MOBILE DATA ASSOCIATION

13 Foster Way, Great Cambourne, Cambridge CB3 6BP
Tel/Fax: 07041 340235 email: info@mda-mobiledata.org
www.mda-mobiledata.org www.text.it

Suhail Bhat
Policy Advisor
ICSTIS
Clove Building
4 Maguire Street
London
SE1 2NQ

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Dear Suhail,

ICSTIS Code (11th Edition) consultation.

The Mobile Data Association is pleased to have the opportunity to respond to your consultation on the 11th Code of Practice, which is enclosed. Please note that in making this submission we are representing the Aggregator, Service Provider and Content Provider community within the membership (some 30 companies) and are **not** representing the Network Operators, who will all have made their own submissions.

The overwhelming concern expressed by all members involved was one of definition and how definitions of the elements in the mobile supply chain do not align with those of the fixed line supply chain. There are also concerns at the way the fixed line and mobile supply chains are aligned under the Ofcom regulations, resulting in differences in perception as to where responsibilities lie and how interconnect arrangements are provided with the consequent effect on cost and revenue share structures.

We note and welcome ICSTIS' intent to pursue Information Providers and to promote the naming of these people in adjudications ahead of the Service Provider. While this goes some way to address a major concern under the existing COP (that of aggregators being named as the culprit when, arguably, the Content Provider is the party who should headline) the proposed revisions do not, in our opinion, go far enough.

These matters, we are sure, will be subject of ongoing discussion beyond the 11th COP and we will be pleased to enter into detailed discussions on these areas moving forwards with the goal of reaching a structure that is acceptable (in day-to-day regulatory and commercial terms) and meets all statutory requirements.

Yours sincerely

Martin Ballard
Director

MDA response *on behalf of its third party members* (Aggregators, Service Providers and Content Providers) to 'A public Consultation seeking comments on the draft 11th Edition of the ICSTIS Code of Practice July 2005'

Summary of Questions
Section 1 - Definitions
Draft paragraph 1.1.3 – Definition of a network operator
Section 1: Question 1
What are your views on our proposed definition of NOs? Do you believe that our proposal is workable and will help ensure that only those companies that can fulfil the obligations of a network can be considered a network for the purposes of our Code?

MDA: We welcome the proposal to clarify the definition of a Network Operator. However, we note that this has still been done with the Fixed Line industry primarily to the fore and the use of terms such as Service Provider and Information Provider causes confusion both within the mobile industry and with consumers.

Historically, Service Provider has had a specific meaning within the mobile industry relating to resellers of mobile phones as a result of the competition model set up when mobile licences were first granted, and yet, with the consumer the term would suggest that it is the company that is responsible for operating and providing the service.

Information Provider suggests that it is the company who supplies the content but who has no responsibility for the use to which that content is put.

The MDA believes there is a simpler way of looking at this which may address the ICSTIS requirement for one set of definitions and which would be easier for both industry and consumers to follow and understand where responsibility and accountability for a service lies.

MDA proposed definitions would be as follows:
Network Operator: The company which has a direct contractual relationship with the consumer to bill them for their use of the telephone for calls, messaging or use of Premium Rate Services.

Premium Rate Facilitator: The company which has a direct contractual relationship with the Network Operator that enables it to use premium rate billing over or through that network and to whom the Network Operator makes payment for the operation of Premium Rate Services.

Service Provider: The company which provides and operates Premium Rate Services and who has a contractual relationship with the Premium Rate Facilitator for connection to the Network Operator and the collection of monies from the Network Operator.

These definitions, in turn, can be tied into definitions provided by Ofcom and the Communications Act using the definition of a Network Operator provided in this draft

consultation. However, on this basis whereas 1.1.3i fits into the direct consumer billing relationship, 1.13ii would appear to dilute this condition and will cause further confusion as to what is a Network Operator opening the door to aggregators to classify themselves as Network Operators.

The MDA believes clarification of these definitions is important both from a regulatory point of view and also from a consumer's understanding of how the service they have used is put together and who they should pursue for redress. Currently, consumers often pursue the company providing connectivity rather than the company causing the problems that can result in aggravation and general malaise of what the Premium Rate industry is about. Perception of "passing the buck" is one of the biggest headaches for the mobile industry, as the consumer is left to try to find out who it is that has given them cause to complain.

