

**Below are the responses from Telecom One. We have not commented on all the questions, either because we have no particular view on the issue or we agree with ICSTIS' recommendation.**

---

**APPENDIX C** - A public Consultation seeking comments on the draft 11<sup>th</sup> 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?*

No comment.

##### **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?*

Most NOs would have to connect to BT's network (either directly or through another NO) so they would become signatories to AIT arrangements. We do not believe that it is necessary to make this a requirement in the Code.

##### **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?*

No comment

##### ***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?*

No comment.

##### ***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?*

No comment.

**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?*

The current definition of PRS where 08 numbers at 1p-10p are not regulated by ICSTIS seems to work fine. At these lower tariffs the consumer harm is relatively limited. It would also be impractical for ICSTIS to regulate 08 numbers since these ranges are used for a large number of different types of services.

**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?*

The regulations are generally applied proportionately, however, the emergency procedure has been applied in a number of cases where the consumer harm has been relatively limited. It should only be used for serious cases where urgent remedy is required.

**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?*

We see no problem in NOs supplying this information. However, in the past ICSTIS has not been consistent in of the information they have requested from NOs. We would also welcome more specific deadlines for ICSTIS processing the information supplied.

***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?*

2.3.1 b is not very specific and it will be difficult if not impossible to carry out in practice.  
2.3.1 g is also not very specific and it could therefore leave a NO liable in all cases where a SP is in breach of the Code.

**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?*

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.

**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?*

No comment.

**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?*

As mentioned above, some of the NO obligations are not very specific and open to interpretation, which is a problem. The sanction in 2.6.1 c could have far reaching consequences for a network's business and it would also penalise compliant SPs who are using the same NO. It would be impractical to have such a far reaching sanction.

**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?*

No comment.

**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?*

No comment.

**Section 3: Question 3**

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

No comment.

**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?*

No comment.

**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?*

No comment.

**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?*

No comment.

## **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.*

No comment.

### ***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?*

We do not believe this is specifically required for dialer services. There are various programs that can be used to protect minors from accessing adult content and the protection should be at that level, for all adult content, rather than specifically for sites that use PRS as a payment mechanism. Paragraph 7.9.7 of the Code covers this sufficiently.

#### **Section 5: Question 3**

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

See above.

#### **Section 5: Question 4**

*Can you offer any views on what you would consider constitute a 'robust' system of age verification for Internet services?*

See above.

#### **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?*

See above.

### ***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?

No comment.

**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?*

No comment.

**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?*

This would be impractical and unnecessary in many cases. There are now several TV channels using PRS as the main source of revenue where the pricing information is constantly displayed on the screen. There are also several channels where the screen is split into different sections with banner advertising in some sections and the main broadcast and voiceover in another section. This type of promotion is similar to print advertising and provided that the promotion complies with paragraph 5.5.2 it should not be necessary to have spoken price information. One option could be to stipulate that where the price is not spoken, the pricing information must be static (not scrolling) and it must be in close proximity to the code/number.

Telecom One has been operating The Dating Channel on Sky for five years following the above principles without any complaints.

**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?*

We believe that a general principle is better than being descriptive.

**Draft paragraph 5.9 - Use of the word “Free”**

**Section 5: Question 11**

*Do you have any 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?*

We do not believe this will lead to greater consumer harm.

**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?*

We believe the definition is fine.

**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?*

£3 seems to be an appropriate level.

**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?*

See above.

**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?*

No comment.

**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?*

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?*

No comment.

**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?*

No comment.

**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?*

No comment.

***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?*

No comment.

**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?*

No comment.

***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?*

We do not believe there is any need for specific provisions for chat, contact and dating. The general duty to consider claims should be sufficient.

***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?*

No comment.

**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?*

It adds clarity to separate subscription services from pay-for-product but the definition of pay-for-product is not very clear. It could be argued that all PRS is delivery of a service and would therefore fall under pay-for-product.

**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?*

We welcome the opportunity for SPs to operate services that can cost more than £20. There are several types of services where a higher cost would be appropriate.

**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 section is too descriptive. It would be better to have the descriptive part in the help notes which would allow for more flexibility in a rapidly changing market.

**Section 7: Question 8**

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

See above.

**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.*

We welcome this initiative and we believe it is a workable solution. It is particularly important in the SMS aggregation/gateway business where traditional NOs find themselves in the position of SPs.

***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?*

In principle we agree with this, however, there need to be an internal procedure within ICSTIS to ensure that the correct decision is being made. As a minimum we would expect the case to be reviewed by a senior manager and one director before an Emergency Procedure is invoked on similar cases.

**Section 8: Question 3**

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

The increase in timescales is reasonable. However, we would welcome some accountability from ICSTIS in meeting these timescales as we have never seen an Emergency Procedure case that has been laid before the adjudication panel within the timescales. We have also experienced cases where the case officer has gone on holiday after invoking the Emergency Procedure which has resulted in unnecessary and unacceptable delays.

***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?*

No comment.

***Paragraph 8.7 – Reviews***

**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?*

We believe the procedures are clear and that this is a positive development.

***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?*

We have no particular view on this but we welcome any initiative that will speed up the process.

## **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?*

The procedure seems reasonable. However, the provisions in 2.3.1 b and g are open to interpretation and can therefore leave NOs liable, even in cases where the NO has used its best endeavor to comply with the code.

## **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.