

# 0871 Services: An ICSTIS Consultation

## Response from COLT Telecommunications

### Introduction

COLT welcomes the opportunity to comment on ICSTIS' proposals for the future regulation of 0871 services. COLT is a leading provider of data, voice and managed services to business and government customers in Europe, focussing on the midsize, major and wholesale business markets. COLT has been active in the UK premium rate and number translation services markets for a number of years, providing terminating capability to a wide range of service providers.

While COLT appreciates that there have been some customer concerns regarding 0871 services which have driven the perceived need for greater regulation of those services, we are somewhat surprised to see the extent of the proposals which have been put forward by ICSTIS. Ofcom research has shown that customer concerns regarding 0871 services largely relate to a lack of clarity about the cost of calling those services. However, it seems that rather than focussing on those concerns ICSTIS is proposing that the majority of the current Code of Practice simply be applied to 0871 services as it is currently applied to more traditional premium rate services. Rather than asking whether specific provisions of the Code of Practice **should** be applied to 0871, it seems that the main consideration for ICSTIS is whether the provisions of the Code **could** be applied to 0871 services. This approach holds a very real danger of regulation becoming disproportionate to the level of consumer harm it is attempting to address.

In its April 2006 Statement "NTS: A Way Forward", Ofcom stated that "The 0871 range will not be subject to the same level of regulation as the premium rate 09 number range"<sup>1</sup> and that "The intention was not that 0871 services should be subject to the same level of regulation as premium rate, but that they should be covered by measures designed to improve price transparency and the level of consumer protection."<sup>2</sup> Specifically Ofcom flagged possible requirements for information on call prices to be displayed on advertisements for services using 0871 numbers and internet diallers on 0871 numbers becoming subject to the ICSTIS prior permissions regime. In the case of internet diallers, action has already been taken to ensure that services using 0871 numbers are governed by the ICSTIS Code of Practice. COLT believes that ICSTIS' proposals go some way beyond what Ofcom intended and for that reason require extensive revisiting before they are implemented.

As ICSTIS is aware the regulations concerning number translation services are undergoing massive change, with the removal of revenue share from 0870 services and the introduction of a price ceiling for calls to those services from February 2008, the introduction of the new nationwide 03 number range and likely further review of the Numbering Plan provisions to introduce price ceilings for calls to all NTS number ranges. Ofcom has also indicated that it intends to undertake a further review of 0845 and is also considering the introduction of a consumer protection test for number allocation. Those offering and using NTS services must take into account all of these developments, as well as taking into account ICSTIS' plans for the regulation of 0871.

All of this has created considerable uncertainty for those offering NTS and it has been difficult for operators to provide clear guidance on what each option will mean for any one customer. Feedback from customers suggests to COLT that the proposed application of the ICSTIS Code of Practice to 0871 services is of concern, particularly the extent to which the Code's obligations will apply. ICSTIS' current proposals will make 0871 an unattractive option for many of those customers. As Analysts

<sup>1</sup> NTS: A Way Forward Ofcom Statement 19 April 2006, Paragraph 1.12

<sup>2</sup> NTS: A Way Forward Ofcom Statement 19 April 2006, Paragraph 4.167

predicts in its research report, "...under the constraints of the current timetable and the general decline in the use of non geographic number ranges, the net migration will be away from the 0871 market. This loss can be tempered by light regulation, but could potentially be increased by a strong regulatory stance."<sup>3</sup>

## Responses to consultation questions

On the proposal to create a Statement of Application to apply to the 0871 number range (see page 8):

**Q1: 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.**

COLT is not convinced that a Statement of Application presents the simplest way in which to clarify the application of the Code of Practice to 0871 services. COLT also has concerns regarding any evolution of the Statement of Application and how ICSTIS would implement changes should they be necessary.

We see no reason why 0871 cannot be treated in a similar manner to directory enquiry services, with a separate section of the Code of Practice specifying the particular sections of the Code which apply to 0871 services. Where clarification as to the application of the Code exists in a completely separate document, there is potential for confusion, particularly as it is likely that the majority of those offering services on 0871 numbers will be unfamiliar with the requirements of the Code of Practice.

COLT is also concerned about future amendment of the Statement of Application. ICSTIS states that "On a practical level, a Statement of Application would retain the flexibility required of this changing market place as it is easier and faster to change as and when required to reflect market developments." We would be extremely concerned if the Statement of Application provided a way of changing the regulation of 0871 services without full industry involvement and consultation and approval from Ofcom. Paragraph 1.4.2 of the Code of Practice allows ICSTIS to issue and/or amend advice concerning the Code, either in the form of Help Notes or statements which set out what ICSTIS' expectations are. We are concerned that the use of these powers to make changes to the regulation of 0871 will not ensure full industry involvement or indeed a need for Ofcom approval to any changes. Certainty regarding future regulation of 0871 services is key and it is therefore essential that ICSTIS clarify how any future changes to the Statement of Application will be handled, particularly the process which will be undertaken to amend the Statement of Application.

