

THUS Response to the ICSTIS Consultation on 0871 services

Submitted by: Mark Gracey, Content Regulation Manager
THUS plc
E: mark.gracey@thus.net
T: +44 (0)20 8492 7176

Date: 6th July 2007

Introduction

THUS plc is a leading provider of Internet, data and telecoms services in the United Kingdom. We deliver fixed line telecommunication services to large business customers and public sector organisations, while tailoring services to small and mid-sized businesses under the Demon brand. As part of our telecoms services we provide NTS including 0871, which are utilised by our customers in a number of ways

We welcome this opportunity to comment on ICSTIS's proposals for the regulation of 0871.

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.

A Statement of Application is more appropriate than having a separate Code of Practice for 0871.

However, the term "Statement of Application" implies that it will list the specific areas of the PRS Code that will apply, when in fact when the proposals are considered there are really only two areas of the Code (content issues and keeping callers on hold) that don't apply. For this reason it may be simpler just to list these two aspects of the Code that don't apply to 0871.

When Ofcom published its "NTS – A Way Forward" document it stated:

"The 0871 range will not be subject to the same level of regulation as the premium rate 09 number range."

And

"[0871] will be subject to requirements designed to improve price transparency and to provide an appropriate level of consumer protection."

Furthermore, in the conclusions of the research commissioned by ICSTIS, Analysys suggests "PRS style regulations with a lighter touch would be adequate for the 0871 market".

We do not see that applying all but two areas of the PRS code is consistent with Ofcom's wishes or indeed takes into consideration the results of research carried out.

As will be seen in the rest of our response, we believe that there are other areas of the Code that should not apply, that will make a Statement of Application more relevant.

Furthermore, conversations with our customers have indicated that they are more likely to (a) not move from 0870 to 0871 or (b) move away from 0871 to avoid what they see as a regulatory burden that could be harmful to their reputation and image. Introducing legislation of this level at this stage will simply limit the use of the 0871 number ranges and probably result in businesses stopping using 0871 and moving to other number ranges and recovering their costs in other ways (e.g. passing the cost onto the consumer in other ways like product pricing). If tough regulation is applied we feel that potential users will not enter the market thus stifling innovation.

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.

There is nothing in Section 1 of the Code that should not be applied to 0871.

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.

We do not agree that it is proportionate to apply the network operator's due diligence requirements to 0871. It would be more appropriate to start with a light regulatory approach (e.g. the 30 day withhold) and introduce a sunset clause to review the regulatory position in say a year's time.

Although we agree (because we also operate in the 09 arena) carrying out due diligence checks is unlikely to cause too much of an administrative burden for us, we have some concerns about what exactly will be expected of us for 0871, not least because this part of the Code is a new addition that has only been operating for the last 6 months and it is still to be seen whether network operators are actually carrying out the checks in the way that ICSTIS is expecting.

In terms of applying s2.3.1 of the Code to 0871, we have the following issues about some specifics:

- We have always been led to believe that 2.3.1b requires us to make sure that the service provider can deliver what it promises via the PRS number (e.g. competition prizes, content, etc.). We cannot see how this will apply to 0871, or how we are to determine whether our conference call customers (who use 0871) or call centre customers for example can demonstrate that they can provide "sufficient financial" or evidence about "other resources" that will mean that they can "discharge their obligations under the Code".
- Similarly, it is difficult to see how a customer offering customer services via an 0871 number can satisfy us that they "have in place adequate customer service" (s2.31f). Furthermore, if they also have to have a "non-premium rate number" (e.g. not an 0871) for customer services it will render their 0871 customer service untenable.

Also, if we apply due diligence checks, there will be a delay in us being able to offer the numbers to our customer. This is expected by 09 service providers, but non-PRS customers (who account for about 50% of our 0871 customers) will not be expecting these delays. This may be one of a number of reasons they may just opt not to use 0871.

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.

We believe that this will vary depending on network operator, their customer's requirements and the services offered via 0871. For example, THUS offers 0871 to a variety of clients. Some of these customers do not take revenue share from the calls as this helps cover our costs for providing the underlying services (e.g. conference lines). Other customers receive payment before 30 days, others afterwards.

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.

We are happy to implement a 30 day withhold for all our customers. Of course, for those who we do not revenue share there will never be a withhold, but then the risk of abuse is limited as there is no financial incentive for scam users of the number.

As we have already stated we would see this as the best first step towards a light touch approach to regulating 0871 in favour of more arduous regulation. In our discussions with Ofcom and ICSTIS they supported the idea of seeing how effective a deterrent the 30 day rule is before applying more rigorous regulation like due diligence.

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.

We do not operate as a Service Provider to be affected by this section being applied to 0871. However, it seems reasonable to expect Service Providers to register with ICSTIS, and comply with this part of the Code.

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.

We do not operate as an Information Provider, so have no particular views on this, but it would seem sensible that Section 4 of the Code applies to 0871 if indeed Information Providers operate or exist within 0871 services.

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.

We do not believe that prior permission should apply to 0871. The risk to the consumer is considerably less (because of the upper limit of 10p a minute) than with a PRS number.

It is also not clear that ICSTIS have done any clear analysis of some of the services offered on 0871 to determine whether the types of services offered on 0871 would or should fall within a prior permission regime. For example, it is clear that customer service lines will not require prior permission, but what about conference line services? We and our customers currently offer a number of conference call services on 0871, but this type of service does not fall within the list of exemptions but probably should.

