



Consultation Paper

Premium Rate Services

Code of Practice

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All responses to this consultation should be clearly marked:-
“Reference: Submission re ComReg 10/92” and sent by post,
facsimile or e-mail to arrive on or before 4pm on 21 January 2011
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Foreword

On 12 July 2010, the responsibility for the regulation of Premium Rate Services (PRS) in Ireland was transferred to the Commission for Communications Regulation (*ComReg*), from the Regulator of Premium Rate Telecommunications Services Ltd (*RegTel*), following the enactment of the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act, 2010 (*the Act*).

The Act provides that the Code of Practice (*the Code*) with respect to the provision, content and promotion of specified PRS, published by RegTel in 2008, will remain in place until a new Code is published by ComReg. The Act also requires that ComReg consults with PRS providers, other interested parties and, as it considers relevant, other regulatory bodies in the State, in order to prepare and publish a new Code of Practice.

ComReg has reviewed the present Code of Practice in light of its experience, Regtel's experience and through liaison with PRS regulators in other jurisdictions to establish international best practice. This draft Code of Practice sets out the proposed requirements that regulated entities will be required to comply with, when formally published, as compliance with the Code is a statutory requirement and is a condition of a PRS licence.

A draft Code which incorporates ComReg's proposed amendments is attached. ComReg also addresses the discrete issues of refunds and numbering issues in relation to charitable organisations.

ComReg invites responses to this consultation from all stakeholders, including consumers, industry, statutory bodies and members of the public. Having carefully reviewed the responses, ComReg will publish a Response to Consultation, outlining its decisions, and a final Code of Practice that will formalise these decisions.

It is requested that views are received at ComReg not later than 4.00 pm on Thursday, 21st January 2011.

Mike Byrne
Commissioner
Commission for Communications Regulation

1 Executive Summary

1.1 Background

On 12 July 2010, the responsibility for the regulation of Premium Rate Services (PRS) in Ireland was transferred to the Commission for Communications Regulation (ComReg), from the Regulator of Premium Rate Telecommunications Services Ltd (RegTel), following the enactment of the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act, 2010 (the Act).

Following a public consultation, in July 2010, ComReg published a Decision document and Statutory Instrument on the class, or type, of PRS that would be “specified” and, therefore, licensable and subject to formal regulation. These Regulations were set out in the Communications Regulation (Licensing of Premium Rate Services) Regulations, 2010 (the PRS Regulations), which also include the conditions that attach to PRS licenses.

The Code of Practice represents the third element of the regulatory framework, supplementing the provisions of the Act and the Regulations. It is published in accordance with Section 15(1) of the PRS Act¹ and is required to be followed by all PRS providers with respect to the provision, content and promotion of specified PRS.

1.2 ComReg’s Vision

ComReg’s vision is that end-users of PRS will be as confident and safe in using PRS as in engaging with best practice retail services. ComReg considers that, with end-user confidence in place, industry will benefit, as new and innovative services are developed and made available.

ComReg also aims to provide an efficient and impartial redress mechanism that ensures that end-users do not necessarily have to take any legal steps to secure redress. ComReg holds the view that end-users are entitled to have their grievances dealt with as fairly and effectively as possible. It is also recognised that, irrespective of any provisions that ComReg may impose on the PRS industry, end-users must bear a level of responsibility for their own actions and that, to a certain extent, they hold the key to their own protection.

1.3 Review of existing Code of Practice

ComReg notes that the PRS sector is dynamic and innovative and that new services, and new means of delivery, are constantly emerging. Rapid developments in the industry require regulatory bodies to continuously review their operations and the regulatory framework(s) within which they operate.

ComReg is cognisant of practices in other jurisdictions, where regulatory authorities regularly update their frameworks, either in response to a particular development in the sector or as a scheduled objective – for example, PhonepayPlus in the UK is

¹ Full Legal Basis can be found in Appendix A

currently concluding a consultation on a new Code of Practice, which will replace the existing Code that was published in April 2008.

ComReg has reviewed its PRS operations since assuming regulatory responsibility for the sector and has analysed contacts to ComReg’s Customer Care Helpline. ComReg has also considered the issues that have arisen, and has noted the impact of developments, at an international level. Based on this analysis, ComReg considers that mobile subscription services continue to be a principal source of potential customer harm.

ComReg has, therefore, modified the existing Code to include additional provisions with the intention of ensuring that the public are clearly informed of the costs of a PRS and the frequency of costs, in particular in relation to Subscription Services, before they are incurred.

ComReg has also re-structured the layout of the Code to rationalise the existing provisions and suggests the following new provisions;

- (a) Section 3 -General Provisions applicable to all PRS. These provisions largely mirror those that are set out in the existing RegTel Code, with the addition of a new provision for “Due Diligence” to reflect the changed regulatory framework, which recognises all PRS Providers in the PRS “value-chain”.
- (b) Section 4 -Promotions - provisions to be observed in respect of promoting PRS across all platforms. Some new provisions include;
 - (i) that essential information has to be spoken as well as visually displayed on television,
 - (ii) that important information has to be of a minimum size and strategically placed to enhance clarity, and
 - (iii) limitations and conditions on the use of the term “free”.
- (c) Section 5 - Pricing Information –provisions relating to how the price for PRS should be conveyed to end-users which support the provisions of Section 4.
- (d) Section 6 – Operation of PRS – this section in the Draft Code contains the provisions to be observed in respect of how PRS should operate and be delivered to end-users. There are several new provisions including;
 - (i) potentially changing the requirement to notify end-users of their expenditure on various types of PRS. ComReg examines if existing expenditure reminders and expenditure limits remain appropriate,
 - (ii) the introduction of a Purchase Confirmation Message; ComReg proposes that end-users should receive purchase confirmation message after they have purchased a PRS,
 - (iii) Subscription Services, ComReg proposes a requirement for an end-user to provide positive confirmation of his or her intention

to subscribe to a service (double opt-in) as well as providing a similar positive confirmation that they wish to remain subscribed to a service after a certain expenditure threshold has been reached,

- (iv) Competition Services provided on a subscription basis, account for a substantial number of consumer complaints and ComReg requests input from stakeholders in respect of the operation these.
- (e) Section 7 – Customer Service – ComReg proposes to expand on the existing requirements in the Code, in order to provide additional measures that are considered necessary to maintain an acceptable level of customer service in a fragmented value-chain.

1.4 Refunds

Section 9 of the Act provides that ComReg can, following an investigation, require a PRS provider who has breached a condition of his/her licence to refund any charges imposed on an end user in respect of the PRS connected with that breach. ComReg is of the view that, in order to ensure that this provision can be implemented funds must be available to reimburse end-users if required following an investigation under section 10(. This implies that a framework be created that will allow for refunds to be issued where necessary, including instances where the PRS provider which is responsible for the non-compliance is out of jurisdiction and/or is not responding to ComReg’s findings, on foot of an investigation.

In addition to the provisions of Section 9 of the Act, Section 7 of the Act provides that ComReg may make regulations specifying the conditions (*including the basis and circumstances upon which refunds may be made to end users*) to be attached to licenses to be observed by licenses holders. As the subject of refunds has not been the subject of a full consulted on, ComReg wishes to now consult on the basis and circumstances upon which refunds may be made. In Section 5 of this paper, ComReg explores various options to ensure that it is possible, in all circumstances, to issue refunds to end-users who have been adversely affected by a PRS provider who has breached a condition of their licence. ComReg also invites the opinions of stakeholders as regards how refunds should be provided to end-users who have been adversely affected by a PRS Provider who is found to be in breach of a licence condition(s).

Also included in this section is a proposal to require Network Operators not to make payments to PRS Providers for at least 30 days after the use of the PRS to which those payments relate. While these provisions have become standard practice in the industry, ComReg is considering formalising them so as to (a) provide clarity for Network Operators, (b) act as a deterrent to those who might otherwise breach their licence conditions and (c) facilitate the establishment of an effective refunds mechanism for consumers.

1.5 Control of Access to Adult (including Sexual) Entertainment Services

In 2007, RegTel conducted a pilot study whereby the provision of Sexual Entertainment Services (SES) was permitted, on condition that;

- (a) the services were provided on a designated number range that would assist the public to identify SES, and
- (b) the services would only be accessible by the use of a Personal Identification Number (PIN) issued by a licensed Network Operator.

RegTel found, that it was relatively easy to bypass these conditions, resulting in a large number of complaints in relation to children accessing the services in question. Since then, the provision of live SES has not been permitted. ComReg now wishes to elicit the views of all stakeholders on the matter, which will inform ComReg's future consideration of the issue of Adult (including Sexual) Entertainment Services.

1.6 Numbering Issues - Fundraising for Charitable Organisations

ComReg notes the increasing practice of donating money to charitable organisations by sending an SMS to a shortcode. The issue of the provision of a specific number range for such purposes, thereby differentiating such services from the wider body of PRS, is examined in Section 7.

2 Draft Code of Practice

2.1 Background

Section 15 of the Act provides that the Code of Practice published by RegTel in October 2008 is the Code to be followed by PRS providers with respect to the provision, content and promotion of specified PRS.

Section 15 of the Act also requires ComReg, as soon as practicable, to prepare and publish a draft Code of Practice as part of a consultation process and, having considered representations on the draft Code, to publish a new Code of Practice.

ComReg's approach to drafting a new Code has been to review the existing RegTel Code, to identify areas where its provisions might be strengthened to provide increased consumer protection, to identify where provisions may require amendment in order to provide clarification, to identify where new provisions may need to be made to reflect emerging industry practices and consumer behaviour and to identify where provisions might be abandoned as they are no longer appropriate.

