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**ICSTIS Consultation
on
0871 Services**

NOC Submission

The Network for Online Commerce (NOC) is a not for profit trade association that exists to promote and facilitate successful enterprise in interactive Telemedia markets around the world. The NOC is uniquely qualified to reflect the views of the UK premium Interactive Media market as its membership spans the entire value chain and is involved in the vast majority of premium value transactions. We welcome this opportunity to comment constructively on this consultation regarding the extension of PRS regulation to services utilising the 0871 number range.

In our September 2006 response to the ICSTIS pre consultation on “ICSTIS Implementation of Ofcom Regulation over 0871 Services” we noted the purpose of extending PRS regulation to 0871 based services to be stated as follows:

- Increase consumer protection for calls to 0871 services and,
- Improve pricing transparency for 0871 calls

We stated then that we were supportive of these objectives since they sit well with our philosophy that consumers who are fully informed as to the cost and content of a call are perfectly placed to exercise their freedom of informed choice and therefore enjoy the most effective form of consumer protection.

While we remain unconvinced that significant problems involving consumer harm and justifying regulatory intervention exist in the 0871 service environment we repeat

our assertion that we are committed to work closely with Ofcom and ICSTIS to achieve a successful conclusion to this exercise. Hopefully this can be achieved without damaging the many legitimate services that utilise this numbering facility today.

Condoc Executive Summary

It is interesting that the list of current uses of 0871 does not contain any service areas where we are aware of 0871 “abuse” and particularly since the use of 0871 to access higher rate PRS lines has already been addressed and resolved, albeit not in a manner that we condone. The problem of tariff transparency for mobile callers to 0871 services still exists but is unlikely to be resolved by the application of additional formal PRS regulation in the 0871 arena.

Where 0871 is used to access call centres any perceived problems regarding extended call holding times could simply be addressed using Service Level Agreements for call centre management. It is also important to emphasise the research findings that revenue sharing is not the prime mover in the use of many 0871 numbers for customer service and contact centres, hence there would be little incentive to unduly extend call holding times – an assumed abuse of 0871 numbers that perhaps does not exist in fact.

Background

Ofcom direction is clear that any imposition of regulation must be proportional to any risk from 0871 services and Ofcom also require improved information on the price of calls in advertisements and promotional material. As mentioned previously the requirement for tariff transparency for mobile callers is unlikely to be resolved by additional regulation in the 0871 arena alone and requires wider consideration.

The lack of clearly identified problems with 0871 coupled with the Ofcom requirement for proportionate regulation suggests a light handed approach would be appropriate for this market. For this reason the blanket application of the ICSTIS Code would not be a proportionate approach and a separate set of requirements, either as a Statement of Requirements or even a separate, more simple, Code document should be considered.

Scope

We note that the decision has been taken by Ofcom to place 0871 within the remit of the PRS Code of practice and that responses should not seek to challenge that decision within the scope of this Consultation.

The nature of the 0871 market is very different to the PRS market for which the current ICSTIS Code has evolved and it would, in our view, be an error to attempt to apply this Code to 0871 without due regard for the differing nature of 0871 services and associated, probably much lower, risks to consumers.

We believe it would not be appropriate to totally apply the current funding model to the 0871 market. Many applications will be too small to generate meaningful contributions and any attempt to impose a minimum levy amount could be damaging to small businesses.

We do not see any benefit from the considerable costs of creating a separate regulatory brand for 0871 services for the same reasons that we see no benefit from ICSTIS re-branding itself under the mistaken impression, in our view, that consumers would somehow derive enhanced understanding and confidence in the PRS market.

Consultation Questions

Question 1

Do you agree with our proposal to create a Statement of Application for the 0871 number range? If not, please provide your reasons and alternative suggestions.

Answer 1

With the earlier (perhaps premature) removal of the 0871 access to 090 services any perceived risk to consumers is greatly reduced. For that reason, and given that Ofcom are insisting that 0871 be governed by the PRS Code, a simple Statement of Expectation or Application would suffice. Anything more would be disproportionate, particularly if the survey prediction of a net migration away from 0871 proves correct.

Question 2

Do you agree that the current application of Section 1 of the Code is appropriate to apply to the 0871 number range? If not, please give your reasons.

Answer 2

The Analysys survey suggests “light touch PRS style” regulation would be adequate for 0871 and hints that anything more would be disproportionately costly. For that reason alone the blanket application of Section 1 of the Code would be inappropriate and, as in answer 1, a simple Statement of Expectation would suffice.

