

REPLY TO CONSULTATION:

PRS DIRECTORY SERVICES LTD

Q1: Do you agree with our definition of Information, connection and/or signposting services (ICSS)? If not, what alternative would you propose?

Yes I agree

Q2: Do you agree with our description of how ICSS operate? Are there other variants not covered in this section?

Yes this is an accurate assessment

Q3: Do you agree with the distinction we are making between the connection and signposting aspects of ICSS on the one hand and directory enquiry services on the other? If not, why not?

The points raised are valid however the services are essentially the same. We provide phone numbers that are searched for and an optional connection service. Branding should not be a compulsory part of a business model and it is not relevant that a narrower range of numbers is provided. Public awareness is also not relevant as long as the service is transparent in its nature. Any attempt to state that ICSS is not a directory enquiry service for the purposes of applying a different set of rules, is in our view dubious to say the least.

Q4 – Do you agree with our assessment of consumer harm in relation to ICSS? If not, why not?

104 Formal complaints need to be seen in context of the overall volume of calls. We are one of many such providers and have serviced over 1.5 m calls since April 2011. Even if we were the only provider, this would be a complaint rate of 0.007%. This is an extremely low complaints' percentage, moreover this number of complaints includes those made by organisations that have a vested interest in preventing us from trading due to the fact that they are now receiving significantly higher call volumes as a result of our service.

We fully agree that providers should not use branding or logos to imply affiliation.

We agree that our type of service should not be targeted at vulnerable people such as those seeking jobs or NHS Direct health advice or Housing Benefit. We have intentionally never promoted our service to these numbers.

The reference to reputational risk is in our view complete nonsense. In the event that a consumer were to realise after the fact that they had called a premium rate directory service and not the company itself, this would have no bearing on how they perceived the company or organisation as they are nothing to do with ICSS services.

The use of trademarks is fully allowed in the right context. We have consulted one of the top Trademark barristers in the UK and correctly used this is not an issue. This is another red herring from companies that wish to shut us down due to increased burden on their customer service helplines.

See APPENDIX A

The accusation that ICSS services collect and misuse data is in my experience not true. This was a baseless accusation by Amazon and whilst it should be regulated against, is not to my knowledge in any way typical of ICSS services as they are currently run.

If a delay is caused by using our service then this is a problem. However this is simply not true. If anything, we speed up the connection between end user and the service they are seeking.

Whilst many organisations do not purposely hide their numbers, it is also true that many people can not be bothered to search for the numbers on the official website and would prefer to call a number and be given the number they are searching for. Most of our call volume comes during office hours where people clearly use their work phones as a matter of convenience.

We pay a significant amount for our advertising and have every right to pay more to advertise our service in a more prominent position than the brands or official bodies that we provide numbers for. No other business would be asked to reduce the effectiveness of its advertising so that it became less prominent than a brand, if offering an information service that relates to a brand. The solution is to improve transparency and not to prevent legitimate promotion of a valid service.

It is agreed that landing pages should not in any way seek to confuse.

Q5 – Is there other evidence of concerns and/or harm that you are aware of and which have not been referred to in this section? If so, please provide them and any evidence that substantiates them.

You seem to have the main areas for concern highlighted.

Q6 – Do you agree with our assessment that ICSS carry a level of risk which meets the threshold for a prior permissions regime? If not, why not?

I think that the argument for consumer harm is arguable however there are a number of other providers that seem to have no regard for the consumer or the regulators and a prior permissions scheme would hopefully prevent the cowboys from operating.

Q7 – Do you agree with our proposed exemptions from a requirement to seek prior permission? If not, why not?

Yes, I agree

Q8 – Do you agree with this assessment and PhonepayPlus' proposed conditions around Search Engine Marketing (SEM)? If not, why not?

I believe the alert should inform the user that they are calling a directory service and not a PRS service. The relevant point is to make it clear that this a directory service for which there is a charge. The mechanism for charging is not the point. No other business has to describe the method by which they charge. It is in our view adequate to state the nature of our service and its cost.

I am concerned as that as the largest operator and the most transparent of ICSS services we were not contacted with regards to this consultation. I only became aware of the consultation document throughout the course of dealing with a PPP professional on another matter.

With regards to the use of company names in website URLs, courts have deemed that under certain conditions, this is acceptable.

Please see APPENDIX B.

4.11 This shows a fundamental misunderstanding of paid for advertising on the web. The system is based upon on auction and all providers are continually bidding against each other in an attempt to outbid each other and drive off the competition. As a result, at any point in time it is likely that a percentage of a provider's advertising is not actually making a profit. If that provider were to cease advertising on that service, the competition would be financially strengthened and would the seek to drive the advertiser off another service. The freedom to turn services on or off at will with impunity does not therefore exist.