2.2 Industry Developments

Mobile PRS (i.e. PRS accessed by, or delivered to, a mobile handset) continues to be the predominant platform in the PRS market and, typically, accounts for two-thirds of the revenues generated by the industry. However, Subscription Services also account for a disproportionate number of contacts from the public, and issues around Subscription Services account for approximately 84% of all of the PRS related contacts to ComReg's Customer Care Helpline.

The advent of WAP² has meant that PRS can now be delivered in a more efficient and seamless manner than was previously possible by SMS, or MMS, delivery. However, WAP is also a source of consumer complaints arising from the ease with which consumers can purchase an individual PRS, or enter a subscription service, merely by clicking on a button or link. The ease of purchase afforded by WAP has led to many claims of inadvertent purchasing by end-users.

Additionally, WAP is raising issues for some end-users who consciously purchase PRS, however cannot access their purchase due to technical challenges. For example, certain types of modern handsets, including Android handsets; Blackberry devices; all versions of the iPhone handset, and many Nokia handsets do not use any kind of WAP markup. The result is that the technical advancement of these devices has by-passed WAP, however end-users with such mobile devices may be unaware of these limitations and could, therefore, be paying for a PRS that they cannot retrieve.

² WAP - Wireless Application Protocol, a technology that allows users to access information (text, images, and video) via handheld wireless devices such as mobile phones.

2.3 Consolidation and Rationalisation

ComReg has evaluated the provisions of the existing Code and assessed their relevance and practical application to the type of PRS and methods of delivery in the modern market.

Some of the provisions that are “principles-based” remain relevant. It is therefore, proposed to retain them. It is also proposed to reiterate some provisions under service-specific categories. Where relevant, ComReg proposes to consolidate and rationalise the Code to minimise or eliminate overlap with the objective of ensuring that the draft Code is more user-friendly for industry.

2.4 Provisions Applicable to All PRS

Section 3 of the draft Code sets out the provisions that are applicable to all PRS. It includes many of the provisions that are included in Sections 3, 4 and 5 of the existing Code and is sub-divided into seven discrete areas, as follows:

- (a) General Provisions,
- (b) Data Protection,
- (c) Legality,
- (d) Decency,
- (e) Honesty,
- (f) Avoidance of Harm, and
- (g) Due Diligence.

The initial six sub-sections replicate existing provisions, however the inclusion of a new sub-section is intended to reflect the regulatory changes introduced by the Act and the PRS Regulations, which recognise all parties in the PRS value chain. ComReg considers that, to a certain extent, there is a shared responsibility for the delivery of PRS to end-users and wishes to encourage good commercial practices throughout the value-chain.

Included in the Due Diligence sub-section is the requirement for Network Operators to withhold payment to their contractual partners for a period of 30 days. This practice is already in operation and is intended to prevent the situation that existed a number of years ago, whereby PRS Providers that had caused significant consumer harm to end-users exited the market before end-users could obtain redress for that harm. It is intended that this provision will also give clarity to Network Operators allowing them to include them in contractual arrangements with their operational partners.

Q. 1. Do you agree with the proposed provisions, applicable to all specified PRS, as set out in Section 3 of the draft Code? If not, please provide reasons to support your view.

2.5 Promotion of PRS

ComReg has consolidated the provisions relating to the promotion of PRS into a single Section. The intention is that there is no longer a requirement to refer to several dispersed Sections of the Code to obtain the required information relating to the promotion of PRS.

ComReg considers that a basic requirement for PRS promotion is that it should not mislead, or require close scrutiny, and should be clear, legible and audible, if spoken. Additionally, it should not mask any important conditions. ComReg addresses a range of specific issues, as follows:

2.5.1 Visual Display Requirements

ComReg proposes to enhance the current Code by proposing that more details regarding the information that is required to be provided in a promotion and how that information be displayed in print, on TV, in promotions sent to mobile handsets and on the Internet. ComReg has, in particular, prescribed that pricing information must be prominently displayed in the body of any promotion and, therefore, not obscured among terms and conditions or in an inconspicuous manner such as in the footer of a promotion.

2.5.2 Spoken requirement

ComReg proposes a new provision in the draft Code that would require the essential items of information relating to the PRS to be spoken as part of a TV, or other audio-visual promotion. ComReg considers that this represents best practice across all retail services and should, therefore, be applicable to PRS.

2.5.3 Use of the Term "Free"

ComReg has proposed enhancing the provisions of the existing Code by incorporating the provisions of an Industry Notice published by RegTel in November 2009. ComReg is advised that the intention of RegTel in this Industry Notice was to address misleading promotions which enticed end-users to avail of “free” offers which, when on further investigation, required a direct or indirect charge to be incurred.

2.5.4 Promotions by SMS, MMS or WAP

Evidence obtained from ComReg’s Consumer Care Helpline has demonstrated that end-users frequently are unable to distinguish between promotional messages, spend reminder messages and charged messages. In addition, end-users are often unable to opt-out of receiving further promotions as they are unsure from whom they are receiving the promotions.

Subject to the responses received from this Consultation, ComReg is suggesting that promotions sent to an end-users mobile handset contain the necessary information for the recipient to identify from whom the promotion is sent, how to contact the sender and how to stop receiving future promotions.

2.5.5 Promotion of Subscription Services

In addition to the provisions that apply to other PRS, ComReg considers that there may also be a specific requirement for Subscription Services to be;

- (a) clearly identified as such, and
- (b) clearly identifiable through the use of an individual name so that end-users can establish if they are currently subscribed to the service, or have previously subscribed, and exited, the service. This will assist in avoiding or resolving cases of disputed service subscription.

2.5.6 Promotions of Specific Categories of Service

ComReg has consolidated the provisions relating to the promotion of specific categories of services into a single sub-section. These provisions are largely transcribed from the existing Code.

Q. 2. Do you agree with the proposed provisions relating to the promotion of PRS? If not, please provide reasons to support your view.

2.5.7 Industry Abbreviations

It is clear from ComReg's monitoring of PRS promotions and from issues raised by end-users of PRS that some of the abbreviations commonly used by industry are often misunderstood and/or overlooked. In accordance with the draft provisions to enhance end-user knowledge and understanding of PRS, prior to purchasing them, ComReg considers that it would be beneficial to prescribe what are regarded as acceptable and unacceptable abbreviations and has, consequently, included a table of such abbreviations as Appendix A to the Draft Code.

ComReg considers that Appendix A contains a non-exhaustive list and it will give the industry certainty as to ComReg's interpretation of the Draft Code and enhance promotional transparency across all platforms.

Q. 3. Do you agree with the proposed table of accepted abbreviations? If not, please provide reasons to support your view.

2.6 Pricing Transparency

Section 5 of the draft Code sets out specific requirements relating to the price information that must be supplied to end-users, prior to any costs being incurred. Transparent pricing information is essential for end-users to make informed decisions and is inextricably linked to how PRS are promoted.

Q. 4. Do you agree with the provisions relating to the price information that should be made available to end-users of PRS? If not, please provide reasons to support your view.

2.7 Expenditure Reminders and Limits

2.7.1 Requirement for Expenditure Reminders and Limits

ComReg considers that end-users should be in control of the amount that they spend on PRS. The nature of some PRS, particularly where the end-user regularly interacts with a service or where its delivery is spread over a relatively prolonged period of time, can result in the end-user being unaware of the cost that he/she is incurring. In addition, there is a risk that reverse-billed PRS might remove a large element of control from the end-user and transfer it to the PRS Provider.

The provisions of Section 6.6 of the draft Code, therefore, requires PRS Providers to provide end-users with a reminder message stating that the end-user has spent €20 on the services. Where applicable, end-users must also provide some positive confirmation to indicate their desire to continue with the service.

ComReg, therefore, is of the view that it is important that end-users are periodically made aware of the costs they incur when purchasing PRS. The existing Code of Practice has, in a number of Sections, limits on the amounts that can be spent in respect of certain categories of services. ComReg has consolidated the various price thresholds, in Section 6 of the draft Code, and welcomes the views of interested parties as to whether the limits, proposed below, are appropriate;

- (a) For PRS that are accessed via a premium rate number (including Live Services and Chatline Services), the end-user must be notified on spending €30 and must actively confirm that they wish to continue the call. The call must be terminated, by forced release, after €60.
- (b) For PRS that are accessed other than by a premium rate number (e.g. SMS, WAP or network proprietary (on-portal) services), end-users must be informed when they have spent €20 on a particular PRS, irrespective of whether this is a subscription service or not. It is proposed that if the PRS is a subscription service, and in a similar manner to services accessed by a premium rate number, the end-user must provide positive confirmation if he/she wishes to continue in the service - see Section 2.9.6 below.
- (c) Children's services must not cost more than €5 per call, or for a single transaction, or more than €10 per month.
- (d) Competition Services must not cost more than €12 per entry.

2.7.2 Payment for a Good or Service

The Act provides that a PRS may include or allow the use of a "facility". The Act further defines that a facility in relation to the provision of a PRS, includes a facility-

- (a) for making a payment for goods or services,
- (b) for entering a competition or claiming a prize,
- (c) for registering a vote or recording a preference, or
- (d) for enabling access to a premium rate service

In relation to point (a) above, ComReg recognises that Network Operators may wish to apply limits on expenditure through the use of a facility in the interests of protecting consumers from “bill shock” and controlling consumer bad debt. Nevertheless, ComReg wishes to elicit the views of interested parties in respect of what expenditure limit, if any, should apply to the payment for goods and services through a PRS.

2.7.3 Daily, weekly or monthly expenditure limit

ComReg is considering if there should be a maximum permitted expenditure on a particular PRS and, if so, whether such a limit should be calculated on the basis of an end-user’s daily, weekly or monthly expenditure.

