

**Response to PhonepayPlus Further assessment of
Information, Connection and/or Signposting Services**

on behalf of The Number UK Ltd (118 118)

5 June 2013

Introduction and Background

kgb ('knowledge generation bureau') is a privately held, New York-based company and the world's largest independent provider of directory assistance and enhanced information services. kgb has built some of the most successful brands in the telecommunications, customer care and enhanced information services sectors.

In 2002, kgb (then known as InfoNXX) established 118 118 (The Number UK - TNUK) which soon became the largest and most well-known provider of directory services in the UK. Last year, it handled over 30 million calls, providing both core directory services and a range of enhanced offer, advertising and other information services.

kgb has also pioneered the provision of a broad range of wholesale and retail information services beyond traditional directory assistance services and in 2010 launched kgbdeals.com.

As the leading provider of 118 directory services in the UK, TNUK has a very strong interest in the healthy continuation of this market and the impact with ICSS may have upon it. We are very concerned about the activities of some ICSS providers and indeed, by the core business model on which they are founded, which we believe in many cases is based simply on misleading consumers. At best they appear to have created a 'service' which consumers do not know exists, do not want, does not provide any value and certainly for which they would not want to pay a premium.

TNUK therefore strongly supports the imposition of a prior permission regime together with a number of rigorous safeguards designed to ensure that consumers are not misled. In that context, we are concerned by some of the changes which PPP is proposing to make, following its previous consultation, which we believe will reduce the protection provided to consumers.

Response to Questions

Q1: Do you agree with our assessment in relation to the six objections that were raised to applying a prior permission regime to ICSS? If not, why not?

TNUK largely agrees with PPP's assessment in relation to the six objections, although there are some additional points we would make.

In particular, we continue to object in the strongest terms to the suggestion that ICSS are similar to (and should be subject to the same regulatory regime as) directory services. Whilst we agree with the differences which PPP has highlighted at paras 2.20 and 2.21, we believe that there are also many more differences which could have been cited, some of which we outlined in our previous response.

In essence, the most fundamental difference is that the ICSS business model is based entirely upon the use of search engine optimisation tools which deliberately divert customers from their intended objective of obtaining a particular telephone number for free, via the internet. In so doing, very many of those

consumers will be misled into believing that they are contacting their intended organisation directly, rather than knowing that they are contacting the ICSS provider.

Even for the small minority of consumers who are not misled, there is invariably no benefit provided to them from the fact that they are contacting the ICSS, rather than contacting the organisation directly. To put it another way, if the ICSS (and its search engine optimisation tools) did not exist, the consumer would have easily been able to contact the organisation directly and at a far lower cost. The very existence of the ICSS therefore puts the consumer in a worse, not better, position which is obviously a very unusual consequence of any product or service, particularly in the premium rate market.

ICSS are therefore at best, essentially parasitic, in the sense that no-one would ever choose or have any reason to want to use them. At worst, ICSS only exist by virtue of their ability to mislead consumers (by appearing to be something that they are not) and therefore they are an example of the very worst type of premium rate service, which PPP should be acting to eliminate.

All of this is very different to the business model of a directory provider. When a consumer chooses to call a directory provider they do so in the full knowledge that (i) they are not contacting the organisation directly, but rather they are attempting to obtain a telephone number which will enable them to do so at any time without paying a premium rate charge and (ii) they are making a chargeable telephone call.

Whilst the same telephone number may be available for free online (including from the directory providers' own websites) the consumer has made an explicit choice not to use that option, as PPP correctly recognises.

A further important difference of course relates to the broad nature of the directory information available to the customers of directory providers. The data which we collect is as comprehensive as possible, even though we recognise of course that some numbers are requested far more frequently than others. Collating and optimising this data represents a considerable cost to the business which we incur because it is necessary in order to be a national directories provider. We could operate a profitable business (indeed probably a more profitable business) by excluding a large number of rarely requested numbers, but we choose not to do so because it is not in the best interests of our customers.

