



Commission for
Communications Regulation

Submissions to Consultation

Scope of Premium Rate Services regulation

Submissions received from respondents

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14 Claire Tully

From: Claire Tully
Sent: 14 May 2010 12:01
To: retailconsult
Subject: SMS regulation

Dear Sir,

I am writing to you regarding the transfer of power of premium SMS regulation from RegTel to ComReg.

I currently use premium SMS to sell content to people and I endorse IPPSA's position on the consultation.

Consumers NOT government agencies should be allowed to choose what digital services they want to consume and the factual basis of such a restrictive approach is highly questionable. An effective licencing scheme could surely deal with giving out penalties to rogue operators.

I firmly believe that Irelands knowledge and digital economy will be compromised if regulations ban normal international practices and is completely unnecessary.

I trust you will consider these points,

Kind regards,

Claire Tully

15 Dan McCaffrey

From: dan.mccaffrey
Sent: 14 May 2010 12:20
To: retailconsult
Subject: Possible over-regulation of the digital economy

To Comreg

I am prompted to 'voice' my opinion on the possible introduction of regulation in the mobile sector that will attempt to deal with bad practice and unscrupulous operators. The best way to deal with such incidences and operators is through enforcement of the existing rules and significant penalties for those found guilty.

Fair practice should not be hindered, impacted or prevented from being operated legitimately in order to deal with those operating outside the regulations.

In the rapidly developing digital world there are growing opportunities to transact business via mobiles. Consumers are already embracing the new technologies and the flexibility they offer. We should be leading this 'revolution' rather than impeding progress through the imposition of unnecessary regulation.

I would urge you to take an enlightened approach to the issue of regulation and to support the potential within the digital & knowledge economies that can lead us out of the current recession.

Yours sincerely

Dan McCaffrey

16 Deaf Hear



DeafHear.ie

Services for Deaf & Hard of Hearing People

Scope of Premium Rate Services regulation - ComReg 10/27

Please find below DeafHear.ie's response to the consultation on the regulation of PRS services

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?

Response: Yes

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

Response: Yes

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

Response: Yes

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

Response: Yes

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

Response: Yes

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

Response: Yes

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

Response: Yes

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

Response: Yes

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

Response: Yes

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

Response: Yes

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?

Response: No. However regulation could be limited in these circumstances to certain issues of public concern, such as compliance with the Data Protection Act.

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

Response: Yes

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)

Response: No

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?

Response: Yes

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?

It is not unfair if a level playing field if provided

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?

Response: Yes

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

Response: Yes

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?

Response: yes

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

Response: Yes

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

Response: Yes

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?

Response: Yes

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

Response: No

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?

Response: Yes

April 2010

17 DFMG

DFMG

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Our Ref: 1676-007PMG/LMB/100428L1

Your Ref:

Date: 13th May 2010

RE: SCOPE OF PREMIUM RATE SERVICES REGULATION - NON CONFIDENTIAL SUBMISSION

Dear Sirs

We wish to raise a number of questions with you in relation to the scheme and scope of the new Communications Regulation (Premium Rate Services) Act 2010 (the "**Regulation**"). Rather than preparing a response to the questions raised in the Consultation Paper published on 1 April 2010 in relation to the Regulation, we set out below a set of additional questions which are merely intended to highlight some issues which, in our view, require more clarity and definition under the new Regulation and as a result of ComRegs Consultation Paper. We would be grateful, in particular, if ComReg would provide clarification in relation to the following:

Pertaining to Question 1 of the Consultation Paper

1. We understand that the Regulation amends the current definition of Premium Rate Services ("PRS") that is provided for in RegTel's current Code of Practice (the "Code"). Under the new definition we understand that a service will only be considered to be a PRS where, inter alia, "*there is a charge for the provision of the service which exceeds costs attributable to communications carriage alone*". We understand that currently RegTel deems any short code text use (within in the meaning of the current Code of Practice) to be a PRS even in circumstances where the rates which are charged are standard network rates. We note that, currently, ComReg has expressed a view, in its Consultation Paper, that the threshold cost of a service which will be deemed to be a PRS, under the new legislation, will be 20 cents per minute/per text.

We understand that RegTel's current practice is to deem any competition or promotion being run using either a short code text or an ordinary texting number to be a PRS and therefore to require authorization by RegTel. Can you confirm that the new legislation will not require that a promoter obtain authorization from RegTel in

Margaret M Carey Brendan O'Donovan Patricia McGovern Joe McVeigh

Anne Cassidy Regina McCaghy Sally-Anne Hinfey Catherine Noone

Consultant – Ernest B Farrell

relation to promotions or competition where they are using short code text numbers on **standard network rates** or using ordinary texting or telephone numbers applying standard network rates (assuming that the promotion/competition in question is aimed at persons over the age of 18 years)?

