



ICSTIS' regulation of 0871 (NTS) services: A pre-consultation paper seeking input into ICSTIS' implementation of Ofcom's objectives for regulation over 0871 services

The deadline for comment is Friday 29th September 2006

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Appendix One

The funding arrangement for ICSTIS – Annex 3 from the ICSTIS Code of Practice 10th Edition (as amended)

Section 1

Executive Summary

0871 numbers are 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. 0871 calls involve a form of micro-payment which is usually shared with a third party as a derivative of receiving the call from the consumer. 0871 numbers have a variety of uses from some forms of entertainment service through to help lines, interactive cinema ticket lines, holiday and flight booking services, business phone numbers, customer support functions provided by many companies to their customers and many other applications.

On the 19th April 2006 Ofcom published its policy statement on Number Translation Services titled NTS: A way forward. That document sets out a number of changes that Ofcom has decided to make to the regulation of NTS including extending the remit of ICSTIS to regulate these numbers and services for the first time.

Ofcom's objectives for extending premium rate services (PRS) regulation to 0871 numbers are twofold. Firstly to increase the level of consumer protection provided for calls to these numbers and secondly to improve pricing transparency for 0871 calls.

The purpose of this document is to seek preliminary views from all stakeholders about the issues that arise for us and stakeholders as a consequence of this Ofcom decision which we now need to enact. We will need to identify a regulatory framework which is proportionate to the needs and detriment that have been raised by Ofcom through their consultation processes and we need to identify how we relate the regulation of this activity to our existing responsibilities in the PRS sector.

We recognise that the parties affected by this issue run wide. Many companies and organisations across the UK rely on 0871 numbers for some aspect of their business whether as a core or peripheral component. They will all be affected by any regulatory proposals that we bring forward. Many consumers and consumer groups also have interests in the regulation of 08 numbers. We therefore plan to give this, and further documents, the widest possible exposure across all industry sectors to ensure that all stakeholders make their views known to us in the process of setting an appropriate regulatory framework.

Section 2

Background

On the 19th April 2006, following extensive consultation, Ofcom published its policy statement on Number Translation Services titled NTS: A way forward (hereafter referred to as the “NTS Statement”¹). That document, which is available on the Ofcom website (www.ofcom.org.uk) sets out a number of changes that Ofcom has decided to make to the regulation of NTS. This pre-consultation document is concerned specifically with one of these: the decision by Ofcom to extend the regulation of PRS to all 0871 numbers.

Ofcom’s objectives for extending PRS regulation to 0871 numbers are twofold. Firstly to increase the level of consumer protection provided for calls to these numbers and secondly to improve pricing transparency for 0871 calls.

The NTS Statement made clear that the level of regulation that we will apply to this extended area of responsibility will not be to the same degree as with the current PRS which cover both the fixed and mobile sectors. Ofcom also went on to observe, however, that this area will be subject to requirements designed to improve pricing transparency and to provide an appropriate level of consumer protection. Ofcom made the point that, amongst other things, PRS regulation for 0871 numbers should include a requirement for service providers to include information about the price of calls in advertisements and promotional material. However, in order to minimise the risk that consumers will be deterred from making 0871 calls by association with more expensive 09 services, Ofcom ask us to consider the possibility of a distinct branding for 0871 regulation.

0871 numbers are a sub-set of NTS where call charges from BT lines are generally above 5p per minute and can be up to 10p. 0871 calls involve a form of micro-payment which is usually shared with a third party as a derivative of receiving the call from the consumer. 0871 numbers have a variety of uses from some forms of entertainment service through to help lines, interactive cinema ticket lines, holiday and flight booking services, business phone numbers, customer support functions provided by many companies to their customers and many other applications.

The NTS Statement provides some aspects of the strategic context against which we now take forward proposals to bring about an effective regulatory regime for 0871 numbers. We seek a proper level of consumer protection without unnecessarily deterring the use of 0871 numbers for legitimate purposes by businesses and others.

Ofcom is committed to delivering this change within 18 months of the publication of its statement on numbering policy which was published on 27th July 2006. This will mean that PRS regulation of 0871 numbers will commence on or around January 2008.