Section 1: Question 2
We have stopped short of including a requirement for NOs to become signatories to Artificial Inflation of Traffic (AIT) arrangements. What are your views on ICSTIS requiring AIT arrangements in the Code?

MDA: The MDA is unclear as to the significance of AIT either on best practice within the industry or in the provision of better regulation

Section 1: Question 3
What comments do you have on whether there are any other ways for ICSTIS to define a NO for the purposes of the Code?

MDA: See S1 Q1 answer above

Draft paragraph 1.1.4 – Definition of a service provider
Section 1: Question 4
What views do you hold on whether, through both the definition of a service provider and the new proposed definition of a network operator, we have managed to ensure that a company in the value chain can be easily identified?

MDA: MDA welcomes a tighter definition of NOs, SPs and IPs and the intention to follow transgressions of the COP to the originator.

MDA is still of the opinion that the proposed definitions do not adequately reflect how premium rate services are actually provided and who has responsibility for what. This lack of clarity will still create consumer confusion but, moreover, will put the emphasis on regulation of the industry in the wrong quarters.

The other definitions in this section appear to be clear other than 1.1.10 Chatline Service, where we believe everyone is clear as to what such a service is. However, as defined here, it is difficult to read and understand. Whilst offering no alternative, an attempt should be made to put this into plainer English.

Paragraph 1.3 – Scope of the Code
Section 1: Question 5
What comments do you have on the scope and application of the PRS regulatory regime?

MDA: With respect to the definition of PRS, a broader definition covering payment of goods and services via the Network Operator collecting such payment through

charges to the telephone account would seem appropriate to cover future developments in the sector.

Section 1: Question 6
Do you consider that PRS regulations should formally cease to apply in areas where the risk of consumer harm appears to be relatively low? If so, how could we identify and differentiate those areas within the context of broad definition of PRS?

MDA: It is the MDA view that regulation should be applied to create a level playing field and that it is dangerous to create exemptions from the perspective of
1] creating distortions in the market; and
2] opening loopholes whereby consumer harm escapes regulatory sanction.

It is, therefore, imperative that any company who wants to provide Premium Rate Services is governed by the same regulatory regime irrespective of price point or that company's position in the market.

We oppose the view that branded portal services should fall outside the regime. We agree that branded portals have little or no interest in abusing or confusing customers but nor do smaller independent Information Providers. Given the commercial ability of such organisations in any event (both to achieve compliance and gain market share) and the fact that these services are increasingly originating from the network operators, such a move must be anti-competitive and a barrier to entry for new service providers. We do not consider that it is the role of ICSTIS to facilitate such a climate.

Section 1: Question 7
Can you comment on whether existing PRS regulations are applied proportionately, with more intrusive measures sufficiently focused on higher risk activities or providers?

MDA: There seems little evidence to suggest that ICSTIS has been concentrating on regulating the wrong areas whilst consumer harm is being done.

There is evidence to suggest that ICSTIS has been too slow to react to impending consumer harm issues most notably with the mobile subscription ringtone clubs which MDA suspects is more of a resource constraint/management issue. This created a regulatory void that compelled the Network Operators to take direct action with mixed feelings from the broader industry. It is vital, therefore, that ICSTIS is able to focus its attention to rapid intervention where serious consumer harm is apparent in the market.

In order to assess the proportionality of ICSTIS measures, the industry would benefit from the provision of case histories listing offences and applicable fines. As well as helping to ensure transparency, consistency and proportionality for the benefit of the industry, such a publication would also serve to dissuade the provision of illegitimate services by making the sanctions for doing so completely clear.

Section 2 - Administrative provisions (network operators)
Draft paragraph 2.1.2 – Supply of information by a network operator
Section 2: Question 1
Can you see any issues or problems with NOs being able to provide ICSTIS with the requisite information on whether they meet the criteria to be recognised as an NO for the purposes of the Code? Please specify any other information you feel should be required?

MDA: If a tighter definition of what constitutes a network operator is applied, then under 2.1.2a, the only information a company needs to provide is that they have obtained the necessary approval under 1.1.3i with evidence from the relevant approval body.

No comment on information requirements listed in 2.1.2b

Draft paragraph 2.3.1 – Provision of service provider details
Section 2: Question 2
Can you comment on whether or not we have successfully ensured that recommendation 2 of the Ofcom report (which states that NOs must provide ICSTIS with information on the identity of their SPs etc) has been transposed adequately in the draft provision?