Question 3

Do you agree that this is a fair and proportionate application of the network operators’ due diligence requirements to the 0871 number range? If not please give your reasons.

Answer 3

Due Diligence represents a significant cost to networks and should be avoided if at all possible for 0871 service applications. This could always be reconsidered in the, unlikely in our view, event that a “problem” 0871 service application emerged.

Question 4

Do you have any further information and evidence regarding usual payment times?

Additionally, it would be helpful to have responses that indicate to what extent service providers rely on immediate payments from network operators to cover their operational costs.

Answer 4

The 30 day payment rule (which originated as an industry suggestion) is generally accepted and is a component of most sensible business plans. This has eliminated the vast majority of early payment scams.

Question 5

Do you agree that this is a fair and proportionate application of a delayed payment mechanism to the 0871 number range? If not, please provide your reasons.

Answer 5

As answer 4

Question 6

Do you agree that the current application of Section 3 of the Code is appropriate to apply to the 0871 number range? If not, please provide your reasons.

Answer 6

Since this will be an area of low risk there is an argument that regulatory effort should be funded by fines revenue from 0871 based Code violations. This will ensure that the vast majority of 0871 applications that cause no problems will not be penalised. We would strongly resist any attempt to impose a minimum “contribution” from 0871 users to fund regulation since many applications will be small in nature and this would be a serious deterrent to new entrants.

As with any blanket application of Sections 1 and 2 the application of Section 3 unmodified would not be proportional to perceived consumer harm.

As documented in other Consultations the NOC believes the definitions contained in Section 3 require critical review.

Question 7

Do you agree that the current application of Section 4 of the Code is appropriate to apply to the 0871 number range? If not please provide your reasons.

Answer 7

The Information Providers referred to in Section 4 are not defined and this section would also benefit from critical review. With current definitions this section has little relevance to 0871 services.

Question 8

Do you agree that it is fair and proportionate to apply ICSTIS 'current application of the prior permission regime under Section 5.1 of the Code to the 0871 range? If not please provide your reasons.

Answer 8

The application of Prior Permission is onerous and costly and should be restricted to examples of high risk of consumer harm. Since there appears to be minimal risk involved with 0871 services we see no need or justification for Prior Permission which would be a serious deterrent for new entrants.

Question 9

Do you agree that Option D is a fair and proportionate application of the undue delay requirements in paragraph 5.4.2 of the Code to the 0871 number range? If not, please provide your reasons and an alternative option. Additionally, please provide details of any other options you feel may be appropriate for ICSTIS to consider.

Answer 9

We agree with the ICSTIS opinion that undue delay (call holding time) is more of a customer service level issue rather than a PRS issue although we remain unconvinced that any evidence exists to demonstrate deliberate extension of call holding times as a revenue opportunity. The application of Option D seems to be a fair and pragmatic approach to what is essentially a service level issue.

Question 10

Do you agree that this is a fair and proportionate application of the pricing information requirements under Section 5.7 of the Code to the 0871 number range? If not please provide your reasons.

Answer 10

ICSTIS make the valid point that a large percentage of businesses using 0871 will not regard revenue from call costs as being core to their business. It follows that pricing information in this environment does not convey the same useful information to a caller that it does in a PRS situation where the price of the call equates to the price of the service. Considering the low risk we would prefer the more pragmatic approach of a relatively simple Statement of Expectation rather than the full weight of Section 5.7.

Question 11

Do you agree that it is appropriate to allow a three-month implementation period, as outlined above?

Answer 11

By stating that stakeholders have "had over one year of advanced notice" ICSTIS implies that business should take action on draft documents in advance of formal Consultation, consideration and formal notice. NOC considers this to be

unreasonable and we would like to see a period of ten months from formal notification for new regulation to take effect for 0871 based services.

Question 12

Do you agree that this is a fair and proportionate application of ICSTIS' scope of regulation in respect to content of services provided on the 0871 number range? If not, please provide your reasons.

Answer 12

We agree that ICSTIS' application of regulatory requirements should, as per their agreed mandate via Ofcom, be limited to the cost of the call and should not be extended to the purchase of goods or services as a consequence of the call. However, it would certainly be good practice to advise consumers who may have cause for complaint, and at the time of the complaint, of contact details for appropriate consumer protection bodies.

Question 13

Do you agree that the current application of Section 6 of the Code is appropriate to apply to the 0871 number range? If not, please provide your reasons.