In this context, the purpose of this document is to seek preliminary views from all stakeholders about the issues that arise for us and stakeholders as a consequence of this Ofcom decision which we now need to enact. We will need to identify a regulatory framework which is proportionate to the needs and detriment that have been raised by Ofcom through their consultation processes and we need to identify how we relate the regulation of this activity to our existing responsibilities in the PRS sector.

The next section of this paper identifies areas where we will need to focus and seek a greater understanding and/or answers to a range of questions so we can bring forward proposals for a proportionate and effective regulatory PRS regime for 0871 numbers from early 2008. Section 4

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

of this paper outlines the next steps involved in delivering this project in the timescales set down by Ofcom.

Finally, we recognise that the parties potentially affected by this issue run much wider than those with who we have traditionally engaged and consulted when regulating PRS. Many companies and organisations across the UK rely on 0871 numbers for some aspect of their business whether as a core or peripheral component. They will all be affected by any regulatory proposals that we bring forward. Many consumers and consumer groups also have interests in the regulation of 08 numbers. For this reason we plan to give this, and further document the widest possible exposure across all industry sectors to ensure that all stakeholders make their views known to us in the process of setting an appropriate regulatory framework.

Section 3

The steps to ICSTIS regulation of 0871 (NTS) services

In order to bring forward a regulatory regime for 0871 numbers which is fit for purpose and deals with the numerous issues identified by Ofcom through its consultation process on NTS, there are a number of areas where we need early input from all stakeholders. The purpose of this section is to identify the key issues on which we will require further input in order to start designing the regulatory model for 0871 numbers. We will then, as explained in Section 4 of this paper, seek further input through specific consultation arrangements.

Understanding the characteristics of the market and services

In order to set any regulations we need to be well informed about the potential detriment and consumer harm that can arise, what would be the proportionate actions to deal with those concerns and where best we can most effect our regulation in terms of responsibilities in the value chain. This means we also need to have a good understanding of the main characteristics of the 0871 market, the service types that are being delivered and how the value chain for delivery operates.

ICSTIS already has a considerable amount of this information and Ofcom's comprehensive research and consultation culminating in the NTS Statement has greatly added to that evidence.

However, we are conscious that, like the PRS market generally, the market for 0871 numbers is dynamic, constantly changing, and engages a wide range of businesses beyond existing PRS providers and networks that will be affected by Ofcom's decision to extend PRS regulation to all 0871 numbers.

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.

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 regulation of PRS to 0871 may impact on their operations and how any ensuing burden should be minimised without losing sight of the need to ensure an appropriate level of consumer protection.

How might the market change in the wider context of the other changes announced by Ofcom?

In the NTS Statement, Ofcom announced that as well as plans to restore the link between the cost of 0870 calls and geographic rates, they would also remove 0870 calls from the scope of the BT NTS Call Origination Condition. This requires BT to originate and retail these calls on behalf of Terminating Communications Providers. This will have the effect of bringing to an end revenue share on 0870 numbers.

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.

Consumer expectations from the regulation of services using 0871 numbers

The NTS Statement provides detailed evidence from the 1,207 responses to the NTS consultation made by consumers and small businesses. Annex 1 to the NTS Statement analyses their response to the consultation questions. Question 4 of the consultation from

Ofcom asked “What do you think of our proposal to extend the rules controlling premium rate services using 09 numbers to include 0871 numbers?”

Of the 1,207 replies, 597 replied “yes, include 0871 numbers with 09 numbers” (49%), 47 (4%) replied “no, keep things as they are” and 456 (47%) did not answer the question directly or in a way that could not be interpreted as a simple yes or no.

Whilst complaints about 0871 services are currently outside our remit we nevertheless receive a considerable number of contacts about them which we do not record as complaints given we have no current remit in this area. In the eight months from 1st October 2005 to 31st May 2006 we received 23,379 number checks on our website about 0871 numbers. In the same period we also had 875 calls to our Contact Centre about dialler issues on 087 numbers and many of these were complaints which we could not record and the caller was given advice in the context of the caller’s needs and it being out of remit to ICSTIS. We therefore have some evidence base which helps frame our approach to regulating these services and will inform policy making when we come to consider the requirements for the Code of Practice which will need to incorporate 0871 numbers. However, we are aware that this is not complete, or necessarily representative.

