

Mr. Paul Whiteing
Deputy Director (Policy and External Affairs)
ICSTIS Ltd.
1st Floor, Clove Building
4 Maguire Street
London
SE1 2NQ

Wednesday 27th September 2006

Re: 0871 (NTS) services: Pre-consultation paper response

Dear Paul,

We are writing in response to the pre-consultation paper issued by ICSTIS seeking input into your implementation of OFCOM's objectives for the regulation over 0871 services.

Having extensive experience within the premium rate industry and the non-geographic market, we hope we are able to offer effective feedback from a Network Operator and Service Provider's perspective whilst also representing the views of our clients.

To keep this document clear, we have collated our responses under each of the questions asked in the pre-consultation paper.

Q1: We would welcome feedback about the distinctive characteristics of the market for 0871 numbers, including information about the market size, the main types of use for 0871 numbers and views on how this is changing, and is likely to change, as we move towards 2008 and beyond.

A1: 4D telecom offers its numbers to clients for use in 3 main areas, the first as contact numbers for offices, premises etc, the second for number re-sellers and the third for connection to value-for-money audiotext services. We have found the latter to be particularly useful for mobile users who are unable to access premium rate services. The audiotext services comprise both information and entertainment services, predominantly genuine peer-to-peer chat and dating services. All are clearly advertised in the press on 0871 tariffs and we also state the price per minute. As a responsible provider, we feel that consumers have benefited from this tariff. We have had negligible negative consumer complaint over pricing and feel that our services are successful on 0871 tariffs and present negligible consumer or societal harm. We would welcome regulation and guidance in proportion to that level of potential harm at tariffs less than 10p per minute.

Q2: We recognise that a considerable amount of use of 0871 numbers relates to business call centres for customer service and information. Again, we would be interested to hear from those companies and other affected organisations about how the decision by OFCOM to extend the regulation of PRS to 0871 may impact their operations and how any ensuing burden should be minimised without losing sight of the need to ensure an appropriate level of consumer protection.

A2: The decision to include 0871 in the full remit of current PRS regulation would have the effect of number providing NO's such as ourselves to either become service providers and therefore take on absolute responsibility for any service provided or widen the potential pool of service providers to organisations that would be unable or unwilling to comply with the legislation. This would effectively remove number re-sellers from the market.

We as an SP would not have enough control over how numbers were being allocated and the responsibility on us to ensure compliance would be too onerous. Again, given the low price point, we believe that any potential consumer harm from 0871 NTS is negligible and can best be dealt with by enforcing proper marketing of all numbers through the relevant medium OR ensuring that an introductory message is displayed at the start of the call. Further regulation would prove to be too onerous and prevent corporate access to as wide a range of numbers for as wide a range of services as exist at present and limit consumer choice and value as a result.

[Q3: We would welcome feedback about the likely consequences of the possible migration to or from 0871 numbers flowing from the changes announced by OFCOM to 0870 revenue share and as a consequence of extending PRS regulation to all 0871 numbers.](#)

A3: We welcome limited, proportionate legislation for 0871 tariffs related to the levels of potential consumer harm on an 0871 tariff which at 10p per minute we would argue, based upon our experience to date, is negligible.

0870 at 1.5p per minute for weekends and 3.9p per minute evening still provides the cheapest possible tariff for commercial information and entertainment services accessed by consumers. Migration to 0871 will represent an increase in costs to the consumer for a like-for-like service. Without specific legislation to enforce price transparency there is no consumer benefit from this. This and an introductory message, we feel, is the extent that current PRS legislation needs to be extended to 0871 tariffs.

Where there is a commercial need for a non-geographic presence – such as information services or our own peer-to-peer chat and dating entertainment services – there is also a need to be able to provide these on a commercial basis on the cheapest tariff possible. Having run peer-to-peer chat and dating entertainment services for 13 years on an 0870 tariff and generating over 20,000,000 minutes a month of traffic, the level of complaints we have received is at less than one a month and negligible as a result. There would appear to be little or no potential consumer harm from running such a service on such a tariff. All our press advertising clearly states the price per minute. Migrating to 0871 provides not only a customer retention issue for us but prevents us from providing such a service as cheaply as possible, one of the key attractors of such a service.

