

RESPONSE OF CHANNEL 5 BROADCASTING LTD (FIVE) TO ICSTIS CONSULTATION ON INTRODUCING PRIOR PERMISSION FOR PREMIUM RATE SERVICES USED IN TELEVISION AND RADIO PROGRAMMES

Five welcomes the opportunity to respond to this consultation. Recent months have seen serious shortcomings and failings in the running of competitions and other programming that rely on premium rate services (PRS) on a number of channels, including Five. We recognise that improvements are needed in the ways PRS on television is used - and that viewers need to be confident in the fairness and efficacy of PRS if they are to participate confidently in our programmes. We have already made a series of improvements in our procedures and continue to look at ways they can be enhanced further.

We recognise the role increased regulation can play in ensuring competitions and voting using PRS are conducted fairly and properly, and in providing public confidence in such services. Therefore, we welcome ICSTIS' proposal to introduce a prior permission regime and look forward to the conclusions of Ofcom's wider-ranging inquiry into the use of PRS in TV programmes. However, increased regulation on its own is not a panacea; the industry as a whole needs to be committed to improving its procedures and following best practice.

Five continues to believe our viewers enjoy the opportunities to participate in our programmes and to take part in the competitions and quizzes that we offer. And as we have said before, such competitions provide us with a modest but significant revenue stream. But we are absolutely determined to ensure our PRS services are run to the highest possible standard.

In the rest of this response, we give our detailed comments on the consultation questions.

Q1. Do you agree with this definition of Broadcast Premium Rate Services? If not, why not and what would you propose instead?

Five is in favour of a broad definition that captures all use of PRS on television. However, we feel a simpler and less cumbersome definition would be achieved by omitting the last eleven words, so the description read: *"premium rate services which are promoted on television or radio and which may provide a facility for interaction or the provision of information."*

Q2. What evidence do you have as to how serious and widespread a problem there is in respect of calls received either before lines are announced as open or after lines are ostensibly closed, and what steps could be taken to manage this problem in a way that limits callers from incurring costs without the benefits of receiving the service?

Five believes viewers must be made fully aware of the deadline for any competition or vote, and that lines should close at the advertised time. However, there remains a problem when viewers make entries after that deadline, as ICSTIS recognises.

Receiving an engaged or unobtainable tone is not a good customer experience, as it can leave viewers unclear about why they have not got through. There is a similar problem with SMS: entrants to Five's competitions using this method are charged a premium rate once they have received a return message informing them their entries have been received. If people were not to receive a return message because the deadline is passed, they may persist in sending text messages for which they will be charged, albeit it at a standard rather than premium rate.

It is for this reason that late entrants to Five's competitions hear a recorded message, or receive a return SMS, stating that the deadline has passed. These are charged at a premium rate, as there are currently technical problems with providing such messages at a lower rate. Five is actively discussing with the service provider industry the prospects for introducing 'competition closed' messages that can be charged at standard or modest rates. However, we appreciate that the prospects for achieving this are considerably greater for SMS than for landlines.

We understand there has been concern in the industry about the proportion of SMS calls being received after a competition closes because of network issues. We carried out our own survey to investigate this. During May this year, we looked at how many entries were received post deadline to the competitions we ran at the end of *CSI* (on Tuesdays) and *House* (on Thursdays). In both cases viewers have 25 minutes in which to enter the competition. We discovered that on average 0.74% of phone entries and 0.48% of SMS entries were received after the deadline. This suggests that the number of people entering this sort of competition after the deadline is actually quite small, and that there is no material difference between landlines and SMS.

Q3. Do you agree with our proposed conditions for prior permission in relation to connectivity and capacity? Have we omitted anything that is critical to considering risk?

Five fully agrees that sufficient time and capacity needs to be available for all entries or votes to be included and counted.

We believe that the first condition can be expressed more pithily and accurately by ending the sentence at the word “outcome” so it reads: “There must be sufficient time for all valid responses sent by viewers or listeners to be considered and reflected in any outcome”

Q4. Do you agree with our proposed conditions for prior permission in relation to conduct as set out above? Have we omitted anything that is critical to considering risk?

Five supports the principles of this section – that all entrants to a competition should have an equal chance of winning and competitions should be run fairly. However, we believe that some of the detailed conditions are either not properly thought through or are expressed imprecisely. Our comments refer to each of the conditions in turn.