By contrast, this is exactly the model adopted by the ICSS providers which again exemplifies their parasitic nature. They concentrate solely on the numbers most often requested by consumers not because this is the way to provide the comprehensive service or value to the largest number of people, but rather because it is the means of driving the highest levels of revenue, whilst keeping data costs to the absolute minimum.

We therefore also agree with PPP's assessment of the ICSS providers' contention that their service is valuable "*where end-organisation numbers are hard to find*". In particular, we strongly agree with PPP's statement at para 2.17 that:-

"we see no evidence that ICSS providers are targeting organisations that make their phone numbers hard to find and where the potential value of the service to the consumer may therefore be greater...It appears that the main determinant for ICSS providers in deciding which services to

offer seems to be which organisations consumers most want to call – regardless of whether that organisations phone number is easy to find or not.”

This is undoubtedly an entirely accurate description of how ICSS operate in practice. Anecdotal research which TNUK has conducted clearly reveals that ICSS providers target an increasing wide range of the most popular and often requested telephone numbers or information searches. This is no evidence that this information is hard to find and indeed TNUK would be most surprised if the ICSS providers had ever even investigated to what extent it is or is not easily available.

As a result, TNUK believes that the providers' contention that ICSS 'are valuable where end-organisation numbers are hard to find' should be given very little credence, particularly in the absence of any demonstrable evidence to support it, of which there appears to be none. Indeed, this is clearly an argument entirely manufactured to support the ICSS providers' opposition to regulation, but it is without any foundation in fact.

Finally, TNUK would comment briefly on the ICSS providers' objection that there is little, if any evidence of consumer harm from these services. We note the evidence which PPP has provided in relation the consumer complaints which it has received, the adjudications which it has made and the research which it has conducted. Taken together, we agree that this provides a very compelling narrative of clear evidence of consumer harm. It is not apparent that the ICSS providers themselves have provided any equivalent evidence which would rebut this.

However, even aside from the empirical evidence which PPP has provided, TNUK believes that the very nature of how ICSS operate is sufficient to justify the imposition of a prior permission regime, at the very least. As we have outlined above, the 'service' exists very largely in order to mislead consumers and whilst the providers may deny that is the intention, they surely cannot deny that is the effect.

Indeed, it may well be the case that the effectiveness of the deception is itself at least partly responsible for lowering the number of complaints which might otherwise have been made. That is because it seems likely that there must be a proportion of consumers who despite having used ICSS, never actually realise that that is the case, because they believe that they contacted the organisation directly.

Very many consumers either do not receive or do not read a phone bill and therefore they are most unlikely ever to know the cost of a particular call. In those circumstances they may well never know that they have been misled into paying an ICSS a premium rate, rather than making the same call directly at a far lower cost. That may well particularly be the case if their use of ICSS is either a one-off or very infrequent, such that they never even become aware of the nature of concept of the service, which seems likely to be the case for the vast majority of consumers. That is therefore clear evidence of consumer harm whether or not the consumer is aware of it and whether or not they subsequently complain about it.

Therefore, TNUK believes that a prior permission regime must be imposed in order to tackle this fundamental misunderstanding amongst consumers which ICSS creates. That alone justifies its imposition, even aside from the number of complaints which ICSS currently generate.

Q2: In light of this, do you agree with our conclusion to apply a prior permission regime to ICSS, but not to full national directory enquiry (118) services? If not, why not?

For the sake of clarity, TNUK therefore agrees that a prior permission regime should be applied to ICSS, but not to full national directory enquiry (118) services. For all of the reasons outlined above, we believe (i) that there is a clear distinction between ICSS and directory services such as would clearly justify them not being treated according to the same regulatory regime and (ii) the nature of ICSS (and the consumer harm which that generates) undoubtedly justifies the imposition of a prior permission regime.