Recent experience demonstrates that some end-users, particularly those that purchase PRS through a fixed-line, have used their telephone account as a form of credit in order to engage with quiz shows on TV that offer prizes. Some end-users, who repeatedly engaged with the shows, incurred unsustainable levels of debt that, subsequently, became an issue for the fixed Network Operator. This issue is less significant for mobile users, as a high-proportion of pre-pay customers are unable to access the two-months credit that the fixed-line billing period affords.

The proliferation of reality TV shows also affords end-users the opportunity to cast votes for their ‘favourite contestant’. ComReg believes that some end-users, particularly those under 18 years of age, can incur relatively high costs in casting such votes. Industry has indicated to ComReg that some end-users may wish to organise “block”, or multiple, votes in support of a particular candidate and that any “daily” spend limit could, therefore, impinge on this activity. This issue may be less significant if, rather than of a daily limit, there was a proportionately higher weekly, or monthly, spend limit.

It is recognised that PRS providers can only provide expenditure notifications and impose expenditure limits in respect of the services that they provide (i.e. an end-user could expend the maximum permitted on one particular service and, then, incur similar charges in respect of several other PRS, where a similar limit applied). ComReg considers that it would be disproportionate to require Network Operators to monitor, and enforce, end-user spend limits across all PRS.

Q. 5. Do you agree with the requirement to provide end-users of PRS with expenditure reminders? If not, please provide reasons to support your view.

Q. 6. Do you consider that the levels at which the proposed expenditure reminders are set are appropriate? If not, please provide reasons to support your view and, where appropriate, suggest alternative limits.

Q. 7. Do you consider that there should be a limit on the amount that an end-user can spend on entering a PRS competition? If so, how much? If not, please provide reasons to support your view.

Q. 8. Do you think there should be limit on the expenditure of an individual transaction through the use of a “facility”? If so, how much? Please provide reasons to support your view.

Q. 9. Do you consider that there should be a daily, weekly or monthly expenditure limit imposed in respect of individual PRS? If so, what do you think an appropriate level would be? If not, please provide reasons to support your view.

2.8 Purchase Confirmation Messages

ComReg considers that, in a similar manner to any retail purchase, end-users of PRS who make a “once-off” purchase via a mobile handset, should receive a Purchase Confirmation Message analogous to a receipt. The intention is that the end-user is provided with a tangible confirmation of a PRS purchase that he/she can retain.

Such a receipt would be particularly beneficial to pre-pay mobile end-users who, in practice, have limited access to billing records, and should also alleviate the requirement for all end-users to query premium charges with their Network Operators.

While ComReg understands that this provision cannot be provided to fixed-line end users, or to end-users of certain mobile services, such as interactive text chat entertainment services, nevertheless, such Confirmation Messages would be suitable and applicable for one-off content downloads or transactions such as competition entries. ComReg’s preliminary view is that the introduction of a Purchase Confirmation Message, would be a positive development and greatly enhance PRS price transparency.

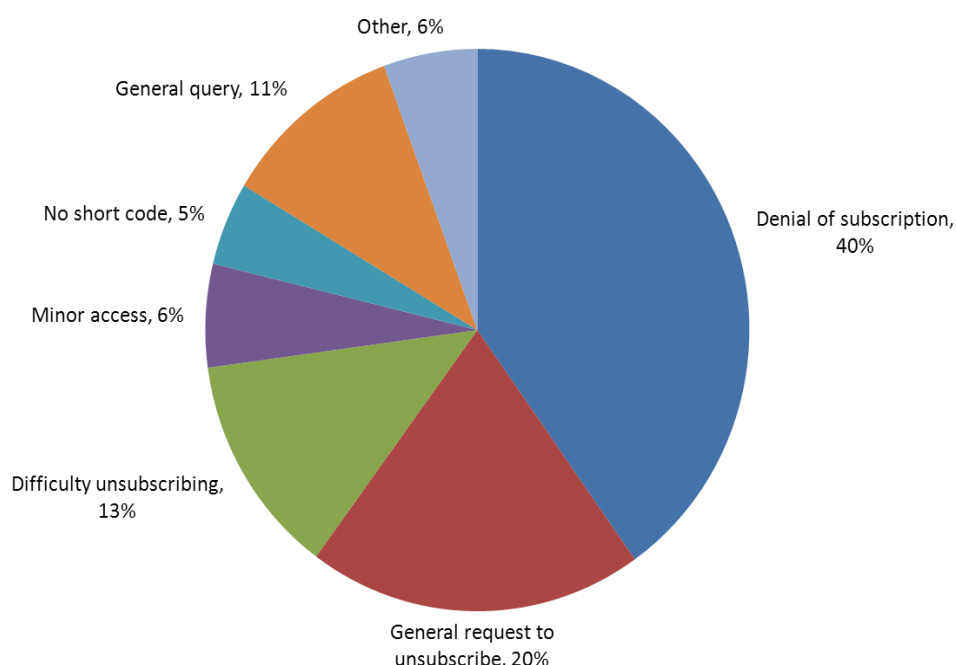
Q. 10. Do you agree with ComReg’s preliminary view on the introduction of purchase confirmation receipts in respect of some once-off PRS transactions? If not, please provide reasons to support your view.

2.9 Subscription Services

2.9.1 The Scale of the Issue

Subscription Services continue to be the principal source of end-users complaints to ComReg. Since 12 July 2010, an average of 250 end-users of PRS contact ComReg each week, with Subscription Services accounting for 84% of these queries and complaints, as illustrated in the pie-chart³ below. In addition to this, ComReg notes that RegTel reported in their 2009 Annual Report that 91% of end-user contact and complaints related to subscription, thereby indicating that these services continue to be the primary source of consumer dissatisfaction in the industry.

However, a recent poll⁴ conducted on behalf of ComReg revealed that 82% of respondents replied “Don’t know”, when asked “Who regulates the PRS industry and who can you complain to if you have a problem relating to PRS?” ComReg considers that it is reasonable to conclude that the numbers contacting ComReg in relation to PRS in general, and Subscription Services, in particular, could be higher if more people were aware that ComReg regulated the sector and could, therefore, advocate on their behalf.



³ Minor access and No Short code are also associated with Subscription Services.

⁴ Ipsos MRBI Omnipoll conducted on 18 September 2010

2.9.2 *Methods of Subscribing*

It is possible for end-users to subscribe to a Subscription Service in different ways, for example;

- (a) by entering a mobile phone number online in response to a promotion. A PIN code can be sent to the nominated handset and the end-user can then enter the PIN online to retrieve the content (or enter a competition etc);
- (b) by responding by text to a promotion on TV, radio, or in print which may, for example, be to induce the consumer to enter a competition or avail of a free/special offer;
- (c) by clicking on a link or “button”, in response to a WAP-push promotion sent to the end-users handset.

In all cases, the end-users are required to receive a “welcome” message from the PRS Provider, setting out the costs and billing frequency of the service.

However, as 40% of the people who contact ComReg’s Helpline deny that they subscribed to a Subscription Service, such a large percentage suggests that end-users either do not receive, do not read and/or do not understand the terms and conditions of the service that they engage with.

2.9.3 *Substantiated Subscription Confirmation*

To investigate cases where end-users deny having subscribed to a Subscription Service, ComReg has power to request all relevant information. In these cases, a relatively large weight is attached to the “log-file” provided by the PRS providers. A log-file is the record of the exchange of messages between the PRS provider and the end-user and is, typically, provided to ComReg, on request, in the form of an Excel spreadsheet.

ComReg recognises that, in some instances, the information contained in the log-file cannot be substantiated by a second party in the “value-chain”⁵ and, therefore, the veracity of the information in the log-file may not be beyond challenge.

ComReg is particularly focussed on those cases where a PRS Provider contends that an end-user has subscribed to a service through a WAP promotion. In such cases, the content from the WAP site is also provided to ComReg in an Excel spreadsheet, and the PRS Provider may contend that the end-user clicked on a link (or button) that was displayed as part of the content. ComReg, typically, requests information from the end-users Mobile Network Operator to determine whether the end-user incurred data charges at the time the subscription was initiated. Invariably, the Network Operator will provide evidence that the end-user incurred data charges at a date and time which supports the log-file, however ComReg cannot substantiate what content was displayed to the end-user when the subscription was commenced (i.e. ComReg cannot recreate what the end-user viewed at the time that the PRS Provider contends that he/she subscribed).

⁵ Refer to diagram in Section 3.1.2 below

This situation is unsatisfactory as it is difficult for ComReg to conclusively determine if the end-user has, or has not, subscribed. In addition, the free “welcome” message that is required to be provided to the end-user is not captured, for billing purposes, by the Mobile Network Operator and ComReg finds that when some end-users deny having received this message, such claims, equally, cannot be substantiated.

2.9.4 Proposed Remedy

ComReg considers that corrective measures are required to improve the customer experience for end-users and industry. Moreover, an unnecessary and inefficient amount of resources is devoted to addressing end-user complaints and queries relating to Subscription Services, by PRS Providers, Network Operators and ComReg.

It is ComReg’s view that the additional provisions relating to the promotion of PRS and clarification around the use of the term “free” may enhance consumer protection. ComReg is of the view, however, that further provisions are necessary to permit end-users to confidently subscribe to a PRS, having first been made aware of the cost and of all relevant terms and conditions.

ComReg has consulted with regulatory bodies in other jurisdictions through the International Audiotext Regulators Network⁶ (IARN). It notes that, where similar issues in the industry have arisen in other countries, the “double opt-in” mechanism has proved to be effective. Double opt-in requires that, prior to the end-user incurring any charges, he/she must be provided, by SMS, with the cost, billing frequency and other terms and conditions relating to the Subscription Service. The end-user must positively reply to this SMS to confirm his/her acceptance of the terms of the services.

