

ICSTIS Plan and Budget for 2006/7

Introduction

1. This document summarises the responses to the consultation on the Plan and budget.
2. The consultation period ran from 4 November to 2 December 2005. In addition to the published consultation the Plan and Budget were discussed at an open forum meeting and at a plenary with all the relevant representative trade bodies. The consultation document can be found on our website at www.icstis.org.uk/news/latest_news.asp. We had 6 responses to the consultation from the following:
 - PRA
 - BT
 - MX Telecom
 - Mobile Broadband Group
 - NOC
 - UKCTA
3. In addition to answering six broad questions respondents made a number of additional points. We want to thank all those who responded. Responses were detailed and helpful. All the points raised are set out below along with our comments. Where necessary we have annexed additional information.

Headline questions and responses

Question 1

Is it right to assume further growth in all or in parts of the premium rate payment sector and 10% growth overall?

- a. Responses varied. The PRA, NOC and BT highlighted the uncertainties around possible new or variant payment mechanisms that could replace or expand premium rate activity. The sense at a Budget Plenary meeting with trade bodies was that there would be continued growth in premium mobile content but little growth on the landline side. The consensus reflected in the UKCTA and NOC responses was that we should assume lower growth overall.

ICSTIS response - Given the importance of having secure funding in place and our ability to use any excess levy or other income to reduce the levy requirement in subsequent years we agree the levy should be calculated on the basis of 5% sector growth.

Question 2 & Question 4

Did the consultation document identify the key challenges for 2006/7 or were some missing or over-stated? Are there are external, political or other developments which have not been addressed and which should affect our planning?

- a. We flagged product developments in mobile, broadband payment and VOIP as issues. We pointed to possible development in terms of EU legislation.
- b. Those responding agreed these were key issues. The UKCTA response highlighted the likely significance of IP telephony to the premium rate business model. The PRA and others pointed to the Ofcom NTS (Number Translation Services) consultation and to the suggestion that ICSTIS might take responsibility for any number range ring-fenced for content services involving some form of revenue-share. The MBG agreed the need to continue to monitor and research product and market developments but made the point that there should be no automatic assumption over what was and was not “premium rate”, or that all products should be subject to the same degree of regulation. Proportionality should be a watchword.
- c. BT and UKCTA highlighted the need for clarity and clarity of purpose in working out and communicating the service categories that were subject to ICSTIS regulation. One respondent said this was an area worth looking at in terms of research; perhaps in looking at the size and nature of PRS/Paid for Content regimes elsewhere in the world and in terms of defining regulatory boundaries. The NOC pointed to the need to avoid conflicting or unnecessarily overlapping regulation, e.g. in relation to gambling.

ICSTIS response - We agree it is important to be clear where and why regulation is applied and to do this in a “joined-up” way. This was our approach working with Ofcom in relation to new forms of participation television, particularly the programmes and channels dedicated to premium rate funded quiz-play and chat and date. The responses and rapid continuing developments around IP communications reinforce the case for a review of the scope, role and nature of regulation.

Our focus on developments at the EU level has also been reinforced by the announcement of further consultative meetings in 2006 on premium rate regulation and how the activity relates to various Commission Directorates-General covering the Single Market, Telecommunications and Consumer Protection. We have also become involved with industry groups and in meetings of regulatory bodies seeking to inform and influence the revision to the Television without Frontiers Directive.

Question 3

Whether ICSTIS and Ofcom should be considering any revisions to the existing KPIs?

- a. The general view was that the KPIs should remain unchanged. They were only introduced in 2005 and ICSTIS is still in the interim period in relation to some targets.
- b. There were questions from the MBG and some others over the complaint handling KPI; over the start point when measuring performance and over our performance in dealing with those cases not closed within the 12 week target period. The concern was that a KPI should not be diluted by any lack of clarity over the basis of measurement.

ICSTIS response – We agree the existing KPIs should be continued. We also agree the KPIs should be structured to ensure they are meaningful measures. In the case of investigation cases we make clear in the MoU that we aim to carry out our initial assessment of complaints with a view to taking a decision on opening a case within five working days of receipt of first complaints.

We understand the interest in financial management and fine recovery. We agree this is an important factor in establishing better regulatory behaviour and in applying the polluter pays principle. We had previously agreed with Ofcom that the percentage of fines recovered should not be a formal KPI as the measure is one largely outside of ICSTIS' control, particularly when there are few barriers to setting up as a network or SP, and little (currently) by way of mandatory due diligence. Until recently, there was nothing to prevent contractual arrangements based on advance or same-week payments. This combination allowed complicity in deals which frustrate consumer protection and recovery of fines. The issue of fine recovery and use of these funds is addressed further below.

