

**Response to the Public Consultation seeking comments on the draft
11th Edition of the ICSTIS Code of Practice**

Section 1 – Definitions

Section 1: Question 1

What are your views on our proposed definition of NO's? 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?

MX Telecom operates predominantly in the wireless space, whereas this definition alteration would appear designed to target the proliferation of companies positioning themselves as fixed line mobile networks, whilst not necessarily having the means or legitimate motivation to so do. As fixed line is not our primary focus, there are many better placed than us to comment on what form and figures should enable a company to become a network operator. However, it is clear that stringent, mandatory requirements of some type are necessary to ensure confidence in the premium rate industry as a whole does not continue to be eroded due to the actions of companies exploiting the ease with which network operator status can currently be obtained.

Section 1: Question 2

We have stopped short of including a requirement for NO's to become signatories to Artificial Inflation of Traffic (AIT) arrangements. What are your views on ICSTIS requiring AIT arrangements in the Code?

No comment.

Section 1: Question 3

What comments do you have on whether there are any other ways for ICSTIS to define an NO for the purposes of the Code?

No comment.

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?

The current definitions and those proposed changes to the definition of a network operator make no attempt whatsoever to accurately identify companies within the mobile value chain.

“Premium rate services” are defined under section 120 of the Communications Act 2003 (‘the Act’) [as cited in the ICSTIS Code of Practice 10th Edition] as follows:

(7) A service is a premium rate service for the purposes of this Chapter if-

- (a) it is a service falling within subsection (8);
- (b) there is a charge for the provision of the service;
- (c) the charge is required to be paid to a person providing an electronic communications service by means of which the service in question is provided; and
- (d) that charge is imposed in the form of a charge made by that person for the use of the electronic communications service.

(8) A service falls within this subsection if its provision consists in-

- (a) the provision of the contents of communications transmitted by means of an electronic communications network; or
- (b) allowing the user of an electronic communications service to make use, by the making of a transmission by means of that service, of a facility made available to the users of the electronic communications service.

(14) References in this section to a facility include, in particular, references to-

- (a) a facility for making a payment for goods or services;
- (b) a facility for entering a competition or claiming a prize; and
- (c) a facility for registering a vote or recording a preference.

Consistency and clarity require that the definition of a “service provider” is that party which provides the very same service defined by sections (7), (8) and (14) of the Communications Act 2003 and cited by ICSTIS as their definition of a “premium rate service”. It is entirely misleading, given this definition of a “premium rate service” to have a definition of a “service provider” that is subject to different definitions. As a result of this inconsistency, the accurate identification of companies within the value chain is made exceedingly difficult.

In order to provide clarity, the party providing the service, currently defined as the “Information Provider” should clearly be denoted as the party providing the service where such party is willing to take responsibility for the service they operate. Accepting it is perhaps impractical to remove the current definition from the Code, there should be provision for a further category of a “Technical Provider” to enable a fairer reflection of the value chain where actual service providers are willing to be recognised as such. This would provide clarity in the value chain by ensuring companies are labelled by ICSTIS accurately and in accordance with their role. This could be framed as follows and, crucially from ICSTIS’ perspective, only be relevant where a service provider identifies itself as such and is willing to accept responsibility for the services it provides.

Technical Provider

- a. Is the first person who falls within section 120 (9) (a) – (d) or section 120 (10) of the Act who, not being a Network Operator himself, contracts with or enters into arrangements with a Network Operator for use of the Network Operator’s facilities in the provision of the relevant premium rate service; and
- b. in the circumstances in which the term is used, does not provide any Premium Rate Service to end users and acts solely in the capacity of a mere conduit through whom the data comprising a Premium Rate Service is passed; and
- c. the company providing the Premium Rate Service in any given case has provided evidence satisfactory to ICSTIS that it is in fact the Premium Rate Service provider.
- d. Where an organisation satisfying the criteria of section a. itself provides Premium Rate Services in any given case in which he falls within section 120 (9) (a) – (d) in respect of the relevant service then the organisation or such part of its organisation is responsible for the provision of the same will be a Service Provider for the purpose of this Code. Notwithstanding anything to the contrary, ICSTIS shall also be entitled to hold an organisation responsible as the Service Provider where it deems it reasonable to do so.