MDA: Under the confines of the question asked here, then the MDA is of a view that Code 11 has adequately transposed Ofcom's recommendations into the Code.

We note, however, that this approach seems upside down as it results in the Network Operators determining who is fit and proper to operate as a Facilitator (under definitions given above), and passing this information on to the Regulator. This gives the Network Operators the power to determine who is licensed to operate in this sector.

Whilst this may be a pragmatic response to the complexities introduced by interconnect in the Fixed Line world, in the Mobile market it has two major drawbacks:
1) It puts too much market power into the hands of one part of the value chain where there is no competition for connectivity; and
2) It results in unnecessary duplication of effort even where the Mobile Network Operators coordinate their efforts in this area, as each has to set up a department to deal with this.

We note that the Network Operators are already concerned at the resource that they have to put into regulatory matters when ICSTIS should be operating in this area.

Draft Paragraph 2.4 – Number porting
Section 2: Question 4
Can you provide comments on whether, from an enforcement perspective, there is justification for going beyond Ofcom's recommendation 3 relating to number porting?

MDA: In the mobile domain we consider that the present reporting structure is satisfactory and that additional as-it-occurs reporting is time-consuming and costly for both the Network Operator and ICSTIS. In the mobile domain, ICSTIS is very well aware of the contacts at the Network Operators.

Number porting does not take into account the porting of Short Codes between Service Providers (as currently defined under Code 10) that can happen with the loss of a customer. There should be provision for the lead Network Operator who allocates a Short Code to make this information available to ICSTIS.

Section 2: Question 5
Can you provide comments on whether there are any practical issues or hurdles you can see in relation to number porting that need to be specifically addressed?

MDA: See response to Q4 in relation to Short Codes

Draft Paragraph 2.5.4 – Network responsibility for shortfall in fines etc
Section 2: Question 6
Do you believe that the proposed provision on network responsibility for shortfalls in fines etc is clear in its application, effectiveness and proportionality? If not, why not?

MDA: The proposal makes eminent sense in the fixed line world but seems somewhat out of place in the context of mobile. To take an extreme point: what would happen if an operator breached the code as a result of a chat service it provided as an own brand product and where the network refused to acknowledge the breach both as an SP and NO? Is ICSTIS really going to impose a sanction that the NO can no longer offer any chat services, which, in essence, damages the whole industry?

In the fixed line industry, providers have the option of switching, and so the sanction, in effect, isolates the errant Network Operators. However, in the mobile sector, the Operators monopolise the access to their billed customers, meaning barring, as a sanction, is unlikely to be imposed without risking a judicial review from other players in the industry who are suddenly prohibited from offering their services. As such, financial penalties are the only realistic option to address errant mobile NOs.

Draft Paragraph 2.6 – Network Operator non-compliance
Section 2: Question 7
Can you provide comments on ways in which we might amend or supplement the proposed text on network non-compliance to ensure that our approach meets the key principles of transparency, proportionality and consistency?

MDA: No comment

Section 3 - Administrative provisions (service providers)
Help notes – Our Approach
Section 3: Question 1
What are your views on how useful you feel the format of 'help notes' will be and, in particular, do you have any comments on how to make them more useful to you?

MDA: Guidelines are needed and if the present guidelines are to be incorporated in the Code of Practice then there is a clear need for Help Notes.

In particular ICSTIS should consider a set of simple help notes for prospective IPs that provides a simple tick list of items that they must have complied with before applying as these often-small companies will not plough through a 60-page document. Similarly, a clear simple statement of what ICSTIS COP DOES cover and what it does NOT cover for both consumer and trade would be welcomed. Examples should be used where possible.

In an ideal world the Code of Practice should be clear enough in its own right to not require guidance notes or help notes and attention should be spent on parts of the code that still do not fill that criteria (such as Chat lines – see above). However, the MDA welcomes an approach that makes the Code more accessible and Help Notes could be useful. However, in the example given, the question to be asked is "how useful would that help note be in making sure someone gets their advertising right first time?". A check list of the "must do's" would be very helpful, as well as a few examples of good and bad practice which would clarify greatly where standards need to be.

Section 3: Question 2
What alternatives should we consider in providing the premium rate industry with

regular guidance on how to operate premium rate services? For example, would more regular statements on how to comply with the Code provisions be useful?