- 1 Calls and SMS entries must not be accepted before lines have been announced as opened or continue to be accepted after an announcement that lines are closed has been made. After an announcement that the lines have been closed has been made, the lines must be closed.*

It seems to go against the spirit of the conditions to say lines must be closed after an announcement that lines have closed, without specifying how long the gap between the announcement and the actual closing of the lines might be. We think it would be better to say that lines must be closed *immediately* after an announcement is made.

- 3 Phone lines must not remain open when programmes are repeated and, in addition, the premium rate number should be obscured where possible.*

This should be amended to accommodate programmes which are repeated but where the competition or vote is still ongoing. For example, each edition of Five’s programme *The Gadget Show* includes a competition that viewers have almost a week to enter. Each edition of the programme is first screened at 8pm on a Monday evening and then repeated the following Saturday morning. The competition closes at Noon on the next Monday (i.e. eight hours before transmission of the next programme). As drafted, this condition would require the competition to be edited out of the narrative repeat of the programme.

The condition might better read “Phone lines must not remain open when programmes are repeated and the competition or vote referred to in it has come to an end. In such circumstances, the premium rate number should be obscured in such circumstances where possible”.

- 4 *Viewers and listeners must not be led to believe that a recorded programme featuring premium rate participation is being broadcast live.*

We find the wording of this condition lacking in precision. The great majority of TV programmes are recorded, but the only way of ensuring viewers know they are watching a recorded programme is to have an on-screen caption to that effect. As drafted, this condition would require the edited version of BBC1’s *Match of the Day* shown on Sunday mornings to be captioned “recorded” when its “goal of the month” competition is featured, even though the recorded status of the programme bears no relation to viewers’ ability to enter that competition. It would also require programmes that are recorded but where the interactive element is live to be labelled as “recorded” throughout. There is nothing inherently wrong with a recorded programme offering viewers a live choice between two outcomes, both of which have been pre-recorded, so long as the voting element is conducted fairly.

We think it would be better if the condition were amended along these lines: “Viewers and listeners must not be led to believe that the participation element of a programme is live when in fact it is recorded”.

- 5 *Winning entrants for competitions must be randomly selected from all correct entries unless there is a tie-breaker or totally skill-based outcome.*
- 7 *Pre-broadcast selection of potential competition winners is not permitted unless necessary to prevent a contravention of competition rules or broadcasting regulations.*

We believe there is a contradiction between these two conditions: either entrants must always be selected randomly, or their selection can be influenced by the need to comply with other regulations such as the Ofcom Broadcast Code. We also believe condition 5 is too prescriptive, and potentially rules out perfectly fair competitions that rely on different dynamics. Arguably, Quiz TV programmes that have a two stage process (entrants are first selected to go on hold, then people are selected from this secondary pool to go through to the studio) would fall foul of this condition.

One way of resolving this problem would be amend condition 5 along the following lines: “Winning entrants for competitions must be selected from all correct entries in accordance with the rules, which must be fair in all respects”.

Condition 7 would then not be necessary. In any respect, we find its drafting unclear, as we are not sure what “pre-broadcast selection” means.

6 In any competition where a prize is worth £5,000 or more, there must be independent third party verification of the fairness of winner selection.

We are unhappy with this condition, for several reasons:

- It is the responsibility of the broadcaster and the service provider to verify the fairness of the selection process in accordance with ICSTIS and Ofcom requirements.
- There is no guarantee that an “independent third party” would necessarily be qualified or capable of verifying the process.
- It is not clear whether a third party who made a negligent mistake would be considered liable for the regulatory consequences.
- There is no clarity over what form this verification might need to take: if the suggestion is for someone to be present whenever such a competition takes place, it would mean having such an individual present several times a week.
- We find the £5000 limit arbitrary: all our competitions need to be run fairly, not just those with larger prizes.

We are not opposed to our selection procedures being inspected on a regular basis, and would be happy to discuss how best this might be achieved.

8 In respect of competition services, records and evidence of winners and the distribution of prizes must be maintained for a minimum period of 12 months from closure of the competition.

