



Commission for  
**Communications Regulation**

## Submissions to Consultation

### Scope of Premium Rate Services regulation

#### Submissions received from respondents

<b>Document No:</b>	<b>10/50s1</b>
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<b>Response to Consultation:</b>	<b>10/50</b>

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ComReg consultation 10/27  
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**Services regulation**

Response from  
**11850**

14th May 2010

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11850 welcomes the opportunity to respond to ComReg Document No. 10/27 “*Scope of Premium Rate Services Regulation*” (the “Consultation”) and we set out below our responses to the issues raised by ComReg in the Consultation.

## 1 BACKGROUND

11850 Directory Enquiries Ltd (“11850”) is a subsidiary of The Number (UK) Ltd (“The Number”), which operates the UK’s market leading 118118 service. Both companies are part of the kgb group (“kgb”) (formerly InfoNXX Inc.), the world’s largest Directory Enquiry provider, with call centre operations in 13 countries. As a leading, recognised provider of information services to the public, 11850 is obliged to keep up with the evolving demands of Irish consumers for instantaneous access to an ever-expanding range of information services and, in particular, the necessity for 11850 to provide this information to consumers on-the-move. 11850 is well placed to provide ComReg with insight into experiences in providing directory enquiry services (including value added services) in different European markets. Through continued investment in market research, 11850 is well placed to understand and react to the developing needs of consumers.

## 2 INTRODUCTION AND SUMMARY

### 2.1 DQ Services - not a source of significant consumer harm

11850 recognises that ComReg’s intention is to address Premium Rate Services (“PRS”) causing widespread consumer harm. 11850 agrees that certain regulatory measures must be adopted in order to address those PRS which are a source of consumer harm in Ireland. However, 11850 has serious concerns regarding the introduction of significant and burdensome regulation involving the inclusion of certain other services which are **not** the source of harm, in particular directory enquiry (“DQ”) services, as a “Specified PRS”.

In particular, 11850 notes ComReg’s statement that, in consulting on the boundaries between what services are regulated as Specified PRS and what services should be subject to a code of practice on a voluntary basis “*ComReg wishes to address those areas where widespread consumer harm has occurred and continues to occur (such as mobile subscription services)*”.<sup>1</sup>

Further ComReg has noted<sup>2</sup> that in considering what services should be regulated as Specified PRS its intention is “*to focus the regulatory arrangements on those areas which hold a higher potential for consumer harm, and conversely, take a proportionate approach to services that pose less risk*”.

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1. Page 5 of ComReg Document No 10/27 (the “Consultation”)  
2. Section 7.1 at Page 5 of the Consultation

The areas of PRS creating most harm in Ireland are similar to areas causing most harm in many other countries and are (as noted by ComReg) related primarily to mobile subscription services (MSS) using mobile terminated (“MT”) billing. In contrast to MSS however, DQ services are not a source of significant consumer harm in Ireland. DQ services should not have an identical method of regulation to other PRS which carry a much higher potential for consumer harm. The categorisation of DQ as a Specified PRS, would be burdensome, disproportionate and without proper justification. In addition, it should be taken into consideration that DQ operators such as 11850 are licensed electronic communications services and therefore, already have regulatory obligations in place that many PRS merchants may not have, creating a risk of excess double-regulation to define DQ as a Specified PRS which we know is of concern to the DQ industry in Ireland.

In particular, ComReg itself notes that *“in recent years, the majority of complaints received by RegTel have been in relation to mobile subscription services”*.<sup>3</sup> Accordingly, in considering the appropriate level of regulation to be extended to DQ services, ComReg should take account of the fact that DQ services attract very few complaints in Ireland when compared with the volume of complaints received in respect of PRS. 11850 notes that when asked to quantify the harm that consumers have reported relating to DQ, **ComReg was unable to detail the number of customer complaints it has received in respect of DQ services as the levels of complaints received have been too low** to be reported on as an individual category of complaints. Whilst it is true that ComReg does not solicit complaints regarding DQ services, as DQ is not covered by Regtel, it is reasonable to assume that the general public would complain to Comreg rather than to any other public body, if they had reason to complain.

Accordingly, 11850 submits that there should continue to be different regulatory treatment for DQ services in order to recognise the extremely low levels of consumer harm associated with DQ services. In particular 11850 notes that the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010 (the “Act”) permits ComReg<sup>4</sup> to exempt certain categories of service from PRS regulation where the risk of consumer harm is low or where there is a record of strong compliance.

The current proposals put forward by ComReg in the Consultation place too much emphasis on the implementation of a broad authorisation and regulatory regime for PRS, rather than focusing on the areas of PRS which have been identified by ComReg as clearly creating widespread harm for consumers (eg MSS). 11850 submits that the application of regulation to PRS should take account of the

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3. Page 7 of the Consultation

4. As noted by ComReg at page 5 and 20 of the Consultation

varying levels of consumer harm posed by the PRS in question, so that a stronger level of regulation is applied where the evidence (and likelihood) of harm is greatest for consumers (ie MSS) and a lower level of regulation (including no regulation) where there is little likelihood of consumer harm occurring.

While 11850 understands that a certain level of monitoring of DQ services may be appropriate, in proposing any such monitoring, a balanced approach should be adopted by ComReg, taking account of the track record of DQ service providers, the low level of customer complaints received, the high standard of services provided by DQ service providers (as acknowledged by ComReg at section 8.4.1 of the Consultation) and the significant differences between DQ services and PRS.

## **2.2 DQ Service – Universal Service**

ComReg should take account of the fact that DQ services, unlike PRS, are recognised in the Directive 2002/ 22/EC (Universal Service Directive) as an essential service which should be available to all EU consumers and which brings social and economic benefits by increasing the connectivity and communications between citizens and businesses.

These unique differences should be reflected in different regulatory treatment for DQ services.

## **2.3 Equality & Disability Act – the value of enabling access to broad, mainstream information services for consumers with hearing impairments**

If 118 codes can offer broader services then they can be relevant to a wider population. One significant benefit of this is enabling mainstream access for consumers that rely on text-based information, for example people with hearing impairments. It is estimated that up to 10% of people have hearing impairments of some kind, and SMS-based services can be extremely valuable to these consumers (an estimated 450,000 Irish citizens).

When considering the relevance of broader services for the Irish market, 11850 consulted DeafHear<sup>5</sup> (formerly called the National Association for the Deaf) for their views. When considering an ‘Ask Us Anything’ service via SMS on 11850, DeafHear commented to ComReg<sup>6</sup> that the service,

*“provides a level of equality in access to information otherwise unavailable to Deaf and Hard of Hearing people. It is a good universal design. It is compliant with both the Disability Act and*

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<sup>5</sup> DeafHear.ie – Services for Deaf & Hard of Hearing

<sup>6</sup> Letter to Mike Byrne, Commissioner for ComReg, 9<sup>th</sup> January 2009

*the Equal Status Act and it enables social inclusion at a higher level. It is of benefit to Deaf & Hard of Hearing people, and others...”.*

When discussing the value of these services being available on 118 codes, as opposed to being available as stand alone information services on 5XXXX codes, DeafHear said,

*“11850 is a mainstream service which is fully accessible on a 24/7/365 basis to Deaf and Hard of Hearing people. As it is a mainstream service it is more likely to continue to be provided on a sound commercial footing. A specialist service, in contrast, would not be cost effective and would be more likely to fail or be withdrawn.”*

Indeed, DeafHear had bold views on the topic,

*“As this service is technically and economically feasible at no additional cost, it would be repugnant to deprive an already marginalised group from the benefits that accrue from this development. These benefits are both Social and Economic.”*

#### **2.4 Regulation must be proportionate and necessary**

11850 would draw ComReg’s attention to the Irish Government’s White Paper on Better Regulation (the “White Paper”)<sup>7</sup>, which recommends that the principles of proportionality, necessity and effectiveness be adhered to in any proposed regulation. Specifically, the White Paper sets out that the burdens imposed by regulation and the penalties for non-compliance should be proportionate to the risks identified (ie consumer harm).

11850 agrees that regulation of PRS is needed where there is a strong likelihood that consumers will otherwise experience significant consumer harm and where such regulation would provide adequate safeguards.

In this regard, 11850 notes that in a recent review of PRS in the UK, where DQ services have been able to offer broader information services than Ireland since 2002, Ofcom has stated that “*Directory Enquiries attract very few complaints*”<sup>8</sup>. DQ services accounted for an estimated 190 million call minutes in 2007<sup>9</sup>, yet only created 41 complaints to Phonepay Plus<sup>10</sup>. DQ caused an equivalent of 260 complaints per billion minutes, or 205 complaints<sup>11</sup> per billion calls. 11850 submits that this situation is replicated in Ireland and we are not

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7. [http://www.betterregulation.ie/images\\_upload/Regulating\\_Better\\_html/executive.html](http://www.betterregulation.ie/images_upload/Regulating_Better_html/executive.html)

<sup>8</sup> 4.49, The PRS Scope Review (Ofcom)

<sup>9</sup> Ofcom, Communications Market Report 2008

<sup>10</sup> PhonepayPlus Data, 3.24, Ofcom PRS Scope Review

<sup>11</sup> Based on 200 million calls per year estimate.



aware of any consumer complaints to ComReg being upheld against DQ providers in recent years.

Accordingly, the absence of a strong likelihood of consumer harm as regards DQ services means that ComReg should ensure that any proposals for regulation affecting DQ calls are proportionate and will achieve valuable benefits for consumers.

## 2.5 Regulatory Impact Assessment

11850 notes its concern in relation to the absence of a Regulatory Impact Assessment (“RIA”) in the Consultation. Pursuant to a Policy Direction issued to ComReg by the Minister for Communications, Marine and Natural Resources in 2003 under Section 13 of the Communication Regulation Act, 2002 (the “2002 Act”)<sup>12</sup>, ComReg is required, *“before deciding to impose regulatory obligations on undertakings, to conduct a RIA in accordance with European and best international practice and otherwise in accordance with measures that may be adopted under the Government’s Better Regulation Programme”*.<sup>13</sup>

11850 notes ComReg’s own guidance in respect of RIA and ComReg’s statement that:

*“RIA is only mandatory, or necessary, in advance of a decision which could result in the imposition of regulatory obligations”* and that *“ComReg will continue to conduct RIAs in respect of any proposed statutory instruments which would impose regulatory obligations”*.<sup>14</sup>

Given that the proposed regulation of PRS if implemented, would result in the imposition of certain regulatory obligations on providers of Specified PRS, some of whom have not been subject to regulation previously (eg mandatory compliance with the Code of Practice to be introduced by ComReg and with the conditions of the relevant PRS licence to be specified by ComReg), 11850 believes that ComReg would find a RIA valuable and that, in any case, ComReg must conduct a RIA in order to ensure that the proposed level of regulation of PRS is necessary and proportionate and to identify if a more effective alternative exists.

## 2.6 ComReg should consider alternatives to regulation

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12. Ministerial Policy Direction made by Dermot Ahern T.D. Minister for Communications, Marine and Natural Resources on 21 February, 2003

13. ComReg Document No 07/56 – *“ComReg’s Approach to Regulatory Impact Assessment- Response to Consultation and Guidelines”* dated 10 August 2007

14. As above

11850 respectfully submits that ComReg should consider whether there are any alternatives to regulation which would more effectively achieve ComReg's goals in respect of PRS.

In this regard, 11850 would ask ComReg to consider the introduction of a system of self-regulation for DQ service providers, pursuant to which DQ service providers would voluntarily comply with a Code of Practice introduced by ComReg in respect of PRS following consultation with the industry.

11850 understands that ComReg may have some reservations about a self-regulation model, however, we believe that if properly crafted and adhered to, self-regulation models can be very valuable indeed. We would suggest that, where ComReg has some residual concerns, it retain certain statutory powers to intervene in the event that it considers that the self-regulation of DQ services has failed to provide the requisite level of consumer protection and to then categorise DQ services as Specified PRS.

## **2.7 Proposed regulation must not stifle innovation**

As the leading European provider of DQ services, The Number and 11850 are cognisant of the need to implement appropriate and effective safeguards to address potential consumer harm issues which can arise when providing information services to the public. 11850 places considerable importance on maintaining effective quality control mechanisms and continually works towards improving and developing these safeguards.

ComReg's chosen method of regulation must avoid stifling innovation so as to ensure an economic environment where service providers can innovate and offer new products/ services for consumers with the minimum of regulations and which ensures that consumer harm is averted. Failure by ComReg to take this approach would result in over-regulation and stifling of innovation so that new consumer harm occurs in the form of an absence of convenient, innovative services being available to Irish consumers.

A harmonised approach must be taken to consumer issues across technologies, applying generic rules and protections to consumers everywhere. Industry-specific regulation should be limited only to addressing unique issues of particular added harm or urgency. Otherwise consumers will be poorly served, investment in industries will be stymied and rogue traders will still be able to serve consumers by focusing on technologies that are not covered by the PRS guidelines.

### 3 RESPONSES TO CONSULTATION QUESTIONS

**Q. 1. Do you agree with ComReg's preliminary view that twenty cents (€0.20) retail cost per minute/per call/per text is a reasonable price threshold below which certain services may be exempted from licensing?**

No. 11850 agrees that certain categories of services should be exempted from regulation when below a certain cost. However, 11850 believes that the 20 cent price threshold proposed by ComReg is too low and is arbitrary and inappropriate and thus, it should not be considered a reasonable price threshold.

