Mobile Entertainment Forum

The Provision of Refunds to Consumers and the Development of Industry Best Practice for Customer Service:

Response to an ICSTIS Consultation Paper

From the Mobile Entertainment Forum

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1. Introduction

The Mobile Entertainment Forum (MEF) is the global trade association of the mobile content industry, comprising nearly 100 larger companies drawn from all parts of the value chain across three continents. This MEF consulted its membership on the ICSTIS paper, which excited considerable interest and engagement. This document represents the consensus views of MEF on the topic.

2. Overview

Members expressed a number of general considerations relating to the entire topic, separate from the specific issues raised in the paper. These were:

- All members support the evolution of the regulatory framework in a way that reduces incentives for wrongdoing and cleanses the system of wrongdoers, and that helps reinforce consumer confidence.

- It is vital to distinguish properly between differences of opinion about details of the customer service process and clear intents to defraud. The refund mechanism, as a regulatory weapon, is viewed as an appropriate redress solely for the latter, and such a use must not be confused with the quite separate objective of improving customer service.

- There was a strong feeling that the ICSTIS proposals, stemming as they do from OFCOM recommendations drafted in the wake of a crisis in the fixed-line industry, are weakened by an inappropriate view of the mobile value chain. This will be expanded upon in the following section.

3. Value Chain Issues

The issue of refunds throw into sharp relief some issues of policy arising from ICSTIS' intended distribution of risk along the value chain.

Whereas, until now, fines have represented a substantial but proportionate burden, of a scale that can be managed within the existing risk allocation model, refunds are quite different.

They represent a potential liability many times higher, up to 100% of the gross revenue generated by a service. As such, mis-allocation of risk along the value-chain can represent at least a disproportionate penalty, and at worst a mortal threat to players, in a manner not necessarily intended by ICSTIS. This could have unintended and perverse consequences, damaging for the industry as a whole.

It appears that ICSTIS is seeking to implement OFCOM recommendations that are based on its understanding of the difficulties associated with the Fixed Line economic model of interconnect.

It does not take into account the much simpler economic model of the mobile industry and as such allocates 100% of the risk to the SP, as interconnect makes it very difficult to follow the money otherwise. This is not the case in the Mobile Industry.

In the mobile industry, the Mobile Network Operator occupies a dominant position in terms of direct contractual power and in terms of information. It would therefore be rational to recognise this role in the process of consumer redress. In the mobile industry it is relatively straightforward to follow the money back from the Network Operator and for money to flow the other way (a situation that OFCOM envisages as being difficult and costly to implement although ultimately would be its preferred route of working).

In particular, there are serious concerns that under these proposals the burden of refund would fall unduly on the wrong part of the value chain. The paper's proposition is that SPs should bear all the risk in all circumstances. We wish to note that, in general, revenue from a fraudulent transaction subject to refund might typically be distributed as follows:

Mobile Network Operator:	20%
Aggregator (SP):	5%
Content Provider (IP):	75%

It is clear that an approach that places the primary burden on the IP, if all parties consent under the provisions proposed in the 11th Code, is right and fair.

However it is equally clear that, in any other event, the whole burden will fall on the actor who has profited least from the transactions. It is also clear that the mobile operator, who will have profited handsomely from the flow of delinquent traffic, would under the proposals enjoy the full benefit of such gains, and bear no direct financial regulatory risk. Neither proposition can be considered right, nor are they necessitated by circumstance, nor is it even politically desirable.

Much consumer disgruntlement over recent scams has been with the perception that the Operators are keen to wash their hands of a problem whilst profiteering from it (BT suffered many complaints of this nature over the rogue diallers issue). If however the networks are the first port of call to issue consumer refunds, then by holding retained and future revenue share against the cost of refund it naturally assures that all parts of the value chain pay their due share, and that the networks are not seen to profit from the scam. Of course, in the instance of a punitive refund redress it is inevitable that the Network Operators will have the contractual right to demand direct reimbursement from the SPs for their share of the refunds.