We are not clear which records are meant here. Five’s current practise is to keep all records, including all audio files of all telephone entries, for a period of four months, which we believe is sufficient to deal with all enquiries (for example, this allows people who receive quarterly telephone bills to query expenditure from the beginning of the billing period). To keep them all for as long as 12 months would raise serious capacity issues. We would like clarification as to whether all entry records are meant to be included in this condition, and if so whether a shorter period might meet ICSTIS’ requirements.

9 Customer service arrangements for handling participant enquiries should be in place.

We assume this condition would not require customer service departments to be open on a 24 hour basis or at all times when competitions are being run. Five has an efficient and effective Customer Service team that is in the front line of dealing with enquiries and complaints. However, it would involve us in major cost and inconvenience if that Department had to be available at all times competitions were running.

Q5. Do you agree with our proposed conditions for prior permission in relation to cost and conditions as set out above? Have we omitted anything that is critical to considering risk?

Five is happy with these conditions, which reflect our current practice.

Q6. Do you agree with our proposed conditions for prior permission in relation to coherence as set out above? Have we omitted anything that is critical to considering risk?

Five strongly supports the existence of clear contractual arrangements between broadcasters, service providers and producers, and believe these conditions will help entrench good practice in everyday working relationships.

Q7. Do you agree with our analysis that the same inherent risks for premium rate use in programmes on television also exist in radio?

Five has no view on this.

Q8. Do you agree with our judgement that the definition of Broadcast PRS should specifically extend to radio for the reasons set out above? If not, why not?

Five has no view on this.

Q9. Do you agree with our proposal to require providers of Call TV Quiz Services to continue to obtain prior permission specific to Call TV Quiz Services but that we include in the existing permission certificates for providers of such services the above conditions? If not, why not?

Five is generally happy with these extra conditions being included in the prior permission regime for Call TV Quiz Services, with one small exception. The second condition should incorporate the position of timeshifted or “plus one” channels (that is, channels broadcasting an entire schedule as a sister channel, but one hour later). If Call TV services are running for several hours on a channel, their lines will still be open when the “plus one” channel broadcasts the same (recorded) content one hour later. The way to solve this problem could be to have a requirement on the “plus one” channel to refer viewers to the live channel if they wish to participate in the programme.

Q10. Do you agree with our assessment that Broadcast PRS involving auctions should be included with the need to obtain prior permission? If not, why not?

Five agrees with this proposal.

Q11. Do you agree that music channels using premium rate votes to determine playlists from participants should be included with the need to obtain prior permission? If not, why not?

Five agrees with this proposal.

Q12. Do you agree with our analysis that premium rate services involving charitable giving and donations should be included with the need to obtain prior permission? If not, why not?

Five agrees with this proposal.

Q13. Do you agree with our assessment as to why we suggest that chat services should be excluded from the prior permission regime proposed in this paper? If not, why not?

Five agrees that ICSTIS' existing prior permission regime for chat services means that they do not need to be included in this one as well.

Q14. Do you consider that there are other categories of service which fall within the definition of Broadcast PRS but which should not be required to obtain prior permission?

We are not aware of any.

Q15. Do you agree with our proposals to introduce prior permission for Broadcast PRS where the primary focus of the need to obtain prior permission will be on service providers alone? If not, why not?

Five wishes to maintain the current regulatory position, in which service providers are answerable to ICSTIS and broadcasters to Ofcom. ICSTIS' proposals for clear contractual arrangements between service providers, broadcasters, production companies and other relevant players will help reinforce the interlocking nature of the relationships between these different parties.

Q16. Do you have any suggestions about how the effectiveness of the proposed prior permission regime might be improved?

We have nothing further to add at present.

Q17. What thoughts or suggestions do you have as to whether or not it would be sensible to engage broadcasters and/or production companies (when information providers) directly within the prior permission regime by causing them to accept, in effect, a position where they are directly answerable to ICSTIS for Code and condition breaches?

As we stated in answer to Question 15, we believe service providers should be required to obtain prior permission. Their contractual arrangements with broadcasters and, where appropriate, producers should mean they can identify the cause of any difficulty or possible transgression of the prior permission conditions. We do not believe anything would be gained by making other parties answerable to ICSTIS. In fact, there is a danger that lines of accountability would be blurred and not enhanced.

Channel 5 Broadcasting Ltd.

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