11850 notes that in the past, Regtel has employed a variety of limits for regulatory purposes as thresholds for added information to be provided to consumers. These have included €10, €12, €20, €30 limits depending on the type of service<sup>15</sup>. 11850 submits that in setting a price threshold below which PRS services are exempted from regulations, ComReg should consider undertaking a comparison exercise to analyse the thresholds imposed by Regtel against those areas of PRS where significant levels of consumer complaints have been received by Regtel in order to properly ascertain the threshold levels which have been most effective in reducing complaints to standard levels (and hence avoiding unnecessary consumer harm).

11850 proposes that spending over €10 per decision (eg a €10 subscription or €10 per call or €10 per text) is an appropriate level at which a consumer is at risk of sufficient harm to merit proactive protection to be put in place by ComReg.

In addition, 11850 submits that clear proportionate codes of conduct for PRS, which are not overly restrictive regarding refund processes, complaints processes and best practise are useful in encouraging services to attain the highest standards for consumers, for example:

- Systems to identify phones owned or controlled by minors, and relevant warnings and restrictions related to these accounts (when they are used to access adult content);
- Improved STOP mechanisms for mobile subscription services;
- Effective complaints processes and means of refunds to customers;
- Simple, effective, well publicised means of finding out who operates a number / service and further information (eg a regulator's website or networks' website or a freephone customer care lines); and
- Ability of service providers to set a uniform retail rate for an individual service across networks (which will enable uniform tariffs that are easy

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15. Regtel Code of Practice dated 1 October 2010

for consumers to understand and will increase price transparency for consumers and maximise price competition between services as tariff comparison will be much easier).

Finally, 11850 proposes that ComReg should consider the introduction of a mechanism whereby, if the level of complaints received by ComReg in respect of PRS cross a recognised threshold (eg 1 regulator complaint per thousand calls/texts), licensing and proactive regulation are considered rapidly as remedies.

Any extension of current regulation, policy and investigation should clearly focus only on real areas of harm, and only where broader consumer law could not effectively prevent such harm.

**Q. 2. Do you agree with ComReg's intention to regulate live services?**

11850 does not propose to respond to this question.

**Q. 3. Do you agree with ComReg's intention to regulate PRS services of a sexual nature, irrespective of cost?**

11850 does not propose to respond to this question.

**Q. 4. Do you agree with ComReg's intention to regulate competition services?**

Any rules regarding competition services must be mindful to not unintentionally prohibit PRS in general from being able to effectively run occasional marketing promotions of limited costs for their services (ie competitions promoting a PRS which is not a competition service).

**Q. 5. Do you agree with ComReg's intention to regulate children's services, irrespective of cost?**

11850 does not propose to respond to this question.

**Q. 6. Do you agree with ComReg's intention to regulate fundraising and charitable donations made through a PRS?**

11850 does not propose to respond to this question.

**Q. 7. Do you agree with ComReg's intention to regulate internet dialler software, irrespective of unit cost?**

11850 does not propose to respond to this question.

**Q. 8. Do you agree with ComReg's intention to regulate virtual chat, contact and dating services, irrespective of cost?**

11850 does not propose to respond to this question.

**Q. 9. Do you agree with ComReg's intention to regulate pay-for-product services?**

11850 does not propose to respond to this question.

**Q. 10. Having due regard for the issues raised above, do you consider ComReg should regulate MNO's "on-portal" services as "Specified PRS"?**

ComReg should regulate in a technologically neutral manner and also in a commercially neutral manner so the regulation focuses on how to avoid harm for consumers, not the nature of the technology used or whether the supplier is a network or not.

It is not fair or reasonable to assume that an MNO will automatically offer a better, more responsible standard of service than a respectable service provider of another kind.

It is reasonable for certain elements of regulation to be waived if the supplier is already covered by other regulations that will ensure fair treatment for consumers. For example, if the nature of the organisation and its communications license means it is already required to offer suitable levels of consumer protection for publishing pricing, refunds processes etc and where that organisation would then be subject to unnecessary double-regulation. This type of situation has been envisaged and references in the latest EC Citizen's Rights Directive which Ireland will transpose into domestic law in the coming year:

*"national regulatory authorities should take due account of the nature of the service, the pricing conditions which apply to it and whether it is offered by a provider who is not a provider of electronic communications services<sup>16</sup>."*

**Q. 11. Do you agree with ComReg's proposal that certain categories of services could be exempted from regulation, provided the cost is below the proposed 20 cent (€0.20) price threshold?**

See Q1.

11850 agrees that certain categories of services should be exempted from regulation when below a certain cost, however, as stated at question 1 above, 11850 believes that the 20 cent price threshold proposed by ComReg is arbitrary and inappropriate and should not be considered a reasonable price threshold.

While regulation is warranted where there is a strong likelihood that consumers will otherwise experience harm, 11850 submits that, in

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<sup>16</sup> Article 14 Recital 32 Citizen's Rights Directive 2009/136/EC, 25th Nov 2009

accordance with the Government's White Paper on Better Regulation, ComReg should ensure that any proposed regulation is as light as possible whenever possible, and that alternatives are considered where appropriate. Any proposed regulation must be proportionate to the likelihood of consumer harm and the magnitude of that harm, so as to be necessary to deal with the risks identified and to maximise innovation for consumers.

The principles of proportionality and necessity should underpin any decisions regarding the regulation of PRS in order to ensure that regulation is as strong as is needed where the evidence (and likelihood) of harm is greatest for consumers (eg MSS), but also to ensure, that other types of PRS which do not pose a similar level of consumer harm (eg DQ services) are not unfairly subjected to a similar level of regulation, which could itself result in consumer harm by stifling innovation.

11850 submits that €10 per consumer decision is a practical level at which to impose a price threshold below which certain categories of PRS (including DQ) could be exempted. Any service that is likely to result in a consumer spending over €10 per decision (eg per subscription or per call or per text) is an appropriate level at which a consumer is at risk of sufficient harm to merit proactive protection to be put in place by ComReg. ComReg should consider undertaking a comparison exercise to analyse the thresholds imposed by Regtel against those areas of PRS where significant levels of consumer complaints have been received by Regtel in order to properly ascertain the threshold levels which have been most effective in reducing complaints to standard levels (and hence avoiding unnecessary consumer harm).

In addition, 11850 submits that only PRS experiencing more than one reported complaint to regulators per thousand calls/SMS should be regulated unless the price is above the €10 price threshold proposed above.

**Q. 12. Do you consider that ComReg should regulate Directory Enquiry services, within their current remit, as specified PRS?**

No.

**(a) DQ services are not a source of significant consumer harm**

DQ services are not a source of significant consumer harm and, as such, should not be categorised by ComReg as a Specified PRS. As stated at Section 2 above, 11850 submits that there should continue to be different regulatory treatment for DQ services to recognise the unique differences between DQ services and PRS and the extremely low levels of consumer harm which are associated with DQ services.

The burden to DQ service providers of complying with any proposed regulation must be proportionate to the risk of harm to consumers posed by DQ services. In this regard, 11850 notes that in a recent review of PRS in the UK, where DQ services have been able to offer broader information services than Ireland since 2002, Ofcom has

stated that ***“Directory Enquiries attract very few complaints<sup>17</sup>”***. **DQ services accounted for an estimated 190 million call minutes in 2007<sup>18</sup>, yet only created 41 complaints to Phonepay Plus<sup>19</sup>**. DQ caused an equivalent of 260 complaints per billion minutes, or 205 complaints<sup>20</sup> per billion calls.

This is a very low level of complaints and represents a fraction of the level of complaints received for general PRS. Phonepay Plus recognised that DQ has unique characteristics that are different to general PRS. 11850 submits that this situation is replicated in Ireland as we are not aware of any consumer complaints to ComReg being upheld against DQ providers in recent years. 11850 notes that when asked to quantify the harm that consumers have reported relating to DQ, ComReg was unable to detail the number of customer complaints it has received in respect of DQ services as the levels of complaints received have been too low to report on.

In contrast, we note that of the 27,807 enquiries/complaints to Regtel’s helpline for the period 2008 to 2009, 25,000 were related to MSS. In addition we note from a press release on Regtel’s website that for the period 2008 to 2009 *“80 million chargeable texts were sent and these resulted in over 2,000 complaints being received from the public about premium rate text services. Of the [over] 30,000 calls received by RegTel’s information line, over 80% related to subscription services, with most seeking advice on how to unsubscribe from services no longer required.”<sup>21</sup>*

**(b) DQ is a Universal Service**

ComReg should have regard to the fact that, unlike PRS, DQ is recognised in the Universal Services Directive as a service that should be available to all EU consumers as it brings social and economic benefits by increasing the connectivity and communications between citizens and businesses.

11850 notes that, in its recent consultation<sup>22</sup> in respect of the Universal Service Obligations under the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2003 (S.I. 308 of 2003) as amended (the “Universal Service Regulations”), ComReg noted that the requirement of the designated universal service provider (eircom) to provide a comprehensive directory enquiry service was withdrawn in 2006 as *“ComReg was of the view that directory enquiry services were being*

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<sup>17</sup> 4.49, The PRS Scope Review (Ofcom)

<sup>18</sup> Ofcom, Communications Market Report 2008

<sup>19</sup> PhonepayPlus Data, 3.24, Ofcom PRS Scope Review

<sup>20</sup> Based on 200 million calls per year estimate.

<sup>21</sup> <http://www.regtel.ie/consumernotices1.htm>

<sup>22</sup> ComReg Document No. 10/35 – Consultation Paper – *“The Provision of Telephony Services under Universal Service Obligations”* dated 22 April 2010

*provided on a commercial basis and that the market could fulfil this aspect of the universal service without an undertaking, or undertakings, being legally obliged to do so by ComReg”.*

Most other PRS services do not fulfil Universal Service Obligations that have been agreed across the EU and which have legal backing as socially desirable objectives. ComReg must pay particular attention when considering any proposed regulation that it is not overly burdensome as regards DQ services and does not cause a decline in the use of this socially and economically advantageous service for consumers. Any decision to impose regulation on DQ services must be supported by empirical evidence of a strong potential for consumer harm to ensure that any added regulation will not undermine the relevance and availability of these social and economic goals.

**(c) Significant Investment of DQ service providers**

Further, 11850 submits that DQ services should not be categorised as Specified PRS and subjected to an identical level of regulation as other PRS service. DQ Service Providers are more focused on the business market than are most PRS and DQ investment levels are significantly greater than for most PRS and entail longer term return on investment perspectives and significant investments in a single branded access number (brand). As a result, customer care matters and consumer harm issues are taken extremely seriously by DQ operators as a failure to do so would put a DQ operator’s significant investment in the Irish market at risk. The high standard of customer care provided by DQ operators to their customers is evidenced by the very low levels of complaints today.

11850 submits that there should continue to be different regulatory treatment for DQ services to recognise the unique differences between DQ services and PRS identified above and the extremely low level of consumer harm associated with DQ services.

**(d) Regulation must be proportionate and necessary**

11850 accepts that regulation of certain PRS (most notably MSS) is needed where there is a strong likelihood that consumers will otherwise experience significant consumer harm and where such regulation would provide proper safeguards. However, any proposed regulation must be proportionate to the likelihood of consumer harm and the magnitude of that harm, so that the extension of a similar level of regulation to DQ services as is applied to other types of PRS (ie MSS) would be disproportionate and burdensome.

In line with the Government’s White Paper and with ComReg’s own guidelines on RIA (the “RIA Guidelines”)<sup>23</sup>, ComReg should ensure that

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23. ComReg Document No 07/56a - “Guidelines on ComReg’s Approach to Regulatory Impact Assessment”



any proposed regulation of DQ services is proportionate and necessary so as to ensure that any such regulation will achieve valuable benefits to consumers.

The White Paper also provides that in determining whether regulation is necessary, an evidenced-based approach should be adopted. Accordingly, 11850 submits that ComReg should only intervene to regulate DQ services if and when there is some prima facie evidence that intervention is required and justified by demonstrating a strong likelihood of consumer harm (eg more than one complaint to a regulator per thousand calls/texts). In this regard, we would refer ComReg to the information provided in respect of DQ consumer complaints in our response to Question 12(a) above.

As stated above, 11850 is concerned that ComReg has failed to demonstrate that a categorisation of DQ services as Specified PRS is proportionate and necessary. In particular, 11850 notes the absence of a RIA in respect of the proposed regulation of PRS and DQ services, particularly given ComReg's view:

*"That the purpose of a RIA is to establish whether regulation is actually necessary and to consider any alternatives...RIA should therefore ensure the most effective approach to regulation is adopted. This will ensure that where regulation is necessary, the most effective and least burdensome regulatory option will be chosen"*<sup>24</sup>.

Section 6 of a Ministerial Direction issued to ComReg in 2003 requires ComReg, before deciding to impose regulatory obligations on undertakings, to conduct a RIA in accordance with European and International best practice and otherwise in accordance with measures that may be adopted under the Government's Better Regulation programme (including the Government's RIA Guidelines).

