

APPENDIX D - A public Consultation seeking comments on the draft 11th Edition of the ICSTIS Code of Practice July 2005

The Regulation of Premium Rate Services

An Ofcom Report for DTI

Issued: 09 December 04

Summary and Recommendations

Foreword

1.1 This report sets out the findings of a review of the regulation of premium rate services (PRS) in the UK. The review was carried out by Ofcom, at the request of the Department of Trade and Industry (DTI), between August and November 2004.

1.2 PRS offer some form of content, product or service via telephone lines that is charged to users' telephone bills. Typical services include TV votelines, scratchcards, competitions, adult services, technical helplines, chat lines, mobile phone ring tone and logo downloads, horoscopes and interactive TV games. Services are usually accessed by dialling 090 numbers, with calls costing up to £1.50 per minute from the BT network.

1.3 The great majority of PRS are welcomed by consumers and generate considerable consumer benefits. This is reflected in the rapid growth of the PRS industry in the UK with call volumes from fixed lines going up by around 30% a year, and revenues estimated to have been around £850 million in 2003.

1.4 However these benefits have been obscured in recent months by problems involving the use of PRS to mislead or even defraud consumers. Such services have harmed not only the consumers who have incurred call charges unfairly but also consumer confidence in the PRS industry generally.

1.5 This report was triggered by growing concerns over "rogue" internet dialers and other such scams, and the extent to which current regulatory arrangements are able to deal effectively with problems of this kind. The terms of reference for the review were drawn quite broadly, to cover matters such as the role and effectiveness of the Independent Committee for the Supervision of Standards of Telephone Information Services (ICSTIS) and the constraints imposed by relevant EU and UK legislation, as well as the specific issue of rogue internet diallers.

1.6 Ofcom's review has not found any single solution or 'quick fix' to the issues faced by the PRS industry. This report makes a number of detailed and incremental recommendations which Ofcom anticipates will significantly reduce the scope for consumer detriment and restore consumer confidence in the PRS industry.

1.7 Ofcom also recognises that the PRS industry is evolving rapidly. The regulatory regime also therefore needs to be flexible. The implementation of the recommendations in this report will require intensive work and close cooperation between ICSTIS, Ofcom and DTI, and will inevitably involve the refinement and development of those recommendations. One of the key recommendations of the report is therefore the creation of a Steering Committee to oversee the process of implementation. Once that process is completed it will be still be necessary for all parties to keep industry developments under close review and to continue to cooperate closely to ensure that the regulatory regime can develop alongside the industry.

Recommendations

1.8 Ofcom has identified a number of problems with the current regulation of PRS. These are described later in this report. However, Ofcom does not believe that it is necessary at this stage to alter the current self- and co-regulatory approach. Ofcom has developed an interlinked package of recommendations designed to improve the effectiveness of PRS regulation within the existing framework:

- Recommendation 1: Ofcom and ICSTIS should take the lead in encouraging Originating and Terminating Communications Providers (OCPs and TCPs) to produce a voluntary code of practice covering traffic monitoring and information sharing. The new arrangements should be designed to enable ICSTIS to identify potential breaches of its Code of Practice (CoP) as rapidly as possible.
- Recommendation 2: The CoP should be amended to require TCPs to provide ICSTIS with detailed information on the identity of the Service Providers (SPs) with which they contract, including an address for service, emergency contact details and a UK customer service telephone number. They should also provide evidence of identity of relevant individuals. The CoP should be amended to include an obligation on TCPs to take all reasonable steps to ensure that the information supplied to ICSTIS is accurate. The purpose of this obligation is to encourage TCPs to carry out proper due diligence on the SPs hosted on their networks. These changes will make it more difficult for SPs to provide false information and should discourage fraudulent individuals from seeking to enter the market. In addition, the obligation on TCPs to provide detailed information about call traffic and revenues where a complaint has been received or an investigation opened under the CoP should be reviewed and if necessary strengthened.
- Recommendation 3: Additional obligations should be placed on TCPs under the CoP to provide ICSTIS with information about exported numbers and the TCPs to which they have been exported when directed to do so.
- Recommendation 4: The CoP should be amended to include an obligation on TCPs not to make payments to their SPs for at least 30 days after calls have been made. This will give ICSTIS more time to identify breaches of the CoP and where appropriate to issue Directions to TCPs requiring them to withhold funds pending the outcome of an investigation.
- Recommendation 5: In the event that the implementation of sanctions against TCPs in breach of the CoP is not sufficient deterrent, further consideration should be given to the introduction of TCP bonds. These bonds should be held by ICSTIS, with their size being linked to the number of PRS hosted by the TCP.
- Recommendation 6: DTI should give consideration to increasing the maximum fine which can be imposed in accordance with sections 121 and 123 of the Communications Act 2003 (the Act) for a breach of the CoP or the PRS Condition₂. The current maximum is £100,000.
- Recommendation 7: Redress should continue as a possible ICSTIS sanction against SPs for breach of the CoP. ICSTIS should codify and publish the circumstances in which it will use this sanction, essentially where there has been a serious breach of the CoP leading to significant harm to consumers and/or where an intent to mislead or defraud has been demonstrated.

