separate guidance documents for easy referral and review.

Question 6: We would welcome feedback on how we should regulate call centre waiting time issues, recognising that being in a queue for a long time leads to consumer expense as well as generally leading to a perception of poor service. We would particularly welcome the views of trade bodies whose members are active in call centre provision about how best practice could link to our regulatory requirements once agreed.

Question 7: We would welcome views on the potential incentives that we could create in order to develop improved performance and consumer service in this area without the need immediately to resort to regulatory sanctions.

As we consider these two questions to be related, we will consider them together.

As we have already stressed, ICSTIS should focus its resources on the issue of ensuring price transparency in view of the lesser scope for consumer detriment. We disagree that ICSTIS has a role in regulating issues relating to call queuing and are concerned with the implication in question 7 that ICSTIS believes it should be involved in improving performance and customer service in call centre environments. There are a vast number of service offerings in the market and customer services are offered by a range of sectors. The market is able – and should be permitted to – regulate call wait times; consumers and businesses can easily vote with their feet if they are dissatisfied with the customer service provided by a particular company. ICSTIS could, on the other hand, help empower consumers to make this choice by ensuring the provision of clear pricing information.

Question 8: In respect of pricing transparency, we would welcome views on how we move to a situation of compliance in time for early 2008 when we take control of the regulation of 0871 numbers. Many companies reported to Ofcom that they face long lead times to amend their promotional copy in respect of advertising for 0871 numbers. What action can we take and with whom to ensure that service providers and others in the value chain



promoting these numbers fully understand the need for providing transparency in good time for any regulatory changes which may take place early in 2008?

As ICSTIS has identified, it will be a challenge to ensure all service providers in the value chain are compliant with pricing transparency rules before early 2008 and for all promotional material to be updated, particularly as the rules and framework are still to be defined and as the value chain extends far wider than the traditional telecoms sphere. Similarly, ICSTIS also only has a short period to ensure the appropriate staff are engaged and trained, and that systems are updated.

In order to facilitate compliance with the new Code, Orange would recommend ICSTIS factors an implementation period into its timeline. During this time, ICSTIS would need to actively promote awareness of this new regime, rather than relying on information filtering down to all individual information providers. Responsible industry will play its part in ensuring partners are aware of the changes, but ICSTIS should also promote this through meetings with trade bodies, bearing in mind that the advertising of 0871 numbers may be provided by organisations that do not actively follow telecoms regulatory developments. Updates should be provided on the ICSTIS website to highlight what would be considered best practice and other compliance information.

Question 9: Pricing transparency for 0871 numbers will be affected by the fact that many such numbers, especially when used for customer services, are listed in white pages telephone directories where space for the listing is restricted to a company name and number. There is no provision to provide information relating to the likely cost of the call. How should we consider dealing with issues relating to pricing transparency in this context or in other contexts such as advertising such numbers or radio or television?

Orange agrees that this is an area requiring further consideration by ICSTIS and that there may not be an ideal solution in view of the variety and choice of service provider and pricing plans. However, with time, and under the new regulatory arrangements, consumers should become more familiar with the number range and associated call charges.

White pages telephone directories could perhaps be encouraged to include in a visible, handy location, a list/illustration of maximum call charges for each number range (perhaps adapting the draft illustration Ofcom put together in the Numbering Consultation⁵).

In television/radio advertising where space/time are limited, the aim is to convey the message without providing an excess of information to the consumer. A message such as "calls cost a maximum of Xp per minute plus standard network charges" would be in line with what consumers are already familiar with.

⁵ Ofcom, Telephone Numbering: Safeguarding the Future of Numbers, Statement, 27th July 2006, Figure 1.1



ICSTIS will be aware that Ofcom is also looking at this issue in respect of other 08 number ranges (as part of its Telephone Numbering review) to see how a greater level of transparency could be introduced in respect of call charges from non-BT lines. Ofcom will be consulting further on the subject and ICSTIS may wish to use that experience and Orange would support a unified approach across number ranges.

Question 10: Do stakeholders have any views about our preliminary conclusions on governance arrangements for regulating 0871 numbers?

Orange agrees that no new legal entity needs to be created for the regulation of 0871. This would not only add another layer of complexity to governance for stakeholders and the consumer alike, but would also be disproportionately costly. Moreover, ICSTIS is already able to cover both mobile and fixed premium rate services simultaneously. Orange would highlight, however, the need to ensure a clear delineation of responsibility and for the strict application of the “polluter pays” principle. Cross subsidisation would not serve to promote corporate responsibility but would add a financial burden to compliant operators.

Question 11: We would welcome any thoughts on how far the current funding model, which appears to have operated well for many years, could be adapted to incorporate 0871 number or whether specific alternatives should be considered. If the latter, with what justification?