In addition, ComReg states in its RIA Guidelines, that it must conduct a RIA where it itself has decided to impose a regulatory obligation. Given that, in the current instance, the Act has awarded ComReg the discretion to determine: (i) which type of PRS will be classified as a Specified PRS and therefore caught by the new licensing framework so as to be subject to regulatory obligations (eg compliance with code of practice and other licence conditions); (ii) which PRS will be exempted from regulation and (iii) the type of regulation to be imposed, we believe that ComReg is required to conduct a RIA in this instance in order to ensure that the most effective approach to regulation is adopted and that, where regulation is deemed necessary, the most effective and least burdensome regulatory option will be chosen.

ComReg states in its RIA Guidelines, that in conducting a RIA it will take into account the six principles of Better Regulation that is

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24.ComReg Document No 07/56 – “ComReg’s Approach to Regulatory Impact Assessment- Response to Consultation and Guidelines” dated 10 August 2007

necessity, effectiveness, proportionality, transparency, accountability and consistency.

We note that ComReg has made no reference in the Consultation to its intention to carry out an RIA and we would therefore request confirmation that ComReg intends to use the information gathered from stakeholders' responses to the Consultation to conduct a RIA in order to properly consider the alternative options available to it (eg self-regulation) and the impact of each option on the various stakeholders involved.

We understand that ComReg intends to publish a response to the Consultation in June 2010. We believe that it is important, given that ComReg is proposing to impose PRS regulation on certain service providers who are not currently regulated (ie to introduce new regulatory obligations), that ComReg carries out a RIA in advance of publishing these Regulations in line with its own RIA Guidelines.

11850 would therefore request that ComReg confirm its intention to conduct a RIA and to publish the findings of its RIA in conjunction with the issue of its Response to Consultation document.

(e) **Alternatives to Regulation should be considered**

Taking into account the significant levels of investment made by DQ operators in their brands in Ireland and elsewhere, 11850 submits that ComReg should consider permitting a model of self-regulation in respect of DQ services pursuant to which DQ service providers would voluntarily comply with a Code of Practice introduced by ComReg in respect of PRS following consultation with the industry.

11850 requests that ComReg consider a self-regulation model where ComReg would retain certain statutory powers to intervene, in the event that it considers that the self-regulation of DQ services has failed to provide the requisite level of consumer protection and, on finding that an unacceptable level of consumer harm has occurred under the system of self-regulation, to categorise DQ services as a Specified PRS.

In this regard, 11850 would draw ComReg's attention to the ongoing success of self-regulation programmes in the telecommunications industry in Ireland. As ComReg will be aware, in 2006, an alliance of mobile phone operators, namely: 3, Meteor, O2 and Vodafone, together the Irish Cellular Industry Association ("ICIA"), wrote to the Minister for Communications, Marine and Natural Resources ("Minister for Communications") setting out a commitment to a Code of Practice (the "Code"), in recognition of the ICIA's obligation to take proportionate and responsible measures to ensure, inter alia, that inappropriate content is not made available to minors.

The Code establishes the standards which mobile operators will adhere to on the issues of: parental controls for minors' access to mobile services; malicious or offensive person to person communications; spam; internet access; premium rate services; and access controls for content services.

We understand that the Code was formulated as a suggested response to the proposed mandatory registration of mobile handsets in Ireland by the Minister for Communications. The mobile operators responded to the proposed mandatory registration by taking responsibility for the implementation and administration of this Code and each mobile operator has committed to enforcing the terms of the Code through its agreements with commercial content providers. The Code represents a useful comparison to the current situation given that the concerns in that case, which included exposure of minors to inappropriate internet content, were dealt with by the telecommunications industry via self-regulation to the apparent satisfaction of the Minister for Communications.

11850 believes that in the current instance, in line with ComReg's own guidance in respect of RIA and the Government's Better Regulation Paper, ComReg must consider alternatives to burdensome regulation. A more aggressive regulation of DQ services should only be explored where a self-regulation model has clearly failed to deliver. A self-regulatory code of conduct could easily be based on the existing and successful rules applied in the UK market for DQ services today.

**Q. 13. Do you consider that DQ services, within their current remit, could be exempted from regulation, provided their cost is below the recommended price threshold? (Refer to Paragraph 7.5)**

Yes. If average charges per text/call are below €10 and if complaints to regulators are at a lower rate than one per thousand calls/text.

Please see Introduction and Summary, Q1, Q11, Q12.

**Q. 14. Do you consider that it is preferable to maintain the current clear focus of 118XX on strictly telecommunications directory services or should it be permitted to expand to allow a diverse range of "general information services" and, therefore, become subject to PRS regulation?**

*Please see the attached summary chart at Annex 2 prepared by 11850 in response to the issues identified by ComReg as arising from a possible wider scope for DQ services in Table 1 at page 48 of the Consultation.*

11850 submits that, in line with the approach taken by other national regulatory authorities (NRAs) in other jurisdictions, including the UK, France and Spain, the 118XX code should be permitted to expand to allow a diverse range of "general information services" whilst retaining DQ as the primary

service available. However, for the reasons set out at Question 12 above, 11850 does not agree with ComReg's contention that the expansion of the 118XX code to provide such services should result in DQ services being categorised as Specified PRS and subject to PRS regulation.

As stated above, 11850 submits that there should continue to be different regulatory treatment for DQ services to recognise the unique differences between DQ services and PRS in terms of licensing regimes, social value and the extremely low levels of consumer harm which results from DQ services.

(a) **Evolving consumer demands**

As a leading provider of information services to the public, 11850 faces daily pressure to keep up with the evolving demands of Irish consumers for instantaneous access to an ever-expanding range of information services and, in particular, the necessity for 11850 to provide this information to consumers on-the-move.

Sadly, the services available today to Irish consumers on services such as 11850 are limited and do not offer as wide a set of benefits as consumers can experience in countries such as the UK, France and Spain where added information services are available via voice and SMS on 118 services, with negligible levels of consumer harm.

11850 notes that a section 8 of the Consultation ComReg raises concerns about the industry's desires to broaden service definitions saying:

*"While some DQ providers have requested a change of regulatory policy on the interpretation of "relevant value added services", it is not clear that all market players would wish this, or indeed that future emerging services would demand it."*

11850 submits that there is evidence that **consumers** would like added services on DQ which would seem of greater importance than whether all DQ players would seek to offer it or allow it. Indeed, it would seem very anti-competitive for market players to try to prevent new service offerings by others simply because they do not want to offer such services themselves.

In June 2009, Millward Brown conducted market research and asked a nationally representative sample of 1000 people in Ireland if they would like added services on their Directory Enquiries. Research showed there was very broad support with at 10% to 45% of all respondents asking for the following services:

- Cinema listings
- Business/shop opening hours
- Train times
- News information
- Weather forecast
- Sports results

- Directions
- Reservations for restaurants, hotels etc
- Ticket booking
- Price comparison
- Priority taxi reservation service
- Lists of recommended restaurants, tradesmen, services, etc
- Discount vouchers for the companies/services I want

In the Consultation, ComReg notes that:

*“Industry trends suggest that the range of products and services available, particularly on mobile devices, will grow rapidly as both network and mobile handset technology evolve. Between 2001 and 2007, annual revenue grew from €31 million, to €95 million, an increase of over 200% - mainly due to the strong growth in Premium SMS. Revenue for the 2009 was down 14 % to €81 million.”*

11850 submits that the decline in 2009 revenues may not all be attributable to the economic downturn as it matches changes in trends seen in the UK and elsewhere from before the current economic downturn took hold and is arguably partly attributable to PRS products struggling to satisfy consumers and stay relevant to their needs.

**(b) Social inclusivity – the value of mainstream access to text-based information by people with hearing impairments**

If 118 codes can offer broader services then they can be relevant to a wider population. One significant benefit of this is enabling mainstream access for consumers that rely on text-based information, for example people with hearing impairments. It is estimated that up to 10% of people have hearing impairments of some kind, and SMS-based services can be extremely valuable to these consumers (an estimated 450,000 Irish citizens).

When considering the relevance of broader services for the Irish market, 11850 consulted DeafHear (formerly called the National Association for the Deaf) for their views. When considering an ‘Ask Us Anything’ service via SMS on 11850, DeafHear commented<sup>25</sup> to ComReg that the service,

*“provides a level of equality in access to information otherwise unavailable to Deaf and Hard of Hearing people. It is a good universal design. It is compliant with both the Disability Act and the Equal Status Act and it enables social inclusion at a higher level. It is of benefit to Deaf & Hard of Hearing people, and others...”*

When discussing the value of these services being available on 118 codes, as opposed to being available as stand alone information services on 5XXXX codes, DeafHear said,

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<sup>25</sup> Letter to Mike Byrne, Commissioner for ComReg, 9<sup>th</sup> January 2009

*“11850 is a mainstream service which is fully accessible on a 24/7/365 basis to Deaf and Hard of Hearing people. As it is a mainstream service it is more likely to continue to be provided on a sound commercial footing. A specialist service, in contrast, would not be cost effective and would be more likely to fail or be withdrawn.”*

Indeed, DeafHear had bold views on the topic,

*“As this service is technically and economically feasible at no additional cost, it would be repugnant to deprive an already marginalised group from the benefits that accrue from this development. These benefits are both Social and Economic.”*

When deciding on rules for 118 services, ComReg should bear in mind DeafHear’s comments. The current review of the 118 rules is a great opportunity to extend availability of key mainstream SMS services (such as ‘ask us anything’) to people with hearing impairments 24 hours a day, 7 days a week.

**(c) Increasing competition from internet-based information service providers**

The ability of 11850 to respond to evolving consumer demands is essential, particularly as providers of DQ services face increasing competition from non-telecoms, internet-based information service providers (referred to as “internet-based providers”), such as Google. Unlike DQ providers, these internet-based providers have a significant competitive advantage as: (i) they operate in an unregulated environment without constraint on their ability to develop and provide innovative information services; (ii) they have a significantly lower costs base than that of DQ providers since internet-based providers operate their services using considerably lower staffing levels than DQ service providers such as 11850, who is committed to offering a quality service provided by ‘live operators’ and therefore, to employing the necessary levels of staff needed to do so; and (iii) as mobile phone technology develops and handsets with 3G capability become predominant in the market, mobile phone users on-the-move will increasingly be able to also turn to accessing internet-based providers, such as Google, from their handsets rather than 11850’s DQ services.

As indicated above, internet-based providers such as Google provide all information automatically without the need for employing ‘live operators’ to intercede with consumers.

Consumers who lack internet access (which generally includes a disproportionate amount of elderly, rurally based, and poorer consumers), or prefer text-based services when ‘on-the-move’ (including consumers with hearing impairments and business people) are served well by relying on instantly available access to human beings to search on their behalves on DQ services. Individualised information services (including information on

opening times, closing times, locations etc) provided by DQ providers are particularly helpful to this population.

**(d) No risk of dilution of 118XX brand**

ComReg notes in respect of an extension of the 118XX code to permit more general information services that:

*“One major disadvantage of this would be that associations in consumers’ minds with the “telecommunications directory service” would become less obvious and the strong branding already built up by existing providers would slowly fade from the public perception.”*

Ireland was one of the first countries to offer competitive DQ. 11850 submits that when the original conditions of allocation of 118XX codes were set the definitions were understandably cautious. However, 11850 notes that much has been learnt since then and no major consumer harm issues have occurred in recent years in any EU member state where a more liberal use of the 118XX code has been permitted but where basic safeguards have been put in place (eg including restrictions for offering sex services or gambling).

Further, 11850 notes that some countries like the UK, France and Spain have chosen to take a more liberal approach to the rules and have allowed 118 services to offer additional services of a broad nature whilst requiring the primary purpose of the service to remain as DQ (see Annex 1 for further details). Drawing on experience in other countries, 11850 does not believe that there is a discernible risk that the existing DQ service will be diluted, nor is it aware of any instances in other Member States where such dilution has occurred. In particular, 11850 would seek to draw ComReg’s attention to the continued promotion of The Number’s DQ service in the UK as the core service offering. Despite the growing success of the “Ask Us Anything” service, the 118118 brand continues to be predominantly associated with the core DQ service.

The continued success of our 118118 DQ service in the UK clearly indicates that the provision of the “Ask Us Anything” service has not undermined the core nature of our DQ service in the eyes of the consumer but has merely added to its value. Having a broader definition of what 118 services can offer has enabled the market to evolve and add a range of new services including train times, film times and reviews and restaurant bookings in addition to continuing to offer high quality directory enquiries services with accuracy rates as high as 96% and calls answered within 2 seconds on average. There is no evidence that these moves have undermined consumers’ perception that 118 services have DQ services at their core. On the contrary, the experience has primarily been that consumers have a view of 118 services as staying relevant to their changing information needs whilst also offering high quality, familiar, DQ services, rather than becoming a historical relic.

**(e) Acceptance by other NRAs of provision of general information services on 118XX codes**

NRAs in other EU Member States, for example the UK, France and Spain, have adopted a wider interpretation of services “ancillary” to or “allied” to directory enquiry services and have permitted 118XX numbers to be used not just for DQ services but also for more general information services not directly linked to telecommunications. The Number has received approval from Phonepay Plus (formerly ICSTIS) in the UK and Le Numero (a subsidiary of The Number) from ARCEP in France to provide a general information service using a 118XX code.