MDA: Information that is clear and concise is always welcome. The presentation of a note in plain English that refers to a legalese document on the web site is helpful.

In addition, any case notes where a company has gone adrift with its marketing, with clear examples of what was wrong alongside "good practice" would be welcome. This would enable rapid dissemination, helping to prevent copycat bad practice (such as Free Ring Tones) which, in turn, quickly became endemic throughout the industry due to a lack of knowledge that action was being taken against them.

Section 3: Question 3
How might ICSTIS help industry groups develop their own notes on Code compliance?

MDA: Building up a FAQ area under the help notes section will allow ICSTIS to add case history examples that will grow and thus cover an increasingly broader range. This, in turn, will be a source of information for the industry.

Case history, with clear guidelines of what went wrong and why it was penalised, outside of the formal language of the adjudication (i.e. in plain English) would greatly help keep the industry on the straight and narrow. The adjudication notes of the technical breaches currently provide little clarification of what went wrong, as copies of the actual items in breach are never presented.

Draft Paragraph 3.2.7 – Customer service arrangements
Section 3: Question 4
What are your views on the extent to which you believe the draft provision relating to the requirement for SPs to have in place customer service arrangements reflects the requirements set out in Recommendation 9 of the Ofcom Report?

MDA:
Within the mobile world, the Service Providers all comply with this requirement.

However, within the mobile industry, we believe ICSTIS should work with service providers to ensure that ICSTIS can provide consumers with information regarding the companies providing particular services, with the SPs retaining ultimate responsibility in the event of unsatisfactory service being provided. This is an approach ICSTIS is pragmatically co-operating with and one which will, undoubtedly, be of benefit to consumers, unaware of the structure of the mobile value chain, and simply seeking speedy and effective resolution of any problems they may have encountered.

We note that the Ofcom report additionally requires ICSTIS to use 'mystery shopper' techniques to follow up on SP's customer service arrangements.

Section 3: Question 5
How useful do you believe it would be to have a specific help note setting out examples of application in addition to the Code provision relating to customer service arrangements?

MDA: See above, S3 Q1 and S3 Q2, clear concise information is always beneficial.

As part of a checklist of things to consider before launching a PRS, it would be very useful. For example: ”Have you made arrangements for a help desk using a UK non premium rate telephone number to handle customer enquiries and complaints?”

Key to the section of the role of Service Provider is the definition of Service Provider within the Code. Responsibility for prior permission should lie with the provider of the service, not the Facilitator (as defined above).

Section 4 - Information providers
Section 4: Question 1
What comments do you have on whether having provisions requiring IPs to comply with the Code are useful, practical and workable?

MDA: MDA welcomes the provision requiring IPs to comply with the code and for ICSTIS to be able to pursue them where it can be demonstrated that the IP is responsible for a transgression. The MDA believes that IPs should also have to register with ICSTIS before being licenced to provide services.

This is where we believe the Code is at its weakest. Under this Code IPs are often the real providers of the services in question and yet ICSTIS has no direct sanctions against them. Clarification of definitions would greatly enhance ICSTIS' ability to correctly monitor and apply sanctions in the right places within the mobile industry. If an IP is literally only the provider of Content, then ICSTIS is right in not seeking to regulate this part of the value chain. Its attention should be on the provider of the service. However, the current definitions do not correctly identify the parts in the mobile value chain, meaning that it is the connectivity partners (Facilitators in the above definitions), rather than the real providers of services, that get cited and sanctioned.

A licensing system would be a more effective way of governing the roles in the value chain and of ensuring that serial abusers of the Code are not able to continue to operate by hiding under the guise of an IP.

Section 5 - General provisions applicable to all PRS
Draft paragraphs 5.2 to 5.3 – Harm and Offence
Section 5: Question 1
Do you have views on whether the proposed amendments to the harm and offence provisions are appropriate and will allow services to be judged more easily against generally accepted standards in society? Alternatively, please let us have any alternative wording that you believe we should consider in regard to the harm and offence provisions.