Number resellers who focus on 0870 will no longer have a viable economic model and so consumers will be forced away from 0870 as a result of lack of availability of 0870 number ranges to corporates. There will also be little or no financial incentive for corporates to set up 0870 services – at a cost to them – whereas 0871 being more expensive to the consumer still provides for a revenue share. Rather than making outpayments to clients on 0870, 4D will need to charge them. This has a massive financial impact on all parties concerned.

[Q4: 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.](#)

A4: We feel that due to the low cost of such tariffs and thus fairly low risk to the consumer, a light touch should be taken in terms of safeguards for 0871. We do not see why anything other than promotional regulations should apply. There has been no evidence to suggest that there has been any concern over the range of services provided on 0871 other than the potential of price transparency. We feel that there is a continuing need to allow 0871 to carry genuine peer-to-peer chat and dating services on such a non-premium rate tariff to ensure that there is suitable distance between such services and the more prevalent premium rate operator-driven sexual entertainment services. In our experience, the press where the majority of such services are advertised would look to see such a distinction being made.

We have been running information services and entertainment services such as peer-to-peer chat and date services on 0871 (and 0870) tariffs successfully for a number of years with a negligible level of consumer complaint. Our services are aimed at both the straight and gay communities. This could also include live peer-to-peer chat where both parties agree to such an arrangement. Adult verification is included as standard. We are assuming that there will be no change therefore in the range of services that can be provided on an 0871 tariff, as to limit this would force such a community based service onto higher tariffs, limit their availability and potentially disenfranchise mobile users.

Q5: 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 should also be addressed?

A5: Given that an 0871 tariff presents little or no scope for consumer harm and is used by a wider community of operators and providers, many on an ad hoc or one-off basis, to apply the entire PRS legislation to 0871 would be both onerous, anti-competitive and potentially damaging to consumers as it could lead to a limited choice of products at such a price point. Generally speaking, 0871 needs to be handled with a very light touch and in proportion to the potential consumer harm that could be caused. Given that transparency of pricing appears to be the major driver of consumer concern and complaint, legislation limited to promotional activities would suffice.

Q6: 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 sanctions.

A6: Our response is limited in this regard as we have little or no involvement in these operations. However, as there is a lack of promotional transparency over tariffs to call centres, empowering the public with such tariffs or including an introductory message detailing call charges would ensure that consumers could make their own decision whether such a call should be continued or not.

We also believe that a detailed guideline or recommended best practice would help in this regard rather than tightly drafted legislation. A requirement to state upfront likely hold times would also empower the consumer in making the call, as would a dedicated complaints or disputes menu option on any associated call centre IVR.

We are also of the opinion that it may be incorrect to assume that if consumers were able to call on a cheaper tariff to access call centres (0800 or 03x), the quality of service would be any better. Call centres often offset their running costs with the revenues gained from 0870/0871 tariffs. Should these disappear you could actually be reducing the quality of customer service i.e. a consumer's call might be answered more quickly but the query not dealt with thoroughly, in order to keep waiting times down.

Q7: 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

A7: We are most encouraged to see this question posed by ICSTIS with regard to 0871. We would also welcome ICSTIS' feedback on why they believe implementing incentives to comply for 0871 would be any different from implementing them on 09 tariffs. For a participative regulator that is keen to ensure that regulation is proportionate to the potential level of consumer harm and for regulation that is no more onerous than is necessary to ensure that consumer harm is minimised, we would welcome an incentive-based approach. Such incentives could include a merit system whereby demonstrably compliant operators could avoid having to submit copy for promotional advertisements in every case for example, or a two tier prior permission process, depending upon past compliance history. We would also propose the move towards a regulator accreditation programme whereby adherence to best practice and guidelines is rewarded.

Q8: 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 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 in early 2008?

A8: We recommend that as ultimately, this is the responsibility of OFCOM and ICSTIS, they would need to provide regular workshops and seminars and provide the necessary documentation with clear instructions to advise organisations accordingly. The help of all Network Operators will also be crucial in achieving success. Clear guidelines, a dedicated help desk for both regulatory and promotional queries, an agreed timeline and a regulatory overview will need to be produced before an estimate of both the cost of compliance and timeline to meet such regulatory requirements can be made. A clear statement of responsibilities will also have to be made to ensure that each interested party is aware of their role and responsibility in compliance. In the provision of non-geographic numbers for corporate use through a re-seller for example, clarity over the roles of service provider and information provider would have to be very clear.