ComReg’s approach to date diverges from its neighbouring NRAs, including the UK and France. In particular, ComReg has noted in an earlier consultation that it was *“not sympathetic to the argument that such services are available in certain countries ...as it understands that consumer-unfriendly difficulties which often blight premium-rated services also exist in respect of 118XX in at least some of the jurisdictions concerned.”* 11850 submits that the only systemic problems that have existed in other countries have been related to early initial deregulation processes a decade ago to introduce competition where struggles for market share at launch was fierce and likely areas of harm were untested. This occurred in Germany, where sexual content services were not barred from 118 codes at launch and it attracted misuse of these codes approximately 10 years ago. Other NRAs took note of such problems on subsequent deregulation processes, with the result that the problem has not occurred elsewhere.

11850 is not aware that any significant “consumer-unfriendly difficulties” have actually occurred in other Member States in respect of 118XX services, which could be considered to be similar to those difficulties ComReg suggests are experienced by premium-rated services.

In the limited instances where consumer difficulties have arisen in other EU Member States in respect of the use of 118XX numbers and services provided on them (for example, at the time of deregulation of the relevant market in Germany), these difficulties were quickly and easily remedied by the relevant NRAs and, in any event, are now purely historical.

The obligation to ensure access by end-users to all numbering resources within the European Community is particularly relevant in Ireland, where a divergence in ComReg’s interpretation of *“relevant value added services”* from the interpretation by Phonepay Plus and Ofcom of services *“ancillary”* to a directory enquiry service in the UK leads to cross-border issues between the Republic of Ireland and Northern Ireland. This divergence in approach means that 118118 users in Northern Ireland can travel to Ireland and continue to use the UK 118118 service (including the “Ask Us Anything” service) which offers broader possibilities than services offered on the Irish 118XX short code. This places 11850 at a competitive disadvantage to DQ and information service providers located in other Member States, and distorts competition within the wider European market for the provision of directory enquiry and information services, contrary to European Community internal market principles.



It is our view that ComReg's current interpretation of "relevant value added services" places Irish DQ service providers at a significant disadvantage to some of their European counterparts.

As the importance placed by consumers on instantaneous access to information on-the-move continues to increase worldwide, NRAs in other Member States such as France, UK, and Spain have responded to, and facilitated, this growing consumer demand by adopting a flexible interpretation of the conditions of use attached to 118XX directory service number allocations in order to encourage the emergence and development of innovative value-added information services and to promote competition within the market.

**Q. 15. Do you consider that the provision of general information services by DQ SP's would be unfair to ordinary SP's of similar services or does the option for them to provide DQ services mitigate this?**

118 codes were allocated following a move to introduce competition into the provision of DQ services. This goal has been achieved and there are three highly active competitors in the Irish market today and so Ireland fulfils the Universal Service Obligation placed on it by the European Commission as noted in ComReg's recent consultation paper in respect of the Universal Service Obligation.<sup>26</sup>

The 118 code format was specifically chosen in alignment with an EU move to migrate services in many countries to using the 118 format (or similar). In each case short-codes rather than long numbers have been made available and one of the reasons is because the provision of DQ services is recognised in the Universal Services Directive as a service that should be available to all EU consumers as it brings social and economic benefits by increasing the connectivity and communications between citizens and businesses.

PRS do not fulfill Universal Service Obligations that have been agreed across the EU and which have legal backing as socially desirable objectives.

If other PRS providers wish to contribute to that social goal by offering a comprehensive national DQ service as well, then they are entitled to apply for licenses and code numbers using the 118 format.

Numbering Convention 6-2(vii) states that a criterion ComReg should take into account when deciding whether to allocate a short code is that "No competitive imbalances should be created by the allocation".<sup>27</sup>

The consultation comments that "It might also be argued that DQ SP's could have an advantage in being able to promote their general information services to consumers making DQ enquiries."

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26. ComReg Document No. 10/35 – Consultation Paper – "The Provision of Telephony Services under Universal Service Obligations" dated 22 April 2010

27. ComReg Document No 08/02 – National Numbering Conventions v 6.0 dated 2 January 2008

This argument seems contrary to consumer interests and common sense. It is clearly in the interests of consumers that there are innovative service providers with a strong consumer ethic, which can provide a range of services to consumers. Further, as noted by ComReg, it is reasonable that DQ SP's would wish to maximise their return on their branding investment.

There is no issue of unfair and uneven competition in this approach as PRS providers have the option to be ECS (Electronic Communications Services) and also provide DQ services and contribute to this Universal Service goal. There are no competitive reasons or consumer benefit reasons why there should be concerns over uneven access to numbering.

**Q. 16. Do you consider it appropriate to delineate the additional “general information” services that would be acceptable on 118XX short codes where prior approval by ComReg would be required on a case-by-case basis?**

While 11850 agrees with ComReg proposing services which should be excluded from DQ services, 11850 does not consider that it would be appropriate for ComReg to introduce a system of prior approval of additional “general information” services on a case-by-case basis. In particular, 11850 believes that the introduction of a prior approval system would be unnecessarily bureaucratic and wasteful and would impact significantly on the ability of DQ operators to provide innovative services in a timely fashion in response to consumer demand.

The UK and other countries have well-established guidelines that allow a broad range of information services on DQ services whilst being mindful to protect consumers from harm. They have served consumers and the industry well and there have not been issues of significant consumer harm – complaints are extremely small in number as a result. These countries have generally banned erotic/sexual content and gambling services from 118 codes. 11850 submits that these guidelines form a good basis for the Irish rules.

The UK regime and others in Europe have demonstrated that barring a handful of known potential problem areas is the most effective way to avoid consumer harm whilst also enabling innovation for consumers. It is a bureaucratic waste of time to manage a prior approval process for every type of services that could be envisaged to *“prescribe every conceivable form of PRS that may be appropriate to offer as a relevant “value-added” service within a DQ service.”* Adopting this approach would also be contrary to the principles of moving towards light-touch and proportionate regulation where possible.

Initially Phonepay Plus in the UK adopted a process of pre-approval of services but this proved to be highly bureaucratic and un-necessary and was subsequently rolled back and removed. If any such approach of requiring pre-approval was to be implemented in Ireland, we would recommend that prior-approval be for a limited number of sensitive subject matters of service, rather

than prior-approval being the norm for all services. If such an approach of prior approval was adopted, ComReg's criteria should be altered to read as follows:

- *Whether a service should be age-restricted to prevent access by children;*
- *Whether a service might more generally incite, or prompt, unauthorised use of other people's telephones;*
- *Whether the service had an unusually high per use charge (eg €10); and*
- *Whether the service raises significant issues in relation to the vulnerability of those that it targets*

11850 does not agree with ComReg's solution regarding the introduction of Quality of Service (QOS) monitoring to counter its concerns regarding dilution of the quality of DQ services. 11850 believes that such an approach is inappropriate, unnecessary and would impose an onerous and unwarranted cost burden on DQ businesses. In particular 11850 does not see how the monitoring by ComReg of DQ call volumes, average speed of answer, abandoned call rate etc contributes to ComReg's stated objective of preventing the dilution of DQ services and standards as result of the offering of general information services. The DQ industry in Ireland is highly competitive. If any service failed to offer suitable levels of quality to consumers the service would be swiftly punished by loss of market share. This will more effectively regulate the quality of DQ services than any attempts at quality monitoring by regulators.

**Q. 17. Should ComReg introduce a "double opt-in" requirement for entry into a mobile subscription service?**

The primary emphasis of regulation should be where consumer harm is most evident. ComReg have made a persuasive empirical case that mobile subscription services are the area creating most harm, and so should be the primary focus for ComReg when considering what to regulate.

As we stated earlier, this regulation will be best focussed on the areas of particular and demonstrable consumer harm, such as where a single consumer decision can result in a large charge (over €10).

Where possible a system of principles based regulation should be adopted instead of prescribing a double opt-in as the only solution, the goal should be to be show that consumers have been fully informed about the details of a service if that consumer is likely to incur a charge of greater than €10 before they next make a decision about whether to use the service again.

In the case of subscriptions which are purchased over the web there are mechanisms available which can be used to ensure that the subscription has involved the handset being present (so subscriptions cannot be completed without the knowledge of the owner of the handset).

**Q. 18. Should ComReg prohibit the use MT billing (reverse-billed SMS) by PRS providers? Should MT billing be permitted only for certain types of services?**

ComReg should continue to allow MT billing in line with most other markets. MT can be a very pro-consumer billing method when used correctly.

For example, in the UK 118118 only charges consumers for text-based questions that it is able to answer. It does not send a chargeable MT event when we are unable to answer a question satisfactorily (eg if we cannot find a suitable answer to the customer's question). This enables us to only charge consumers when they receive value, rather than on every message. This is something we are unable to do on voice calls and it would be unfortunate for consumers if ComReg chose to remove the ability to offer MT charging.

MT also created the ability to offer consumers a chance to trial services for free and for promotions to be run which can encourage innovation and improved value for consumers.

As identified above, where consumers are likely to incur more than €10 per consumer decision, then added safeguards should be put in place to ensure that MT can offer benefits to consumers whilst also safeguarding consumers from the areas of greatest potential harm.

**Q. 19. Should ComReg prohibit the use of “invisible” reverse billed (MT) SMS by PRS providers?**

Invisible reverse billed SMS have the potential to be abused and cause consumer harm, but they do also have potential legitimate uses so ComReg should be mindful of this when deciding on this matter.

Premium SMS codes have a fixed charge, so if a service provider has a legitimate reason to want to vary that charge then invisible SMS can be useful for that.

Example:

- A consumer asks a question where the response from the service provider would not fit on one text message and so needs to be sent as an elongated message (made up of 2 premium SMS). If that service provider wishes to only charge the consumer a single charge as the cost is related to the service provided (the content), not the length of message, then they would need to send the elongated response over 2 chargeable texts followed by sending an added refund message to bring the charge back to the correct amount.

At a minimum, ComReg should ensure that visible messages or other service information must inform consumers of the potential use and purpose of invisible messages being sent to consumers.

ComReg should avoid banning innovative technology that can lead to product and billing innovation, but rather monitor and put in place safeguards to avoid service provider abuse.

**Q. 20. Should ComReg prohibit chargeable messages being “stored-up” for delayed sending, when a pre-pay account is out of credit?**

ComReg should not prohibit this.

There are a number of services where consumers legitimately request use of a service then run out of credit. If these messages are not queued then consumers will not receive their response when they top up prepay phones. In addition, the company that has served their request has done the required work to answer the consumer’s requests and may have incurred costs due to this that they will be exposed to not being able to recover from consumers. This will either result in less services being targeted at prepay users, or customers will be paying extra to subsidise the occasions when prepay users have used the services but not had to pay (due to running out of credit).

It is wrong to suggest that it is a fair principle that consumers should be able to evade paying for services they have requested (and which companies have fulfilled and spent money on) due to running out of credit temporarily.

Ceasing to allow queuing of any kind also opens up fraud/misuse problems as consumers can be in a position where they know they can mischievously or maliciously request services they will not be asked to pay for.

**Q. 21. Should MNOs in Ireland be required to provide all customers with the option of barring premium calls and/or barring consumer access to Premium SMS/MSS, whether on an outgoing (MO) or incoming (MT) basis?**

Call-barring policies should be controlled by customers so that barring reflects their desires. This means that any call-barring processes must be on an opt-in basis controlled by consumers.

Most mobile handsets enable call barring to be applied by customers themselves. Enabling consumers to understand and use these features is the most proportionate and efficient way to enable consumer protection.

**Q. 22. Should ComReg restrict the class, or type, of service that can operate a subscription payment model?**

11850 does not propose to respond to this question.

**Q. 23. Do you agree with ComReg’s recommendation in relation to cancellation of subscription services and marketing opt-ins when an account expires or the number is quarantined?**

11850 does not propose to respond to this question.

## **Annex 1 – 118 Rules in Spain, UK, France**

### **3.2 UK approach– Ofcom and ICSTIS**

In the UK in 2006 Phonepay Plus approved the use by The Number of the 118118 code to provide a general information service, in addition to the directory enquiry service already provided by The Number using this code. The service approved by Phonepay Plus is similar to the service that 11850 is seeking to roll out in Ireland.

Ofcom's Numbering Plan and Phonepay Plus Guideline No.21-Premium Rate Directory Enquiry Services provide that for any service to be considered a DQ service its "main purpose" must be to provide a "white pages" service and *"a classified directory is only to be considered to be ancillary to the primary purpose of a DQ service for the purpose of the regulations"*

Phonepay Plus approved the provision of a general information service (now known as the "Ask Us Anything" service (the "AUA Service") by The Number in the UK as ancillary to the provision of a national DQ service in March 2006.

### **3.3 Approach in France – ARCEP**

In June 2008, the French Post and Electronic Communications Regulatory Authority, ARCEP, approved the provision of an SMS information service by Le Numero, a French subsidiary of kgb, via its 118218 code. The service provided by Le Numero is similar to the SMS Service which 11850 proposes to offer in Ireland.

ARCEP designated 118XXX format numbers as access numbers for telephone information services in its Decision Number 05-006 (the "Decision"), dated 27 January 2005. In approving Le Numero's request to supply an information service via SMS using the 118218 numbering range, ARCEP stated that it had specified in the Decision that operators have the right to offer additional services in order to encourage the emergence of innovative services such as the provision of information by SMS. Accordingly, ARCEP found that the information service to be provided by Le Numero was compatible with the provisions of the Decision.