The double opt-in was introduced in the UK in 2009 and the success of this approach was evident one year later, with⁷ ;

- (a) total complaints regarding mobile services reduced by 57%
- (b) consumer complaints regarding mobile subscription services reduced by 50%, and
- (c) consumer complaints regarding unsolicited text messages reduced by 85%.

In many instances, Irish end-users are billed for the service, having had sight of the terms and conditions only once, with no opportunity to reconsider their decision to purchase and, in the case of television or radio advertising, with little time to review the key terms and conditions before responding to the advertisement. In jurisdictions where double opt-in is in operation, end-users are reminded of the purchase price in the Subscription **Request** Message. Before receiving a Subscription **Confirmation** Message and being billed, they must reaffirm their wish to purchase by replying

⁶ <http://www.iarn.org/>

⁷ <http://www.phonepayplus.org.uk/output/news/phonepayplus-mobile-review-one-year-on.aspx>

“OK.” This is also in accordance with the principle of positive end-user consent. If end-users fail to reply to the Subscription Request Message, the PRS Provider may not opt them into the subscription and may not impose a charge.

ComReg wishes to consider whether the introduction of the double opt-in mechanism, as set out in Section 6 of the draft Code, would constitute an essential measure to enhance consumer protection. ComReg, however, has an open mind on this issue and will take into account the views of Respondents.

Q. 11. Do you agree with ComReg’s proposal to introduce a “double opt-in” requirement for Subscription Services? If not, please provide reasons to support your view.

2.9.5 Sign-Up Fees

It has long been established that PRS Providers are not permitted to require end-users to subscribe to a PRS for a minimum subscription period thereby facilitating end-users to opt-out of a Subscription Service with immediate effect (Section 11.13.3 of the current Code and Section 6.22 (b) of the Draft Code refer).

A relatively recent industry development has seen end-users incurring “*sign-up*” or “*joining*” fees as part of the opt-in to a Subscription Service which, in effect, is analogous to a minimum subscription period i.e. the end-user must incur a minimum cost. ComReg understands that PRS Providers wish to recoup at least some costs from end-users whom have already received content but may unsubscribe before any charge is applied. However, a worrying variation on the “*sign-up/joining*” fees model is that some PRS Providers of Subscription Services impose on end-users the first period’s charges in addition to the “*sign-up*” fees. The result is that end-users are charged the sum of the join-up fees plus the first periods billing charge immediately on subscribing, even if they were to immediately unsubscribe from the service and prior to using the service/accessing content etc.

While it is understandable that PRS Providers of Subscription Services may wish to charge end-users in advance of delivering the PRS, it is ComReg’s preliminary position that because sign-up fees may be disproportionately high in relation to the periodic charges, the combination of “*sign-up*” fees in addition to the charges for the initial period places the end-user at an unreasonable disadvantage in the commercial transaction, having cognisance for the principle of no minimum subscription period.

ComReg is interested in the opinions of stakeholders in respect of “*sign-up*” fees, and proposes that a reasonable solution in the interests of both industry and end-users is the proposal that any initial “*sign-up*” fee would be considered as the charges for all, or a portion, of the first charge period.

In addition and to ensure that there are sufficient protections and mechanisms satisfactory to both industry and end-users, ComReg has also proposed the provisions as set out in section 6.29 of the draft Code which will allow end-users to access any content that they have already been charged for.

Q. 12. Do you agree that any sign-up fees should be considered the subscription charges for the first billing period? If not why not?

2.9.6 Expenditure Update Messages

PRS Providers of Subscription Services are currently required to send end-users a free reminder text message when the end-user has spent €20 on a subscription service. This reminder message must contain details of the service including the charges, frequency of charges and details of how to unsubscribe from the service.

ComReg has found, through active monitoring of certain PRS, that the reminder messages sent to end-users by some PRS Providers are indistinguishable from subscription “welcome” messages or promotional messages, with the result that end-users are unsure, as to whether the message is free, billed, and who is responsible for sending the message. ComReg is therefore considering prescribing the format that the expenditure reminder message should take and has proposed a format in the draft Code. ComReg believes that this may assist in fully informing end-users of the costs that they have incurred to date, and require that the end-user positively indicates his/her desire to continue receiving the services.

This requirement for a positive affirmation by the end-user after incurring costs of €20 in a Subscription Service is analogous to a caller to a voice-PRS on a premium rate number being required to positively confirm that they wish to continue with the call, when they have incurred costs of €30. This mechanism is also in accordance with that proposed in Section 2.7.1 above, whereby the PRS provider is required to provide an expenditure update after the end-user has spent €20 in a non-subscription service.

Q. 13. Do you agree with the proposal to require end-users to provide positive confirmation of their desire to continue in a Subscription Service after a certain expenditure level? If not, please provide reasons to support your view.

2.9.7 Subscription Services Message Flow

A flow diagram set out in Appendix B illustrates the proposed changes that would occur in the end-user experience with the introduction of the double opt-in and amendments to the expenditure update messages.

2.9.8 Failed Delivery Messages

ComReg is particularly concerned at cases where messages for a Subscription Service are not delivered to the end-user, perhaps due to the fact that the end-user is out of network coverage or, in the case of an end-user with pre-paid mobile phone

accounts, as a result of the end-user being out of “call-credit”. In certain cases, the undelivered messages are “stored –up” for instant delivery when the end-user regains network coverage, or tops-up their call credit.

ComReg has proposed a provision in the draft Code that the PRS Provider may only, following the initial attempt, make two further attempts in a seven-day period to send any undelivered messages.

Q. 14. Do you agree with the provisions in the Draft Code that restrict the number of attempts that a PRS Provider may use to send an undelivered message? If not, please provide reasons to support your view.

2.9.9 Unsubscribing from Multiple Subscription Services

In the draft Code, ComReg has provided for circumstances where end-users are subscribed to multiple subscription services that operate on the same short code. If an end-user indicates a wish to exit from a particular service by sending the word STOP to the relevant shortcode, the PRS provider may not know which particular service the end-user wishes to exit. The proposed provisions of the draft Code make it possible for the PRS provider to inform the end-user of the subscription services that he/she has subscribed to on a particular shortcode, and permit the end-user to indicate the service(s) he/she wishes to exit from. If, however, the end-user fails to indicate a preference, it is proposed that the PRS Provider unsubscribe the end-user from all services on that shortcode.

Q. 15. Do you agree with ComReg’s proposal in relation to unsubscribing from multiple Subscription Services that operate on the same shortcode? If not, please provide reasons to support your view.

2.10 Competition Services

2.10.1 Subscription Competition Services

Competition Services provided on a subscription model continue to raise a significant number of complaints from end-users.

ComReg’s experience from dealing with end-user queries and complaints is that many end-users are content to enter competitions, whether promoted as free, or which carry a premium rate charge. However, many end-users are unaware that the subsequent messages that they receive, consequent of being subscribed to the service, result in a charge being levied to their phone account on a weekly or monthly basis for instance. The subsequent messages, typically, offer the end-user the opportunity to enter further competitions, for different prizes, other than the competition that he/she entered to subscribe to the service.

ComReg’s particular concerns in respect of Subscription Competition Services are that;

- (a) if the end-user chooses to ignore the additional messages received as a result of being subscribed to the service, or opens the messages and chooses not to enter the new competition that is promoted, the end-user derives no benefit from being in the service and is, in effect, paying for promotional messages, which is not permitted under the provisions of both the current and draft Codes;
- (b) if the end-user does choose to enter one of the additional competitions promoted through the messages that are sent as a consequence of being subscribed to the first service, the end-user incurs an additional one-off charge in respect of each competition entered. These charges are over and above the cost of the subscription and, therefore, it could reasonably be inferred that the published cost of the subscription was misleading. In fact, the PRS Provider would be unable to predict the cost of the subscription to the end-user, as it would be impossible to predict how many “additional” competitions the end-user would enter.
- (c) if the end user was, as a consequence of subscribing to a competition service, automatically entered into a weekly (or some other period) competition, without the end-user having to undergo a qualifying question or other pro-active means of demonstrating skill, then it is possible that this could be considered a lottery, rather than a competition and could be treated differently under the provisions of the Gaming and Lotteries Act, 1956 (as amended).

ComReg would welcome the views of interested parties as to whether Competition Services should be permitted to be provided on a subscription basis.

Q. 16. Should competition services be permitted on a subscription basis? Please provide reasons for your answer.

2.10.2 Competition Services - Quiz TV

Long-format Quiz TV programmes, which are dedicated to encouraging viewers to engage with a PRS are a relatively new development in the PRS industry. These services have, in the past, raised a relatively large number of complaints from end-users, who maintained they were unaware they were incurring costs for every call that was made in an attempt to connect to the studio and from some Network Operators, whom became exposed to bad debt as a result of their end-users engaging with these services.

While the general provisions of the Code will apply to all PRS, there are no specific provisions relating to Quiz TV PRS in the existing Code and ComReg has proposed a number of provisions in the draft Code that are intended to provide certainty for both industry and end-users as to how these services should operate.

Q. 17. Do you agree with the provisions in the draft Code relating to Quiz TV Services? If not, please provide reasons to support your view.

2.11 Additional Sub-Sections of Section 6 of the Draft Code

ComReg proposes to retain many of the provisions of the existing Code in respect of;

- Live Services
- Children’s Services
- Advice and Information Services
- Chatline Services, and
- Virtual Chat Services

The draft Code contains additional provisions and definitions which differentiate between Live “Entertainment” Services and Live “Advice or Information” Services. These provisions should assist in setting out the various provisions for each category.

ComReg also proposes provisions in respect of Pay-for-Product Services and has included additional provisions relating to SES.

Q. 18. Do you agree with the provisions in the draft Code relating to the services referred to in this Section? If not, please provide reasons to support your view.