MDA: It is the MDA's view that it is not the role of ICSTIS or the PRS industry to be moral guardians for the nation, and that any definition of harm and offence is going to be very hard to justify in a world where such standards are being perpetually eroded at an ever-increasing rate. Why is foul language used as a bench mark when increasingly, pop records are coming out with ever more explicit lyrics and words such as “f***” which would have barred a song from the airwaves 15 years ago are becoming common place in songs? What decency are we trying to preserve when many pop videos are only a lycra-skin width away from portraying sex. Channel 4 recently had a ‘documentary’, “The World's Most Extreme TV”, on 22nd September 2005, with clips from TV from around the world showing material ranging from decapitated corpses of murder victims to penises being sliced in two for cosmetic surgery.

If society's moral values are becoming more relaxed, as demonstrated in other media, then there is little value in PRS (which, with multimedia, is increasingly competing with other media for eyeballs) fighting the tide.

More relevant would be a simple statement stating that all content must be legal and must comply with current standards of decency.

Effort should then be concentrated on ensuring that any material that is used is appropriate for the age group being targeted, and that has access to the service, and that the sending of such material is with the users consent. As such, if providers wish to show material which goes beyond a U classification, then they must have measures in place to show that they know the age of the users, and clearly, if it is adult material, comply with the requirements for the provision of adult material.

Concentration on an age-verified system that goes beyond the simple 18 and over categorisation (i.e. more akin to the film and gaming industries), with clear guidelines to the consumer of what the content of the service is likely to contain, is going to be of far greater value to the development of a safe consumer-friendly industry than general moral blandishments that are going to look increasingly irrelevant and will put the PRS industry a step behind other forms of media.

Draft paragraph 5.4 - Internet Services
Section 5: Question 2
Do you have any views as to whether you believe the additional protection of requiring the use of age verification for Internet services is necessary?

MDA: The MDA fully supports the restriction of availability of services to underage subscribers. We recognise also the onus on parents and the need to educate the public on the way in which this protection operates and how to activate or deactivate it. Clear guidance in the form of help sheets will assist here.

The MDA also recognises the need to regulate, for example, chat services for the 16-18 age group and wishes to see a suitable framework for regulation of this class of services.
We note also that the Mobile Industry already has in place age verification, controlled by the Network Operators, for access to adult short codes that should also be used for access to adult internet sites. Clarification on this point within the Code would be useful in stating that use of any mobile system for access to adult material, whether on the mobile or via other media, must be behind an adult short code, irrespective of whether a charge is being made via the mobile.

In addition, as stated above, we advocate the introduction of different age bands to enable the greater classification of content, in line with the film and gaming industries, to introduce greater safeguards for the consumer (and open up the prospect of a wider non-offensive use of content).

Section 5: Question 3
Do you have any comments on its practicability and any effects its introduction may have on premium rate service providers?

MDA: The barring of premium rate services on mobile phones has already been covered under the Mobile Operators Code of Practice January 2004.

Section 5: Question 4
Can you offer any views on what you would consider constitute a 'robust' system of age verification for Internet services?

MDA: No further comment

Section 5: Question 5
Are other practical and proportionate measures ICSTIS could take specifically in relation to preventing inappropriate access by minors to adult internet services?

MDA: No further comment

Draft paragraph 5.5.1 - Pricing Information
Section 5: Question 7
Can you comment on whether you believe that listing all the requirements for pricing in one place in the Code is logical and will make finding relevant information easier for service providers?

MDA: The MDA welcomes ICSTIS moves to provide greater clarification of pricing which has been a major source of contention within the industry over the last 12 months. Keeping pricing information in one section is clearly helpful. However, the MDA would also welcome unambiguous pricing as part of a checklist that providers of PRS should consider.

We further note it would be beneficial to distinguish between PRS and PR Subscription services and that these latter are also set out clearly

Section 5: Question 8
Do you have any comments on whether the inclusion of a pricing proximity requirement in the Code would be practical, enforceable and future proof? Would you consider that a pricing proximity provision would be more effective as a series of prescriptive Code provisions or a generic Code provision supported by help notes?

MDA: The MDA supports the need for clarity and this is best provided by taking a technology and channel-neutral approach. Applying generic principles, rather than prescription, allows greater flexibility while ensuring that the rules are clear and consumers are not misled. We believe the application of provisions such as paragraph 5.5.2 – "Written pricing information must be easily legible, prominent, horizontal and presented in a way that does not require close examination" satisfy this need.

We would ask for clarification of who will regulate the Advertisers where these adverts appear in other media.