### **3.4 Approach in Spain**

Spanish DQ Regulation, Order 711/2002 establishes that 118XX numbers are designated for DQ services and, in addition, for value added services, for example, SMS delivery, e-mail addresses and other commercial information. Accordingly, Spanish DQ service providers, for example, Telefonica, Yell and Telegate, offer general information services to users via 118XX SMS services, for example cinema listings, weather forecasts etc.

**Annex 2 – Comreg Analysis of proposed DQ changes, with 11850 comments**

<b>Issue</b>	<b>Arguments in Favour of the DQ status quo</b>	<b>11850 Arguments in Favour of a Wider Info Service</b>	<b>ComReg concerns</b>	<b>11850 comments on ComReg concerns</b>
<b>Consumer perception of the purpose of 118XX numbers</b>	<i>Irish consumers have a clear understanding that 118XX signifies directory enquiries only</i>	<p>118XX will remain primarily for directory enquiries as it has done in other countries that have allowed wider services (with 'primary purpose test').</p> <p>Widening the offerings available on 118 codes updates the purpose of 118XX numbers to match consumers' perceptions of modern search services - the original definition might have been appropriate for the pre-Google age but is no longer appropriate.</p> <p>Consumers now expect, and want to be able to find out more (eg opening hours, train times to reach</p>	Consumers must have a clear understanding of the service on offer and, equally, must be clear about what they are paying for.	<p>Consumers who want traditional DQ, will continue to receive traditional DQ.</p> <p>Consumers who want more information, will ask for more information and due to proper transparency will be made aware of any additional costs which might result. Consumer expectations will always therefore be met.</p> <p>Tariffing is associated with the number you call, not the service you receive, so the same familiar tariffs will apply.</p> <p>There is no evidence from other European markets of significant changes in average call costs following the introduction of broader services on DQ.</p>

		a business/person). Broadening the offering brings Directory Enquiries up-to-date and prevents it becoming an outdated relic tailored to consumers' needs from a decade ago rather than meeting consumers' needs today.		
<b>The strong market recognition of 118XX should be exploited</b>	<i>The strong branding is closely linked to the current clear focus on telecoms DQ. This should not be eroded.</i>	DQ providers have invested in their brand recognition. They wish to ensure that their product remains relevant and competitive with online services, enabling innovation for customers.	ComReg recognises the investments made. However, consumers must be well informed regarding the services they are purchasing and the associated costs must be transparent.	See above.  11850 is proposing to increase regulation by introducing a self-regulatory code of conduct.  The strong market recognition of 118XX has not been undermined in other EU countries that have chosen to broaden the services available.  Leveraging the strong market recognition can be valuable in ensuring wider information services are made available via SMS to consumers with hearing impairments.



<p><b><i>The proposed new information services would compete directly, and maybe unfairly, with non-DQ providers who cannot avail of 118XX short codes</i></b></p>	<p><i>DQ providers are already free to use the same 15XX/1890/1850 or 5XXXX number ranges that non-DQ SPs are obliged to use. The converse would not be true (without disproportionate investment) if DQSP's were allowed to expand their offerings on 118XX</i></p>	<p>DQ is a socially useful service, recognised in the Universal Service Directive of the European Commission. 118 services enable social and economic benefits for Irish citizens through increasing the ability to communicate and do commerce. PRS providers are welcome to join 118 providers in helping Ireland to gain those benefits, providing the PRS provider is willing to conduct sufficient investment in databases, systems and training to offer a comprehensive DQ service. There is therefore no competitive imbalance.</p>	<p>The question of fair competition may arise. ComReg is interested in receiving views that address this matter.</p>	<p>Today, PRS operators could offer a very broad range of services on 15XX codes including offering Directory services on 15XX codes. The same cannot be said for a DQ service wishing to offer a broader information service on a 118 code. If anything, the competitive imbalance today is against DQ providers, not against PRS providers. As DQ is considered to be a socially useful service, this dynamic seems wholly wrong, and 118 codes should be able to modernise and innovate.</p>
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<p><b><i>There is a risk of 'true' DQ provision being subverted in favour of general information provision on 118XX</i></b></p>	<p><i>General information providers may seek to exploit the advantage of a unique short code for general information, while providing an inferior quality core DQ service.</i></p>	<p>DQ providers have made too significant an investment in their services to let this happen.</p>	<p>ComReg could impose a primary purpose test and commence Quality of Service monitoring.</p>	<p>Phonepay Plus in the UK operates a primary purpose test for 118 codes to ensure that they remain primarily used for the purpose of offering DQ. 11850 supports this approach.</p> <p>Many countries have barred sensitive content to minimise the risk of attracting unwanted services of offending callers. These restrictions have generally banned erotic/sexual and gambling content from 118 codes. No major problems have been experienced where this common sense approach has been adopted.</p>
<p><b><i>Info services of the type now proposed for DQ are (mostly) currently subject to PRS regulation.</i></b></p>	<p><i>PRS regulation may not be welcomed by existing DQ SPs.</i></p>	<p>DQ services already comply with consumer protection guidelines such as ensuring price information availability on all promotions. This has resulted in no significant consumer complaints being reported by consumers to ComReg. Increased regulation should only be introduced where there is proven consumer harm or significant risk of that</p>	<p>ComReg considers that any broadening of DQ scope to cover info services shall require PRS regulation.</p>	<p>11850 submits that this is a disproportionate approach.</p> <p>No RIA has been undertaken to identify that this added regulation is proportionate or necessary.</p> <p>11850 voluntarily proposes self-regulation for the DQ industry with backstop powers for ComReg if self-regulation fails.</p> <p>In the UK and France where broader services are offered on 118 codes, complaints levels are extremely low</p>

		harm.		(please see response at Question 12(a)). There are no examples of DQ services with ongoing high levels of consumer risk or harm in Europe. In the UK, broader services have been allowed on 118 codes for approximately 8 years and there have been no ongoing problems. When reviewing regulation for 118, Ofcom recently said, "Directory Enquiries attract very few complaints".
<b>Content regulation in the context of a wider DQ scope is likely to lead to erosion of defined borders</b>	<i>No matter what boundaries are set, the potential for high revenue generation (as for PRS) may lead to over-stepping. The status quo avoids this.</i>	DQ providers have shown a high level of compliance in past years.	Categorisation of content for pricing and consumer (eg children's) protection is a feature of PRS requiring vigilance	A self regulatory code of practise can easily address these issues. As the DQ industry has a very good reputation across Europe for not harming consumers or putting them at risk, self-regulation is a proportionate response to ensure consumers protection.
<b>Pricing transparency assumes much greater importance in a PRS context</b>	<i>DQSP's may prefer the current limited pricing transparency obligations</i>	PRS regulation does not significantly differ from pricing rules already in place by DQ services (as they all make price available on all promotions, on websites and via customer care	ComReg considers that the improved tariff transparency of a PRS context is a major benefit for consumers	PRS regulation does not offer additional tariff transparency to consumers, but PRS regulation does carry added bureaucratic burdens that are disproportionate and inappropriate.

		lines already).		
<b>Evidence from the PRS sector indicates there is a potential risk that abusive practises may occur and information content may broaden into unacceptable material.</b>	<i>If the reputation of 118XX services is damaged, this will impact on compliant SP's, as well as on regulators and government.</i>	It is not in the interests of existing DQ providers, who have invested heavily, to damage their brands.	The potentially large returns from PRS abuse, even during the course of compliance actions, have led to boundaries being overstepped in the past.	In Europe, wherever a primary purpose test for DQ has been maintained, accompanied by a ban on sexual/erotic or gambling content, there has been no incentive for disreputable PRS providers to use 118 codes. As 118 providers have to invest significantly in establishing their services and their brands, there is no incentive for short-term abusive actions against customers. This experience has been true throughout Europe (except in Germany at launch when sexual services were not banned and there was no primary purpose test to deter the misuse of 118 codes).

**2 11890**

## **Premium Rate Services Review – Response of 11890**

### **Submission specific to 118xx issues**

The definition of a premium rate service as set out in the discussion document is any service whose cost to the consumer exceeds the cost attributable to communications carriage alone.

The document envisages services provided on 118 codes possibly being included as specified PRS. 11890 consider this inappropriate since Directory Enquiry services have little in common with Premium Rate Services as currently understood with the exception of the previously mentioned definition.

The purpose of regulation is to protect consumers from harm which may be caused through unclear pricing or procedures. 11890 feels that while there are areas in the Premium Rate Services Industry that are giving cause for concern, these do not pertain to the Directory Enquiry business. 11890 has a customer complaint rate of less than 1 in a thousand. The cost of resolution ie compensation to customer, is rarely more than €2 and never more than €10. The complaints are generally related to giving out an incorrect number or the non receipt of a textback. There are virtually no complaints about cost and this we feel is due to the fact that customers are always asked if they would like to be connected.

11890 has invested heavily in building up a brand based on trust, value and customer service. We have continued to do this even as the market has contracted. If it is seen fit to broaden the services allowed on the 118 code, 11890 will continue with its brand values. We would not risk damaging such an investment for possible short term gain.

The service we provide is very important to our customers. We would not jeopardise their confidence in 11890 by doing anything out of keeping with our brand.

### **Universal Service Obligation**

The origins of the Directory Enquiry Service lie in the Universal Service Obligation which rested with all Telecoms providers until it evolved into a

competitive marketplace. If for any reason the provision of directory enquiry services ceases to be attractive to commercial providers it would seem logical to assume that the USO would be reinstated for all telecoms providers. This would not be a desirable development from anybody's perspective.

The nature of services provided by the traditional Premium Rate Services operators does not have such a heritage and depends on the attractiveness of the offering for their business. Therefore, the 118 service is different and should not be bundled into Premium Rate Services regulatory regime based on a single criterion or definition.

### **PRS Barring**

It is currently possible to request a Telecoms Operator to bar access to Premium Rate Services. 11890 would be opposed to being defined as a Premium Rate Service if it meant that 118xx were to be included in the specified group of numbers covered by the barring facility. Apart from being detrimental to our business, 11890 feels that it would not be in the public interest to include it in barring. It is felt that the public do not associate Directory Enquiries with Premium Rate Services and could therefore inadvertently cut themselves off from access to a vital service.

We would urge that a distinction be made when it comes to barring.

### **Provision of general information services by 118 providers**

In order to avoid a return to Universal Service Obligation, the provision of Directory Enquiry Services must be attractive to commercial providers. The market has declined in the past few years for the following reasons

1. The mark ups applied by telecoms operators other than eircom have naturally had the result of reducing demand
2. The emergence of far better information on Google etc
3. The ability to store numbers as names on mobile phones

It is normal practice for commercial enterprises to expand into complementary areas particularly where their core business is under threat because of

extraneous forces. The narrow definition of the use of 118 codes restricts this natural evolution. 11890 considers the ability to provide general information services as a normal evolution of the Directory Enquiry Service. This is evidenced by the growing amount of requests from callers for opening times of shops, train and bus timetables etc. It is damaging to our business and to customer satisfaction not to be allowed to give out this information particularly when we are in a position to do so. The provision of such information services is standard in many other jurisdictions and does not appear to have caused any difficulties.

The review document raises the issue of whether the broadening of the remit of 118 codes would be unfair to existing PRS providers. 11890 is of the view that it would not be unfair and supports the idea of primary purpose. It is open to all PRS providers to apply for a 118 number and provide Directory Enquiries.

## **Regulation**

The document suggests that, if the numbering convention relating to 118 were broadened, the 118 operators would become subject to regulation. While 11890 accepts that some regulation is needed, the regulation associated with being a specified Premium Rate Service appears to be inappropriate for the reasons set out earlier. Nevertheless, the issue of what type of information and services would be regarded as acceptable for a 118 code needs to be addressed. The term general information appears to be too broad for specified regulation.

However, this is not sufficient reason to prohibit the provision nor is a full carte blanche a desirable resolution. A possible approach to this issue would be a trial period of self regulation.

11890 proposes that a self regulatory group consisting of a representative of all the DQ providers be established under the guidance of an official from Comreg. The purpose of this group would be monitor the development of



general information services allowed under the expanded range of services that could be provided on the 118 code. 11890 would see membership of this group restricted to those 118 operators providing general information services.

While it is accepted that such a forum might be a slightly unusual proposal, we feel that it bridges the gap between inappropriate regulation and a laissez faire approach. In any event the approach of using a self regulatory solution does not preclude the introduction of specified regulation at a later date should that prove necessary.

11890 has replied separately to the two documents included in the review paper.

We would be happy to engage in a face to face consultation if Comreg deem this to be useful.

Kind regards

Nicola Byrne

Managing Director

11890

Building P2

East Point Business Park

Dublin 3.

## Appendix D – Consultation Questions

This is the response of 11890 to the list of questions set by ComReg in relation to Consultation 10/27.