Until there is evidence of harm that could have been prevented by prior permission registration we see no reason why 0871 services should require any prior permission and urge ICSTIS to list 0871 services as exempt.

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.

As ICSTIS recognises in the consultation document, it must not get caught up in customer service issues. The issue of undue delay has to be one where it is clear that a complainant is being kept on hold for the purposes of generating revenue and for no other reason. Where a consumer has been kept on hold for a long time because of unforeseen demand, this should not be caught by the undue delay provisions.

ICSTIS should be vetting complaints about undue delay and deciding whether the issue is being kept on hold, being kept on hold to generate revenue on the line or another reason (such as long introductory messages).

We are not convinced that Option D addresses this in enough detail, although in principle we agree with the approach. It would be useful for there to be a “help note” or some kind of guidance that sets out the process a little more in depth than has been set out in the consultation document.

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.

It is clear from the guidance offered by the OFT and DTI¹ on application of the Distance Selling Regulations, that once 0871 falls within the definition of a premium rate number, pricing information is required when goods are being sold via those PRS. For this reason, and because Ofcom requires better pricing transparency, s5.7 of the Code should apply. However, it should be noted that s5.7.5 of the Code is not applicable as the Distance Selling Regulations require the pricing to be given regardless of the cost for some services.

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

No we do not. We also disagree with ICSTIS’s statement “Service providers have, therefore, had over one year of advanced notice of the introduction of this requirement.” Users of 0871 have existed in a state of flux ever since Ofcom announced its plans for ICSTIS to regulate. It is not clear what wording would be acceptable, particularly as there continues to be a debate about the variable costs involved in making a call, particularly from a mobile.

We would therefore suggest that a 12 month grace period is required. This should give 0871 users plenty of time to update their liveries, stationery, etc. Furthermore, no consideration has been made about other non-updateable materials such as manuals, leaflets, etc. that will not have pricing transparency statements on them.

¹ See http://www.ofcom.gov.uk/shared_ofcom/business_leaflets/general/ofcom698.pdf

It would also be useful for ICSTIS to provide some guidance about what is expected in terms of pricing information and wording and under what circumstances, as the Distance Selling Regulations will not be applicable to all 0871 services (i.e. ones that are not selling services or products).

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.

Yes we agree with this position.

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.

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.

In answer to these questions, we believe that the services set out are more likely to be provided via PRS and therefore there is no need to include them in the 0871 regulations.

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.

THUS believes that the risk to consumers from 0871 is significantly less than with PRS. This means that the sanctions ICSTIS can apply are disproportionate.

Whilst we agree that ICSTIS needs powers to adjudicate and investigate, we do not feel there is a need to include all parts of sections 8 to 11 to 0871. Specifically, for the purposes of a light touch approach sections 8.4, 8.7.2e – h, 8.7.3 should be excluded.

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.

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.

There is confusion in the consultation paper about outpayments and levies. On the one hand it suggests that there will be a "notional" outpayment based on 60% of revenue generated via 0871 to which a levy will be applied, whilst on the other, it suggests that this notional outpayment will only apply when there is no clear outpayment.

If the 60% notional outpayment is intended to apply to all services (regardless of whether an actual outpayment is made), then we believe the figure of 60% is far too high. This would have an impact on the services we offer and the small amount of revenue shared with the service provider. Until ICSTIS has a clear idea what sort of issues it has to deal with, how many calls it gets and how many complaints it investigates, we struggle to see how the figure of 60% can be objectively justified.

If the 60% notional outpayment is intended to apply only where no outpayment is made (with the levy applied to the actual outpayment value where an outpayment is made), we foresee a number of difficulties. Apart from the additional processing this would mean for us in terms of determining who we apply a levy against and who we calculate a notional outpayment before applying the levy, there is also a concern over fairness between the two different types of customer – some may end up paying more than others. The system would also be open to gaming, where Operators offered a minimal revenue share to customers to avoid being caught by the notional outpayment calculation.

Furthermore, there is no clear regulatory impact assessment in the consultation setting out how ICSTIS reached the 60% figure for a notional outpayment, or how this will meet their financial requirements. We request that details of how ICSTIS reached the 60% figure and calculated their costs are consulted on further.

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.

From the discussions we have had with customers a separate brand for 0871 is irrelevant. Even with the rebranding of ICSTIS to PhonePay+ later this year, users of 0871 are still concerned that they are using numbers that will be regulated and regulated by the same agency who “regulates sex chat lines”.

This is not to say that they have anything to hide, but for the small amount of revenue they make on the lines (if at all) they are unsure they want to carry out the changes to their service, apply the Code of Practice or indeed worry what overarching powers ICSTIS have which could affect their service.

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?

We strongly feel that the first steps at regulating 0871 should be a light touch approach. For this reason we would prefer it if the framework for regulating to 0871 was limited to simply:

- 30 day withhold
- pricing information
- investigation and an informal approach to resolving issues
- funding

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.

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

Notwithstanding our comments above, the only comment we have to make is that we believe that the section “Regulation of the content of a service” should more clearly reflect our concerns set out above relating to “option D”. As worded it implies that ICSTIS are specifically regulating the telephone number abuse issues that it may concern itself with customer service issues.