Is this what is intended by the proposal at section 7.5 of the Consultation Paper where ComReg has indicated that certain services will be excluded from the requirements of the Regulation?

Pertaining to Question 11 of the Consultation Paper

2. Will it be necessary to submit details of a promotion/competition to the new Commission for review before a launch date, even where a promoter forms the view that this particular promotion/competition falls into an exempt category?

Pertaining to Question 5 of the Consultation Paper

3. We understand the reasoning behind the view that children's services should be regulated irrespective of the cost of that service. However, can you please provide some indication of the standards against which children's services will be tested? For example, if a promotion (for example a text for a chance to win competition offer) is aimed at minors (persons under 18 years of age), and the said competition terms and conditions and overall scheme is in compliance with the ASAI Code of Standards and with all provisions of the Data Protection Acts, what additional standards could be applied to this promotion beyond this? How onerous will these standards be, in practical terms?

As you can imagine, industry will require some degree of certainty in relation to the types of promotion that will be acceptable under the new scheme and it would be useful to have guidance in this area as soon as possible so that industry parties can prepare to ensure that future promotions/competition are in compliance in advance of the implementation of the new scheme.

Pertaining to Question 5 of the Consultation Paper

4. In circumstances where a promotion is being run for children and: (i) the ASAI standards; (ii) Data Protection legislation; and (iii) any additional standards under the new Regulation and Code of Practice have been fully complied with, will there be a structure in place where a promotion can be re-run in the same or substantially the same format and experience an expedited approval or re-approval process?

We would look forward to receiving further information and guidance from you in relation to the Regulation.

Yours faithfully



DFMG Solicitors

18 Dialogue Communications Ltd.

From: Alex Crisp
Sent: 14 May 2010 15:08
To: retailconsult
Subject: Regulation in Ireland

Dear Sirs,

I have read through the consultation and the IPPSA draft submission with great interest.

I have come to Dialogue Communications from previously working at PhonepayPlus as an Executive in Investigations.

My experience with regulation in Ireland is in regard to the application of licences from RegTel to operate services on Ireland 5 digit premium rate shortcodes.

We support the response of IPPSA.

In addition and in respect to my particular experience I want to give my support to ComRegs decision to not include competition services in those services which need to be licensed irrespective of cost. It is my understanding that the regulation of the promotion of a none premium rate competition should fall elsewhere in Ireland, dependant on the dynamics of that particular service. Recognised brand companies which operate successful competitions in the UK and wish to include the Republic of Ireland into their market appear to be prevented from doing so effectively as a result of licensing requirements which can take an unreasonably extended time to obtain.

Kind regards

Alex Crisp
Compliance Manager
Dialogue Communications Ltd



Dialogue Communications (Estd. 1994) is a world leader in mobile messaging, mobile electronic payments processing and specialises in the development and operation of value added mobile solutions for an international market.

19 Donal McGarry

From: Donal mcgarry
Sent: 14 May 2010 14:20
To: retailconsult
Subject: new regulations

Good afternoon

I would like to make some points regarding the upcoming planned changes to regulations on Premium test services

Consumers should be allowed to choose what digital services they can consume

Our knowledge and digital economy will be damaged

Regulation should focus on effective and clear measures

Rgds

Donal McGarry

20 Eircom Ltd.

eircom Ltd.

Response to ComReg Consultation Document 10/27:

***Scope of Premium Rate Services
Regulation***



14 May 2010

DOCUMENT CONTROL

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EXECUTIVE SUMMARY

- eircom recognises that the perception and reputation of the PRS industry depends on the formulation and implementation of regulations that are proportionate and balanced. In this context, eircom welcomes ComReg's request for feedback from the industry to inform its approach to regulating this important sector of the electronic communications market in Ireland.
- While eircom is fully supportive of the key consultation objective to protect consumers and to prevent consumer harm, we consider that measures introduced to protect consumer interests should be proportionate to avoid limiting the scope of the industry to innovate and develop.
- The definition of PRS in the new legislation is far reaching. Some services that would not traditionally be considered as PRS, such as directory enquiries, are now in scope. eircom would encourage ComReg to apply remedies that are proportionate to the potential consumer harm that may arise. Services that are benign by their content and nature should not be regulated.
- In eircom's opinion the use of a €0.20 threshold, above which services would be deemed 'Specified PRS' and regulated, is inappropriate. The nature and the content of the service must be the determining factors when deciding if a service is 'Specified PRS'.
- Under the new legislation network operators such as eircom are deemed to be PRS Service Providers, however eircom is not a PRS service provider in its own right. Eircom is concerned that ComReg has not provided sufficient detail regarding the obligations it intends to impose on network operators and requests that ComReg consult further on any such proposals in order to provide industry with an opportunity to fully consider the implications and respond appropriately. Any regulatory obligations that ComReg impose upon network operators must be proportionate and recognise that originating network operators are passive facilitators of the PRS service delivery to consumers.