Section 5: Question 9
Do you have views on whether you believe that pricing information should be spoken as well as displayed for television advertising? Do you believe there are alternative ways to provide pricing information to consumers in television promotions which we should explore?

MDA: We support the use of voice-over in television promotions – as is the case with financial advertisements - and further understand that the £2 limit covers all subscription services that might be offered.

It should also be defined that voice-overs need to be clear, concise and understandable.

Draft paragraph 5.6 – Address Information
Section 5: Question 10

Do you have any views on whether setting out the general principle of providing address information is better than being prescriptive as we currently are in the Code?

MDA: Under the wider catchment provided in The Information Provider in section 4 question 1 above, we believe that the address of the Information Provider should be included.

Draft paragraph 5.9 - Use of the word "Free"
Section 5: Question 11
Do you views on the inclusion of a 'buy one get one free' type provision in the Code and do you consider there to be any inherent risks in adopting such a provision which could lead to a greater degree of consumer harm?

MDA: MDA agrees that the term 'free' should be clarified and that it should correspond with custom and practice elsewhere - that is, it should clearly state 'buy one, get one free' and not that the product is totally free. This should serve to reduce consumer harm rather than increase it.

The MDA has concern that the use of PRS to cover postal costs is open to abuse, and that the term free under 5.9b could be misleading. In such instances the cost of carriage should be clearly stated.

Draft paragraph 5.13 - Services specifically targeted at children
Section 5: Question 12
Can you offer views on whether it is right and necessary to more carefully define what constitutes a children's service? How could this be done?

The MDA supports ICSTIS emphasis on services 'targeted at children' (and therefore promoted in Children's magazines, Children's TV etc) as opposed to trying to come up with a definition of what is a Children's Service. However, as stated previously, the MDA would also welcome greater classification of content that mirrored the Film and Gaming industries that provided guidance to both parents and the industry as to the suitability of content for different age groups.

Section 5: Question 13
Do you have any views on whether the maximum call costs for children's services should remain at £3 or whether it should be varied?

The MDA believes that this is a very difficult area to stipulate. Subscription services to football clubs, that have been in existence since 1999 and are generally priced between 20p and 35p per alert, clearly total more than £3 over the lifetime of the service and are not particularly targeted at children. However, there is little doubt that teenage boys are a large segment of the market for these types of services. It makes no sense to put artificial limitations on these types of services.
We believe that clear pricing needs to be given special attention when addressing this segment of the market, so that any services likely to cost over £3 a month and that are targeted at children, require special clarity of costs and overt consent of the parent/guardian.

Again greater classification of content into age categories would be of huge benefit in isolating some of these pricing sensitivities.

Section 5: Question 14
What guiding principles do you believe might reasonably be applied if we were to consider an increase to the maximum tariff for children's services and what additional safeguards should be considered in protecting children?

MDA: See Q13, but in essence, classification on content in line with the film and gaming industry, along with higher benchmarks for clarity of pricing for services targeted at a younger audience and overt parental consent for services priced over £3 within a given period (one month?), are among the options that should be considered.

Section 6 - Provisions relating specifically to Live services
Draft paragraph 6.1 - Live services
Section 6: Question 1
Do you have any comments or views on our proposed approach in relation to regulating Live services?

MDA: MDA believes Option 3 – retaining the prior permission requirement for all Live services, subject to a published list of specified exceptions, is the most sensible option to follow.

Section 6: Question 2
Are there alternative options that we could consider in reducing the level of regulatory burden in this area while maintaining adequate levels of consumer protection?

MDA: No comment

Draft paragraph 6.8.1 to 6.8.4 - Claims for compensation
Section 6: Question 3
Do you have any views on whether you consider the draft provisions more clearly set out the regulations governing claims for compensation?

MDA: The MDA is puzzled as to why compensation is specifically tied to Live services and is not given its own section similar to the provisions on pricing. How to compensate effects all PRS, and is one of the biggest concerns consumers have when Network Operators attempt to wash their hands of a problem by stating that they are profiting from a service and they are the billing party.

The MDA would welcome a broader look at consumer compensation, especially where fraud is involved, to ensure that no one part of the value chain profiteers from such fraud (whether or not inadvertently), and how consumers can be compensated for such fraud.

One potential measure that should be considered, and would be worthy of consultation, is the establishment of a compensation fund (much in line with ABTA), whereby industry contributes to such a fund. This could be done via ICSTIS if a licensing scheme is operable or alternatively could be championed by one of the trade bodies where services are given a kite-mark.