We will briefly address below the issue of the definition of ICSS and it relates to directory enquiry services.

Q3 – Do you agree with our altered definition of Information, Connection and/or Signposting Services (ICSS)? If not, what alternative would you propose?

As TNUK indicated in our previous response, we are somewhat relaxed about the precise definition of ICSS as we think that in reality there will be little doubt about whether a service does or does not fall into that category. However, we still believe that PPP's proposed definition provides an unduly positive view of these services and particularly the added-value which they apparently provide.

In particular, we believe that the description of Type 2 ICSS as providing “*information, advice and/or assistance*” suggests that they offer a value to the consumer which in many cases does not actually exist. The reality is that these services often simply encourage or mislead people into calling them and then attempt to lengthen the call as much as possible in order to derive the maximum premium rate revenue, whilst providing little, if any, value to the consumer.

TNUK also continues to believe it is odd that although the word “*signposting*” appears in the name, it does not appear anywhere in the definition, despite the fact that it is sole limited function of many of these services.

For reasons outlined above in response to Q1, we continue to agree strongly that it is correct to exclude 118 services from the definition of ICSS. We note the Ofcom definition of a “full” National Directory Enquiry Service and we agree that this provides a firm basis for the definition of ICSS, in terms of how 118 services can be distinguished. We therefore agree with PPP's proposed amended definition of ICSS (subject to the points just made above).

Q4 – Do you agree with our proposals to remove the exemption for charities which we had previously proposed, but waive the requirement to pay a prior permission fee? If not, why not?

TNUK has no direct experience or strong understanding of charities operating in the ICSS sector. However, we note the evidence that PPP has provided which we find to be sufficiently persuasive so as to agree that the exemption should be removed.

We agree as a matter of principle that charities should not be exempt purely on the basis that they are charities, unless there is also some clear evidence that they pose less of risk than other ICSS providers.

No such evidence appears to exist and indeed the case which PPP has cited would not appear to support that hypothesis. It is unfortunately the case that some organisations may obtain and misuse their charitable status in order to obtain different types of advantage. It is therefore not always possible to assume that simply because an organisation is a charity that it will never be responsible for any form of consumer harm.

TNUK therefore supports the cautious approach of not applying an exemption to charities. Indeed, (as fundamentally benign organisations) there is no reason why they should object to the enhanced transparency and fairness measures which PPP is proposing as part of the prior permissions regime. We would therefore expect them to welcome these measures.

However, TNUK accepts PPP's proposal to exempt charities from paying the fee for prior permission, as financial resources will obviously be a key consideration for some of them.

Q5 - Do you agree with this assessment and PhonepayPlus' changes to proposed conditions around SEM? If not, why not and do you have an alternative to propose that meet our objective?

TNUK accepts PPP's proposed changes regarding the wording to be contained in all of the SEM results, in order to reduce the word count slightly.

However, we would again highlight the point made in our previous response that the benefit of this proposal assumes that consumers understand what is meant by a "*premium rate telephone service*", which is far from certain as anecdotally many appear to believe that all 08 number ranges are included within that description. In which case, consumers may legitimately believe that certain public services (such as NHS Direct, DVLA or HMRC) are PRS, as they understand the term. Therefore, having this drawn to their attention may well not be sufficient to avoid them being misled when calling the service.

At the same time, we agree with the PPP's reasons for rejecting the other suggestions made by the ICSS providers. In particular, we agree strongly that the wording "*this is premium rate service*" should not be replaced with the words "*this is a directory service*". As has already been discussed in response to Q1, ICSS is categorically not a 'directory service' as ICSS providers do not hold any comprehensive directory of telephone numbers as would be required in order to fit with that description. Such a description contained in the SEM results would therefore be fundamentally misleading and we are pleased that PPP has rejected it.