2.12 Customer Care

In Section 8 of the draft Code, ComReg has set out the existing arrangements that are currently operated by PRS providers in respect of;

- (a) unsubscribing end-users who have contacted ComReg’s Customer Care Helpline requesting to be unsubscribed, and
- (b) making contact (callback) with an end-user, who has contacted ComReg’s Customer Care Helpline seeking information about a PRS that he/she had received.

ComReg proposes a number of additional provisions that are intended to ensure that the end-users should have to make as few calls as possible in order to obtain redress. In particular, ComReg considers that an end-user should not be required to make a separate call to a number of different PRS Providers involved in the provision of the particular PRS. ComReg’s contention is that the PRS Provider, with whom the end-user makes initial contact, should ensure that if any further contact with the end-user

is required then the relevant PRS Provider who is responsible for the provision of customer care in respect of the PRS, places the call to the end-user and not vice-versa.

Q. 19. Do you agree with the provisions in respect of Customer Service? If not, please provide reasons to support your view.

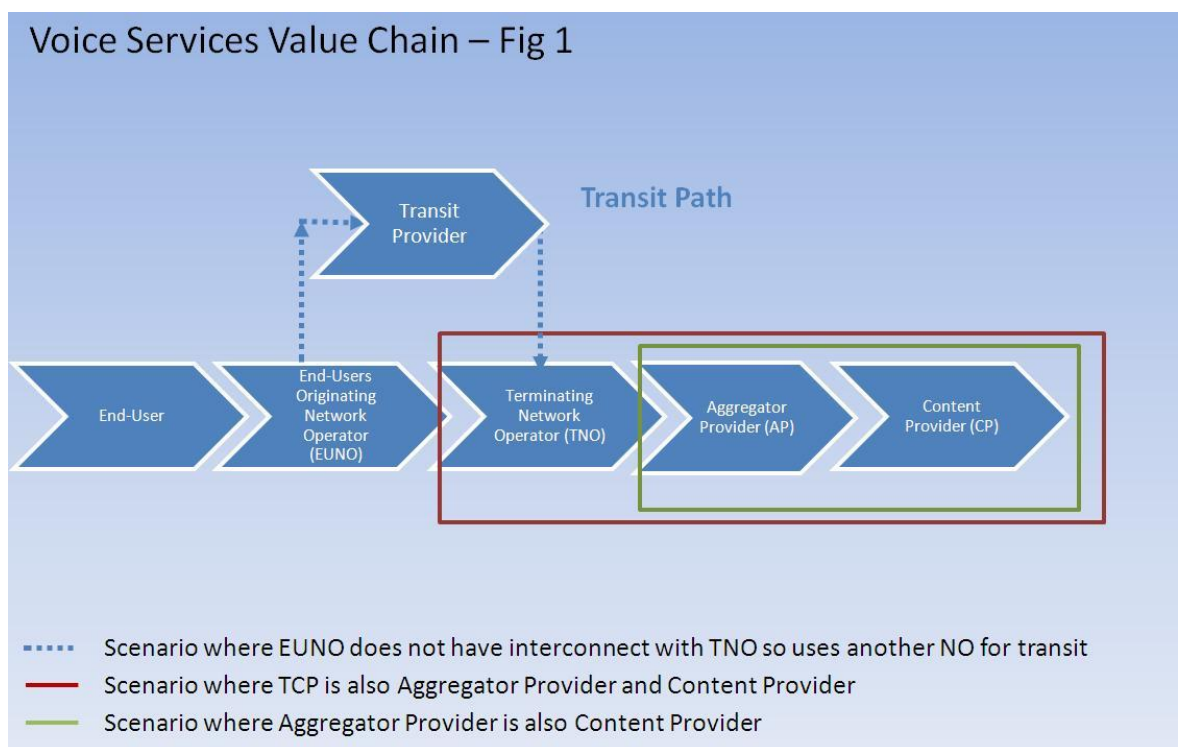
3 Refunds

The provisions of Section 9 of the Act explicitly provide that, should ComReg find, on foot of an investigation, that a PRS Provider has breached a condition of its licence, ComReg can require that PRS Provider to refund end-users who have been charged for the PRS that is connected with the non-compliance.

3.1 PRS Value Chain

ComReg considers that it is instructive to illustrate the relationships between the various parties in the PRS “value-chain” and the flow of funds between these parties. It is important to note that the definition of a “PRS Provider”, which is provided for in the Act, includes each of the various parties included in the diagrams below:

3.1.1 Voice Services Value Chain



3.1.1.1 The End-User

Typically, the end-user responds to PRS promotional material that he/she has seen, or received, by calling a PRS number. While this is most commonly used to access a live conversation service, or recorded voice service, other service types are available such as technical support, competition entry, long distance calling platforms, etc.

3.1.1.2 The End-Users Network Operator (EUNO)

The EUNO is the telephone network to which the end-user subscribes (the consumer’s billing network). The EUNO relays the call to the Terminating Network Operator (TNO), which provides the network facility for the Aggregator Provider (AP). If the EUNO does not have a direct interconnect relationship with the TCP, a transit operator will be used, as illustrated in Figure 1 above. As an originating

provider, it is possible that the EUNO has no commercial interest in the provision of the PRS and it is, therefore, solely providing a communications service. In such cases, the EUNO will bill the customer for the relevant amount and retain a charge for call origination or call transit. This is an important distinction from “revenue sharing” where the TNO, the AP and the Content Provider (CP) share the revenues generated from the provision of the PRS.

3.1.1.3 Terminating Network Operator (TNO)

The TNO has “rights of use” to blocks of premium rate numbers allocated from ComReg’s National Numbering Scheme. These numbers are allocated on a secondary basis, along with network connectivity, to the AP. The TNO is contracted in a revenue sharing agreement with the AP. It is possible that TNOs provide, promote and deliver their own content and in such cases, the TNO is also acting as the AP and CP, as illustrated in Figure 1 above.

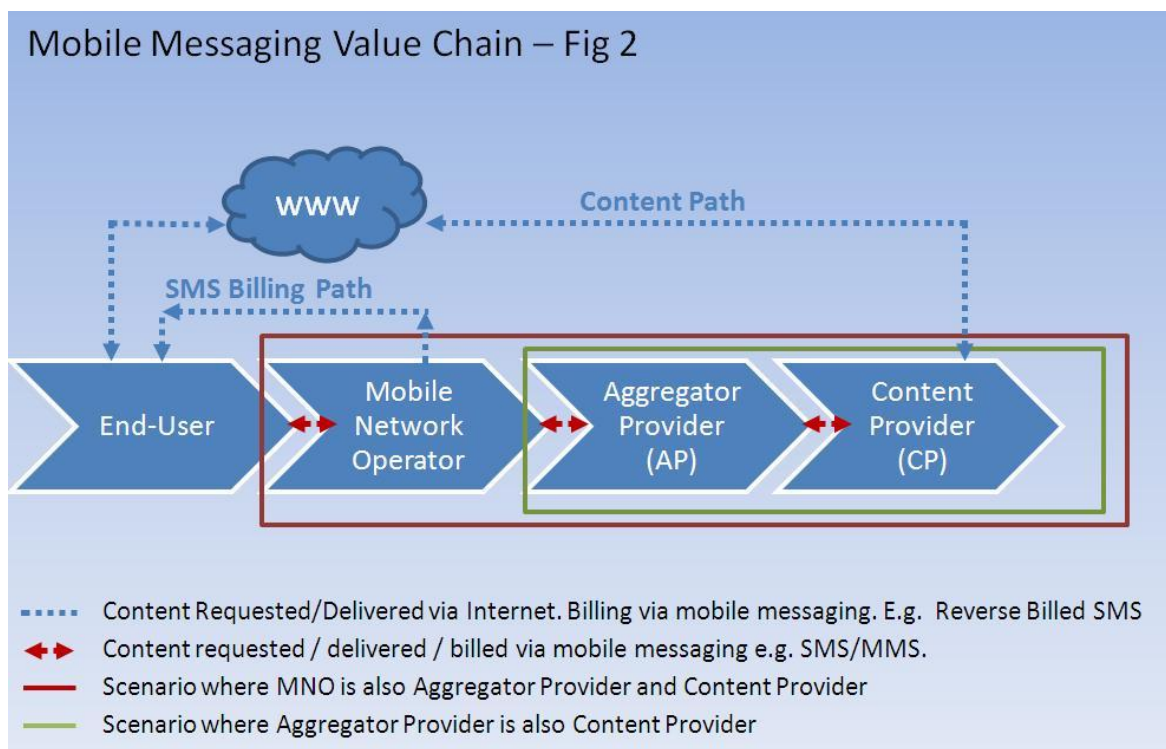
3.1.1.4 Aggregator Provider (AP)

The AP has acquired a PRS number and network connectivity from the TNO. The number can be used to provide premium rate charging for the PRS. It is possible that some AP’s provide and promote their own content and, in such cases, the AP is also the CP, as illustrated in Figure 1 above.

3.1.1.5 Content Provider (CP)

The CP provides and promotes PRS content as its core business. Its revenue comes exclusively from revenue sharing deals with APs. It is unusual for a CP to further sub-contract the provision of content to another CP, particularly in the fixed line sector.

3.1.2 Mobile Messaging Value Chain



3.1.2.1 The End-User

Typically, the end-user responds to PRS promotional material that he/she has seen, or received, by texting a key word to a specified mobile short code, or by accessing a website (where mobile short codes are used for charging purposes). PRS content such as images, video clips, games or information can be downloaded from the website or delivered using mobile messaging functionality such as MMS or SMS . The charging event is generally by “Mobile Terminated” (MT) SMS, commonly referred to as “Reverse Billed” SMS.