GENERAL COMMENTS

In responding to this consultation, eircom brings its experience as a network operator in the PRS industry. eircom trusts that the insights and views which are offered in this response will prove valuable to ComReg in formulating its PRS regulatory policy.

Perception of PRS Services

PRS services have achieved a reputation that can cause concern to consumers, parents and stakeholders generally. This derives from the nature and the content of certain services, in addition to the potential for high charges on consumer bills. However PRS services do provide valuable services that consumers want and are willing to pay for.

PRS services began through Service Providers providing information type services to consumers which were of value to consumers. This value is reflected in the variable charging mechanisms for calls that is dependent on the service offered. The services have evolved to include services such as Tarot Card reading and competitions. Other services to appear include Chat Lines, Dating Services and services that offer content of an adult nature.

This has led to a number of serious issues emerging that affect consumers, network operators and service providers. The consequence of these issues was reflected in the establishment of RegTel to regulate the industry, the need for certain services to be provided only by strict means using PIN numbers and some services having to be withdrawn at RegTel's request. Furthermore consumers were in some instances faced with unexpectedly high bills giving rise to network operators experiencing bad debts and disconnecting customers.

The negative customer experience is attested to by the level of complaints which RegTel received during 2009¹. In a number of other jurisdictions there have been high

¹ ComReg 10/27 page 52

volumes of complaints and large fines imposed in relation to PRS service, albeit concerning mobile subscription services².

eircom also notes that viewers of the television competition show 'Play TV' which used PRS numbers are required by RegTel to receive refunds with respect to two of the broadcasts³.

Any regulatory initiative, supported by legal powers, will give comfort to consumers and network operators. Service providers will also benefit over time as the industry begins to enjoy an enhanced and trustworthy reputation.

Therefore the regulatory approach must protect consumers, prevent harm to vulnerable users including children, whilst at the same time being balanced to allow the services to grow and innovate.

Scope of PRS Regulation

Section 3 of the Act provides a definition of Premium Rates Service Providers, which includes network operators. This definition brings into scope for the first time network operators such as eircom.

ComReg in section 11.1⁴, states that "ComReg will introduce a licence condition prohibiting licensed PRS providers from entering into commercial arrangements with another PRS provider unless that other party is also licensed by ComReg". This will ensure that ComReg regulates all parties in the provision of PRS services in Ireland.

eircom encourages ComReg to take a balanced and proportionate approach with respect to network operators such as eircom as network operators are merely carriers of the communications between consumers and the Service Providers. eircom sets out its views in relation to the supervisory and enforcement role OCPs can play further in its response.

² ComReg 10/27 pages 53 and 54

³ "Viewers of 'unfair' TV quiz to get refunds on premium call rate" Irish Times 6th May 2010

⁴ ComReg 10/27 page 67

Protecting Consumers and Preventing Consumer Harm

Protecting consumers and preventing consumer harm is central to the need for regulating PRS services and to this consultation.

It is worth commenting here that users, though adult by age, may be vulnerable for a variety of reasons. These users may be adversely influenced by the nature and content of some PRS services. There are existing consumer protection measures, for example registration and PIN numbers, relating to adult content. In eircom's view, these should be further reviewed in the context of vulnerable users.

PRS services were initially set up to provide information services and the call charges were a small portion of their telephony bill. Over the years, the industry has evolved and the main services offered are Tarot Cards, Chat Lines and Competition lines. With the increased availability of the Internet the use of Chat Lines is declining. In the recent past, however, the launch of the television game and competition shows has led to a marked increase in the use of PRS, for example the 'Play TV' and the Brainbox shows. While TV3 has cancelled its 'Play TV' show, it is expected that a replacement show will be launched in the future by TV3⁵.

The profile of PRS users varies considerably. A high proportion of the general public use PRS services to enter competitions, such as the Late Late Show competitions or television talent competitions. Callers to these shows do not usually incur high charges on their telephone bills.

There is a smaller group who are frequent users of PRS services. These users avail of services such as Tarot Cards, Dating Services, Chat lines and in particular the television Game Shows. Some of these users are potentially vulnerable and may be from lower socio economic groups. They tend to incur high charges on their telephone bills and also the level of bad debt on their accounts has increased significantly.