We further agree that the information must be provided at the SEM stage and it is not sufficient to provide the description on the ICSS landing page. This is because (as PPP notes) that consumers form their impressions (and to a large extent make their decisions) at the SEM stage when comparing at a glance all of the search results which have been generated. By the time they click on a particular result (and reach a particular ICSS landing page) they are likely to be under the impression that they have clicked on the 'official' page of the organisation which they are attempting to contact. Although that impression may be corrected at the later ICSS landing page, it is obviously far more difficult to do so once the consumer has an idea in their mind.

For all of these reasons we believe that the wording contained in the description of the SEM result is of vital importance and should clearly state that the ICSS is a premium rate service. Indeed, we would prefer it also to state that it has no connection with the organisation concerned, although we appreciate that this is impractical in view of the restricted availability of characters.

For reasons previously discussed in response to Q3, we do not believe that in reality Type 2 services provide any meaningful 'assistance' to consumers and therefore we believe that the addition of this word is arguably misleading by ascribing these services a greater value than they actually provide. We therefore believe it should be deleted and that the same description should apply to Type 1 and Type 2 ICSS.

Q6 – Do you agree with this assessment and PhonepayPlus' changes to proposed conditions around promotion of ICSS? If not, why not?

Q7 - Do you agree with this assessment and PhonepayPlus' changes to proposed conditions once a consumer has dialled an ICSS? If not, why not?

TNUK will respond to these questions together as we believe that they raise essentially the same issues.

In the consultation, PPP describes these changes as 'minor amendments/adjustments' to the prior permission conditions. Setting aside for a moment whether or not the changes are justified, TNUK does not believe that they can accurately be described as 'minor', certainly in terms of the impact which they will have. It is not clear why PPP has chosen to describe them in that way which is potentially misleading to anyone who does not read the detail of the changes which are proposed.

Indeed, the very forceful representations made by the ICSS providers against PPP's original proposals would very much suggest that they do not regard these issues as minor or incidental. For its part, PPP highlights their impact on the core business model of ICSS which would also indicate that the changes are substantial.

TNUK therefore does not believe that these changes should be made lightly and without full and thorough consideration. In particular, we believe that they constitute a significant 'watering down' of PPP's original intentions and therefore provide significantly less protection from consumer harm.

For that reason TNUK opposes the removal of condition b (ii) and the related requirement to provide the actual number of the organisation at the start of the call, although we accept that it may not be necessary to accept that this information is provided for free. In our previous response, we made some specific arguments and recommendations on this point (which do not appear to have been acknowledged by PPP in this consultation) and so we will reiterate them here for the sake of clarity.

In particular, we argued that it is necessary to distinguish between connection and signposting services, which are quite different in this context. We said that whilst it may just about be legitimate for ICSS providers to charge a premium rate for signposting to a hard to locate number, TNUK does not accept that it would be legitimate for them to charge a premium rate for connection to such a number, without giving the consumer any other alternative.

Consequently, we believe that a requirement to provide the actual number should always be applied to connection services. If one compares DQ providers with ICSS providers (as they like to do), an ICSS connection only service would be the equivalent of a DQ provider only offering an onward connection to the number which the consumer had requested, rather than just the number itself. That would clearly be viewed as quite unacceptable and a cause of harm by increasing costs to consumers. Whilst some DQ customers choose the convenience of being onward connected to the number, many do not because of the inherent increased costs. Indeed, even where the customer does wish to be connected, the DQ provider will also provide the number itself, so as the consumer does not have to incur further charges if they wish to call it again subsequently.

However, PPP is now proposing to allow that which (in a directories context) would be viewed as a 'compulsory onward connection service'. By that we mean that the consumer is being given no option simply to acquire the number (even at a premium rate) but rather they are being obliged to have the entire (possibly lengthy call) onward connected at a premium rate. We know from our experience (where we offer consumers the choice of whether to onward connect their entire call) that the majority do not wish to do so. By permitting this option, PPP is therefore allowing for this form of negative consumer outcome to occur for every call, but the effects could be mitigated by the inclusion of a requirement to provide the actual number.