### List of Questions

- Q. 1. Do you agree with ComReg’s preliminary view that twenty cents (€0.20) retail cost per minute/per call/per text is a reasonable price threshold below which certain services may be exempted from licensing?  
...Yes..... 30
- Q. 2. Do you agree with ComReg's intention to regulate live services? .....Yes..... 31
- Q. 3. Do you agree with ComReg’s intention to regulate PRS services of a sexual nature, irrespective of cost?  
.....Yes..... 31
- Q. 4. Do you agree with ComReg's intention to regulate competition services? Yes. 33
- Q. 5. Do you agree with ComReg's intention to regulate children’s services, irrespective of cost?  
.....Yes..... 33
- Q. 6. Do you agree with ComReg’s intention to regulate fundraising and charitable donations made through a PRS? .....Yes..... 34
- Q. 7. Do you agree with ComReg’s intention to regulate internet dialler software, irrespective of unit cost?  
.....Yes..... 34
- Q. 8. Do you agree with ComReg's intention to regulate virtual chat, contact and dating services, irrespective of cost? .....Yes..... 35
- Q. 9. Do you agree with ComReg's intention to regulate pay-for-product services?  
.....Yes..... 36
- Q. 10. Having due regard for the issues raised above, do you consider ComReg should regulate MNO’s “on-portal” services as “*Specified PRS*”? .....Yes..... 38
- Q. 11. Do you agree with ComReg’s proposal that certain categories of services could be exempted from regulation, provided the cost is below the proposed 20 cent (€0.20) price threshold?  
.....Yes..... 39
- Q. 12. Do you consider that ComReg should regulate Directory Enquiry services, within their current remit, as *specified PRS*? .No. .... 42
- Q. 13. Do you consider that DQ services, within their current remit, could be exempted from regulation, provided their cost is below the recommended price threshold? (Refer to Paragraph 7.5)  
.....N/A..... 42
- Q. 14. Do you consider that it is preferable to maintain the current clear focus of 118XX on strictly telecommunications directory services or should it be permitted to expand to allow a diverse range of “*general information services*” and, therefore, become subject to PRS regulation?.....The scope of services provided by 118 providers should be expanded to allow for the provision of general information services. Separate document attached. .... 47
- Q. 15. Do you consider that the provision of general information services by DQ SP’s would be unfair to „ordinary“ SP’s of similar services or does the option for them to provide DQ services mitigate this? ....No unfairness..... 47
- Q. 16. Do you consider it appropriate to delineate the additional “general information” services that would be acceptable on 118XX short codes where prior approval by ComReg would be required on a case-by-case basis?...Not practical. General information services are by definition general and are bundled as such for that reason. Regulatory approach proposed in separate attached document..... 47 Scope of Premium Rate Services regulation 75 ComReg 10/27

Q. 17. Should ComReg introduce a “double opt-in” requirement for entry into a mobile subscription service? .....Yes.....	56
Q. 18. Should ComReg prohibit the use MT billing (reverse-billed SMS) by PRS providers? Should MT billing be permitted only for certain types of services? Yes.....	58
Q. 19. Should ComReg prohibit the use of “invisible” reverse billed (MT) SMS by PRS providers? .....Yes.....	58
Q. 20. Should ComReg prohibit chargeable messages being “stored-up” for delayed sending, when a pre-pay account is out of credit? .....Yes.....	59
Q. 21. Should MNOs in Ireland be required to provide all customers with the option of barring premium calls and/or barring consumer access to Premium SMS/MMS, whether on an outgoing (MO) or incoming (MT) basis? ...Yes but 118 should not be included in the list. Reasons are on the attached separate document .....	60
Q. 22. Should ComReg restrict the class, or type, of service that can operate a subscription payment model? ....Yes.....	61
Q. 23. Do you agree with ComReg’s recommendation in relation to cancellation of subscription services and marketing opt-ins when an account expires or the number is quarantined? .....Yes.....	

Issue	Arguments in Favour of the DQ status quo	Arguments in Favour of a Wider Info Service	ComReg Comments	11890 Comments
<b>Consumer perception of the purpose of 118XX numbers</b>	Irish consumers have a clear understanding that 118XX signifies directory enquiries only	Consumers are capable of distinguishing between the various services that may be offered to them and will welcome the additional services	Consumers must have a clear understanding of the service on offer and, equally, must be clear about what they are paying for	11890's experience is that customers are well able to understand that they can receive a number of different services from the same supplier. Vodafone provide mobile and fixed lines now where they previously only provided mobile. 11890 is convinced that there is a demand for additional services on the 118 platform. If there proves to be no demand then it is the 118 providers who will have lost. 118 providers are as clear as they can be with customers as to what is on offer and what the customer will have to pay. The structure of the market is such that for the majority of the calls the price is fixed by the telecoms operator so that even with the introduction of new services the same issues re pricing will pertain.
<b>The strong market recognition of 118XX should be exploited</b>	The strong branding is closely linked to the current clear focus on telecoms DQ. This should not be eroded	DQ providers have invested in their brand recognition. They wish to leverage this investment	ComReg recognises the investments made. However, consumers must be well informed regarding the services they are purchasing and the associated costs must be transparent.	118 providers have invested significant resources, financial and otherwise, in developing their brands. All products have a type of life cycle which is affected by environmental as well as other factors. What normally happens in these circumstances is that the business seeks to diversify to protect its long term business and indeed survival. Such an approach, under the current numbering conventions, is not possible. Failure to change will ultimately do damage to the provision of directory enquiries since as demand for pure DQ decreases so too will the attractiveness of providing the service. The ability to provide a wider range of services will give a broader business base to the 118 service providers allowing them to continue to provide the DQ service. The same comments in relation to transparency apply as made in the section above.

Issue	Arguments in Favour of the DQ status quo	Arguments in Favour of a Wider Info Service	ComReg Comments	11890 Comments
<p><b>The proposed new information services would compete directly, and maybe unfairly, with non-DQ providers who cannot avail of 118XX short codes</b></p>	<p>DQ providers are already free to use the same 15XX/1890/1850 or 5XXXX number ranges that non-DQ SP"s are obliged to use. The converse would not be true (without disproportionate investment) if DQ SP"s were allowed to expand their service offerings on 118XX</p>	<p>Other SP"s could qualify for a 118XX number if they invest in a full DQ service</p>	<p>That question of fair competition may arise. ComReg is interested in receiving views that address this matter</p>	<p>It is the intention of this service provider to offer an information service on 11890. It would not be our intention to attempt to provide any of the specialised services offered by those in the 15xx and 5xxxx markets. In any event it is always open to these service providers to apply for an operate a directory enquiry service on a 118 number subject to whatever rules apply from time to time.</p>
<p><b>There is a risk of „true“ DQ provision being subverted in favour of general information provision on 118XX</b></p>	<p>General information providers may seek to exploit the advantage of a unique short code for general information provision, while providing an inferior quality core DQ service.</p>	<p>DQ providers have made too significant an investment in their services to let this happen</p>	<p>ComReg could impose a “primary purpose” test and commence Quality of Service monitoring.</p>	<p>The proposal from ComReg is fully supported</p>

Issue	Arguments in Favour of the DQ status quo	Arguments in Favour of a Wider Info Service	ComReg Comments	11890 Comments
<p><b>Info services of the type now proposed for DQ are (mostly) currently subject to PRS regulation</b></p>	<p>PRS Regulation may not be welcomed by existing DQ SP's.</p>	<p>Existing DQ services are charged at a Premium Rate at present and should, therefore, be subject to PRS regulation</p>	<p>ComReg considers that any broadening of DQ scope to cover info services shall require PRS regulation</p>	<p>The document suggests that, if the numbering convention relating to 118 were broadened, the 118 operators would become subject to regulation. While 11890 accepts that some regulation is needed, the regulation associated with being a specified Premium Rate Service appears to be inappropriate for the reasons set out earlier. Nevertheless, the issue of what type of information and services would be regarded as acceptable for a 118 code needs to be addressed. The term general information appears to be too broad for specified regulation. However, this is not sufficient reason to prohibit the provision nor is a full carte blanche a desirable resolution. A possible approach to this issue would be a trial period of self regulation. 11890 proposes that a self regulatory group consisting of a representative of all the DQ providers be established under the guidance of an official from Comreg. The purpose of this group would be monitor the development of general information services allowed under the expanded range of services that could be provided on the 118 code. 11890 would see membership of this group restricted to those 118 operators providing general information services. While it is accepted that such a forum might be a slightly unusual proposal, we feel that it bridges the gap between inappropriate regulation and a laissez faire approach. In any event the approach of using a self regulatory solution does not preclude the introduction of specified regulation at a later date should that prove necessary.</p>

Issue	Arguments in Favour of the DQ status quo	Arguments in Favour of a Wider Info Service	ComReg Comments	11890 Comments
<b>Content regulation in the context of a wider DQ scope is likely to lead to erosion of defined borders</b>	No matter what boundaries are set, the potential for high revenue generation (as for PRS) may lead to over-stepping. The status quo avoids this	DQ providers have shown a high level of compliance in past years	Categorisation of content for pricing and consumer (e.g. children's) protection is a feature of PRS requiring vigilance	11890 has worked tirelessly to develop its brand to stand for customer service, value for money and jobs for Ireland. With this in mind the extra services we propose to provide will be in the area of general information as opposed to specialist services such as adult services.
<b>Pricing transparency assumes much greater importance in a PRS context</b>	DQ SP's may prefer the current limited pricing transparency obligations	PRS regulation would ensure greater transparency on pricing	ComReg considers that the improved tariff transparency of a PRS context is a major benefit for consumers	The transparency of pricing DQ services is difficult to achieve given the structure of the market. The pricing of Directory Enquiries is set by each operator who in many cases have seen fit to double our price to their customers. So while transparency is difficult to achieve the real beneficiaries are the mobile operators not the service providers.
<b>Evidence from the PRS sector indicates there is a potential risk that abusive practices may occur and information content may broaden into unacceptable material</b>	If the reputation of 118XX services is damaged, this will impact on compliant SP's, as well as on regulators and government.	It is not in the interests of existing DQ providers, who have invested heavily, to damage their brands	The potentially large returns from PRS abuse, even during the course of compliance actions, have led to boundaries being overstepped in the past.	As stated earlier it is not in our interest to do anything that would affect the brand we have developed.

**3 63336 Ltd.**





Michelle Townshend  
Commission for Communications Regulation  
Irish Life Centre  
Abbey Street  
Freepost  
Dublin 1  
Ireland

Dear Ms Townshend

### **Scope of Premium Rate Services regulation – Com Reg 10/27**

#### **Background**

We are 63336 Limited, a company incorporated in England & Wales. Since 2005, we have operated a premium rate text question and answer service in Ireland on the short-code 57275.

We are responding to those sections of the consultation document on premium rate regulation that affect our business and upon which we have specific knowledge and expertise. Accordingly, we have limited our responses to questions 12 through to 16.

#### **Q12 Do you consider that Com Reg should regulate Directory Enquiry services, within their remit as specified PRS?**

Yes. DQ services charge customers at a premium rate. As a result, most of the regulation which is in place to protect customers on ordinary premium rate services is also applicable to DQ services. Indeed, given the relatively large volume of calls made to DQ services compared to other services generally, the interests of consumers are best served by bringing the regulation under the umbrella of Com Reg.

#### **Q13 Do you consider that DQ Services within their current remit could be exempted from regulation provided their cost is below the recommended price threshold?**

No. The regulations covering premium rate services do not just cover cost but also how the service is advertised and operated.

The exemption of some DQ services on the grounds of cost will increase confusion for the customer. We believe that compliance with premium rate regulation is good for consumers and represents good practice generally. It should therefore, not be considered a burden nor should it involve a large administrative overhead.



We also believe that the public have an expectation that all premium rate services are being regulated and it is illogical to carve out certain companies.

**Q14 Do you consider that it is preferable to maintain the current clear focus of 118XX on strictly telecommunications directory services or should it be permitted to expand to allow a diverse range of “general information services” and, therefore become subject to PRS?**

It is important to differentiate between companies providing the services and the number ranges those services operate on.

We accept that a company operating a 118XX DQ service is entitled to start a new type of premium rate service on a new number range. However, we do not believe it is appropriate or fair for that company to use their 118XX number to supply the other premium rate services. The 118XX number range was originally reserved for DQ specific enquires and it should remain that way.

The 118XX number range has been reserved for Directory Enquiries and considerable public money and effort has been spent to ensure that the public is familiar with this number range and what to expect when using one of these numbers. No other number range has enjoyed this public subsidy and promotion. This process was highly successful in making the public aware and familiar with these numbers and this is acknowledged in the consultation document. However, the highly visual campaign also gave these numbers a significant competitive advantage over other telecoms short code numbers.

We believe that awareness of this competitive advantage was a significant factor when the first National Numbering Convention was created, stating “*118XX directory information access codes shall be used only for the provision of directory enquiry service and relevant value added service*”. The use of the word relevant was critical to ensure both a level playing field for other service providers in the premium rate industry as well as ensuring the public was not confused in any way about the purpose of a 118XX number.

We believe that the wording of the National Numbering Convention is as relevant today as it was in 2000 when it was formulated. Indeed, since 2000 the Directory Enquiries market has become an effective oligopoly which is now dominated by just 2 or 3 key players. These players would now have a huge advantage if they were allowed to use their 118XX numbers to provide other premium rate services and it would dilute the unambiguous message that 118XX services provide telephone number information.