Section 1: Question 5

What comments do you have on the scope and application of the PRS regulatory regime?

MX Telecom firmly believe that the existing scope of the PRS regulatory regime strikes the correct balance by being adequate yet not excessive. Whilst ICSTIS have received arguments for the deregulation of particular types or costs of service on the basis that they do not represent a risk to consumers, this can be argued to demonstrate the effectiveness of ICSTIS regulation rather than illustrating certain types or costs of service to be “lower risk”. In the absence of evidence that the current coverage is too pervasive without always being necessary, the current application should continue.

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?

As above. If services are genuinely low risk, ICSTIS can take informal measures to concentrate their efforts elsewhere. Whereas, to formally deregulate certain areas will provide the impetus for illegitimate service providers to concentrate their efforts in that particular area.

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?

It is difficult to conclude how proportionate regulations are as there is a lack of visibility as to the factors that determine particular ICSTIS sanctions or measures. In order to assess the proportionality of ICSTIS measures, the industry would benefit from the provision of tariff schedule 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 dis-incentivize the provision of illegitimate services by making the sanctions for doing so completely clear.

Section 2 – Administrative Provisions (Network Operators)

Section 2: Question 1

Can you see any issues or problems with NO's 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.

No comment.

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 NO's must provide ICSTIS with information on the identity of their SP's etc) has been transposed adequately in the draft provision?

No comment.

Section 2: Question 4 (no question 3)

Can you provide comments on whether, from an enforcement perspective, there is justification for going beyond Ofcom's recommendation 3 relating to number porting?

No comment.

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?

No comment.

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?

No comment.

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?

No comment.

Section 3 – Administrative Provisions (Service Providers)

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?

The adoption of flexible guidance in this format will be useful to demonstrate how ICSTIS will interpret the Code of Practice in a practical setting which can achieve relevant and effective regulation and guidance without hindering the development of new and innovative service designs.

Section 3: Question 2

What alternatives should we consider in providing the premium rate industry guidance on how to operate premium rate services? For example, would more regular statements on how to comply with the Code provisions be useful?

Non-prescriptive guidance should be provided by way of the “help notes” proposed above. The help notes should be reassessed on a regular basis to ensure they maintain currency and continue to assist the industry in achieving compliance with the Code of Practice.

Section 3: Question 3

How might ICSTIS help industry groups develop their own notes on Code compliance?

The industry should be regularly consulted as an integral part of the process of compiling up-to-date “help notes”. This will provide the necessary vehicle to ensure all parties are aware of their responsibilities under the Code of Practice. The provision of separate “notes” should not be necessary and would hinder consistency in the event that the “help notes” are adequately researched and compiled.

Section 3: Question 4

What are your views on the extent to which you believe the draft provision relating to the requirement for SP’s to have in place customer service arrangements reflects the requirements set out in Recommendation 9 of the Ofcom Report?

With respect specifically to “SP’s” (as defined) in the mobile industry, the financial barriers to entry of achieving such status are such that all SP’s are sufficiently well established and reputable as to have the requisite customer care and refund mechanisms in place. More pertinently in the mobile industry, ICSTIS should work with service providers to ensure that ICSTIS can provide consumers with information regarding the companies providing particular services, with the SP’s retaining ultimate responsibility in the event of unsatisfactory service being provided. This is an approach ICSTIS are 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.

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?

This would not represent a useful function of the “help notes”. The purpose of “help notes” should be to provide clarity where industry dynamics mean the Code must be applied to hitherto unforeseen circumstances such as technological or service design innovation. The provision of adequate customer care is a basic, immutable and fundamental concept that should be detailed within the body of the Code of Practice.

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?

In circumstances where Information Providers are willing to deal with ICSTIS directly, it is prudent for ICSTIS to reciprocate and to properly identify such party as that responsible for the provision of a particular service. Service Providers can pass on the requirement for Information Providers to deal directly with ICSTIS through the contracts between the SP and IP. This will assist in the process of ensuring the companies responsible for the provision of services are held visibly accountable for their actions and thus provide an additional deterrent to operating fraudulent or otherwise non-compliant services.