TNUK therefore believes that (as an absolute minimum) ICSS providers providing a connection service should be required to provide the actual number which the customer is seeking in a message at the start of the call. We would accept that this need not necessarily be a free message. This requirement places ICSS providers in exactly the same position as directory providers and therefore it cannot be argued that it is disproportionate or undermines their business model.

We also argued in our previous response that it may be justifiable to apply less onerous requirements in the case of genuinely hard to locate numbers, but even in these cases PPP must still adopt a very cautious approach. In terms of deciding what is or is not 'hard to locate', TNUK suggested that a simple rule which could be applied is that the number does not appear anywhere on the organisations website. This would mean that the only way in which it could be obtained would perhaps be to call some other number in order to ask for or be put through to the customer services or complaint number in question. In these circumstances, there would be some genuine time or effort required (beyond internet search) in obtaining the number, which could not be counteracted by search engine optimisation techniques. TNUK does not accept that if the number is published by the organisation anywhere on its own website that it could be described as genuinely hard to locate.

Furthermore, such a rule would be easy to test and enforce simply by typing the number into a search engine and seeing what (if any) results it produces. This would provide a guaranteed method of determining whether and where the number is available online.

In addition, as part of the evidence, PPP might also request the ICSS provider confidentially to provide information as to how it acquired the number. Although this is perhaps a slightly more subjective test of the degree to which it is "*not easy to locate*", it would allow PPP to make a genuine assessment of that question in order to determine whether it is legitimate to charge a premium rate for providing signposting to the number.

Whatever test PPP decides to apply in this case, it must be real and genuine. It must ensure that ICSS providers are not able easily to circumvent it by claiming that numbers are “*not easy to locate*” (for example because they do not appear in the principal “contact us” section of the website) whereas in reality a couple of minutes spent on Google would reveal the same number.

In terms of the other conditions around transparency and disclosure when an ICSS is called, we would comment briefly as follows:-

- We strongly support the contents of the alert at the start of the call which PPP outlines at para 3.58, although we note that PPP no longer proposes that it must be provided for free. If PPP were to adopt our suggestion that this alert should also include the number of the organisation which the customer is seeking, we would accept that it need not be provided for free, because the information it contains is of material value to the customer. However, if PPP maintains its decision not to require that the number be included, we see no reason why the customer should be charged to hear the message. It provides them only with basic transparency/explanatory information as a precursor to be obtaining the information which they really want. We would therefore expect that most consumers would believe that it is unfair for them to be charged (at a premium rate) to hear this message and TNUK would agree with that view.
- TNUK is somewhat ambivalent about the requirement to inform consumers that they may be placed in a queue upon connection in condition (c). We accept that ICSS providers will not know for certain whether or not that is the case, but we believe that there is still value in informing consumers of the possibility in order for them to have early warning and be able to decide whether to continue with the call.
- TNUK believes that the objections to condition (g) regarding it extending the length of the call may not be entirely credible. In practice, TNUK believes that the information provided to customers will be brief, whether it is provided on the call or on the website and so does not believe that it would unduly lengthen the call. However, we do think that the number of customers who will actually check the information on the website (after hearing a message that it is available) will be extremely small. Therefore the effect of the change which PPP is proposing will almost certainly be simply that the vast majority of customers will never receive this information. For that reason TNUK opposes this change.
- TNUK believes that (notwithstanding that consumers may by this stage already know the price of the call) this further announcement upon connection remains a vital requirement owing to the fact that this information is likely to be of the most critical importance and interest to the consumer. We would also highlight that an obligation to inform the consumer of the price of the call just before it is onward connected (in order to give them the opportunity to decline and avoid the cost) is a core element of the regulatory regime which applies to 118 directory providers. It exists in order to prevent possible bill shock on longer calls and that concern is equally (if not more) relevant in this case. Owing to the clear possibility of deception and misunderstanding and the potential for consumer harm, we believe that PPP must err on the side of caution and retain this requirement.