3.1.2.2 The Mobile Network Operator (MNO)

In all cases, the MNO acts as both EUNO and TNO relaying text messages, or calls, from the consumer to the AP. MNO’s are, therefore, the consumer’s contracted billing network with whom the consumer has direct retail relationship and are also party to a contractual revenue share arrangement with the AP. MNO’s relay SMS messages, or calls, containing PRS content or billing instructions back to the consumer. The MNO makes a charge to the consumer’s phone bill or deducts the amount from prepaid credit. A portion of the charge to the consumer is retained by the MNO, with the remainder passed on to the AP which, in turn, shares it with the CP.

3.1.2.3 Aggregator Provider (AP)

The AP applies to ComReg for an allocation of Premium Rate messaging short codes (5XXXX). The AP then enters into an agreement with each individual MNO to provide the allocated short code on the MNO’s network to enable consumers to purchase PRS and to deliver those services to the consumer’s mobile handset. AP’s interface with MNOs over a secure Internet connection directly to the MNO’s messaging platforms. An AP can provide access by millions of mobile subscribers to its CP customer’s content. Concurrently, the CP can access customer mobile phone billing accounts by sending MT-billed (reverse-billed) content to the consumer. Some AP’s in the mobile sector could provide their own premium rate content however, in practice, this is uncommon. They, instead, concentrate on collating or “aggregating” PRS content and providing the gateway to mobile customers for CPs.

3.1.2.4 Content Provider (CP)

The CP provides and usually promotes the PRS on offer. It has become increasingly common for CPs to sub-contract to other CPs in respect of some, or all, of the PRS content.

3.2 Non-Co-operation of a PRS provider

The provisions of Section 9 are, however, limited when the fragmented nature of the PRS “value-chain” is considered. It is possible that a PRS provider from outside the jurisdiction may;

- (a) refuse to co-operate with an investigation by ComReg into alleged, or suspected, breaches of licence conditions,
- (b) cease trading, resulting in there being no entity with which ComReg can engage during the course of an investigation, and/or

- (c) following an investigation, be found to have breached its licence condition, however fail to issue refunds as required by ComReg.

Each of these outcomes would leave ComReg in a position where it could revoke, amend or suspend a licence, in accordance with Section 10 of the Act, but it would be unable to assist end-users, who have been adversely affected by the breach of a licence condition, to achieve the redress anticipated by the Act.

3.3 Timely and Efficient Refunds

It is also possible that, should ComReg require a PRS provider to refund a large number of end-users who have been affected by non-compliance of a licence condition(s), the scale of the refunds to be issued cannot be efficiently implemented such that end-users fail to pursue or give up on receiving a relatively small amount of money. An issue also arises as to whether refunds are to be issued only to those end-users who registered a complaint about the PRS, or whether refunds should be issued to all end-users that engaged with the PRS.

ComReg wishes to explore the options that are available to ensure that end-users can, where necessary, be properly recompensed, in a timely and efficient manner. The situations that require consideration are;

- (a) who should be responsible for issuing refunds to end-users if the PRS provider, which was found to have breached a licence condition, either refuses, or fails, to provide refunds, and
- (b) in what form should a refund be provided (e.g. cheque, bank transfer, call credit, etc.) to ensure that end-users are effectively refunded.

Requirement for Refunds

It is ComReg's view that the issuing of refunds to end-users, who have been harmed as a consequence of a non-compliant action by a PRS provider, is essential to;

- (a) maintain and promote confidence in the industry, and
- (b) act as a deterrent to those PRS providers who may seek to take advantage of end-users.

Under the regulatory framework that existed before enactment of the Act, the responsibility for the promotion and provision of the PRS rested with the party to whom the PRS number (in the case of voice services) or the shortcode (in the case of mobile services) was issued. Since, in the majority of cases, this was the AP, the responsibility for issuing refunds, in the event that there was a breach of the Code, rested with the AP.

In addition, complainants who were adversely affected by the non-compliance were, typically, instructed by RegTel that an investigation had determined that there had been a breach of the Code and that, as a result, a refund was due and that they should contact the AP to arrange to receive this refund. As the number of end-users to be refunded were relatively limited, the AP tended, once the complainants had made contact and provided their names and addresses, to issue cheques to the

complainants. On certain occasions, where there were a large number of complainants to be refunded, the MNO's, although under no obligation to do so, assisted this process and provided the refunds directly to their customers (that is, the end-users affected by the non-compliant PRS).

3.4 Requirement for Full Refunds

Although there are examples where refunds have been issued to all end-users adversely affected by the actions of a non-compliant PRS Provider, refunds are, typically, issued solely to those end-users who make a complainant, as the PRS is unlikely to have caused harm to all end-users who engaged with it.

ComReg considers that it is possible that certain PRS Providers may consider issuing refunds to a relatively small number of complainants as an “inconvenience” or a “tax on doing business” and, as the number of complainants would be relatively small in comparison to the total number of end-users who accessed the non-compliant PRS, the sum to be refunded would not be sufficiently large to deter similar non-compliant behaviour in the future.

ComReg considers that refunding all end-users would be appropriate in certain circumstances, for example, where it is demonstrated that there has been a breach of a licence condition whereby the promotion for a PRS was misleading in a manner that enticed end-users to purchase and/or where the PRS has no intrinsic value⁸.

If, following an investigation, subject to Section 9 of the Act, ComReg concludes that a PRS Provider has deliberately, or through negligence, caused widespread consumer harm, it seems justified for that the PRS Provider to return all of the revenue which the service has generated. ComReg proposes that requiring PRS Providers to fully refund all end-users could act as a significant deterrent to those who set out to cause consumer harm or those who take little or no care in preventing consumer harm through the promotion and provision of a PRS.

As end-users may be unaware of who to complain to, there is merit to requiring non-compliant PRS Providers to inform all end-users of the non-compliant service that they are entitled to a refund and what steps they should take to claim it.

Irrespective of whether refunds are issued only to complainants or to all end-users it is ComReg's preliminary view that if an end-user is entitled to a refund, then this **refund should be for the full cost, inclusive of VAT, that was lost as a result of engaging with the non-compliant PRS**. This may result, in some instances, with some end-users receiving a higher refund than others, as a result of the pricing structure of the various End-User Network Operators.

⁸ When a PRS Provider purports to provide a PRS that in fact does not exist; for instance, where a household receives a delivery card through the letterbox relating to an undelivered parcel and which requires the recipient to dial a premium rate number but no parcel or delivery service exists and the sole intention is to induce the recipient to call a premium rate number.

Q. 20. Do you agree that the amount to be refunded to end-users should be the full charge imposed on them, inclusive of VAT, by the non-compliant PRS Provider? If not, please provide reasons to support your view.

Q. 21. Do you consider that ComReg should, in cases where the effect of the PRS is that end-users have been fundamentally misled in breach of the Code, require the PRS Provider to refund all end-users of the services? If not, please provide reasons to support your view.

3.5 How Should End-Users be Refunded?

ComReg considers that any refund should be provided to end-users in an efficient and timely manner. There are a number of methods of effecting refunds, as follows;

- (a) Cheque – refunds in the form of cheques involves additional costs in the form of bank fees for the PRS Provider issuing the cheque and the end-user cashing it. The sum to be refunded by cheque should be supplemented to take account of the cost of bank fees to be borne by the end-user.
- (b) Postal Order/Money Order – the sum should be for the full cost incurred by the end-user.
- (c) Bank transfer – this is the most efficient method of transferring money to an end-user as the transfer fees are borne by the party transferring the funds; the PRS Provider. Anecdotal evidence, however, indicates that end-users, who have suffered as a result of a non-compliant PRS Provider’s actions, are reluctant, to provide their bank details to a party, which
 - (i) has already caused them harm and, hence, the requirement for the refund, or
 - (ii) in the event that the PRS Provider issuing the refund is not their billing Network Operator, they are unlikely to have an on-going relationship with, and may not have heard of, the PRS provider, prior to the action requiring the refund.
- (d) Paypal (or other payment service provider) – some PRS Provider’s offer to credit an end-users Paypal account. However, Paypal will also charge a fee and therefore, the end-user may receive less than the charge originally imposed as a result of engaging with the non-compliant PRS.
- (e) Recent developments in the UK indicate that some PRS Providers can send end-users a unique access code to their mobile handset, which can be presented at a Post Office or banking institution, and a refund obtained. Such a development would be welcome in the Irish market.

- (f) Re-credit Telephone Accounts – re-crediting an end-users telephone account appears an obvious and efficient manner in which to issue refunds. It could be considered reasonable for a Network Operator, who may choose, or be compelled, to issue refunds to its customers to extract an administrative charge for doing so from the non-compliant PRS Provider, who is ultimately held responsible for refunding end-users. Some end-users may also have ported to another network and, therefore, it may not be impossible for Network Operators to refund the full amount that was originally charged to its customers.

Q. 22. What do you consider to be an appropriate means for end-users to receive refunds?

Q. 23. Having consideration for the principle of proportionality, should different methods of refunds be utilised, depending on scale of the refunds to be issued? If not, please provide reasons to support your view.

3.6 Default by a Party Responsible for Issuing Refunds

If there is general agreement that end-users should be reimbursed for the full charge imposed as a result of a non-compliant PRS, there are financial implications for those towards the end of the “value-chain”. If, for example, it is considered that a CP has breached its licence conditions and should, as a result of an investigation, refund those consumers affected by this breach there is an additional cost to the CP other than just the cost of administering the refund. The Network Operators and the AP’s, not having been the cause of the harm, will expect to receive their portion of the cost that was imposed on the end-users as they would with any compliant PRS. The CP will, therefore, have to issue refunds net of the portion of the charge to the end-users that is shared by the Network Operators and the AP. This situation may, possibly, result in some CPs failing to provide refunds, if the number of end-users to be refunded is sufficiently large that the total cost may have implications for the viability of their business.