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.

Determining regulatory requirements and a Code of Practice

Paragraphs 4.167 to 4.185 of the NTS Statement outline Ofcom’s responses to consultees’ comments about extending PRS regulation to 0871 numbers. Arising from these responses were issues relating to the suitability of the current Code of Practice for the regulation of the types of services being provided on 0871 numbers. This was particularly with regard to issues about the suitability of the Code to cover customer service functions which operate on 0871 numbers. Related to this was a concern from some respondents about disproportionate regulation of call centre waiting times should the “undue delay” provisions in the current ICSTIS Code of Practice be adopted in a rigid way with no proper regard to call queuing issues that arise in call centre environments. We, like Ofcom, observe that any provisions by us in this area will be the subject of consultation and a balance may need to be struck between ensuring consumers do not suffer unreasonable financial detriment resulting from call queuing with the need to provide a call centre operation where it needs to be recognised that consumer calling patterns are not always even and accurately predicted.

Separately we need to address the issue of how far services which contain a live voice element, which may be the great majority, would require separate permission from ICSTIS to operate, as we currently require for live voice services in the 09 area today as well as a requirement, linked to this, to give pricing information on connection to consumers. Our initial thoughts are that prior permission for all services should be targeted on those services which are considered to have the characteristics which could generate consumer harm or vulnerability. In this context our initial thinking is that most 0871 live services will not fall within that category unless they are providing some form of entertainment or service which may make users particularly vulnerable or place them at risk, such as live chat services or counselling/ medical advice lines.

At this stage we have not taken any formal decisions about the format, structure or substantive provisions in any Code of Practice covering 0871 numbers. Our starting point, however, is that the regulation by ICSTIS of these numbers should:

- (a) be proportionate to the consumer harm or detriment that can and does arise
- (b) display consistency of approach between the regulation of these numbers and that of 09 numbers and mobile premium services, while accepting that 0871 services are generally cheaper than conventional 09 services.

If these principle are correct, our starting point for the development of a Code of Practice will be the existing ICSTIS Code provisions with a view to testing each to see if it is relevant and proportionate in the environment of cheaper 0871 numbers.

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 would also be addressed?

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 requirements once agreed.

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.

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 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?

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 pricing transparency in this context or in other contexts such as advertising such numbers or radio or television?

Governance issues

Our preliminary view is that the governance of the regulation of 0871 numbers should be incorporated into the current ICSTIS Company and fall under the auspices of the current ICSTIS Committee. We believe that establishing a separate legal entity under ICSTIS to regulate 0871 numbers would serve no clear purpose. It would be considerably more costly and lead to the potential for inconsistency to arise between the regulatory practices of ICSTIS' current remit over 09 and mobile PRS and 0871 numbers. It would also be more confusing for consumers in a market that is already complex and subject to a range of different regulatory remits.

In terms of how we incorporate the work of regulating 0871 into the existing Secretariat, a full assessment has not yet been made. When it is, we will ensure that we do not undermine the effectiveness of the regime in operation today and that we maximise the benefits of scalability that arise from this change. We will also ensure that consistency of approach proportionate to the detriment that may arise from 0871 numbers is built into the management arrangements.

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

Funding to cover regulatory costs

The current ICSTIS funding model is based on a levy. This is expressed as a percentage of network operators' outpayments to service providers that must be retained by network operators and then paid to us.

Each year we consult all our stakeholders on an annual activity plan and budget for the forthcoming financial year (which commences on 1st April). Having considered comments on the budget and activity plan, we then present it, together with any amendments arising from the consultation, to Ofcom for comment. Having received comments from Ofcom, we make such amendments to the budget and activity plan as necessary to secure Ofcom approval. Once this has been secured we announce our budget for the forthcoming calendar year, specifying the amount we intend to collect, having regard to any carried forward surplus from the collection of fines and other income from the previous year which can offset against the new levy.