4.13 The price paid by advertisers is directly correlated to the chosen ad copy as Google and other search engines use Click Thru Rate (CTR) which is Ad Impressions/Clicks, to determine the price paid per click. Any attempt to dictate ad copy would therefore be anti-competitive, and would directly interfere with a provider's ability to advertise profitably. It is accepted that ads should not mislead but as the user is not able to undertake a financial transaction from the ad alone, this is not the appropriate place to fully describe the nature of the service. Instead this information should be made clear on the landing page, from where the number can be called. It is our opinion that, if we are forced to use the proposed ad copy that our advertising costs would raise to the point where we would be loss making. We have also sought legal advice on this matter.

Please see APPENDIX C.

Note that if this were to be part of the prior permissions regime, we would take the matter to court. We have already spent over £20,000 fighting the ASA on this matter and will continue to do so, subject to legal advice.

Q9 – Do you agree with the need to require the inclusion of specific wording in SEM results as displayed to the consumer on-screen in search engine results that states “This is a premium rate telephone service”? If not, why not?

Absolutely not. Please see the point above and also **APPENDIX C**

Q10 – Do you agree with this assessment and PhonepayPlus’ proposed conditions around promotion of ICSS? If not, why not?

4.18 ii) It is completely unreasonable to expect a directory enquiry service to provide the number being searched for for free. We pay for our service and our advertising and we provide a link to the official website with equal prominence to our premium rate number. This is not reasonable by any means and can not be justified by stating that we are different from DQ services because of lack of branding or the fact that only supply certain numbers.

We agree with the other points.

Q11 – Do you have any views on whether condition B ii) should be applied to all ICSS, or whether an altered condition, as outlined above, should apply only to connection and signposting services which can prove they are not used mainly by vulnerable people and link to genuinely hard to find numbers? If so, please provide them, and any evidence which supports them.

Despite the fact that there are some differences to 118 services, our service is clearly a directory enquiry service. To ask us to give the number for free is inappropriate. It is in our view more than adequate to provide a link to official websites of equal prominence to the number. The number itself may be available for free but we charge for the research, maintenance and the provision of that number via our systems and not for the number itself. We provide a service and have a right to charge for that service. The difficulty of finding the number is not relevant. Would you go to a 118 service and tell them that they could only charge for providing numbers that were hard to find? As regards vulnerable people, it would surely be better to prevent providers from advertising their service to these groups, perhaps via an undertaking?

Q12 – Do you agree with this assessment and PhonepayPlus’ proposed conditions once a consumer has dialled an ICSS? If not, why not?

The business model that applies to us, model 4. The provision of the number followed by an optional connection service. We provide the number so that the user does not have to use our connection service and we advise

customers that if they are put on hold they should hang up and call back using the number provided. We also state the price of the ongoing connection. Any user wishing to remain on hold once they have been given a full range of options and having been made aware of the price should be allowed to use the service unhindered.

The suggestion to introduce a five second gap to prevent the consumer from being charged is pointless. The user is charged immediately on placing the call for the first minute. The consumer will only be charged if they then choose to stay on the line for more than 1 minute. An extra 5 seconds after the initial message (which is about 15 seconds), will make no difference to the amount the consumer is charged. Perhaps a 2 second gap would be more appropriate?

It is not appropriate to give website addresses at the start of a directory enquiry call. This is not what an informed consumer is looking for or requested and force feeding them this information will cause some valid customers to hang up. It is our belief that it is more than adequate to provide a link next to the official website of equal prominence to the premium rate number to be called.

Similarly, if we state (with equal prominence) on our landing page that the number can be found for free and we provide a link to the official website, it will serve to annoy and frustrate customers if we then mention it again in the recorded message. Do 118 services have to do any of the above?

We agree with all the other points.

Q13 – Do you have any views on whether condition B should be applied to all connection and signposting services, or whether an altered condition, requiring that the consumer is given the website of the organisation they are looking for rather than the actual number, should apply to connection and signposting services which can prove they are not used mainly by vulnerable people and link to genuinely hard to find numbers? If so, please provide them, and any evidence which supports them.

Condition B should not apply to any services. It is unreasonable and disproportionate to expect providers to pay for advertising and then to provide the service that they are charging for, for free.

Q14 – Do you agree with this assessment and PhonepayPlus' proposed condition where an ICSS collects personal and/or confidential data from consumers? If not, why not?

I agree

Q15 – Do you have any thoughts on whether a bond is necessary? If so please provide them, and any evidence that supports them.

If a bond is considered necessary, then we would not in principle be against it. One problem that we see is that unscrupulous and dishonest providers do not pay their PPP fines but instead choose to fold their limited companies. A bond would mean that those providers that showed no respect for the regulatory system would suffer a financial penalty.

Q16 – Do you agree with our impact assessment? If not, why not?