Answer 13

Agreed.

Question 14

Do you agree that the current application of Section 7 of the Code is appropriate to apply to the 0871 number range? If not, please provide your reasons.

Answer 14

Agreed.

Question 15

Do agree that the current application of Section 8 to 11 of the Code is appropriate to apply to the 0871 number range? If not please provide your reasons.

Answer 15

Agreed.

Question 16

Do you agree that this is a fair and proportionate application of the funding model in Annex 1 of the Code to apply to the 0871 number range? If not, please provide your reasons.

Answer 16

It is consistent to apply the same basic principles. We do have concerns regarding ICSTIS's assumptions on outpayment amounts and would be happy to discuss this separately with ICSTIS.

Question 17

Do you agree that this is a fair and proportionate method of collection of the funding levy to apply to the 0871 number range? If not, please provide your reasons.

Answer 17

If the amount of levy collected for 0871 activity proves to be disproportionate to either the cost of collection or the degree of regulatory enforcement required then it should be reconsidered at an appropriate time.

Question 18

Do you agree that a minimum payment amount from each network operator should be £500 per annum? If not please provide your reasons.

Answer 18

We do not agree with the principle of applying a minimum levy amount for the following reasons:

- Amounts collected will, as stated, often be very small and it is likely that the cost of a minimum levy will find its way to the users of 0871 numbers.
- This is a “swings and roundabouts” situation where the higher costs of collecting small 0871 levies will be offset by the relatively lower costs of collection at the other end of the scale.
- The costs of applying regulation to 0871 services is likely to be insignificant by comparison to 090 services hence 0871 should not be penalised with unnecessary overhead.

Question 19

Do you agree that it is not appropriate for ICSTIS to create and promote a separate brand for regulation of the 0871 number range? If not, please provide your reasons.

Answer 19

We agree with ICSTIS that it is not appropriate to construct a separate brand for 0871 and that it will be sufficient for 0871 to have its own service identity on the ICSTIS website.

Question 20

Is there any other way in which ICSTIS’s regulatory framework should be amended or otherwise so as to regulate the 0871 number range in a way that is fair and proportionate?

Answer 20

On the grounds that 0871 services and tariffs are unlikely to cause significant threat of consumer harm we see no need for additional effort and associated cost to be directed towards amending the regulatory framework. Rather the existing framework should be utilised in a light handed, unobtrusive and pragmatic manner unless, highly unlikely in our view, events demand a reappraisal of the situation.

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Question 21

Do you agree that this is an appropriate wording for a Statement of Application based on ICSTIS' proposals? If not, please provide your reasons or alternative wording.

Respondents are also asked to indicate their preferred option in applying the undue delay provisions of the Code to the 0871 number range.

Answer 21

At first sight the proposed Statement of Application appears somewhat lengthy and is not particularly end user friendly. We do not have the time to propose a shorter, easier to understand, version at this time but we would be happy to co-operate in such an exercise, preferably using the ILP with its broad industry representation. Our response to the application of the Code to "undue delay" is covered in our answer to Question 9

Summary

With ICSTIS survey results predicting a net migration away from 0871 and previous perceived problems of 090 services being accessed via 0871 resolved the actual risk of potential harm to consumers seems very low. It is also recognised that users of 0871 are not motivated by considerations of revenue share hence this market is very different to the market that the PRS Code has evolved to address.

We believe a light handed pragmatic approach to the regulation of 0871 services will be sufficient to protect consumers from potential harm and will avoid disproportionate attention and associated cost being expended in this direction.

We also suggest that when ICSTIS have had the opportunity to consider all Consultation responses they convene a "round table" discussion by respondents where ICSTIS's findings can be openly and transparently discussed before any conclusions are reached and announcements made.

Statement of Representation

The NOC confirms that this response has been compiled following a process of circulation of the relevant Consultation documentation to all NOC members. A list of NOC members may be found at www.noconline.org/currentmembers.aspx .

The views expressed in this response are a fair representation of the views held by the responding NOC membership. Individual members are actively encouraged to submit their own independent views as they deem fit and at their sole discretion.

We look forward to your response and assure you that, as ever, our comments are made constructively and with the aim of achieving an effective, fair and proportional regulatory regime for Premium Interactive Media services in the UK using the PRS billing model.

If any clarification to our response is required or if we can be of any further assistance please contact Zoe Patterson 08707 327 327 or zoe@noonline.org .

Sincerely

Toby Padgham

NOC General Secretary