On the proposed application of Section 1 of the Code (see page 9):

**Q2: 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.**

COLT agrees that it is appropriate to apply Section 1 of the Code of Practice to 0871 services.

On the proposed application of the due diligence requirements in Section 2 of the Code (see page 11):

**Q3: 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. ICSTIS would welcome further information regarding quantification of costs.**

COLT does not believe that it is fair or proportionate to apply network operators' due diligence requirements to the provision of 0871 services. The due diligence requirements were introduced

<sup>3</sup> Implications of regulatory changes in the 0871 market – final report Analysys Report 17 April 2007, Paragraph 6

following concerns about fictitious details being provided to network operators by premium rate service providers. While COLT appreciates that problems have arisen in the premium rate arena, we do not believe that it necessarily follows that similar problems have or will arise in respect of 0871 and no evidence has been provided to show that an issue does exist.

Services offered on 0871 differ from traditional premium rate services in a number of ways. The level of service provider outpayments is much lower, a factor which makes those services much less attractive to those intent on fraudulent behaviour. In fact, as ICSTIS has noted, in some cases no identifiable service provider outpayments are made.

In considering the application of the due diligence requirements to 0871, ICSTIS' consultation document gives no consideration to the findings of Analysys on the nature of the 0871 market and its characteristics. Analysys states that 0871 numbers are generally used for consumer support, such as help lines, and for ticket booking. Initial assessment of the market identified the main users of 0871 number ranges as large corporate customers, although further research did identify a wider range of users, a very small minority were identified as "illegal" – live adult services and call waiting scams.<sup>4</sup> From these findings it is difficult to understand why ICSTIS believes that comprehensive due diligence checks are either necessary or proportionate.

Additionally, Ofcom is currently consulting on the introduction of a consumer protection test for the allocation of numbering which, if introduced, would require operators to carry out due diligence on customers before allocating certain numbers to them, including 0871.

COLT is also concerned about the application of the due diligence regime where network operators are providing services through resellers/third parties. COLT believes that further clarification of the application of due diligence requirements in these circumstances is still required in relation to traditional premium rate services and that to extend the regime to 0871 services without further clarification would simply create further uncertainty and confusion with regard to the various parties' obligations.

**On the 30-day payment rule in Section 2 of the Code (see page 12):**

**Q4: 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.**

In COLT's experience, usual payment times for 0871 are indeed less than the 30 day period imposed for PRS and could well create issues for smaller service providers who are dependent on more regular payments in terms of their cash flow.

**On the proposed application of the 30-day payment rule in Section 2 of the Code (see page 13):**

**Q5: 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.**

Given the lower potential for customer harm arising from services offered on 0871 numbers, we would suggest that application of the 30 day rule is not necessary. As already highlighted, the nature of the majority of services offered on 0871 coupled with lower call charges, significantly decreases the potential for consumer harm,

<sup>4</sup> Implications of regulatory changes in the 0871 market – final report Analysys Report 17 April 2007, Paragraph 3.3

On the proposed application of the obligations for service providers in Section 3 of the Code (see page 13):

**Q6: 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.**

COLT agrees that the current application of Section 3 of the Code is appropriate to apply to the 0871 number range. However, COLT does have concerns regarding duplication of effort on the part of services providers in having to provide registration information both to ICSTIS and due diligence information to network operators. As we have noted, we believe that application of the due diligence requirements is disproportionate and provision of registration information should be sufficient for ICSTIS' requirements.

COLT would also suggest that if Section 3 of the Code is to be applied to 0871 number ranges, ICSTIS undertakes a proactive campaign in order to flag registration requirements to those providing services on 0871 numbers. Customers offering services on 0871 are likely to be unfamiliar with the requirements of the Code of Practice and will need assistance and guidance in terms of their responsibilities. COLT believes that ICSTIS is best placed to provide that help where necessary.

On the proposed application of the obligations of information providers in Section 4 of the Code (see page 13):

**Q7: 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.**

COLT agrees that it is appropriate to apply Section 4 of the Code to the 0871 number range.

On the proposed application of the prior permissions regime in Section 5.1 of the Code (see page 15):

**Q8: 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 number range? If not, please provide your reasons.**

COLT does not believe that it is fair and proportionate to apply the prior permission regime under Section 5.1 of the Code to the 0871 number range.

Given the lower call charges which apply for 0871 services (typically up to 10ppm) and the nature of the services which are provided on 0871, COLT believes that the risk to consumers is minimal and that to apply prior permission requirements in the same manner as they are applied to 09 services would be overly burdensome. Ofcom has already taken steps in June 2006 to address the issues of internet diallers operating on 087 number ranges, extending the definition of "Controlled Premium Rate Services" to include such services which means that a significant area of concern in respect of services operating on 0871 has already been addressed.