Q9: 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 price transparency in this context or in other contexts such as advertising such numbers on radio or television?

A9: As the call cost per minute is low and thus is low risk, placing a pricing message at the beginning of the call should be sufficient and allow the caller enough opportunity to decide whether to continue the call or not. Where it is feasible for price transparency in other media (on bills for example where helpdesk numbers or service numbers are included, full pricing information should be included.

Q10: Do stakeholders have any views about our preliminary conclusions on governance arrangements for regulating 0871 numbers?

A10: We are concerned at this stage of the consultation process that there does not appear to be a clear or definitive purpose for the regulation on 0871 although we welcome ICSTIS's comments that there is a need to identify a regulatory framework that is proportionate to needs raised. We agree with OFCOM that the focus should be on promotional material and that legitimate services – which include entertainment services - should not be disenfranchised as a result.

As only 49% of the sample base expressed an interest in regulating 0871 tariffs alongside PRS and the fact that separate measures have been taken against diallers – the major area of concern and consumer deception – we feel that the impetus for regulation on 0871 is somewhat limited and should be confined to OFCOM's principal area of concern, namely pricing transparency.

We disagree with the view that live entertainment services have the potential to cause the greatest potential consumer harm. With adequate adult verification and monitoring, and genuine peer-to-peer services with "opt in" from both parties before live conversations can commence, and at low tariff pricing, we believe the scope for consumer harm is very limited. Our own level of historic complaints proves this to be the case.

Given the nature of 0871 tariffs and the wide range of services that are offered, we feel that a better approach would be to work a new code of conduct from the ground up rather than trying to apply the current ICSTIS code and "shoe horn" it where applicable. Tailoring down an existing code in this way can only lead to onerous and detrimental regulation and limit the availability of services and so remove consumer choice. It would also be anti-competitive.

With the stated aim of being both proportionate and participative through consultation, we feel very strongly that an approach based upon incentives rather than penalties, greater self regulation, a system based upon best practice and guidelines specific to the drivers and concerns of 0871 tariffs is more appropriate. It would be wholly inappropriate to take regulation for example, aimed at sexual entertainment services at premiums as high as £1.50 a minute and try to water these down to apply them to non sexual, entertainment services at tariffs below 10p with a completely different community and consumer base with different economic drivers and potential levels of consumer harm.

[Q11: 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 numbers or whether specific alternatives should be considered? If the latter, with what justification?](#)

A11: We agree that the current levy based model would appear appropriate to regulation over 0871 but would be interested to know the procedure for dealing with OFCOM-driven outpayment changes and therefore corrections to any levy imposed.

[Q12: 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.](#)

A12: If it is agreed that the regulation of 0871 should be suitably different to that of PRS – indeed we think it is important for the credibility of 0871 traffic that it is kept distinct from premium rate services to ensure consumer confidence, it is imperative that not only is any regulation and the regulator be branded separately, but it is important that the regulation cannot be perceived merely as a code of practice "lite". Given the very distinct nature of 0871 from PRS, and the wider range of services and potential service providers, it must be treated as a completely separate entity and have its own regulatory requirements, branded and drafted from the ground up.

[Q13: We would welcome any comments on this proposed timetable.](#)

A13: If the COP is not officially ready until Oct/Nov 2007, it cannot reasonably be expected that organisations (particularly those new to the world of PRS regulation) have their copy etc in place two months later.

Especially if any copy promotion is to be reviewed by the regulator first. If we assume that all call centres etc. using 0871 tariffs will effectively become SPs, and in many cases have to apply for prior permissions, a 2 month timescale may well be unrealistic for both the industry and the regulator without, as a minimum, some transitional reliefs in place. We also note that there is no scope for a customer awareness campaign or education be in pr, fact sheets or open forums. We feel that for 0871 to continue its strong and successful history as a source for both information and entertainment, increased public awareness is required.

Please feel free to contact us if you have any queries or require elaboration of any of our comments. We look forward to hearing other organisations' feedback and the conclusions from this pre-consultation paper. Thank you.

Yours sincerely,

Sarah Godfrey
Sales Manager