ComReg believes that there should be reasonable precautions in place to ensure that it is not possible for a non-compliant PRS Provider to quickly exit the industry leaving end-users of their services with little or no prospect of redress. The issue of a PRS Provider firstly profiting from a breach of a licence condition and then defaulting on an obligation to refund end-users is, therefore, a subject that requires examination in this consultation.

ComReg is primarily concerned about the possibility of a non-compliant PRS Provider either;

- (a) refusing to co-operate with an investigation,
- (b) being out of the jurisdiction and/or becoming unreachable, or

- (c) failing to issue refunds in accordance with the findings of an investigation.

In each of these situations, there is the possibility that the PRS Provider has already received the revenue from its contractual partner in respect of the non-compliant PRS for which refunds are required. If the PRS Provider is already in possession of the revenues, there is a possibility, particularly if the PRS Provider is located outside the jurisdiction, that retrieving the funds in the form of a refund on behalf of end-users will not be possible.

However, consider an example where ComReg becomes aware of a non-compliant service and takes steps to ensure that it is discontinued, and the revenues accruing from this non-compliant PRS have not been distributed through the “value-chain” but are held at the end-users billing networks. Also assume that ComReg finds, on foot of an investigation, that a refund is appropriate but the PRS Provider responsible for the non-compliance becomes unreachable. In these circumstances, ComReg would be faced with the situation where the PRS Provider responsible for the non-compliance is unreachable but the revenues that accrued from the non-compliance are held by several other PRS Providers (the end-users network operators) who have not breached their licence conditions or been the instigators of the harm to their end-users. ComReg would welcome comments as to how this situation should be resolved having considered the following sub-paragraphs.

ComReg considers it an imperative that no PRS Provider should be able to quickly exit the Irish PRS market after being the cause of consumer harm. Therefore, the industry practice of Network Operators withholding funds for a minimum of 30 days is thus essential to deter any PRS Provider from attempting a “quick scam” and to provide a meaningful basis for an effective refunds framework. Accordingly, and subject to the feedback received from this Consultation, ComReg is proposing the imposition of a mandatory 30-day withholding rule to be formally set out in the regulatory framework.

3.6.1 Collective Responsibility

If all parties involved in the delivery of PRS to end-users in Ireland benefit financially, to varying degrees, it is reasonable to conclude that those same parties should also bear a degree of responsibility, if the result of providing the PRS causes harm to end-users.

If CP’s are primarily responsible for the provision, content and promotion of the PRS, they cannot do so without the involvement of their contractual partners, the APs and the Network Operators. There is, therefore, an implied responsibility on all PRS Providers to ensure that they conduct a level of due-diligence and maintain a reasonable level of oversight on the operations of their contractual partners. This is supported by, and is in addition to, Regulation 5(8) of the PRS Regulations and is also reflected in the Due Diligence section of the draft Code.

3.6.2 Proportional Responsibility

In the case of voice services, it is likely that the End-Users Network Operator (i.e. the end-users billing network), has no part in the provision of the PRS, other than to provide connectivity for the call to the Terminating Network Operator.

Q. 24. Do you agree with ComReg’s position that network operators should withhold payments for at least 30 days after the use of the PRS to which the payments relate? If not why not?

Q. 25. In the event that a non-compliant PRS Provider defaults on a requirement to provide refunds, who should be responsible for refunding end-users?

Q. 26. Is it reasonable, and proportionate, to require the non-compliant PRS Provider’s contractual partners to issue refunds in such circumstances? If not, please provide reasons to support your view.

Q. 27. How would compliant PRS Providers recoup the cost of administering refunds on behalf of a non-compliant PRS Provider?

Note: ComReg has not included any provisions in respect of refunds in the Draft Code of Practice but will, having considered the responses received to this consultation, make decisions and include provisions in respect of refunds in the regulatory framework.

4 Control of Access to Adult (including Sexual) Entertainment Services

ComReg seeks the views of all stakeholders on the following matters, which will inform its future consideration of the issue of Adult (including Sexual) Entertainment Services.

Q. 28. What are your views on the establishment of an Age Verification Framework for ensuring appropriate access to Adult (including Sexual) Entertainment Services?

Q. 29. What are your views on requiring Network Operators to bar access to the number ranges set aside for Adult (including Sexual) Entertainment Services in the numbering conventions?

Q. 30. What are your views on placing the responsibility for controlling access to Adult (including Sexual) Entertainment Services with the PRS Provider?

Q. 31. What are your views on establishing a Live Service Providers Compensation Scheme to provide for refunds to end-users whose telephones have been the subject of unauthorised use to call Adult (including Sexual) Entertainment Services?

5 Numbering - Fundraising for Charitable Organisations

Some charitable organisations have recently utilised the power, reach and convenience of PRS to raise funds for their fundraising campaigns. In conjunction with contractual partners, typically Aggregator Providers and Mobile Network Operators, who are involved in the promotion and provision of a wider range of PRS, charitable organisations provide end-users with the facility to donate funds by sending an SMS and a keyword to a mobile shortcode. The donation is deducted from the end-users phone account, or call-credit, and passed to the fundraising organisation through the normal “on-payments” methods in the PRS industry.

Typically, an end-user will send an SMS with a “keyword” to a designated shortcode and, in circumstances where the shortcode is used for the provision of other PRS, it is the keyword that will identify that the SMS relates to the fundraising campaign.

The potential benefits of providing a designated shortcode range are;

- (a) for the public, it will assist in identifying charitable donations from other forms of PRS, and
- (b) for Mobile Network Operators and Aggregator Providers, it will assist with accounting processes by clearly delineating revenues for charitable donations from other PRS.

ComReg understands that the commencement of various provisions of the Charities Act, 2009 will result in the establishment of a public register of charities under the auspices of a proposed Charities Regulatory Authority. Until such a public register is established, ComReg’s preliminary position is that any shortcode range, specifically set aside for fundraising for charitable organisations, should;

- (a) be within the broader 5XXXX range, and
- (b) be available to those organisation that have been granted a charitable tax exemption and issued a charity reference number (e.g. CHY123) by the Revenue Commissioners under the Taxes Consolidation Act, 1997.

Q. 32. Do you consider that a designated shortcode range should be made available for the purpose of fundraising for charitable organisations through mobile PRS?

Q. 33. If so, do you have a view on what range should be used?

Q. 34. If a shortcode range is set aside for fundraising through mobile PRS, do you consider that there should be any restriction on the types of organisations that could apply for a shortcode within this range? If so, please state what these restrictions should be.

6 Submitting Comments

The consultation period will run from Tuesday, 30 November 2010 to Thursday 21st January 2011, during which time the Commission welcomes written comments on any of the issues raised in this paper. It is requested that comments be referenced to the relevant question numbers from this document.

Having analysed and considered the comments received, ComReg will publish a response to consultation and decision.

In order to promote further openness and transparency, ComReg will publish all respondent's submissions to this consultation, subject to the provisions of ComReg's Guidelines on the Treatment of Confidential Information – ComReg 05/24. We would request that electronic submissions be submitted in an-unprotected format so that they can be appended into the ComReg submissions document for publishing electronically.

Please note

ComReg appreciates that many of the issues raised in this paper may require respondents to provide confidential information if their comments are to be meaningful.

As it is ComReg's policy to make all responses available on its web-site, and for inspection generally, respondents are requested to clearly identify confidential material and place such material in a separate Annex to their response.

Such information will be treated subject to the provisions of ComReg's Guidelines on the Treatment of Confidential Information – ComReg 05/24.

Appendix A – Legislation and Legal Basis for Consultation

Amendment to the Principal Act

The enactment of the PRS Act amended ComReg’s functions as set out in Section 10 the Communications Regulation Act, 2002, (*Principal Act*) as amended, as follows;

- (cb) to ensure compliance of premium rate service provider with their obligations in relation to the provision, content and promotion of premium rate Premium Rate Services
- (d) to carry put investigations into matters relating to-
 - (i) ...
 - (ii) the provision, content and promotion of premium rate Premium Rate Services

The Act of 2010 also amended ComReg’s objectives as set out in Section 12 of the Principal Act, as follows;

“(d) to protect the interests of end users of premium rate Premium Rate Services”

Section 9 of the PRS Act

9.—(1) Where the Commission conducts an investigation under section 10(1)(d)(ii) of the Principal Act —

- (a) to ensure that the conditions of a licence are being complied with, or
 - (b) in respect of an alleged breach of a condition attached to a licence, and finds, on foot of the investigation, that a premium rate service provider has not complied with or has breached a condition attached to his or her licence, it shall notify the provider of the findings and require the provider to remedy any non-compliance or breach and to refund any charge imposed by the provider on any end user in respect of any premium rate service that is connected with the noncompliance or breach not later than—
 - (i) one month after issue of the notification,
 - (ii) such shorter period as is agreed by the Commission with the provider concerned or stipulated by the Commission for reasons stated in the notification, or
 - (iii) such longer period as may be specified by the Commission.
- (2) The Commission may publish, in such manner as it thinks fit, any notification given by it under this section, subject to the protection of the confidentiality of any information which the Commission considers confidential.

Section 15 of the PRS Act

15.—(1) The Commission shall, following consultations with premium rate service providers, other interested persons and, as it considers relevant, other regulatory bodies in the State, prepare and publish, as soon as is practicable after the appointed day, a code of practice to be followed by premium rate service providers with respect to—

- (a) the provision, content and promotion of specified premium rate services, and
- (b) the conditions set for specified premium rate services under regulations under section 7.