Each network operator providing PRS must then submit to us a forecast of the value of outpayments that each of them anticipates making in the forthcoming calendar year. This is used to determine the actual levy that will need to be deducted by networks at source against all contracted service providers carrying PRS and is paid to us. The contribution will be the levy percentage of its forecast outpayments for the year. This is then paid in 12 equal instalments to ICSTIS.

Appendix 1 to this paper sets out a copy of the funding arrangements for ICSTIS as published in our current Code of Practice.

Extending ICSTIS' remit for the regulation of 0871 numbers has obvious consequences for our additional costs and consequential funding needs, however we deliver the regulation of this new activity.

In devising any funding model to cover the costs of this additional workload we believe that some key principles should apply. These are:

- Funding for 0871 services should cover the costs involved in setting up and delivering the regulation
- Wherever possible the “polluter pays” principle should apply and the burden of regulatory costs should be attributed to those who generate the costs
- The funding arrangements need to provide reasonable certainty for all affected parties, including ourselves
- The arrangement should be transparent, understood by all parties and be seen to be equitable in its distribution of the regulatory burden

We also recognise that it is more usual for the commercial arrangements for revenue-share on 0871 to be related to a subsidy for additional services rather than to be necessarily made in the form of out payments. This could undermine a levy based on out payments – the traditional ICSTIS funding model - but may encourage a mechanism based on termination payments instead.

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 number or whether specific alternatives should be considered. If the latter, with what justification?

Branding issues

The NTS Statement revealed concerns from some respondents that extending PRS regulation to 0871 would have negative effects on consumer perceptions of 0871 numbers and would make consumers wary of using them. This, it was argued, could undermine confidence in the 0871 range. Ofcom, in their response, acknowledged the risk that services labelled as “premium

rate” may be regarded by consumers in the same way as 09 numbers and they may be reluctant to call them. Ofcom expressed a view that this concern could be addressed by ensuring that the regulation of 0871 is given a distinct branding, unrelated to PRS regulation. Ofcom went on to suggest that whilst the regulations would be administered by ICSTIS, they could for example:

- ❑ Use a different name
- ❑ 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
- ❑ Be funded by a separate levy
- ❑ Be accessed via a separate website

We should make clear that, separate from these suggestions from Ofcom, we are looking to re-brand ICSTIS. We take the view that the name ICSTIS is in any event a barrier to consumer and others’ understanding of what we are and what we do. In this context, this may prove an opportunity to identify an over-arching brand which could capture this new remit change and not necessarily overtly identify “premium rate” as a core element of the brand given that the new area of responsibility will extend from services costing less than 10p to those costing £1.50 per minute/ transaction or more.

In respect of a separate identity for a website dedicated to 0871, we see no reason why we could not deliver this. Nevertheless, it is right to consider this in the context of an over-arching brand which could capture the 0871 number range without overt references to “premium rate”.

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.

Section 4

Next Steps

The indicative timetable for incorporating 0871 numbers into the regulatory regime for PRS contains the following key stages. A full and detailed project plan has not yet been drawn up. When it is, there may be some amendment to the timetable below:

July/August 2006	Issue pre-consultation paper on issues that need agreement
October 2006	Analyse results of pre-consultation and consider impact on the project. Appoint consultants to help deliver the project. Funding for this is being discussed with Ofcom
October 2006	Start planning work on a Code of Practice for 0871 services
February 2007	Issue Code of Practice for consultation. At same time, consult on funding issues
May 2007	Appraise response to consultation
July 2007	Submit Code to Ofcom for approval and to the EU under the Technical Standards and Regulations Directive (98/34/EC) for a 3 month standstill and allow for Member State consideration
Oct/Nov 2007	Ofcom approve Code of Practice
December 2007	ICSTIS consults on budget for 09 and 0871 services
January 2008	Code of Practice for 0871 services regulated by ICSTIS takes effect Regulation of 0871 implemented
February 2008	Budget for 2008/9 approved by Ofcom

In parallel during 2007 a number of activities will also be undertaken involving issues related to brand, website development, staffing arrangements and any necessary recruitment at the end of 2007 in preparation for additional workload activities.

Q13 We would welcome any comments on this proposed timetable.