The MEF therefore takes the view that an approach that holds the SP solely responsible for refund redress is wrong. The consequences of following such a path will include:

- dramatically higher charges by aggregators to content providers as an insurance premium against the enormously higher risks entailed. This will cause severe inefficiency in the value chain and reduce the vitality of the industry.
- these higher premiums will create a strong economic incentive for IPs to work directly with mobile operators. In case of default, the consumer is left with the reduced protection of the TCP obligation.
- for those content providers who are compelled to use aggregators, payment timescales will dramatically increase as aggregators hold greater reserves against refund risk. This will punish all IPs – the vast majority of whom are honest – with diminished cashflow.

- there will therefore be a tendency for IPs to work with those aggregators who take the most chances by paying out early, and who charge the lowest insurance premium. This race for the bottom will cause default risk to increase. In the case of default, the consumer will be left with the reduced protection of the TCP obligation.

The consequence of this approach will therefore inevitably lead to minimised customer protection and decreased economic efficiency in the value chain. There can be little justification for ICSTIS to pursue a policy with such consequences.

Instead, MEF proposes that the risk should be allocated primarily to the Mobile Network Operator. The reasons for this are as follows:

- MNOs are in a powerful contractual position to lay this risk off to aggregators and their IPs. Thus when the system is working normally, the delinquent party will be forced to pay.

- many IPs may in any case normally prefer to deal themselves with any refund incident, since the cost to them of processing refunds and of refunding the full sum will normally be lower than the punitive refund charges MNOs might reasonably be expected to charge for carrying out the refunds themselves. This again will tend to pull cost into line with responsibility

- by allocating the presumptive responsibility for refunds to the MNO, it would expose the substantial revenue share kept by MNOs to refund. MEF regards this as very important in order to deal with the moral hazard otherwise implied. It cannot be right for a recipient of 20%+ of a delinquent transaction to be exempt – or be seen to be exempt - from any duty to refund as they are, even under the TCP underwriting provision.

- The survival of responsible aggregators is in the strong economic interest of the MNOs. They therefore have a rational incentive to ensure that aggregators bear, under contract, a share of the refund risk appropriate to their participation in the value chain.

- Finally, it must be recognised that the MNOs are in a good position to execute refunds, given their direct billing relationship with their subscribers – an observation true for any OCP. By ascribing to them the ultimate liability for refund, it will ensure that they have a strong motivation to implement this capability in a sensible fashion.

- In the case of default, the risk premium that must be levied by operators – given their much higher revenue share – will be much lower than the premium that would have to be levied by aggregators. This will increase the economic efficiency of the chain. In addition, such premium may be levied across all aggregators, thereby avoiding any perverse competitive incentives between aggregators.

- In other payment schemes, such as credit cards, refunds are always processed by the issuer (the OCP), for the reasons indicated above. It is then an internal contractual matter how risk is reallocated amongst the value chain.

Clearly, it is in the interests of all parties that normally an IP should take responsibility, and ICSTIS practice should acknowledge and facilitate this, in a manner suggested by the 11th Code. However, it is essential that, in the absence or failure of this mechanism, ICSTIS should have the right to revert directly to the MNO.

4. MEF Responses to Specific Consultation Questions

Q1. Do you agree that a refund should equate to the full cost of the service that the consumer actually paid for the service? If not, why not and what alternative would you suggest?

MEF is clear that the answer to this is yes. The analogy used by the consultation document is instructive, however. It is quite clear that the "shopkeeper" is the MNO.

Q2. Do you agree that a refunds arrangement should have no formal lower cost threshold and that ICSTIS may vary from this in case specific situations where to not do so would be disproportionate?

MEF believes that the answer to this must be positive, since otherwise attempts to defraud will merely migrate to lower price points on a correspondingly larger scale.

Q3. We would welcome feedback and examples of how customer service refunds can be made in ways that meet the needs of both the consumer and the service provider who has to facilitate and administer the refund.

MEF highlights this as the first specific example in the paper of the presumption that it will be the aggregator, not the IP or MNO, who will execute the refund, which we contest as indicated earlier. The aggregator normally only administers a refund in the case that a shared shortcode is involved (in which case the aggregator is much more like a true SP). Otherwise, the "SP" does not get involved and is normally unaware even of refund requests from consumers, which go straight to the IP.

Since such subtleties are lost on consumers, it is advantageous to shield them from the full complexity of the industry structure they are dealing with.

