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Changes to Governance and the ICSTIS Code of Practice (11th Edition)

An ICSTIS Consultation on Enhancing Governance and Adjudications

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 the captioned consultation having been at the forefront of a campaign to encourage ICSTIS to adapt their corporate structure to better match the fast moving Telemedia environment for many years.

The NOC recently raised formal concerns to Ofcom regarding the current ICSTIS Adjudications and Appeals process and in particular the apparently unjust financial conditions placed upon appellants regarding the placing of deposits, the allocation of costs and the seeming lack of any process to refund costs following a successful appeal. While we welcome this timely review of the Adjudication and Appeals structure we note this Consultation does not appear to consider the important issue of costs and we place on record our concern that this issue should be addressed without undue delay.

Executive Summary

The NOC entirely agrees with the need to ensure that the PRS Code, enforcement and associated activities are best suited to the needs of a dynamic, growing, commercially significant and increasingly complex market. We also support the view of a need to meet industry and public expectations and have long been advocates of the closer industry /regulatory engagement necessary to achieve this. We see this a key role for the Industry Liaison Panel (ILP).

The proposal to establish a separate Code Compliance Panel from which suitable individuals can be drawn to sit on Tribunals is supported but with the proviso that the selection process for the panel is transparent and contains industry input, preferably via the ILP.

The overall tone of corporate adjustment to the realities of the demanding interactive Telemedia market is welcomed.

Background

While ICSTIS refers to itself as “the independent regulator of premium rate services in the United Kingdom” it is actually the Appointed Enforcement Agency by Ofcom to apply the Ofcom approved Code of Practice, which is itself not an exclusive Code. This is an important distinction as Ofcom is the statutory regulator for communication services in the UK, including premium rate, and all responsibility for policy decisions regarding premium rate reside in Ofcom.

Reasons for Review

The NOC is pleased to see recognition of the need for ICSTIS to account not only to Ofcom but to Shareholders (we assume this to mean funders) and Stakeholders and the emphasis on engagement with both Ofcom and Industry to secure agreement on the purpose and scope of regulation. We see ILP as being key to this process.

We believe it is sensible to pursue a structure that contains the flexibility needed to address a dynamic market and we would like to see more informative and corporate performance focussed Key Performance Indicators utilised to demonstrate value for money performance to Shareholders (funders).

We are pleased to see an acceptance that the exceptional circumstances surrounding Diallers in 2005 were just that, an exception to the general pattern of business, and should be treated as such and not be used to justify future resource demands. While we recognise that regulated activities have grown over the past 5 years we would expect much of this to be absorbed by internal productivity and a more corporately orientated structure will assist this.

Enhancing the Adjudicatory Structure

Any structural change by ICSTIS to ensure more focus on the principles espoused by the Better Regulation Task Force is supported by the NOC.

The NOC is also disturbed by the apparent trend for adjudication cases to become increasingly high profile and litigious as this does not, at the end of the day, represent good value for either industry or regulator. If the new structure will ensure the application of focused skills and authority to ensure just and sensible adjudications at the outset then we will certainly welcome this. The, in our view, unnecessarily complex current Code of Practice is also a factor in this troubled relationship between industry and regulator and we expect to address this in the forthcoming Ofcom Review.

ICSTIS Proposal

We are pleased to see ICSTIS embracing standard corporate governance with the establishment of a Corporate Board structure (as recommended by NOC in 2003) in preference to the current committee arrangement which we have long believed to be too bureaucratic to react to the dynamic Telemedia environment. Having said that a 10 strong Board to administrate an organisation the size of ICSTIS does seem unnecessarily large.

We support the preference to remain flexible in the composition of Code Compliance Panels and would like to see the experience of the ILP used in the selection of Panel members to ensure fair, proper and proportionate determinations.

Code Compliance Panel and the Board

While the Code of Practice will continue to be proposed by the Board (and subject to the approval of Ofcom) it will be useful for input to be channelled from the Code Compliance Panel for consideration of proposed changes or amendments to the Code. It should be emphasised however that ICSTIS have no powers over policy issues regarding the Code and this responsibility will continue to reside in Ofcom.

Code Changes and Timing

It is pleasing to see ICSTIS accept previous criticism regarding the difficulty of understanding proposed Code changes without some means of highlighting changes by including bold, underlined italics.

Cost Benefit Assessment

It would be unusual for any Corporate restructuring not to have any costs impact, positive or negative and ICSTIS could be expected to have more views on this.

Consultation Questions

Question 1

What are our views on the principle of a degree of separation of Board and Code Compliance work?

Answer 1

We welcome the principle of separating Board management activity from Code Compliance work.

Question 2

What are our views on the proposal for a smaller Board (generally of 10) with the revised composition indicated?

Answer 1

The opening intent in the Executive Summary to create a smaller Board does not appear to be achieved with the new proposal for “generally 10” members, a considerable number for an organisation the size of ICSTIS. We would not expect the Board to supervise the work of the Executive as stated as this would normally be the operational responsibility of one or two Executive Board members who would report to the full Board.

Question 3

What are our views on the creation of a Code Compliance Panel which will always provide a legally qualified Chairman of Tribunals?

Answer 3

We welcome the separation of Tribunal Activity from the Board (previously the Committee) and we would also welcome a role for the ILP in assisting with the selection of members of the Panel in order to add transparency to the process.

Question 4

What are our views on the idea of an initial element of common citizenship between the Board and the Code Compliance Panel but with the option to revise this based on experience?

Answer 4

We would favour the early separation of Board and Code Compliance Panel.

Question 5

What are our views on the amendments made to the Code (as attached) to give effect to the proposals stated?

Answer 5

Item 2 Constitution

2.1 It is not understood what is referred to as “the members” of ICSTIS who are also deemed to be ICSTIS Directors?

2.2 The Chief Executive if appointed to the Board would be an Executive Director.

Item 3 Code Compliance Panel

3.1.3 Lay members should be appointed by the Board in consultation with the Chairman of the Panel and the ILP.

Item 8 Procedures and Sanctions

8.2 Permissions

--- may impose any condition which it considers appropriate within the limits of the provisions of the Code and ICSTIS's authority.

Question 6

Are there any other ways in which this framework or ICSTIS processes might be revised to achieve maximum public and industry trust within the parameters set out?

Answer 6

Industry trust cannot be achieved without genuine engagement between industry and ICSTIS and the current vehicle for this is the Industry Liaison Panel (ILP). The effectiveness of ICSTIS is enhanced by industry/regulatory co-operation and this would be further improved by utilising the ILP in the appointment process for the Code Compliance Panel thereby signalling transparency in the appointments process.

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@noconline.org .

Sincerely

Toby Padgham

NOC General Secretary