Section 5

Questions for stakeholders

We are seeking answers to the following questions which appear through the body of this consultation document. These are:

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.

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 regulation of PRS to 0871 may impact on their operations and how any ensuing burden should be minimised without losing sight of the need to ensure an appropriate level of consumer protection.

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.

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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 would also be addressed?

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 requirements once agreed.

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.

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 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?

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 pricing transparency in this context or in other contexts such as advertising such numbers or radio or television?

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

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 number or whether specific alternatives should be considered. If the latter, with what justification?

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.

Q13 We would welcome any comments on this proposed timetable.

Section 6

Pre-consultation paper responses

We are seeking the views of all stakeholders on the proposals and questions contained in this paper by no later **than Friday 29th September 2006**.

Where possible comments should be submitted in writing and sent by e-mail to consult@icstis.org.uk. Copies may also be sent by mail or fax to:

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If you have any queries about this consultation please telephone or e-mail Paul Whiteing.

Confidentiality

We plan to publish the outcome of this discussion paper and 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 it.

Appendix 1 – ICSTIS Code of Practice 10th Edition (as amended) Annexe 3 funding arrangements

1 General Provisions

- 1.1 Information obtained by ICSTIS pursuant to these provisions shall be confidential, save that ICSTIS may supply the same to Ofcom insofar as 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.

Explanatory Note:

Where a network operator is also the service provider for some or all of its services, the network operator should declare an outpayment in respect of that service, even though there may be no external payment.

- 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.

2 Timetable

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

3 Budget and Activity Plan

- 3.1 As far as is practicable by 30 September each year, ICSTIS will publish a proposed budget and activity plan for wide consultation and scrutiny.
- 3.2 Thereafter, 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. Ofcom will be invited to make comments upon the proposed budget and activity plan within such a period of time as ICSTIS may specify.
- 3.3 Having received comments from Ofcom, ICSTIS will make such amendments to the proposed budget and activity plan as are necessary to secure Ofcom approval.
- 3.4 Having received Ofcom approval, ICSTIS will announce its budget for the forthcoming calendar year, specifying the amount it intends to collect ('the Budgeted Figure').

Explanatory Note:

Ofcom must be satisfied that there are adequate arrangements in place for the funding of ICSTIS. For this reason ICSTIS will keep Ofcom informed and will seek Ofcom's comments on and approval of its budget each year.

ICSTIS' budget will set out the anticipated expenditure for the forthcoming year and will also make provision for the establishment and maintenance of reasonable reserves. In proposing and deciding the total amount that it needs to collect from the industry, ICSTIS will take account of any surplus or deficit from the previous year.

4 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 calendar 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 calendar year, 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.

Explanatory Note:

Funds will be collected through a levy (see section 5 below).

The Levy is a flat rate sum which network operators withhold from service provider outpayments. The sum is set in terms of pence in the pound as set out in paragraph 5.2.

The Levy is worked out by ICSTIS and its accountants based on network operator forecasts and expectations of the likely performance of the premium rate market. This figure is then divided by the size of the budget approved by Ofcom.

The Levy may change in the course of a year in exceptional circumstances where significant changes in the market mean that the amount of the levy does not meet the cost of regulation.

5 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 ICSTIS 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 £1.00).
- 5.3 Following receipt of notification under paragraph 5.2 network operators must inform all persons 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 that the deducted amount will be paid over to ICSTIS.
- 5.4 network operators are responsible for deducting the Levy notified under paragraph 5.2 from every outpayment that it makes. 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.

6 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 EC network operator is expected to collect in the forthcoming calendar 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, 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 January. Wherever possible network operators should arrange to make payments by electronic transfer.
- 6.4 Where a network operator falls within paragraph 4.3 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 calendar year of service provision.
- 6.5 All invoices provided by ICSTIS to network operators will add a charge to 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 the 31st of March, 30th June, 30th September and 31st December.
- 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.

7 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.

8 Adjustments

- 8.1 At the end of each calendar year and in any event by no later than 31 January, 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 below), or 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 or an auditors' report pursuant to paragraph 9.1, ICSTIS will determine in respect of each network operator the aggregate amount that ought to have been collected pursuant to paragraph 5.4 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.
- 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.