There is one proposed condition that will not merely reduce revenues but will instead put an end to this industry. The proposal to dictate the ad text used by advertisers so that they have to use the valuable space available to them to state that they are a “premium rate directory service”. As previously stated, the price that we pay is directly correlated to the ad copy that we use. I would be happy to show solid and empirical proof of this in your offices if this would help. We already state that we are a directory service in our ad copy and that a user must call us to use our service. Moreover we have taken extensive legal advice on this point and it is the view of our legal team that the any regulatory decision taken must take into consideration the landing page as well as the ad copy and that to focus on the ad copy alone would in fact be unlawful. **Please see Appendix C**

We disagree with the risk to reputation. The only consumers that would be dissatisfied in any way would be those that for whatever reason were not aware that they were using a premium rate service who posthumously became aware. If they remained ignorant then they would not be unhappy, and if they discovered their error at a later stage, then they would after investigation realise their error and at this point any reputational risk would be held by the DQ provider.

OUR SUMMARY

We are not against a prior permissions scheme and whilst we disagree with the attempt to define ICSS as NOT being a directory enquiry service, we do agree with many of the protective mechanisms put forward in this consultation.

We accept that greater transparency which gives consumers the ability to make fully informed choices is a good thing and that accordingly revenues may be reduced.

The main two points that in our view are untenable are

- 1) The requirement to provide the number that a consumer is searching for without charge. This does not acknowledge the fact that we provide a valuable service in quickly providing the exact number searched for by phone and that we have a right as does any directory service to charge for that service.

- 2) The stipulation that we must state in our initial and limited ad copy that we have available to us that we are a premium rate directory enquiry service. This is in our view overly prescriptive, will greatly increase our advertising costs and is further more unlawful. **See Appendix C.**

APPENDIX A

We have sought the professional advice of Emma Himsworth, who is one of the country's foremost trademark barristers, on the subject of whether our use of trademarks constitutes fair use or whether we are guilty of "passing off" as alleged by some companies.

Counsel advised that the key question from a trade mark point of view was what would the average, reasonably well informed internet user think? Would they know that the client's service was not connected with the companies whose numbers we provide?

Counsel felt that relatively low number of complaints to calls was strongly in our favour and that the key issue as whether we could take the landing page into account. Please see Appendix C.

APPENDIX B

Trademarks in URL

I would like to point out that the courts have previously ruled that to constitute a nominative fair use (fair dealing), a defendant's use of a trademark must meet three factors:

- 1) The product or service in question must be one not readily identifiable without use of the trademark.

In our case without the use of the trademark or the organisation name, it is not easy to readily identify our product or service. In other words, it is not possible to identify which contact number we are providing without using the trademark in the URL or ad copy. Thus our motivation is not to be misleading but to provide an essential means of identifying which number we are providing.

- 2) Only so much of the mark or marks may be used as is reasonably necessary to identify the product or service.

We only used the mark to the extent necessary to identify which number we are providing.

- 3) The use must do nothing that would, in conjunction with the mark, suggest sponsorship or endorsement by the trademark holder.

It is our view that the average consumer will not believe that our site was sponsored by the companies whose numbers we are providing. This is especially true in the context of both our landing page and ad together. Moreover, courts have also held that such use of a trademark in the "path" or "second level" of a domain name does not and cannot constitute trademark infringement because the "path" or "second level" does not identify the origin of the web site, but rather only describes the site's organization. This is the manner in which we have used trademarks and company names in our URLs.

APPENDIX C

Dictating Ad copy – Unlawfulness

The Unfair Commercial Practices Directive 200/29/EC (CPR) is a maximum harmonisation directive. This means that as set out in advertising law (Crown, Bray and Earle, page 839) the UCPD requires the complete harmonisation by member states of administrative laws and provisions within the fields that it occupies. This is essentially all commercial practices which harm the interests of consumers.

Therefore, by law, the rules which you apply should be no more strict or lax than the directive's requirements in the fields within the scope of the directive.

The CPR makes it clear that commercial practices must be considered in context and that overall presentation is a relevant factor.

Our advert does not cause a consumer to take a transactional decision but merely leads consumers to a landing page where full details of the service are set out. The transactional decision is made on the landing page where the decision is made whether or not to call the premium rate number.

The advert alone can not therefore be defined as misleading as defined by the UCPD. It is merely the first element of a commercial practice where the ad is merely the first element.

Therefore, any decision taken that does not take into consideration our landing page and which would cause our business significant harm would potentially be unlawful.

We have taken extensive legal advice on this matter from both our solicitors and Jane Collier of Blackstone Chambers.

It is our position that we are willing to legally challenge any decision to dictate our ad copy if that decision was made on the basis that our ad is misleading because our landing page was not taken into account.