Question 5

Should we seek to rebalance activity and expenditure with a view to a greater focus on industry dialogue and proactively in order to prevent problems before they translate into a reactive enforcement and 'helpline' work?

- a. This proposition was welcomed. Some saw the immediate benefits in terms of capped or reduced staffing costs. Others looked for more by way of a breakdown of costs and savings. The PRA, BT and UKCTA saw a close link to the proposed external and internal governance changes, hoping the creation of the Industry Liaison Panel and the industry members of the ICSTIS Board will add to this culture of prevention and compliance. The NOC and MBG welcomed the proposal to put additional resources into monitoring services, making the case for a more flexible approach to enforcement and use of informal procedures or informal channels to sort problems and avoid unnecessary prosecutions. The PRA questioned whether a significant growth in informal complaint resolution would result in an equivalent fall in the number of standard cases.

- b. One respondent asked whether we had the right balance of responsibilities between ICSTIS and originating/billing networks (ONOs) when dealing with enquiries or minor disputes. The concern was to minimise costs to ICSTIS that should more properly fall to ONOs.

ICSTIS Response - We welcome the broad support for a proactive approach. This had been our preferred course with SMS subscription services and with participation/quiz TV. This was the basis on which we approached Directory Enquiry (DQ) services, avoiding some of the problems that arose with exotic content services abusing DQ numbering. We said in our consultation document that we would be looking to make much more use of informal procedures. Our working assumption was that this was likely to happen most when relatively minor problems had been identified through monitoring and were of a kind that could be readily corrected without ICSTIS launching a case. This is also possible but in practice less practical when we have had public complaints.

There are proper limits to what can be done informally. Some problems, e.g. around promotions cannot be readily put right, some apparent breaches of the Code involve subjective assessments and there is a limit to the extent to which staff (as distinct from Committee members) can exercise discretion. Finally there is the need to apply the regulation in a consistent and predictable way that meets the legitimate interests of all parties. ICSTIS has a very strong reputation for independence and impartiality. We want to maintain the high level of trust.

In the staffing resource related to networks in our proposed budget there is capacity for work on understanding and compliance with our forthcoming 11th Code of Practice.

The provision for Contact Centre helpline staffing is based on being able to deal with scenarios involving up to 1250 callers/day. We are, however, doing all possible to support ONOs and the public direct by refreshing the web-based data-base of "asked-about numbers". This deals with over 2,000 checks each day with about 60% of the checks carried out by ONO staff. We want to build on this success and welcome the Ofcom plans to reinforce ONO obligations to provide customer services under General Condition 14. We will only staff-up to the levels necessary to meet demand. We do not, however, see merit in the NOC suggestion of separating such a small Contact Centre (12 or so "seats") from the staff and organisation it supports or for relocating the organisation at this time.

Question 6

Do you agree we should continue to develop the “user and polluter” pays principle, charging for activities and using fine and other income to reduce the levy to the industry at large?

- a. There was universal support for two related propositions –
 - that we should not budget on the basis of anticipated fine and related income but
 - That the polluter/user pays principle should be applied and that those causing costs, especially enforcement costs, should meet those costs. As now, fine and administrative charge income recovered should be used to reduce the levy required in the following financial year. That is to say the £1.1m+ of fines recovered in 2005/6 would be used to reduce the levy funding requirement in 2006/7.
- b. In their responses the NOC and UKCTA said a move to a “fine to fund model” would introduce the wrong drivers and serious conflicts of interest when adjudicating if ICSTIS was dependent on fine income coming out of those adjudications.
- c. There was concern over the level of fine recovery and interest in having a KPI on this activity (see above). We did not ask for wider comments on the funding mechanism but one respondent (BT) observed that the existing arrangements were established and understood and a review with a view to alternatives seemed of limited purpose at this time.
- d. UKCTA and MBG raised questions over cash flow management and the transparency of ICSTIS balance sheet. Both flagged the possibility of using fine income to build the winding-up funds or any other contingency reserves thought necessary. NOC asked that we be very clear at end-year over the fine income recovered and being applied to the following year.
- e. There was general support at meetings and in individual responses for the introduction of charging for handling prior permission applications. The NOC took the view that charging for prior permission might also introduce some degree of conflict of interest, especially if it seemed we were over-inclined to introduce this form of licensing control. The PRA and MBG saw value in charging to deter frivolous applicants and unnecessary and unproductive costs to ICSTIS. At the same time they and others stressed the importance on not introducing charging at a level that deterred market entry by genuine new players. All agreed we should keep in mind the distinction between fines and charges on wrongdoers and fees for legitimate businesses.