Section 6: Question 4
Do you consider the use of a help note in relation to these provisions is better suited than detailed Code provisions in providing examples of how the claims for compensation work in practice? If not, what could you recommend that might better achieve this aim?

MDA: See our earlier comments on help notes as a support for detail in the Code. As stated above, the issue of compensation should not be restricted to Live services. How compensation should be managed by the industry at large should be a subject of further consultation.

Section 7 - Additional provisions relating to specific categories of service

Draft Paragraph 7.2 - Betting tipster services

Section 7: Question 1

Can you offer your opinion as to whether you are content with the inclusion of the betting tipster provisions in the draft Code?

The MDA is happy with the inclusion of Betting Tipster services within the body of the code, however wonders weather the definition should be broadened to any service that looks at a forward event for financial gain.

We note that certain services (such as share tips) would come under the remit of other regulators.

Draft paragraph 7.3 - Chat, Contact and Dating Services

Section 7: Question 2

What views do you hold on our proposals in relation to chat, contact and dating services?

MDA: MDA supports the proposals to incorporate requirements from specific permission certificates into the body of the Code and considers them pragmatic. We believe ICSTIS should promote clarity and consistency in the wording. The prescriptive requirement for moderation should be clarified between services.

Section 7: Question 3

What views do you hold on whether the proposed provisions are adequate to prevent use of adult chat services by younger children?

MDA: We note that age verification is a concern to all parties in the supply chain as well as to consumers and is incorporated in the Mobile Network Operators' Code of Content. The matter of age verification entails difficulties that are well understood. It is our view that ICSTIS should not attempt to overburden the SPs and IPs with processes that are outside of accepted custom and practice and legislation and that do not increase the burden without identified and workable mechanisms.

The MDA is concerned as to why ICSTIS is trying to move away from prior permission for the provision of chat, contact and dating services where, because of the nature of the services, greater due diligence should be required of providers of such services.

We also wonder why the Universal STOP command is specifically mentioned here, when it should be part of the general provisions for the operation of any mobile data service.

Further clarification can be given through Help Notes.

Draft paragraph 7.3.5 and 7.3.6 – Reasonable and valid claims for compensation

Section 7: Question 4

Do you have any views on the appropriateness of having specific provisions relating to service providers' responsibility for paying reasonable and valid claims for refunds chat, contact and dating services given that there is a general duty on service providers to consider claims for compensation for all services?

As stated previously, the MDA believes that the requirements in relation to compensation should be treated in a section devoted to that topic and not dispersed

amongst individual services. How compensation is handled, and who picks up the bill, should be subject to further consultation as, currently, within the mobile chain, the onus is on that part of the value chain that retains the least amount from the provision of the service.

On the issue of validity, it is not valid for a refund to be paid if unauthorised use of a phone occurs due to the want of care from and negligence of the bill payer. Paragraph 7.3.6 b. should be amended to reflect this fact.

Draft paragraph 7.6 - Directory Enquiries (DQ) Services
Section 7: Question 5
Do you have any views on whether you believe that the proposed provisions clearly set out the regulations applicable to DQ services and are proportionate and appropriate?

MDA: The MDA believes ICSTIS' stance is reasonable. Reminding users of the cost of onward connections does not appear to be an unreasonable requirement where this would be at a premium to the normal cost of making such a call.

Draft paragraph 7.8 - Pay-for-product services
Section 7: Question 5
What are your views on our approach to pay-for-product services? Do you believe that the approach will increase clarity? If not, why not? Are there other alternative options you believe we should consider in clarifying the regulations in respect of pay for product services?

MDA: We believe the definition of pay-for-product services is unclear. As a result, the conformance of Information and Service Providers is compromised.

ICSTIS should be aware of future payment possibilities and build suitable flexibility into its regulation to accommodate these. For example, two areas should be given consideration:
1) With the relaxation of e-money regulations and the probability at some stage of Mobile Network Operators offering a £5 tariff, is the £20 limitation sensible or necessary? If higher price points are allowed, should they be for a limited amount of goods? In mind, here is the possibility of buying tickets from your mobile phone in conjunction with a 'Tickets are available' type of alert where a £20 restriction would be too limiting.
2) What happens to partial payments of goods and services where a person either terminates a call early having changed their mind or has insufficient credit on their mobile phone to complete the transaction via messaging? The MDA believes that any pay-for-product service should have the ability to re-credit the phone account. However, given the limitations of technology, this is not possible in many cases and, therefore, alternatives are required. This should be subject to wider consultation as we move into mobile commerce.