There is also significant risk of confusion amongst 0871 service providers as to what they will be required to do in respect of which services given their unfamiliarity with the Code of Practice and its requirements, particularly in respect of call centre type services. This would simply create an additional and unnecessary workload for ICSTIS. Indeed in the research carried out by Analysys service providers suggested that there already exists a backlog of PRS prior permission administration, a problem which would only be compounded by application of the prior permission regime to services provided on 0871.

On the proposed application of the undue delay provision in Section 5.4.2 of the Code (see page 19):

**Q9: 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 alternative preferred option.**

**Additionally, please provide details of any other options you feel may be appropriate for ICSTIS to consider.**

COLT appreciates the concerns which have been raised by 0871 service providers about the possible application of the undue delay provision of the Code of Practice. As ICSTIS notes there is a perception among customers and the media that there is a clear link between delay and profiteering on revenue share on 0871. However, ICSTIS acknowledges that these delays are seldom intentional and generally are not deliberate attempts to make money by extending call durations.

COLT agrees with ICSTIS that call waiting times are first and foremost a customer services issue and that they should be dealt with directly between the service provider and its customers. Those providing services on 0871 numbers have a range of incentives to ensure that they offer a certain level of service, not least that customers will go elsewhere if dissatisfied. We appreciate there are services offered on some numbers which cater for a “captive” audience, for example, football clubs which might use a 0871 number for ticket booking because they are precluded from using 09 numbers due to the undue delay provisions. However, in these situations although there may be long call waiting times, those calling are willing to hold in order to get through and to pay the relevant call cost.

It is also important that the nature of the services provided on 0871 numbers and the lower cost of calls to those services are recognised. These are factors which also contribute to a much lower risk of consumer harm than that associated with traditional premium rate services.

While COLT believes that ICSTIS’ proposal presents a pragmatic approach, we believe that more guidance is needed as to how ICSTIS would approach any investigation it might open in response to complaints of undue delay and also the factors which would be considered to demonstrate “systematic” undue delay. COLT would suggest that for there to be conduct which would warrant action being taken, there should be evidence of deliberate inflation of call waiting times, rather than delays arising from an imbalance between the number of callers and the capacity available to take them or poor customer service.

On the proposed application of the pricing requirements in Section 5.7 of the Code (see page 21):

**Q10: 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.**

**Q11: Do you agree that it is appropriate to allow a three-month implementation period, as outlined above?**

While COLT appreciates the need for customers to be provided with clearer information regarding the cost of calls to 0871, we also see a number of problems with the application of the price publication requirements which will create uncertainty and additional expense for those providing services on 0871 numbers.

Because of the nature of many of the services offered on 0871, it is difficult for service providers to accurately judge the likely length of any given call. Calls to customer services lines may involve a relatively quick and simple enquiry or a more complex issue which necessitates a much longer call. Likewise, the example provided earlier where services are offered to a “captive” audience, could result in much longer calls where a particular event which cause a surge in demand. Coupled with the fact that service providers may not have access to information regarding the cost of calls to their services from various providers (or indeed the split of incoming calls from different providers) it will be

extremely difficult for service providers to assess the average cost of a call. In these circumstances service providers may be forced to assume that the cost of calls to their services will exceed 50p in order to ensure compliance which will result in blanket application of price publication requirements, a situation which would be disproportionate to the level of risk of consumer harm. COLT believes that further consideration must be given as to how price publication requirements might be sensibly applied to 0871 services. We would also urge ICSTIS to give some consideration to the fact that Ofcom has indicated that it intends to consult further this year on the possibility of amending the Numbering Plan so that the price points selected by terminating network operators/service providers for 0871 calls apply not only to BT, but also to other operators.<sup>5</sup> The introduction of such a requirement would further reduce the potential for consumer confusion and harm.

If ICSTIS were to proceed with the application of price publication requirements to 0871 services, COLT believes that ICSTIS' proposals allow insufficient time for service providers to become fully compliant, even with a 3 month period implementation period. The Code of Practice is to apply to 0871 services from February 2008 which means that service providers would be required to update company stationery, livery, promotional and advertising material by the end of April 2008. We believe that it is unlikely that companies would choose to undertake such a costly exercise before they are clear on what the exact requirements are, which are not likely to be confirmed before the final quarter of this year. Realistically, this leaves companies with very limited time to ensure they are fully compliant and booking for publications such as Yellow Pages will have closed. Given the exact obligations have yet to be confirmed COLT cannot accept that service providers have had "over one year of advanced notice" of the price publication requirement simply because Ofcom indicated that consideration should be given to a price publication requirement. At the very least the implementation period should be extended to take account of the reality of the challenges facing service providers in complying with any requirement.