⁵ See TV3 Press release Friday 5th March 2010
http://www.tv3.ie/pr_sub.php?type=2&view_pr=121

eircom's experience also shows that certain vulnerable users include old age pensioners. This group of users may encounter large bills resulting from PRS calls that were made on their accounts without their knowledge.

Role of Network Operators in Protecting Consumers

Section 4.3 of the consultation document discusses the issue of 'Accountability for All Parties in the Value Chain' and suggests that both Network Providers and Originating Communications Providers (OCPs) would be responsible for ensuring compliance.

Specifically, the section sets out that:

“Network providers have a critically important role in ensuring compliance with the Regulations and the Code of Practice as they have the capacity to, as appropriate, cut-off access to numbers; disconnect mobile short codes and stop the payment of customer charges to providers of non-compliant services. The new regulatory framework will, therefore, contain core provisions in relation to network providers, placing responsibility on them to prevent, halt and remedy consumer harm. In certain circumstances the remedy of harm will involve refund payments and ComReg will address the potentially important role that OCPs (Originating Communications Provider) may play in this regard”⁶.

eircom notes that ComReg has not provided details of the extent of the responsibilities that are likely to be placed on Network Providers and OCPs. In the absence of this information, it is impossible for eircom to offer an informed view on ComReg's, as yet undetermined, obligations. Moreover, ComReg has not requested industry views in relation to these proposals. In eircom's view, this is an oversight which should be addressed. We therefore propose that ComReg provide additional information on the obligations it intends to impose on network providers and an opportunity for industry to respond appropriately in line with regulatory best practice.

Without prejudice to any further consultation published by ComReg in this regard, eircom would like to make the following observations in respect of the general

⁶ ComReg 10/27 page 18

principle of placing responsibilities on network providers to halt and remedy consumer harm:

1. Network operators should not be required to act as a policeman, assuming a role of co-regulator. Any intervention by network operators must only arise from a direct regulatory or legal instruction. Intervention may also arise from commercial issues that the network operators may have with service providers, however this type of intervention is quite separate from that suggested by ComReg.
2. Network operators cannot always cut-off access to individual PRS numbers. Numbers are generally enabled on networks in blocks of 1,000. Therefore cutting-off access to an individual number would require disabling the entire 1,000 block, thereby disabling the services of compliant service providers.
3. Network operators may not be able to stop payment to non-compliant service providers in a fashion considered timely by ComReg.
4. Requesting network operators to refund payments (to consumers) raises unfair liability and cash flow issues if payments to service providers have already been made.
5. The 'retention rates' which network operators use to cover call origination and transit costs are not sufficient to cover the potential refunds. Indeed eircom as an originating network operator experiences bad debt with respect to PRS services and is currently engaged with ComReg to review the retention rates for these services.
6. There may be a large administrative burden on network operators.
7. eircom encourages ComReg to apply proportionate and reasonable obligations on network operators, when developing the new regulatory framework.

Notwithstanding the foregoing concerns eircom may introduce its own limits or restrictions for customers that use PRS services, when bad debt issues arise. These include limiting the number of calls to PRS numbers to a certain revenue threshold or implementing PRS barring (eircom provides PRS barring free of charge). Having experienced significant PRS related bad debt, eircom continually re-assesses its policy.

When issues arise with a particular service or a service provider, the current eircom practice is to address each incident or issue on a case by case basis. If irregular activity

is identified eircom informs RegTel. Where possible eircom implements any recommendations that RegTel may make including suspension of the service. Though it may not always be possible for eircom to cease service depending on the number range, eircom will also withhold out-payments to the PRS provider when possible.

When issues arise, eircom will refund the affected consumers, however this is dependent upon the PRS service provider agreeing to refund the charges to eircom. eircom will only make refunds to its own customers. It is up to the individual OAOs to refund their customers.

It should be noted that it is not always possible for eircom to identify fraudulent or irregular activity. Furthermore it may not be possible for eircom to suspend the service and the out-payment may have been made to the PRS service provider. The PRS service provider may not be willing to reimburse eircom or other Network Operators for the calls.

Licencing Regime

The new licencing regime provides powers to ComReg to protect consumers and prevent consumer harm. Section 6 (1) of the Act provides that a licence application must be made to ComReg before PRS services may be offered. Under Section 6 (10) of the Act existing licensees retain their licences for no more than six months from 12th July 2010 when ComReg becomes the PRS regulator. Section 6 (7) allows ComReg to vary the duration of the licences granted. This licencing regime affords ComReg the opportunity to take a strict approach when granting licences.