(2) Before publishing a code of practice or any part of a code of practice, the Commission—

- (a) shall publish in such manner as it considers appropriate a draft of the code of practice or the part of the draft code of practice and shall give premium rate service providers, other interested persons and, as it considers relevant, other regulatory bodies in the State one month from the date of publication of the draft code or the part of the draft code within which to make written representations to the Commission in relation to the draft code or the part of the draft code, or for such further period, not exceeding 2 months, as the Commission in its absolute discretion thinks fit,
- (b) shall, having considered the representations, if any, publish the code or the part of the code with or without modification as the Commission in its absolute discretion thinks fit, and
- (c) where the Commission publishes a code of practice or any part of a code of practice, it shall publish a notice of such publication in the *Iris Oifigiúil* and that notice shall—
 - (i) identify the code,
 - (ii) specify the matters concerned in respect of which the code is published, and
 - (iii) specify the date on which the code comes into operation.

(3) The Commission may, following consultation with premium rate service providers, other interested persons and, as it considers relevant, other regulatory bodies in the State amend or revoke any code of practice or part of any code of practice prepared and published by it under this section.

(4) Where the Commission amends or revokes a code of practice or any part of a code of practice published under this section, it shall publish notice of the amendment or revocation in the *Iris Oifigiúil*.

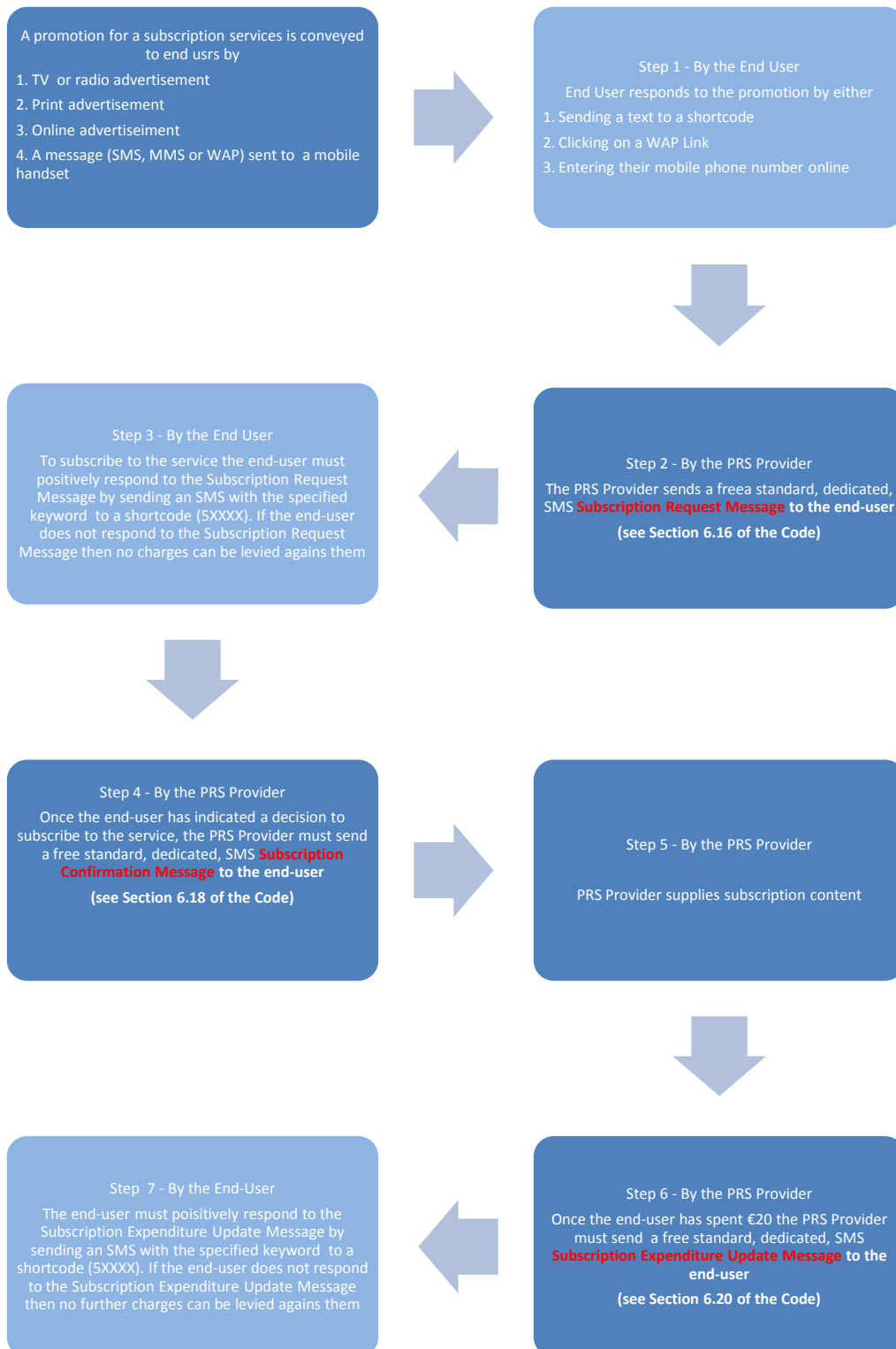
(5) The Commission shall make available for public inspection, without charge, on the Commission's website on the internet and at its principal office, during normal working hours—

- (a) a copy of each code of practice, and
- (b) where a code of practice has been amended, a copy of the code as so amended.

(6) It is a condition of a premium rate service licence that any code of practice is complied with.

(7) The code of practice in relation to the matters referred to in subsection (1) prepared and published by Regtel on 1 October 2008 continues and is the code of practice until a code of practice replacing it is prepared and published by the Commission under this section.

Appendix B – Subscription Service “Double Opt-In” Message flow



Appendix C – Consultation Questions

List of Questions

- Q. 1. Do you agree with the proposed provisions, applicable to all specified PRS, as set out in Section 3 of the draft Code? If not, please provide reasons to support your view. 10
- Q. 2. Do you agree with the proposed provisions relating to the promotion of PRS? If not, please provide reasons to support your view. 11
- Q. 3. Do you agree with the proposed table of accepted abbreviations? If not, please provide reasons to support your view. 11
- Q. 4. Do you agree with the provisions relating to the price information that should be made available to end-users of PRS? If not, please provide reasons to support your view. 12
- Q. 5. Do you agree with the requirement to provide end-users of PRS with expenditure reminders? If not, please provide reasons to support your view. 14
- Q. 6. Do you consider that the levels at which the proposed expenditure reminders are set are appropriate? If not, please provide reasons to support your view and, where appropriate, suggest alternative limits. 14
- Q. 7. Do you consider that there should be a limit on the amount that an end-user can spend on entering a PRS competition? If so, how much? If not, please provide reasons to support your view. 14
- Q. 8. Do you think there should be limit on the expenditure of an individual transaction through the use of a “facility”? If so, how much? Please provide reasons to support your view. 14
- Q. 9. Do you consider that there should be a daily, weekly or monthly expenditure limit imposed in respect of individual PRS? If so, what do you think an appropriate level would be? If not, please provide reasons to support your view. 14
- Q. 10. Do you agree with ComReg’s preliminary view on the introduction of purchase confirmation receipts in respect of some once-off PRS transactions? If not, please provide reasons to support your view. 15
- Q. 11. Do you agree with ComReg’s proposal to introduce a “double opt-in” requirement for Subscription Services? If not, please provide reasons to support your view. 18
- Q. 12. Do you agree that any sign-up fees should be considered the subscription charges for the first billing period? If not why not? 19
- Q. 13. Do you agree with the proposal to require end-users to provide positive confirmation of their desire to continue in a Subscription Service after a certain expenditure level? If not, please provide reasons to support your view. 19
- Q. 14. Do you agree with the provisions in the Draft Code that restrict the number of attempts that a PRS Provider may use to send an undelivered message? If not, please provide reasons to support your view. 20

Q. 15. Do you agree with ComReg’s proposal in relation to unsubscribing from multiple Subscription Services that operate on the same shortcode? If not, please provide reasons to support your view. 20

Q. 16. Should competition services be permitted on a subscription basis? Please provide reasons for your answer. 21

Q. 17. Do you agree with the provisions in the draft Code relating to Quiz TV Services? If not, please provide reasons to support your view. 22

Q. 18. Do you agree with the provisions in the draft Code relating to the services referred to in this Section? If not, please provide reasons to support your view. 22

Q. 19. Do you agree with the provisions in respect of Customer Service? If not, please provide reasons to support your view. 23

Q. 20. Do you agree that the amount to be refunded to end-users should be the full charge imposed on them, inclusive of VAT, by the non-compliant PRS Provider? If not, please provide reasons to support your view. 29

Q. 21. Do you consider that ComReg should, in cases where the effect of the PRS is that end-users have been fundamentally misled in breach of the Code, require the PRS Provider to refund all end-users of the services? If not, please provide reasons to support your view. 29

Q. 22. What do you consider to be an appropriate means for end-users to receive refunds? 30

Q. 23. Having consideration for the principle of proportionality, should different methods of refunds be utilised, depending on scale of the refunds to be issued? If not, please provide reasons to support your view. 30

Q. 24. Do you agree with ComReg’s position that network operators should withhold payments for at least 30 days after the use of the PRS to which the payments relate? If not why not? 32

Q. 25. In the event that a non-compliant PRS Provider defaults on a requirement to provide refunds, who should be responsible for refunding end-users? 32

Q. 26. Is it reasonable, and proportionate, to require the non-compliant PRS Provider’s contractual partners to issue refunds in such circumstances? If not, please provide reasons to support your view. 32

Q. 27. How would compliant PRS Providers recoup the cost of administering refunds on behalf of a non-compliant PRS Provider? 32

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