It is imperative to ensure that the “polluter pays” principle applies, in other words, the cost of funding 0871 regulation (including transitional and set-up costs) should be borne by 0871 service providers. Orange is against any cross subsidisation of 0871 activities with funds from the current ICSTIS levy or for it to be funded by originating operators.

To ensure consistency, we believe the current ICSTIS funding model should be applied to 0871 numbers. Orange notes ICSTIS’s concerns that the revenue sharing system on 0871 can be different to that on 09 numbers (i.e. where an arrangement is sometimes made to subsidise additional services rather than make an out payment), with a result that this system may undermine a system based on out payments. Should ICSTIS deem this to be the case after conducting market analysis, ICSTIS could consider defining and applying a notional levy based on market averages, as currently occurs in the mobile space where there is a direct, contractual relationship between the mobile operator and content provider and no out payments are made.

It should also be borne in mind that as 0871 regulation justifies a lighter touch approach (in view of the lower capacity for consumer detriment) fewer resources will also be needed to implement regulations.



Question 12: We would welcome stakeholder comments on branding issues and how far, in the context of a re-brand of the core ICSTIS business, stakeholders consider there is a need for public perception reasons, for a separate brand for 0871 numbers.

Orange agrees that a separate sub-brand for 0871 services would be appropriate to differentiate these from PRS in the consumer's mind, whilst at the same time promoting a positive image of 0871 numbers to encourage use. The "branding" would need to reflect the notion of 0871 services costing more than a geographic call, but less than a premium rate call, as well as encompass a positive view of these services being of added value.

ICSTIS's tag line is currently the "Premium Rate Services Regulator". This will need to be modified when 0871 responsibilities transfer to ICSTIS to avoid consumer confusion and to better reflect ICSTIS's role. Orange agrees with the comments made by ICSTIS that there is a need to clarify ICSTIS's role and remit to consumers more generally. Ofcom's PRS review will help inform ICSTIS's re-branding and ICSTIS needs to bear this in mind when considering branding issues. Orange looks forward to commenting in further detail on the ICSTIS re-branding exercise when such details become available.

Ofcom lists a number of branding suggestions for 0871 in the NTS Statement⁶, which we look at in turn below.

- Use a different name

Orange is conscious that the perceived proliferation of regulatory points of contact is mystifying for the consumer, who has to assess who to approach in time of need (of course, most consumers' first port of call is the mobile operator). It would therefore not be advisable for ICSTIS to act under a different name when dealing with 0871 issues.

On the other hand, in order to differentiate 0871 from PRS issues, it would be appropriate to consider a generic name to describe 0871-type services (e.g. a name that conveys the "value added" concept).

ICSTIS would also need to change its tagline, which is currently "the Premium Rate Services Regulator".

- Be based on a separate Code of Practice with few regulations reflecting the less acute consumer protection concerns and the lower price of services involved.

⁶ Ofcom, NTS Statement: A Way Forward, 19th April 2006, page 55



On balance, Orange disagrees that a separate Code of Practice is necessary or desirable. As explained in response to question five, Orange believes that ICSTIS should issue one, single Code of Practice with subsections dealing with the various types of services under its remit (i.e. PRS, DQ and 0871). This would help streamline the administration of the ICSTIS Code of Practice and subsequent review processes. It would also help promote consistency of approach.

We do agree, on the other hand, that the section on 0871 services should reflect the less acute consumer protection concerns and the lower price of services involved. In other words, the level of technical detail would not need to be as great as that for PRS.

- Be funded by a separate levy

Orange agrees there should be a separate funding mechanism for 0871 numbers, which would only apply to 0871 service providers. The funding model should follow the model established for PRS.

- Be accessed via a separate website

Orange disagrees that there is a need to set up a separate website. To ensure simplicity of use for the consumer and industry, as well as to avoid confusion, it would seem more appropriate to have a clear link to the 0871 *section* of the ICSTIS website from the home page. The ICSTIS website could, for example, be re-designed so as to act as a portal for all services under ICSTIS's remit, allowing users to navigate through to the appropriate section.

Question 13: We would welcome any comments on this proposed timetable.

Orange notes the ambitious nature of the timetable. We are concerned about the short amount of time proposed between the publication of the Code and its entry into force and whether this is sufficient for ICSTIS's preparations and for service providers to digest and comply with the letter of the new obligations. However, we understand the time constraints within which ICSTIS must formulate and apply this new regime.

There is a need for firm deadlines to be set for each stage in the process. For instance, information about ICSTIS's communications plan, and the deadline/period for compliance once the 0871 code has been published, should be provided.

Finally, we are concerned that the timetable seems to assume at this early, pre-consultation phase, that a new and separate Code of Practice for 0871 will need to be drafted. As explained in response to questions 5 and 12, we do not agree this is the case.

All queries in relation to this response should be to Clare Seabourne, Regulatory Analyst, Orange, 50 George Street, London W1U 7DZ – clare.seabourne@orange.co.uk – 07973490053