Draft paragraph 7.9.6 – Maximum cost for non-live sexual entertainment services
Section 7: Question 6
Do you have views on whether you consider our approach in respect of the maximum cost for non-live sexual entertainment services fair, proportionate and necessary?

MDA: It would simplify matters if call charges for these services were in line with similar services in the non-recorded market.

We note that, even if ICSTIS lifts the maximum spend restriction, a number of Mobile Network Operator contracts specifically restrict daily spend on any one service. The MDA would prefer an approach where one rule fits all, and given that such services now operate behind adult bars, believe that such spend restrictions are no longer necessary as long as the consumer is sent regular reminders of how much they have spent.

Draft paragraph 7.10 - Subscription services
Section 7: Question 7
What are your views whether you believe the draft provisions for subscription services will adequately safeguard consumers while, at the same time, allow service providers to continue providing a variety of subscription services?

The MDA welcomes the embodiment of Subscription services into the code but would like consistency in the price points adopted across the Code as being critical. Moreover the MDA would welcome the embodiment of the Network Operators Code of Practice for Subscription Services into the Code to ensure consistency. The danger otherwise is that there are two Codes, with slightly differing provisions, that will cause confusion amongst providers as to which should be followed. The MDA urges ICSTIS to work with the Mobile Network Operators to get commonality between the codes.

Section 7: Question 8
Are there other alternative options you believe we should consider in clarifying the regulations in respect of subscription services?

MDA: See above – the key is the frequency and form of messages that need to be sent out to consumers and the compromise reached with Network Operators where services of variable billing (through frequency of messages such as football alerts) are exempted from the £20 rule but must be notified once a month.

Section 8 - Procedures and sanctions
Draft paragraph 8.1.4 – Complaint investigation
Section 8: Question 1
Could you comment on whether you agree with the proposed model to deal with IPs? Do you consider that it is a workable alternative? We welcome comments on whether you can see any other ways in which we can deal with IPs directly.

MDA: As before, the MDA welcomes ICSTIS proposal to pursue IPs who are in breach. However, see our response to Section 4 Question 1 and that IPs should have to register with ICSTIS. This would enable ICSTIS to deal directly with the IP.

Draft paragraph 8.4d – Emergency Procedure
Section 8: Question 2
What are your views on the Secretariat being able to invoke the Emergency procedure in cases that exhibit similar characteristics?

MDA: Subject to the explanations and examples already provided at the consultation forum on 1st September where auto-diallers were used as an example and the need to rapidly close down any rogue service that might be switched around the networks, we agree to this proposal.

The MDA is concerned that sanctions to block all payments to SPs, under the current definition of an SP, is disproportionate, because the Service provider could be operating similar services which meet all regulatory requirements for other

customers. However, the stopping of all revenue streams for similar services would then potentially prejudice those other customers' services.

Section 8: Question 3
Do you have any views on the timescales required for service providers and the Secretariat to be increased?

MDA: We believe the current timescales are adequate.

Draft paragraph 8.6.6 – Refunds
Section 8: Question 4
What are your views on whether we have successfully incorporated the requirements of recommendation 8 relating to refunds in the Code?

MDA: We believe this area needs wider discussion and consultation

Paragraph 8.7 – Reviews
Section 8: Question 5
Can you provider us with your view on whether you believe that the procedures as set out in the draft provisions in relation to Reviews are clear?

MDA: No comment

Paragraph 8.8 – Oral Hearings
Section 8: Question 6
What are your views on whether the Chairman of the Hearing should be able to convene a conference for the purpose of providing Directions?

MDA: No comment

Section 9 - Procedures concerning NOs
Draft paragraph 9.1 – Network Operator non-compliance
Section 9: Question 1
What comments do you have on whether you believe the procedures as set out in the draft provisions relating to NO non-compliance are fair, clear, adequate and proportionate?

MDA: No comment

Section 10 - Appeals
Section 10: Question 1
What are your views on whether the proposed amendment relating to the appeals procedures better reflects the purpose of the IAB and the modern public law of England and Wales?

MDA: No comment