Thus experience shows that by far the best way to execute a refund is via the MNO phone bill or pre-paid account, though there are exceptions to this if the refund is too big. For example, if the consumer has a normal monthly spend of £30, and has been billed £1000 in an incident which the operator has pursued and extracted as payment, it cannot be acceptable to ICSTIS that the mobile operator then offers a credit for this amount to their phone account.

However, MEF members today generally prefer to issue refunds themselves, rather than delegate it to the MNO, given the loss of control over the process that might be entailed. Typically cheques are used. Experience of members has also shown that PayPal transactions can be a successful way to complete a refund.

Q4. Do you agree that refunds may be made in a number of ways as long as the customers are in general agreement to accept an alternative to a monetary refund being offered by the service provider or other party involved in the provision of the service?

MEF is in agreement with ICSTIS' discussion on this matter.

Q5. We would welcome information about how service providers manage these issues today in order to benchmark various practices.
Q6. We would welcome views on what is a reasonable degree of evidence in such situations for a service provider to demand given the risks of fraud.
Q7. What suggestions do you have for how best to manage the authentication of consumer requests whilst minimising the barriers to consumers when seeking refunds? How can this be kept under review?
Q8. What evidence is it reasonable to ask of a consumer to evidence their disputed PRS transaction where their network provider does not provide bills or where they are not itemised?
Q9. We would welcome views about how matters of refund authentication can best operate in an environment where consumers do not ordinarily receive a telephone bill such as the majority of mobile phone users who have pre-pay arrangements.
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Q10. We would welcome any other views on customer authentication and fraud management which might aid the development of an appropriate refunds framework.

MEF sees these as essentially one set of questions.

It appears that, in the past, corroboration barriers have been kept deliberately low by content providers in the mobile industry. Essentially, anyone who called up with a complaint could get a refund without many questions. This was based on the following considerations:

-knowledge of the premium SMS mechanism was not widespread
-awareness that refunds could be obtained was not widespread
-as a consequence, the proportion of consumer refunds was low
-the cost of handling a consumer complaint is high, and escalates rapidly if it is contested
-damage to a brand is minimised by offering uncontested refunds.

Lately, the situation has changed due to the high media profile given to premium SMS. As a consequence, more genuine customers are aware of their right to obtain refunds, but opportunists have spotted the chance to defraud content providers with false claims.

MEF members are acutely aware of the dangers of a lax refund regime, since this was one of the contributory factors to the failure of the US premium rate industry. The lesson learned is that it is vital that, if MNOs are tasked with executing refunds, they do so against common standards of verification and proof to those expected of the industry. Otherwise, there can be an incentive for them to liberally award refunds, at the expense of their content providers who are powerless to prevent it. Another lesson learned is that an enormous hazard develops if dispute resolution processes are so weighted towards the consumer that it is easy for them to enjoy a service and then repudiate the ensuing charges.

As regards verification, a number of steps are required.

Firstly, does the consumer own the telephone number? To verify this, some providers require the consumer to send by fax or mail copies of the contractual documents (pre-pay or post-pay) attesting to their ownership of the number, together with some corroborating evidence of identity to avoid mis-representation.

Secondly, was the consumer charged for the service as alleged? Most content providers have straightforward means for verifying this. The problem arises if there is dispute, and herein lies the heart of the matter.

Thirdly – and MEF is concerned that this has been ignored in the consultation paper – did the consumer actually fail to receive a satisfactory service? Again, it is normally straightforward for a content provider to verify that a consumer received or downloaded the content. Unfortunately, it is then often impossible to verify if the consumer was able to activate it or use it. An example might be a polyphonic ringtone. Most content providers offer it in good faith using WAP Push; however, some mobile phones make it very difficult for consumers to know what to do with a WAP Push, and they may as a consequence be dissatisfied without any ill faith of the content provider. At least the content provider is aware of this. Even harder to manage, some consumers may successfully execute the WAP push download, and then be unable to find the downloaded file, since it has been put somewhere obscure in their phone. There is no way a content provider can observe, verify or rectify this. There is thus a difficult problem to resolve in case of dispute.

MEF takes the view that the approach of shifting the burden of proof of non-charging to the service provider is too simplistic and lacks integrity in the mobile context. The reasons for this position are as follows:

- Charging data available to SPs is flawed. It is not uncommon for message delivery data from MNOs to SPs to be inaccurate, ambiguous or absent. There is never complete reconciliation between the transactional data provided by the MNO and the payments actually made by MNOs to SPs. In this situation of uncertainty, it is impossible for an SP to prove that a charge was not made – only that the information relating to such a charge suggests that it was not made. Only the MNOs can provide the information required to determine this dispute.