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- Recommendation 8: Where redress is ordered as a sanction against the SP and when directed to do so by ICSTIS, TCPs should make funds withheld by them available for consumers to claim redress for three months after an adjudication under the CoP.
- Recommendation 9: SPs should be required in the CoP to have adequate customer service and redress mechanisms, including a UK customer service telephone number. ICSTIS should monitor compliance with these obligations, including a programme of 'mystery shopping', and work with the industry to develop best practice guidance on customer service.
- Recommendation 10: ICSTIS should continue to have a role in the provision of consumer information and should produce a set of guidelines to govern its activities in this area. In developing these guidelines, ICSTIS should have regard to Ofcom's statement on its Strategy and Priorities for Promoting Media Literacy³ and the section on "Exercising effective consumer choice" in Ofcom's Strategic Review of Telecommunications Phase 2 consultation document. The guidelines should set out the principles ICSTIS will adhere to when planning and executing its consumer information function, in relation to both the reactive handling of consumer enquiries and its more proactive, educational activities. ICSTIS should consult with its industry stakeholders on the draft guidelines, with the aim of ensuring that industry views are properly reflected in their content, and should then submit them to Ofcom for approval.
- Recommendation 11: OCPs should take on more responsibility for handling general PRS enquiries and for dealing with number check queries. This should be achieved by amending the obligations on OCPs under Ofcom's General Condition 14 and related guidance to require Communications Providers to produce a code of practice which would include the provision of practical information relating to the nature of PRS, and their costs and availability to consumers, e.g., information regarding call barring facilities, number checking etc.
- Recommendation 12: ICSTIS should take the lead, in consultation with industry stakeholders, in carrying out a feasibility study into the establishment of a central database of SP contact information, which can be accessed by OCPs when dealing with customer enquiries.
- Recommendation 13: The CoP should be amended to enable ICSTIS to use Directions to impose sanctions, including fines, directly on TCPs where they fail to meet their obligations under the CoP.
- Recommendation 14: ICSTIS should proceed with the implementation of the governance changes set out in its draft report on governance. These proposals are intended to ensure an appropriate level of accountability to ICSTIS' industry stakeholders and include the conversion of the Committee into a Board, the inclusion of members with industry expertise and the establishment of an advisory committee of industry stakeholders. These changes will bring ICSTIS more closely into line with Ofcom's co-regulatory principles.
- Recommendation 15: ICSTIS and Ofcom should agree a Memorandum of Understanding (MOU) which clarifies the roles of the two organisations in relation to PRS regulation, and which ensures an appropriate level of accountability to Ofcom, in

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accordance with Ofcom's co-regulatory principles. As part of the MOU discussions Key Performance Indicators (KPIs) should be agreed in relation to ICSTIS' Helpline and case management activities, which ICSTIS would report upon as part of the annual activity plan and budget approval process.

- Recommendation 16: In preparing its budget for 2005, ICSTIS should take account of the proposals set out in this report, the implementation of which will have some resource implications over the coming year.
- Recommendation 17: DTI, in conjunction with ICSTIS, should explore the scope for accelerating the process for changing the CoP by carrying out the necessary EU consultations in parallel with the industry stakeholder consultation. This could reduce the time required to implement the proposals by up to 3 months.
- Recommendation 18: A Steering Committee should be set up to oversee the implementation of the proposals. The committee should consist of representatives from DTI, ICSTIS and Ofcom.