**Q15. Do you consider that the provision of general information service by DQ SP's would be unfair to ordinary SP's of similar services or does the option for them to provide DQ services mitigate this?**

We believe that the provision of general information services on a 118XX shortcode would be extremely unfair to SP's of similar services. We do not feel that the option for them to provide DQ services remotely mitigates this given the huge public investment that has already been made to ensure wide ranging awareness of the 118XX number range.

As stated in our answer to Q14, it is not the provision of other services by DQ service providers that is the problem. It is the provision of those services on their 118XX number that is unfair.

The DQ companies have chosen to brand on their number rather than their service or a common name. That was a commercial decision for them. They were aware of the regulation surrounding premium rate numbers and the limitations on the use of those numbers for other services when they made this decision. It is wrong for the regulator to subsequently change the regulations or rules because of pressure from the DQ companies to use their 118XX numbers for other premium rate services.

The consultation document explains that one of drivers in opening this matter for discussion is the decline of the DQ market. The competitive pressures and awareness of future pressures on the DQ market from other sources such as the internet, automated directory assistance service or even WAP enabled devices have been in existence from pretty much since the introduction of the new 118XX DQ regime and will have been considered by companies at the time they entered the market. It was their responsibility to factor in these competitive pressures and their knowledge of regulation covering the use of 118XX number range when they developed their business plans.

In a similar way SPs, such as ourselves, made investment decisions in the premium rate service market in the expectation of a level playing field and the full expectation that the National Numbering Convention would be upheld by the regulator.

**Q16 Do you consider it appropriate to delineate the additional "general information" services that would be acceptable on 118XX short codes where prior approval by Com Reg would be required on a case by case basis?**

No. This introduces a huge level of uncertainty to any provider of premium rate services. In effect, a small company may create a new service at considerable cost and risk to itself. The owner of a 118XX number then realises the potential of this new market, applies to Com Reg who enable it to offer the same service on its 118XX number, thus benefiting from huge cross functional competitive advantage and overwhelming the incumbent. It does not enable providers of new services to plan effectively and manage the risks.



The consultation document goes on to discuss those services which might be acceptable for 118XX numbers and those that would be unacceptable. It explains that Com Reg has already agreed in a previous consultation that promotion of some services such as sexual entertainment, abusive or gambling service would be “unacceptable”. Yet it is now discussing other services that “might be acceptable”. This is flawed and demonstrates the confused thinking set out in section 8.4.2 and 8.4.3 of the document.

Turning this argument around, the 5XXXX number range on which we have to operate is used for a whole range of services including sexual entertainment, gambling etc. A vast majority of the public do not trust any service on these numbers because of historical scams on a number of these services and their association with the “risk of unacceptable content”.

However, we run a service that must work in this number range and does not have the benefit of consumer trust that was built into the 118XX number range as a result of the backing of public authorities. Now you are proposing to allow 118XX services to pick and choose which “good and trustworthy services” they provide, and you expect us, on a 5XXXX number to be able to compete on a level playing field. You will effectively over time create a two tier regime where 118XX numbers become the publicly trusted and seemingly regulator-endorsed services, whilst 5XXXX numbers are seen as the riskier services providing “unacceptable content”, to use the words in your consultation document.

### **Other thoughts**

Whilst expressing our strong opposition to some of the matters being brought for consideration we are worried that Com Reg may bow to pressure from the large DQ Companies to make changes to the National Numbering Convention and allow 118XX numbers be used on services that may not be considered a “relevant” value added service. We would like to reiterate that the providers of 118XX services are already free to enter these new markets using other shortcode numbers. It is the use of their 118XX shortcode that we are concerned about.

Yours Sincerely

Stephen Williams

CFO

## **4 Advanced Telecom Services (UK) Ltd.**

**From:** Cindy Aspland  
**Sent:** 12 May 2010 15:11  
**To:** retailconsult  
**Cc:** 'Ian Scott'; 'Matthew Lerner'; 'Helena Ioannou'  
**Subject:** PRS Consultation RegTel

Dear Sirs

We are a long-standing Service Provider operating voice and mobile premium rate services in Ireland, as well as N Ireland and England. We have been operating services for over 10 years in Ireland, and nearly 15 in the UK. We pride ourselves on running compliant, fair services and have never been breached by either PPP (formerly ICSTIS) or RegTel. Due to our history and experience of running parallel services in both the UK and Ireland, we are aware of the disparity between the 2 regulating bodies and we thus welcome the strengthening of Irish regulation and fully support ComReg in this consultation process.

The Irish phone paid market is still buoyant and represents opportunity for both business and consumer alike to take advantage of new technologies to access information and services. In particular, the popularity of using mobile to access information remains fairly high – with evidence from our own users that knowledge and understanding of mobile billing is keeping pace. We believe that ComReg can put in place strong regulation to protect consumers (and punish non-compliant service providers) without the need for too severe prohibition.

In particular, we are concerned at the proposal put forward in Section 9 to possibly prohibit MT billing. As a UK company that also has offices in Canada, USA, Czech Republic and Ireland, we are cognisant of the shared technology and development that is enjoyed by the international community (and thus benefits the consumer). We believe that the measures proposed by ComReg on this issue would unnecessarily disadvantage Ireland in terms of mobile market development from an international perspective.

We would welcome the opportunity to discuss regulation with you and fully support ComReg as it is in all of our interests to ensure that the Irish phone paid industry remains buoyant and of benefit to the Irish community.

Rather than submitting a separate response, we have read the detailed report prepared by the IPPSA and hereby offer our wholehearted endorsement of their submission.

Best wishes  
Cindy

**Cindy Aspland**  
Director  
Advanced Telecom Services (UK) Ltd

## **5 Aegis Media**

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11<sup>th</sup> May 2010

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Michelle Townshend  
Commission for Communications Regulation  
Irish Life Centre  
Abbey Street Freepost  
Dublin 1  
Ireland

Dear Michelle

**Re: Scope of Premium Rate Services Regulation (Comreg 10/27)**

I am writing in response to your consultation document as I am concerned with the repercussions of the extreme measures that are being proposed in relation to MT and subscription services. The consequences of the proposals will have a significant negative impact on employment within the Irish advertising industry.

In 2009 the PRS sector spent €25.8 million in the Republic of Ireland on TV, Radio, Print and Outdoor advertising and €41.2 million in 2008. Much of this involved the promotion of Subscription Services. This is in addition to their creative and production expenditure and is, by any comparison, a considerable amount of money. It takes on even more significance given that the total Irish media market has declined by 40% since 2007.

The financial pressure on our sector has never been greater. In the last twelve months, most agencies have made staff redundant while there have also been some high profile business failures. Indeed, I think it's fair to say that unless industry activity improves in the second half of 2010, there will be a lot more business closures and job losses.

In this context, the €25.8.m investment by the PRS sector represents an increasingly important source of income for the Irish media and advertising industries. Were PRS services unduly restricted as suggested then I calculate that it could lead directly to the loss of at least fifty more Irish jobs. It would also adversely affect the ability of indigenous media to operate effectively.

It seems that the options being suggested are extreme, simplistic and ill-considered. I am particularly concerned that there seems to be no analysis of how these options might impact on the industry itself or other sectors which are indirectly impacted such as the advertising industry.



INVESTOR IN PEOPLE



The questions of particular concern to me are;

Q.17 – I do not support the introduction of double opt-in. It has been proven over and over that multi-stage consumer sales processes are a difficulty for consumers. Consumers are currently well informed before and during their use of subscription services and have the option to easily unsubscribe at any time. Any concerns about clarity of promotion should be addressed by the ASAI. The ASAI are the appropriate body to independently handle any consumer complaints regarding the clarity and fairness of any advertisement.

Q.18 – I do not support any restriction on MT-billing. Unscrupulous service providers should not be allowed to destroy the businesses of the vast majority of law-abiding providers. Comreg should use their new powers to enforce the law rather than effectively shut down an entire industry.

Q.22 – I do not support imposing restrictions on particular types of subscription services. There is little evidence that any particular service type is less valuable than another to any particular niche market segment. Arbitrary classification of services ignores the fact that services are created to meet the demands of distinct niche market segments. This suggestion seems to show a lack of understanding of the most basic principles of market segmentation and the fact that consumers vary significantly in their tastes and values from segment to segment. I would strongly advise that a detailed analysis of the market be conducted before any simplistic, unfounded assumptions are used to guide policy decisions such as this.

Yours sincerely



Liam Mc Donnell  
CEO

## **6 Alternative Operators in the Communications Market ("ALTO")**

# alto

alternative operators in the communications market

**Response to Consultation on the Scope of Premium Rate  
Services Regulation Ref: 10/27**

**Submission By ALTO**

**Date: May 14<sup>th</sup> 2010**

ALTO is pleased to respond to the Consultation on the Scope of Premium Rate Services – PRS, Regulation in Ireland.

ALTO welcomes the Consultation as a way of ensuring better regulation, alignment of strategic priorities and transparency. With the recent transfer of regulatory responsibility to ComReg and the imminent enactment of new legislation we believe that this is the right opportunity for a new regulatory framework to be created for the PRS market.

PRS are offerings within communications market that can if appropriately regulated provide consumer benefit, service and satisfaction. However, due to its various characteristics, as set out by ComReg in the consultation, it can also present a number of difficulties for consumers and operators if it not appropriately regulated.

We agree that there should be a mandatory code of practice and in the main we agree with all the proposals made by ComReg and have only commented below where our views differ.

Areas where we would advocate caution so as not to stifle the innovation of future services, concern alternative payment methods where originating service providers offer billing services to retailers in addition to appropriate risk management processes for operators.

Our concerns in this area:

- Firstly to ensure that any new regulatory remedies are cognisant of existing consumer legislation such as distance selling, and also of financial regulation. Proposals should not duplicate or contradict existing regulations as such would create uncertainty in the market;
- Proposals should strike an appropriate balance of protecting consumer welfare whilst allowing market development and investment in Ireland;

- Facilitation of access to PRS services by any interested party;
- Efficiencies in combining the regulatory agencies; and
- Not setting restrictive billing or pricing regulation without wider consideration of market issues.

ALTO notes that the data captured in Section 9 of the Consultation bares little resemblance to the market realities at this point in time. We call on ComReg to carry out a more detailed analysis of what has been presented in this Section.

The ComReg Consultation appears not to have captured the following elements that are both relevant and substantive across markets:

- Review of administrative barriers to entry within the PRS Market in Ireland;
- Review of the effectiveness of the previous Regtel regime;
- Granular and proper qualitative analysis of Regtel reported data;
- Unenforced Regtel Code of Practice – COP, thresholds (€10);
- Facilitation of complaints and transparency of billing relating to pre-paid phones;
- Industry interaction with PRS operators;
- General management, enforcement, reviews and cross-over between Privacy, Data Protection, Consumer protection to include (but not limited to): database management and Opt-Out clauses;
- The regulatory agency cooperation agreements (Section 34 and 47G of the Competition Act and the general agency agreements);
- Disputes over Information Notices; breach findings; Consumer Guidelines and linkages to the COP;
- Refund/Redress Mechanisms; and
- Facilities to cater for fraud and inter-carrier compensation processes.

ALTO's view is that the market for PRS in Ireland and regulation of it to date has been in dire need of review for some time.

## **Response to Consultation Questions:**

Q. 1. Do you agree with ComReg's preliminary view that twenty cents (€0.20) retail cost per minute/per call/per text is a reasonable price threshold below which certain services may be exempted from licensing?

A.1. We agree conditionally with the ComReg view that twenty cents (€0.20) retail cost per minute/per call/per text is a reasonable price threshold below which certain services may be exempted from licensing as such services are of a low financial impact etc. For clarity and certainty for investment decisions it would be helpful to have a clear view either of what falls within regulation or what does not.

ALTO remarks that the cost of a national telephone call from a payphone in Ireland is circa €0.25 retail cost, there is valid cause for ComReg to analyse this issue further.

ALTO also notes that the EU mandated reasonable price threshold level is circa €0.11.

Q. 2. Do you agree with ComReg's intention to regulate live services?

A. 2. We agree.

Q. 3. Do you agree with ComReg's intention to regulate PRS services of a sexual nature, irrespective of cost?

A. 3. We agree in order to protect vulnerable customer groups such as minors.

Q. 4. Do you agree with ComReg's intention to regulate competition services?

A. 4. Given recent customer experiences and current bad debt issues within the market concerning certain competition services we agree.

Q. 5. Do you agree with ComReg's intention to regulate children's services, irrespective of cost?

A. 5. We agree to protect the welfare of this group.

Q. 6. Do you agree with ComReg's intention to regulate fundraising and charitable donations made through a PRS?

A. 6. We agree to avoid inadvertent consumer distress and to protect against organisations that may achieve charitable status as a potential loophole to avoid regulation.

Q. 7. Do you agree with ComReg's intention to regulate Internet dialler software, irrespective of unit cost?

A. 7. We agree. Although less prevalent today with the advent of broadband, this issue caused considerable customer distress and complaints in the past. The problems of certain internet dialler software, often described as 'scams', are still possible as most computers now have built-in PSTN access ports which some customers still use for fax and back-up dial up internet services.

Hence the potential for the theft of personal data, and finance still exists although now on a smaller scale. ALTO would agree with ComReg that customers are often unaware of the scam until well after the event. ALTO supports ComReg's proposal.