**On the proposed application of those Code provisions which enable ICSTIS to regulate the content of services (see page 23):**

***Q12: 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.***

COLT agrees with ICSTIS' assessment that it should not deal with issues relating to the content of services provided on 0871, outside its existing remit of telephony issues. However, we are concerned about the inclusion of a proviso in the draft Statement of Application which indicates that should ICSTIS receive a level of complaints about a particular service which indicates a danger of potential consumer harm, it may then choose to commence an investigation into the service in question. In these circumstances, it would be more appropriate for ICSTIS to liaise with relevant consumer protection body for action.

**On the proposed application of Section 6 of the Code (see page 23):**

***Q13: 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.***

COLT agrees that the current application of Section 6 of the Code is appropriate to apply to the 0871 number range.

<sup>5</sup> NTS: A Way Forward Ofcom Statement 19 April 2006, Paragraph 1.17

On the proposed application of Section 7 of the Code (see page 23):

**Q14: 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.**

COLT agrees that the current application of Section 7 of the Code is appropriate to apply to the 0871 number range.

On the proposed application of Sections 8 to 11 of the Code (see page 23):

**Q15: Do you agree that the current application of Sections 8 to 11 of the Code is appropriate to apply to the 0871 number range? If not, please provide your reasons.**

COLT agrees that the current application of Sections 8 to 11 of the Code is appropriate to apply to the 0871 number range.

On the proposed application of the funding requirements in Annex 1 of the Code (see page 24):

**Q16: 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.**

ICSTIS is proposing to calculate funding for its 0871 activities through the application of a “notional outpayment”, with the percentage notional outpayment and the percentage levy to be applied at the time of announcing its general industry levy. In the interim, the proposal is to use a notional outpayment of 60% of total revenue generated with a levy payable of 0.34% of the notional outpayment.

COLT is concerned that ICSTIS has not undertaken further analysis in order to determine the appropriate model and level of funding to be applied to 0871. At the very least some consideration should have been given to the potential revenues and costs associated with regulation of 0871 services in order to justify the proposed levy, however, the consultation provides no such information. We would urge ICSTIS to consider the appropriate level of funding further – a proportionate approach should see a lower levy applied commensurate with the lower potential for consumer harm associated with 0871 services.

On the proposed method of collection of the levy (see page 24):

**Q17: 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.**

**Q18: Do you agree that a minimum payment amount from each network operator should be £500 per annum? If not, please provide your reasons.**

Currently ICSTIS relies on network operators to collect the levy on its behalf from outpayments made to service providers. Estimates of revenues which will be paid to service providers are given to ICSTIS with monthly payments made on the basis of those estimates. A retrospective adjustment then takes place at the end of the year.

COLT is supportive of ICSTIS’ proposal for a minimum payment amount from each operator, however, given the burden and cost to network operators of administering levy payments, we also believe that it is appropriate that further consideration is given to alternative funding models, particularly the “polluter pays” approach. We appreciate that it is difficult to give full consideration to this in the context of 0871 alone and believe that the same approach should be taken with regard to both 0871 and 09 services. We would therefore urge ICSTIS and Ofcom to give full consideration to funding arrangements as part of the review of PRS regulation which Ofcom will be undertaking later this year.

On branding (see page 25):

**Q19: 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.**

Given that ICSTIS is currently undertaking a rebranding exercise for its own name and its activities as a whole, and as a result the organisation will be promoted as a regulatory body with a “portfolio of services” within its remit, we believe that it would not be appropriate for a separate brand to be created for 0871 services at this time.

However, we would urge ICSTIS to ensure that its rebranding exercise is completed prior to 0871 services coming within its remit to avoid confusion. We also believe that as part of this rebranding there is a need for an education campaign, both for consumers and service providers. Consumers need to understand the difference between 0871 services and traditional premium rate services on 09 and the actions which can be taken by ICSTIS in relation to each type of number, while 0871 service providers will need assistance in understanding the application of the Code of Practice to their businesses.

On inviting views on any other issue (see page 25):

**Q20: Is there any other way in which ICSTIS’ regulatory framework should be amended or otherwise so as to regulate the 0871 number range in a way that is fair and proportionate?**

COLT directs ICSTIS to its comments throughout this response on the appropriateness of applying the Code of Practice to 0871 services in the manner proposed. The approach proposed by ICSTIS holds a very real danger of regulation becoming disproportionate to the level of consumer harm it is attempting to address.

On the draft Statement of Application in **Appendix A** (see page 30):

**Q21: Do you agree that this is an appropriate wording for a Statement of Application based on ICSTIS’ proposals? If not, please provide your reasons and alternative wording.**

COLT directs ICSTIS to its comments in response to Question 1. COLT does not believe that a Statement of Application is the appropriate manner in which to apply the Code of Practice to 0871 services.