- SPs may not have visibility. IPs can change aggregator during the lifetime of a service. Then if for example an IP has a fault (or a deliberate tampering) with its systems where it (inadvertently?) signed on customers to a service who had not authorised this, but up until that point and after that point signed up customers legitimately. Nevertheless, let the scale of the error be sufficient for ICSTIS to impose a full refund policy on complainants so affected, and in this circumstance the SP could be faced with hundred of claims from parties who have legitimate claims as well as from customers who are trying it on but who had properly signed up for the service. Aggregator (SP) systems would not necessarily be able to tell which were legitimate and which were not, but the IP's systems should be able to.

- Yet charging and consent data held by an IP is open to challenge. There is a clear incentive to cheat here, and there is a suspicion that unscrupulous players in the industry – those most likely to commit the breaches punished with refund by ICSTIS – would not shy away from deleting records to show a charge was not made or counterfeiting the customer records "proving" that consent to a charge was not given. The mere suspicion of such behaviour would hang like a pall over the entire industry of content providers, and effectively destroy the credibility of negative proof held even by the most reputable. Clearly, claiming an absence of records must not in itself get an IP off the hook. However, the situation may be addressed by adding the concept of corroboration: evidence from aggregators and especially MNOs must also be taken into account, and they must be compelled to share in the burden of proof. This is essential, since eg MNOs may not otherwise have a strong incentive to find and provide the necessary corroboration.

In both cases, MEF asserts that the burden of negative proof cannot be ascribed to the SP, but must actually lie with the MNO, the only body with records reliable enough to serve this purpose.

MEF also notes that the issues of Q8 & Q9 do not arise if the mobile network operator acts as an arbiter of disputes, whose records of charge are accepted by ICSTIS as binding.

As regards the general hazard of consumer fraud, there is a view that requiring the consumer to work a little – by actively responding to reasonable information request - to obtain a refund is a not inappropriate way to separate the dishonest from the genuinely aggrieved.

Q11. Do you think that industry or ICSTIS has a responsibility to notify all affected consumers of their rights to claim a refund when this has been made the subject of a sanction by ICSTIS? If you do, where does responsibility lie and why?

MEF believes the force of this question revolves around the meaning of "affected". If "affected" users are regarded as those who have taken steps to complain to ICSTIS or the IP, then there is a reasonable case to be made. If alternatively it refers to all users of the service, then this recommendation effectively creates the institution of a Class Action in premium services. As a general rule, this is regarded as an extremely negative step, with very few precedents from other industries, since it invites abuse by the public on a massive scale and in almost all cases is disproportionate. Furthermore, the workload involved in filtering genuine complainants from opportunists stimulated by such a Class Action approach could place unacceptable demands on all members of the value chain, not just on the offender.

MEF believes that it is the role of the IP and/or the aggregator to notify customers of their rights. There is little enthusiasm for ICSTIS to do so: the manner of communication may be unjustifiably damaging to the IP, and the costs should not be borne by ICSTIS. Only if ICSTIS has evidence that the IP is failing in their obligation to inform "affected" users should it act as the informer of last resort, and charge accordingly. To implement this, it is likely that ICSTIS will need to agree a "refund notification" plan with the IP, against which any failure to deliver may be judged.

MEF is negative about the alternative of relying on the MNO to conduct such a proactive campaign. Standards of premium service databases are very variable amongst operators, and there is a risk that incorrect information may be disseminated.

Q12. What views do you have on how affected consumers, whether they complained or not, can be advised of their rights to a refund where that has been demanded by ICSTIS as a sanction?

For mobile users, the natural medium of communication is the text message. This is especially true since the users of premium mobile services are almost by definition text-literate. However, it is important that ICSTIS is involved in the notification process. The reason is that there is no difficulty about sending mass communication campaigns that say anything to consumers, and the unscrupulous could use bogus refund notifications to cause an attack on an IP's call centre, web site and reputation. Therefore genuine refund notifications must send consumers to the ICSTIS web site for information on eligibility and methods for obtaining a refund, not directly to the IP.