Some responses and one from MX Telecom in particular, highlighted the importance of quality and speed of service in permissions work. It was thought wrong to introduce charging if the service charged for was not delivering consistently to an acceptable standard.

ICSTIS response – We propose to continue to apply the polluter and user pays principle wherever appropriate. We understand and share the concern that we should maximize fine recovery. The introduction of the 30 day payment rule and recent Ofcom and ICSTIS action against unacceptable network conduct and even the involvement of the Police have hopefully addressed some extreme behaviour which sat behind most of the recent high sanctions and problems in recovering the fines which had us at a 25% recovery rate. We are monitoring progress on this monthly and continuing to pursue over £1.5m in unpaid fines through legal actions.

We expect to introduce charging for prior permission during the next financial year but at an intermediate level – around the £250-£300 levels suggested by the PRA and MBG. As originally proposed any resulting income will, as with fines, be secured for use to reduce the funding levy in the following year.

Other Points from the consultation

4. Some who responded saw the case for producing a balance sheet and for greater clarity on expenditure items.
5. A number of responses comments on the absence of a capital expenditure line item and on the inclusion of “depreciation” in the expenditure plan. Some called for a balance sheet and more commentary on cash flow.

ICSTIS response - We accept the language traditionally used and generally understood by previous network funders is not clear in relation to capital expenditure. Our depreciation policy in writing down capital assets is one agreed with our auditors. We have, however, also used the term depreciation in Plan and Budget documents to refer to the amount of expenditure allocated to meeting the cost of capital purchases that will be depreciated during that year. The cost of a capital purchase must be met in the year of the purchase. Our policy has been to meet purchase costs from the totality of our annual income and reserves and to recover the cost of the purchase over the lifetime of the asset. This is part of our aim of avoiding wild swings in levy rate, maximizing stability of levy and funding requirements over the longer term and reducing the levy progressively. This approach allowed us to manage two office relocations and associated refurbishment and build-out costs without having to introduce very large levy hikes to meet one-off costs in the years in question.

6. We aim, in future, to be clearer on this and similar matters and we hope that the new Industry Liaison Panel will be a forum for discussions of this kind. We will use simpler language in future financial material in order to remove any ambiguities.

7. We had decided that that it would be wrong to produce in November 2005 a forecast end year balance sheet for end March 2006. Any such balance sheet would have been built on a series of assumptions and estimates in relation to fine and other charge income recovered, our end-year spend/under-spend, the accumulated funds in the wind-up fund and the contingency reserve and the actual level of market activity (as calculated from returns from about 100 network providers). We will include a very detailed explanation of the end year position in our forthcoming accounts and activity report.
8. We recognise, however, the clear stakeholder interest in having an indication of the figures as now forecast. We hope the information at paragraph 10 explains more clearly how income is to be used to reduce the funding payment ion 2006/7.
9. We have no worries regarding financial adequacy in 2006/7 but we simply do not yet have enough data to forecast the extent to which our end-year reconciliations with networks will show growth to, beyond or below the forecasts when the 2005/6 levy was set. For these reasons we were reluctant to propose a levy rate for 2006/7 in the original consultation.

Conclusion & 2006/7 Levy

10. Based on the latest available information we are now able to set the 2006/7 levy at 0.3%. This is a 33% reduction on the 2005/6 level and the lowest ever rate. We have been able to set this levy based on a series of positive developments and circumstances:
 - a. Our 2006/7 budget is a reduction in real terms
 - b. We have approximately £700,000 of income from 2004/5 that was received late in that financial year but that can be used to reduce the 2006/7 funding requirement.
 - c. We have approximately £1.1 million of banked fines and administrative charges for the first three quarters of 2005/6. This too is to be used to reduce the funding requirement.
 - d. We have had success in reducing complaints and enquiries but not case load. As a result we believe we can commit a further £200,000 from our 2005/6 budget. This underspend is not assured but we believe it can be anticipated.
 - e. Against this, and as noted in the consultation document, we must maintain our reserves at the levels advised by our accountants. This involves securing about £500,000 in addition to the budgeted expenditure.
11. We are assuming a market with PRS outpayments of £850 million. Taking the budget, the reserve need and deducting the funds above available to reduce the funding requirement we believe it is possible to set the levy rate at 0.3%.

We are grateful to all who responded to the Plan and Budget consultation. We welcome the broad support for our approach and for our plans for a reduced budget and levy.