Q8 - Do you agree with this assessment and PhonepayPlus' changes to proposed conditions where an ICSS collects personal and/or confidential data from consumers? If not, why not?

Q9 – Do you agree with the additional condition c) in respect of a requirement to only collect information necessary for the provision of the service? If not, why not?

TNUK agrees with PPP's assessment and its proposed changes to the conditions where an ICSS collects personal and/or confidential data from consumers.

We reiterate our previous concern that there are instances in which ICSS providers are not simply collecting irrelevant data in order to lengthen the call unnecessarily, but that they are doing so in a manner which is in breach of the Data Protection Act and therefore unlawful.

For that reason we support the inclusion of the proposed condition (c) which we think is a very useful and worthwhile addition. Compliance with the Data Protection Act and the ability to demonstrate such compliance to PPP is of course a pre-requisite with which no-one could disagree.

We continue to be extremely concerned that some ICSS providers behave in this manner and where evidence is found, it justifies the harshest action being taken against any such provider in order to discourage others from adopting a similar approach. Any organisation which operates in this way obviously has a complete disregard for the interests of consumers and therefore is likely to be the cause of many other forms of harm beyond the data protection issues. It says much about the reputation and operations of ICSS providers more generally.

Once again, we would draw a distinction with legitimate DQ providers who would never act in a similar manner and go to considerable lengths to ensure that they comply with the Data Protection Act in relation to the much larger quantities of data which they hold.

Q10 - Do you have any further evidence on whether a bond is necessary? If so please provide it.

TNUK has no further evidence on whether a bond is necessary and nothing to add to our previous submission on this point other than to reiterate that whilst we acknowledge that a bond will always create a barrier to entry to some extent, TNUK believes that it is clearly justified in this case.

It is right and proper to disincentive providers who may not be intending to offer a genuine and fair service, from entering into the market. A bond is one potential means of doing so. In particular, it should be noted that the barriers to entry more generally to become an ICSS are extremely low, which is probably why the market has become attractive to disreputable providers.

Q11 – Do you agree with our proposal to alter the list of current exemptions from prior permission, so that 'connection services' are removed? If not, why not?

TNUK agrees with the proposal to include 'live full national directory enquiry services' within the list of exemptions. This is necessary in order to provide consistency both with the existing list of exemptions for

other live services as well as the amended definition of directory enquiries which PPP is including within the ICSS prior permission notice.

However, TNUK is not convinced of either the need or logic of providing a specific exemption for one particular type of ICSS provider. We are concerned that this may potentially open up a loophole which some ICSS providers might attempt to exploit. The significant advantages which would accrue to any disreputable ICSS provider from not complying with the entirety of the prior permission conditions creates an obvious incentive to try and avoid them, by any means necessary, even if they are only able to do so for a temporary period. This proposed exemption might provide them with that incentive.

TNUK does not recognise the description of an ICSS provider who has an agreement with an organisation to which the customer support services relate. In our view, PPP appears to be describing an outsourced provider of customer services (who provides a service which the organisation specifically does not provide) which is very different to an ICSS who attempts to provide a service in addition to the customer service function of the organisation in question. We believe that the former is not an ICSS provider and therefore we believe that this issue might be better addressed within the definition of ICSS, rather than by creating a specific exemption.

Q12: Do you have any evidence of significant cost which ICSS providers will incur as a result of a requirement to state “premium rate connection service” or “premium rate assistance service” in SEM descriptions? If so please provide it.

TNUK has no evidence to provide on this point.

All queries in relation to this response should be to Simon Grossman, Director of Government & Business Affairs, The Number, Whitfield Court, 30-32 Whitfield Street, London W1T 2RG – simon.grossman@118118.com – 07971 050 001