9 Auditors

- 9.1 ICSTIS' auditor for the time being ("the Auditors") shall have the power to request of a network operator direct confirmation by audited statement of the actual level of outpayments made by it and the actual revenue retained by the network operator 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 timeframe 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, in which case the Auditors may require the network operator(s) concerned to provide an audited statement more often than once in every four years.
- 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 indicates that the actual outpayments made by a network operator during the relevant year were different from those declared by a network operator under paragraph 8.1 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 has revealed material inconsistencies in the information previously supplied to ICSTIS by a network operator, ICSTIS may refer the network operator to Ofcom under the procedures set out at Section 8 of the Code.

10 No Identifiable Outpayment

- 10.1 Where ICSTIS has received notification under paragraph 8.1 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.

11 Transitional Provisions

- 11.1 Paragraphs 1, 2, 3 and 11 of these funding provisions will come into effect following the approval of this Code by Ofcom.
- 11.2 Paragraphs 4 to 10 of these funding provisions will come into effect on 1 January 2004 or such later date as ICSTIS may specify following the approval of this Code by Ofcom.
- 11.3 For the purpose of these transitional provisions:
- 'Expenditure Budget' means the 2003 ICSTIS budget that was agreed between ICSTIS and the then network operators.
 - 'Applicable Percentage' means the proportion of revenue generated by premium rate services that each network operator was individually liable to contribute toward the Expenditure Budget for 2003.
 - 'Contribution' means the sum represented by the application of the Applicable Percentage to each individual network operator.
- 11.4 Network operators that were, immediately prior to this Code being approved by Ofcom, dealing with ICSTIS as network operators and funding ICSTIS in accordance with their contract, must continue to pay to ICSTIS such amounts as would have fallen due under those contractual arrangements until 1 January 2004 or such later date as may be notified by ICSTIS under paragraph 11.2.
- 11.5 Network operators that were not, immediately prior to this Code being approved by Ofcom, dealing with ICSTIS as network operators, must:

- (a) declare to ICSTIS, as soon as is practicable, at the end of each calendar month the total revenue that they have received in connection with the provision of premium rate services during the preceding calendar month;
- (b) pay to ICSTIS such a sum as ICSTIS may request to represent its Contribution to the Expenditure Budget for the relevant period (calculated by reference to the average Applicable Percentage applied to those network operators falling under 11.3).

until 1 January 2004 or such later time as ICSTIS determines that the new funding provisions will have full effect.

- 11.6 By the last day of February 2004, network operators (including those identified in paragraph 11.5) must provide ICSTIS with a statement of the actual total revenue generated by their premium rate services during 2003 (“Actual Total Revenue”).
- 11.7 The Auditors shall have the power to request of network operators direct confirmation of the Actual Total Revenue. network operators’ auditors must provide such confirmation within such time and in such a format as the Auditors may prescribe.
- 11.8 The Auditors intend to monitor 25% of network operators in accordance with paragraph 11.7 above, save that additional network operators may be monitored where previous audits have revealed significant inconsistencies or where other information provided to ICSTIS has given cause for concern.
- 11.9 Where there are differences between the Actual Total Revenue declared by a network operator under paragraph 11.6 above and the figure given by a network operator’s auditors under paragraph 11.7 the Auditors shall rely on the information provided by the network operator’s auditors.
- 11.10 On receipt of statements provided under paragraphs 11.6 and 11.7 and on completion of the audit of the accounts of ICSTIS for 2003, the Auditors will recalculate each network operator’s (including those falling within paragraph 11.5) Applicable Percentage to the Expenditure Budget, based on their Actual Total Revenue and their actual Contribution to ICSTIS during 2003.
- 11.11 ICSTIS will issue invoices and credit notes reflecting the adjustments to be made under paragraph 11.10 as soon as is reasonably practicable after receipt of the Auditors’ recalculation, and the sums due to or from ICSTIS shall be payable within 30 days thereafter.
- 11.12 The Contributions and payments of the network operators shall be exclusive of VAT, which shall be added to invoices at the appropriate rate in force from time to time.