Section 5 – General Provisions Applicable to all Premium Rate Services (Service Providers)

Section 5: Question 1

Do you have any 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.

Whilst the current provisions seemed to be interpreted effectively, the proposed wording seems to have the same purpose and therefore as long as they are interpreted as effectively, this does not represent a change of concern.

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?

No comment.

Section 5: Question 3

Do you have any comments on its practicability and any effects its introduction may have on premium rate service providers?

No comment.

Section 5: Question 4

Can you offer any views on what you would consider a “robust” system of age verification for Internet services?

No comment.

Section 5: Question 5

Are other practical and proportionate measures could take specifically in relation to preventing inappropriate access by minors to adult Internet services?

No comment.

Section 5: Question 7 (no question 6)

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?

Any attempts to simplify access to fundamental requirements such as pricing are to be welcomed. However, it is proposed that the Code should go further and also provide a summary of the most important elements of the Code such that it can be presented to service providers as a less intimidating document and hence be more likely to be read, understood and complied with.

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?

Without doubt, the inclusion of a pricing proximity requirement in the Code would not be practical or future proof. Such a level of prescription would only be workable if the format of advertising for premium rate services were uniform. The reality is of course, entirely different. Services may be advertised by traditional mediums such as print and television media but increasingly diverse channels are being utilised – the interactive Sky television “red button” in conjunction with television adverts is a recent example. To be overly-prescriptive requires revision for every conceivable or yet to be conceived advertising medium. Such a policy lacks clarity, consistency and generates uncertainty amongst service providers as to the requirements that must be adhered to. Secondly and more importantly, it overlooks the fundamental principle that underpins pricing regulation – the need for clarity. Clarity is best ascertained by taking a technology and channel-neutral approach, as ICSTIS are evidently doing. Applying generic principles rather than prescription allows greater flexibility ensuring that the rules are clear and consumers are not misled. This will be exemplified through 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”.

Section 5: Question 9

Do you have any 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 could explore?

This should be determined by reference to the number of complaints received by ICSTIS in relation to services advertised on television.

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?

The current requirements do not impose significant burdens upon service providers. As with pricing information however, the principle is more important than the particularity of the requirement. The address information provided should be reasonable and sufficient in the context of the type of service being provided and the likelihood of consumers requiring contact with the service provider.

Section 5: Question 11

What are your views on the inclusion of “buy one get one free” provisions 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?

It is entirely legitimate for services providing free content and other incentives to advertise accordingly. In general, ICSTIS' involvement in such advertising should extend no further than ensuring that the advertising is not misleading to consumers. As long as ICSTIS effectively regulates this requirement, no further prescription is necessary. Given the potential for consumer harm however, a "help note" would also be helpful to provide service providers with guidance on how the advertising of "free" products can comply with the requirement for services not to mislead.

Paragraph 5.9 a. must be revised or removed to reflect the fact that the mechanic described is not in fact a "free" offer. It is an example of a "buy-one-get-one-free" offer and to advertise it as "free" would be misleading. The only circumstances in which a product should be described as being free are where the consumer can, at no charge other than standard carriage costs, obtain a service usually charged at a premium rate.

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?

Paragraph 5.13.1 adequately encapsulates the factors to be taken into account when determining whether a service constitutes a "children's service", assuming that an implicit consideration within this generic definition will be the nature of the advertising for the service.

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?

No comment.

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?

No comment.

Section 6 – Provisions Relating Specifically to Live Services

Section 6: Question 1

Do you have any comments or views on our proposed approach in relation to regulating live services?

The proposed modifications seem sensible to ensure that low-risk live services are not unnecessarily subject to additional regulation.

Section 6: Question 2

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

The regulatory burden could be significantly reduced by speeding up the process of gaining service approval. Although ICSTIS may rightly require additional material before considering an application, turnaround of approximately three months for a standard application serves to penalise service providers seeking to ensure they are fully compliant whilst encouraging less scrupulous service providers to seek technical providers who are willing to allow services to run without the correct authorisations being in place.

Section 6: Question 3

Do you have any views on whether you consider the draft provisions more clearly set out on the regulations governing claims for compensation?

If the compensation arrangements are to differ from those currently in place, the new arrangements should be clarified.