Q. 8. Do you agree with ComReg's intention to regulate virtual chat, contact and dating services, irrespective of cost?

A. 8. We agree.

Q. 9. Do you agree with ComReg's intention to regulate pay-for-product services?

A. 9. An area where we would advocate caution so as not to stifle the innovation of future services concerns alternative payment methods where originating service providers offer billing services to retailers. Our concerns are two fold in this area:

- Firstly as ComReg touches on within clause 7.5 our view is that new regulatory remedies should be cognisant of existing consumer

legislation such as distance selling and also of financial regulation. Proposals should not duplicate or contradict existing legislation as such would create uncertainty in the market for consumers and investors. Therefore it would be helpful as part of any regulatory package for ComReg to point to the appropriate legislation where appropriate rather than to attempt to duplicate or amend it. ComReg used this approach effectively for its publications following the removal of the Customer Codes of Practice for Local Loop Unbundling (Ref. ComReg 08/11)

- Proposals should strike an appropriate balance of protecting consumer welfare whilst allowing market development and investment in Ireland Inc.
- In relation to Section 7.1, if regulation is to apply, it should apply in a proportionate manner. Unspecified services, or regulatory loopholes should be dealt with. Light-touch regulation may not be immediately applicable given the nature of the market and the changes required to regulate that effectively.
- ComReg should be very aware of the media messaging around ‘light-touch’ regulation in Ireland given the recent banking crises. This is something that should be considered when preparing the new framework for PRS regulation, in addition to the high potential for alarmism and problems, where PRS services are concerned.

Q. 10. Having due regard for the issues raised above, do you consider ComReg should regulate MNOs “on-portal” services as “Specified PRS”?

A. 10. ALTO believes that there is a formal legal and regulatory obligation on ComReg to regulate the on-portal PRS business.

Q. 11. Do you agree with ComReg’s proposal that certain categories of services could be exempted from regulation, provided the cost is below the proposed 20 cent (€0.20) price threshold?

A. 11. Please see response to Q 1 – ALTO is not opposed to this view, but states concerns over national retail call costs from payphones and EU mandated cost levels.

Q. 12. Do you consider that ComReg should regulate Directory Enquiry – DQ, services, within their current remit, as specified PRS?

A. 12. See Q13.



Q. 13. Do you consider that DQ services, within their current remit, could be exempted from regulation, provided their cost is below the recommended price threshold? (Refer to Paragraph 7.5)

A. 13. Yes, given the price threshold. ALTO believes that DQ operators in many cases are subject to regulation under existing regimes.

Q. 14. Do you consider that it is preferable to maintain the current clear focus of 118XX on strictly telecommunications directory services or should it be permitted to expand to allow a diverse range of “general information services” and, therefore, become subject to PRS regulation?

A. 14. We don't see the need to regulate the existing 118XXX services below a threshold unless there is significant evidence of consumer welfare issues and we are agnostic concerning these providers being allowed to widen their portfolio of services. However where providers widen their portfolio of services then where such new services would be normally regulated, appropriate regulations should apply and other services should be absent regulation until there is a clear demonstration of consumer welfare problems or a clear justification of expected problems.

Price transparency and if voluntary codes of practice or standard business practice do not ensure such transparency then we believe a pre-call announcement may be a sufficient remedy.

Q. 15. Do you consider that the provision of general information services by DQ SPs would be unfair to ordinary SPs of similar services or does the option for them to provide DQ services mitigate this?

A. 15. We do not see an issue.

Q. 16. Do you consider it appropriate to delineate the additional “general information” services that would be acceptable on 118XX short codes where prior approval by ComReg would be required on a case-by-case basis?

A. 16. Yes, it would be helpful to delineate services so that customers have an appreciation of the potential cost of the call and the service to expect.

Q. 17. Should ComReg introduce a “double opt-in” requirement for entry into a mobile subscription service?

A. 17. Double opt-in should not be introduced until the most basic regulatory practices that have been missing to date, have been implemented and allowed to operate for a reasonable time.

ALTO suggests that ComReg should consider taking the following approaches:

1. The introduction of an industry wide complaints handling process that gives the benefit of the doubt to the consumer and allows reliable statistics to be gathered in relation to any issues that might exist.
2. The introduction of the licensing or authorisation regime under the new Act and effective enforcement of the provisions therein.
3. The development of a consumer awareness website and the promotion of this to consumers.
4. The establishment of an industry working group that can actively address any concerns as they arise and deal with the issues that ongoing technological development presents.
5. In advance of any actions that may negatively impact consumers or industry there should be a clear analysis of the underlying cause and then only reasonable and proportionate remedies should be introduced.

Q. 18. Should ComReg prohibit the use MT billing (reverse-billed SMS) by PRS providers? Should MT billing be permitted only for certain types of services?

A. 18. No further comment.

Q. 19. Should ComReg prohibit the use of “invisible” reverse billed (MT) SMS by PRS providers?

A. 19. No further comment.

Q. 20. Should ComReg prohibit chargeable messages being “stored-up” for delayed sending, when a pre-pay account is out of credit?

A. 20. No further comment.

Q. 21. Should MNOs in Ireland be required to provide all customers with the option of barring premium calls and/or barring consumer access to Premium SMS/MMS, whether on an outgoing (MO) or incoming (MT) basis?

A. 21. No further comment.

Q. 22. Should ComReg restrict the class, or type, of service that can operate a subscription payment model?

A. 22. No further comment.

Q. 23. Do you agree with ComReg’s recommendation in relation to cancellation of subscription services and marketing opt-ins when an account expires or the number is quarantined?

A. 23. Given past problems we agree with ComReg’s proposal.

**ALTO - 14<sup>th</sup> May 2010**

## **7 Associated Newspapers Ireland Ltd.**

**From:** paul.henderson  
**Sent:** 14 May 2010 10:53  
**To:** retailsconsult  
**Subject:**

Michelle,

with respect to the consultation document on the scope of premium rate services regulation, I thought I would offer the perspective of an Irish publisher in a global context.

Irish newspapers are incredibly powerful with 86% of the population reading their favourite title every week. Of particular interest in this context is the fact that almost 40% of 15-34 year olds read a newspaper every week.

Consumers will always desire premium services. The means to acquire these services digitally is growing by the minute as new devices enter the market.

Any changes which further restrict reputable companies from offering their services through main stream media (Press, TV and Radio) will only drive a further distance between us (ComReg+the media owners) and consumers from influencing the manner in which the message is delivered.

In simple terms - a buoyant main stream advertising market for premium rate services - displayed with clear guidelines for consumers will be more effective at protecting Irish people than killing an industry through legislation and driving the same demand to foreign digital sources. (The drinkaware campaign comes to mind - the logo for which now appears on all alcohol advertising).

Premium services are part of a newspapers life in two ways. Firstly as a convenient response mechanism for readers to interact with their newspaper and secondly as a source of advertising revenue from independent advertisers.

In terms of soliciting a reader response, the preferred method with the highest response is a text service for pure reader convenience. It now outweighs response levels by post at a factor of 4:1 now. I can tell you first hand from monitoring the calls to our customer care desk that neither cost nor method is a concern for readers.

On the advertising side, National Newspapers of Ireland reported a revenue decline for the first quarter of 2010 which essentially puts the market back to a 1998 level. The agency closures and job losses within the media sector are well documented. Any further restrictions on advertisers will only put further pressure on the industry.

In this tragedy of economic circumstances in which we all find ourselves, there exists an opportunity and a genuine willingness now for advertisers, media owners and ComReg to work together to maintain business and protect consumers at the same time.

Many thanks

Paul

**8 Association for Interactive Media and Entertainment  
("AIME")**

Michelle Townshend  
Commission for Communications Regulation  
Irish Life Centre  
Abbey Street Freepost  
Dublin 1  
Ireland

[retailconsult@comreg.ie](mailto:retailconsult@comreg.ie)

14 May 2010

## **Consultation**

### **Scope of Premium Rate Services regulation – ComReg 10/27**

## **Submission**

### **Association for Interactive Media and Entertainment (AIME)**

**AIME** ( [www.aimelink.org](http://www.aimelink.org) )

AIME is a UK based not for profit trade association that promotes excellence in the Interactive Media and Entertainment industry.

We uphold our Code of Ethics and Core Values to create an environment of consumer trust and industry confidence within which our members' commerce can grow. We are committed to furthering the interests of Interactive Media and Entertainment through the regular exchange of information and communication throughout the value chain, effective engagement with regulators and legislators and the presentation of a successful industry image to media.

We are the only UK trade association with membership across all elements of the interactive media and entertainment value chain, which is generally supported by Premium Rate Service (PRS) billing facilities, and our membership represents in excess of 90% of annual industry revenues, which stood at £0.80bn in 2009 within the UK and which, we believe, has the potential to increase to £1.5bn - £2.0bn per annum over the next three years assuming we have a healthy balance of self and formal regulation and that industry is successful in continuing to build consumer trust. We believe similar, proportionate, opportunities exist in the Republic of Ireland where a number of our members are active.

AIME encourages its members to focus particularly on consumer care and to recognise that if there is to be sustainable growth in our industry then one area where there must be more investment is in consumer contact and support as a part of building trust, whether it be

dealing with enquiries or complaints. Recent research suggests that, despite their inherent popularity, there is still a significant portion of the UK population that is reluctant to use premium rate services due to trust issues in the main and it is important that we work towards improving this situation and encourage more consumers to use premium rate services on a regular basis.

We welcome the opportunity to respond constructively to this Consultation on the Scope of Premium Rate services within the Republic of Ireland (ROI) and AIME will on this occasion register its views by way of supporting the submission made by the ROI based trade body IPPSA (Irish Phone Paid Services Association).

AIME promotes and abides by the philosophy that consumers who are accurately and openly informed of the nature, content and cost of participation in an interactive service experience are perfectly placed to exercise their freedom of choice and thereby enjoy the most effective form of consumer protection.

## General

AIME supports the IPPSA view that disproportionate and uninformed regulation can be seriously damaging to the PRS industry in the Republic of Ireland which is currently valued at Euros 100m per annum, with associated employment and with the capacity for significant growth.

AIME believes it is important to have a clear regulatory goal for PRS which is supported and clearly understood by regulator and industry alike and the following text was included in the earlier PRS Scope Review by Ofcom for the UK.

*“ensure services are advertised accurately with clear pricing, that the content meets acceptable standards whilst protecting against fraudulent or unauthorised use, and trying to ensure effective control of certain services to prevent access by minors”.*

There also needs to be a system of gauging or measuring regulatory success in a similar manner to any modern business and the measurable factors listed below are examples of outcomes that could be monitored.

- Consumer confidence and trust
- Growing industry revenues
- Reduced and properly accounted complaints
- Increased innovation with new services introduced
- No flash flood crises
- Accurate and transparent reporting
- Industry and regulatory co-operation (co regulation)
- Positive stakeholder relations
- Accountable Key Performance Indicators (KPIs)

AIME firmly believes there is benefit from moving towards a co-regulatory (industry – regulator) approach for PRS which would better suit the entrepreneurial nature and pace, together with some of the inevitable challenges that arise, of this industry.



AIME strongly recommends that ComReg takes note of developing market trends worldwide in the hugely important mobile sector and takes a flexible and co-operative approach to concerns that it might currently have regarding MT billing and subscription services. Our experience suggests that problems tend to involve specific service applications and that these can be resolved given industry/regulatory co-operation without the disproportionate impact of a generic approach which inevitably damages the vast majority of compliant activities.

### **IPPSA Submission**

AIME wishes to register its support for the IPPSA submission to this ComReg consultation following a process of discussions and exchange of views between our respective Associations.

### **Statement of Representation**

AIME confirms that this response has been compiled following a process of internal discussion and distribution of the relevant Consultation documentation to all AIME members. A list of members can be found at <http://www.aimelink.org/home/members.aspx>

The views expressed in this response are a fair representation of the majority views held by the responding AIME membership. Individual members are actively encouraged to submit their own independent views as they deem fit and at their sole discretion.

### **Close**

We assure you that, as ever, our comments are made constructively and with the intent of achieving an effective, fair and proportional regulatory regime for Premium Interactive Media and Entertainment services in the ROI in association with our IPPSA colleagues.

If any clarification to our response is required or if we can be of any further assistance please contact Zoe Patterson at + 44 1273 685328 or [zoe@aimelink.org](mailto:zoe@aimelink.org)

Sincerely

AIME

## **9 Autofreephone**

From: Danny (Worldlink)  
Sent: 14 May 2010 14:32  
To: retailconsult  
Cc: Alan Murray  
Subject: Consultation submission to Comreg on the Scope of Premium Rate Services Regulation (Comreg 10/27)

Autofreefone have operated in the Premium Rate business in Ireland since 1998.

We wish to endorse IPPSA's very thorough submission and would like to highlight our following held views:

- consumers, and not government agencies, should be allowed to choose what digital services they, the customer, want to consume
- regulation should focus on effective transparency measures and not prohibition of fair practices
- an effective licensing scheme and penalties can deal with rogue operators
- the factual basis of a restrictive approach are highly questionable
- establishment of an industry working group by ComReg to bring initiatives forward would be very advantageous
- Ireland's knowledge and digital economy will be compromised if regulations ban normal internationally acceptable practices

Danny Murray  
Autofreefone