There is also a strong view amongst MEF members that MNOs should either not charge or charge a cost-based tariff to the IP for such informational messages. The alternative is that such communications become a lucrative revenue source, with all the moral hazards entailed. ICSTIS should therefore have the power to direct MNOs how to charge for such messaging traffic.

Q13. What further potential is there in the ICSTIS adjudication information being shared with the customer contact staff of the OCPs who may be able to alert future complainants about services to their right to a refund (where sanctioned by ICSTIS)?

Whilst not having strong objections to this in theory, MEF members are nevertheless very much against due to the problems with training, information support and instruction of MNO call-centre staff; there is a very real risk that wrong information would be disseminated, with potential damage to uninvolved and innocent SPs and IPs.

Q14. Do you have any views on this approach to considering how refund sanctions will be determined by ICSTIS?

MEF recognises that this is a difficult issue. On one hand, there is agreement that refunds are the appropriate means to ensure consumer redress in the case that un-redressed harm has been caused. On the other hand, there is a reluctance to accept that refunds should be used as a sanction – a means of bypassing ICSTIS fine ceilings. It is important that the total punitive consequences imposed by ICSTIS should be proportionate to the breach, within the limits determined by the Code and the underlying law. In particular, there is concern that, in the case of a relatively limited breach, the adverse consequences of a refund sanction might in aggregate lead to a disproportionate sanction, and ICSTIS must take care to avoid this, in a manner that is transparent.

The clearest omission in the list of factors militating for a refund ruling is the behaviour of the subject towards customers who have been complaining. It seems unreasonable for ICSTIS to impose a refund sanction on a subject who has been giving refunds in its normal course of business.

As noted before, the Panel will also need to judge whether the intent, effects and scale of the harm are so gross as to merit a broad interpretation of the concept of "affected". MEF believes that too liberal a use of this tool would destabilise the entire industry, by creating a risk profile quite different from that which has permitted it to flourish in the UK. Therefore, those "affected" should be limited by the Panel to those who have registered complaints, with ICSTIS, the MNO, the SP, the IP, or any other related body such as Trading Standards, up to the time of a public announcement – either of an investigation or of an adjudication. Only in extreme cases should the Panel extend this right to those who file complaints after the case has become public when opportunity to make money from a complaint has become evident. Examples of such criteria might include:

->80% of users of the service were likely to have suffered from the breach and
-there was clearly malicious intent to mislead and
-there is evidence that the SP/IP was not giving refunds to consumers who requested it

On no account should refunds be offered or invited to those who have not complained on their own initiative – to do so would be to invite chaos.

Q15. Do you agree that the arrangements for the ICSTIS Compensation Schemes for Live Services and multi-party chatlines should remain as they are and should not be affected by proposals in this consultation paper? If not, why not?

MEF expresses no view on this matter.

Q16. Do you agree that ICSTIS should take forward the development of best practice guidance for customer service in the way outlined above? Can you identify any organisations from which a representative should join this working group?

In principle MEF supports efforts to raise the lowest common denominator of customer service in the mobile sector in the UK. Since there is currently a vacuum of initiative in this area, an initiative by ICSTIS will be welcome, providing its scope is limited to one of facilitating the industry protagonists to develop their own guidelines.

MEF is enthusiastic to contribute to such an effort, as indeed will many of its members. MEF believes that one of the principle determinants of quality in customer service in the mobile area is the quality of the mobile operators call centres, and therefore believes that it is essential that senior executive management from these functions in the MNOs must be involved in this effort for it to have any value at all.

It is clear that other trade associations from the industry – MDA and NOC – will have an important part to play in this working group. It would be constructive to involve consumer groups as well, to ensure an appropriate balance of interests.

Q17. Are there other aspects of customer satisfaction that you believe a Working Group ought to consider when developing best practice guidance for customer service?

MEF believes that the biggest additional factor to be included in such an initiative, other than those quoted, are the call handling processes between the value-chain players, and the consequent end-to-end experience of the consumer. It is not enough to ensure that a customer call is well handled, if the customer has to make twelve of them to gain satisfaction.

Q18. Do you have any views about the make-up and structure of a Working Group, including who should chair it?

Given the facilitating role MEF recommends ICSTIS play in this matter, we recommend that ICSTIS do not chair the group, but seek an industry protagonist to do so.