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?

Practical examples in the form of contemporary help notes to assist in interpreting the Code are welcomed.

Section 7 – Additional Provisions Relating to Specific Categories of Service (Service Providers)

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?

Whilst the actual provisions are sensible, it seems inconsistent to have such service-specific requirements in the body of the Code rather than in the “help notes” section.

Section 7: Question 2

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

The proposals to incorporate requirements from specific permission certificates into the body of the Code are extremely pragmatic – they will promote consistency and clarity regarding the operation of such 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?

Paragraph 7.3.2 a. contains a typing error.

It would be helpful for ICSTIS to clarify, perhaps through a “help note”, what it considers to constitute compliance with the requirement to use “reasonable endeavours”. Will the existing requirements of ICSTIS in this respect constitute the use of “reasonable endeavours”?

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 compensation and valid claims for refunds for chat, contact and dating services given there is a general duty on service providers to consider claims for compensation for all services?

Given the potential for consumer harm being greater in respect of services such as these, it seems sensible to have specific provisions relating to the responsibilities of the service provider.

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 and negligence of the bill payer. Paragraph 7.3.6 b. should be amended to reflect this fact.

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 fair?

No comment.

Section 7: Question 5 (second 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 any other alternative options you believe we should consider in clarifying the regulations in respect of pay for product services?

The definition of a “pay-for-product” service in paragraph 7.8.1 is unclear and so vague as to potentially capture all types of service, other than subscription services, which despite conforming to the definition, are specifically excluded. Whilst there exists such a lack of clarity in respect of the services this definition is intended to cover, there will be an inherent difficulty in getting service provider compliance with the specific requirements of this section. If the intention is that pay-for-product services are intended to specifically cover physical goods and services delivered to the phone – both of which require a call to be completed prior to taking effect; this should be drafted more clearly.

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?

It seems consistent to bring the maximum call cost for this type of service into line with other similar, non-recorded, services.

Section 7: Question 7

What are your views on whether you believe the draft provisions for subscription services will adequately safeguard consumers while, at the same time, allow service providers to continue to provide a variety of subscription services?

ICSTIS’ position on subscription services reflects the measures undertaken within the industry in 2005 to resolve the consumer harm being caused by certain subscription services. In practical terms the level of prescription will have no negative implications on service providers as the measures already constitute mandatory network requirements. From the point of view of the consumer, the introduction of such detailed and highly visible provisions in the body of the Code of Practice will be of benefit to help eradicate the problems experienced in this area.

Section 7: Question 8

Are there other alternative options you believe we should consider in clarifying the regulations in respect of subscription services?

Whilst the proposed regulations are satisfactory, ICSTIS should seek continued industry input to ensure the measures remain current and consistent with the measures being taken by network operators and technical providers to ensure subscription services are operated effectively.

Section 8: Procedures and Sanctions

Section 8: Question 1

Could you comment on whether you agree with the proposed model to deal with IP's? 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 IP's directly.

The proposed model represents an improvement on the existing arrangements, as commented on in Section 4: Question 1. Irrespective of whether or not ICSTIS deal directly with an IP, reporting should not mislead readers. Therefore, the use of the term "Service Provider" to determine a company that did not provide the premium rate service should not be used.

Section 8: Question 2

What are your views on the Secretariat being able to invoke the Emergency Procedure in cases that exhibit similar characteristics?

This represents a sensible measure to ensure any harm caused to consumers in such cases is minimised.

Section 8: Question 3

Do you have any views on the timescales required for service providers and the Secretariat to be increased?

No comment.

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?

Paragraph 8.6.6 should be amended to incorporate the ability for the actual party providing a service to be responsible for any refunds, further to paragraph 4.2. The defined "Service Provider" would remain liable in the event of non-compliance yet the true service provider would be accurately identified, sanctioned and discouraged from undertaking such activities in future.

Section 8: Question 5

Can you provide us with your view on whether you believe that the procedures as set out in the draft provisions in relation to Reviews are clear?

The procedures as set out are clear.

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?

If this promotes efficiency without compromising the integrity of proceedings, it is to be welcomed.

Section 9 – Procedures concerning network operators

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, adequate and proportionate?

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?

No comment.