Section 8 of the Act allows ComReg to apply to the High Court for the immediate suspension of a service provider's licence. Section 12 of the Act makes it an offence to provide Specified PRS services without a licence and provides that fines may be applied on conviction.

eircom concurs with the aspiration set out by ComReg in section 11.1⁷, that “ComReg will introduce a licence condition prohibiting licensed PRS providers from entering into commercial arrangements with another PRS provider unless that other party is also licensed by ComReg. This provision will enhance the reputation of the PRS industry generally. It will give comfort to network operators, such as eircom, that ComReg views the other parties in the service provision as competent and compliant.

eircom will welcome any clarity that ComReg will give on the practical operation of this condition, including the provision of licence numbers or some other reference that PRS providers are licenced, before commercial agreements are completed.

eircom is concerned however that there is a potential restriction in this proposal. ComReg can only licence PRS providers within the Irish jurisdiction. Would this limitation prevent international commercial agreements being put in place and restrict EU Free Market activity?

Levy

ComReg suggests that the current levy regime to cover the cost of PRS regulation will continue⁸ and that the revenue used to calculate the PRS levy must be ‘ring fenced’ from other communications revenue.

eircom is a network provider that facilitates the provision of PRS services to various degrees. This ranges from the hosting of premium services to the mere transit of calls to other host networks. Therefore the levy should be limited to eircom’s Terminating Communications Providers (TCP) activities.

In eircom’s view the levy should be applied only to TCPs, Service Providers (SP) and Content Providers (CP) that share in the value added element. To date, eircom as an Originating Communications Provider (OCP) has voluntarily assisted where possible by implementing damage limitation measures in the case of wayward services and in providing refunds where required. eircom will continue to do so in the interest of

⁷ ComReg 10/27 page 67

protecting their consumers. The role played by eircom as an OCP is supportive; the imposition of a levy on eircom and OCPs generally cannot be justified.

eircom also calls for an end to the requirement for the TCP and the SP each to be subject to 50% of levy and urges ComReg to take this opportunity to place the levy on a more equitable footing whereby each would contribute in proportion to the revenue that each party earns from the PRS service in question.

Services that are not ‘Specified PRS’, not requiring regulation, should be free of the levy burden. Alternatively a two tiered approach to the levy is possible. Services that are not ‘Specified PRS’ could attract a small levy, while ‘Specified PRS’ would pay a higher levy.

eircom is seriously concerned however at the potential for the levy to be applied to the Directory Enquiry service calls. Directory Enquiry services are by their nature benign, in their overall nature and content. Regulating these services as PRS service should not be contemplated. Consequently placing a levy on these services that are in a highly competitive environment would be damaging. Currently Directory Enquiry services pay a levy at the rate of 0.2% of relevant revenue⁹. Applying a levy at the current rate¹⁰ to eircom Directory Enquiries (eircom comprising all parties on the value chain) would see an increase in the levy of between 2.5 and 9 times. The application of a levy on Directory Enquiry services would be entirely disproportionate and commercially damaging. eircom notes that ‘11850’ will move its operations abroad with the loss of 78 jobs¹¹ in Ireland, highlighting the difficult Irish environment for the Directory Enquiry business.

⁸ ComReg 10/27 page 12

⁹ Section 5 (1) Communications Regulation Act, 2002 (Section 30) Levy Order, 2003

¹⁰ The current RegTel levy is 0.5% or 1.8% of the retail revenue (excluding VAT) depending on the particular service

¹¹ “Directory firm 11850 outsources 78 jobs to Asia”, Irish Independent 13th May 2010

Code of Practice

eircom notes that ComReg will publish a draft code of practice in July 2010 for implementation by October 2010. eircom will provide comment on the draft code of practice and encourages ComReg to ensure that there is no delay in the process.

This is imperative so that there is no ambiguity on how consumers (including children) are protected and consumer harm is prevented.

Determining Specified PRS Services

Section 3 of the Act provides a definition of a PRS Service as a service that has each of the characteristics summarised as follow:

- The service provides ‘content’ that is not broadcast, using an electronic communications network
- The charge for the service exceeds the cost of carrying the call
- The charge is paid by the consumer through the consumer’s bill

The current definition of PRS services is more determined by the number ranges that are used, i.e. 15xx ranges on fixed networks and 5xxxx ranges for mobile messaging services.

The definition in the Act has the potential for an extremely wide interpretation when compared with the current definition. This opens the possibility for services that would not ordinarily be considered ‘Premium Rate Services’ to be captured by the legislation.

It is incumbent upon ComReg that its interpretation and implementation of the Act does not affect services that are currently considered to be legitimate, benign and not warranting any further regulation than exists at present. ComReg’s new remit is to protect consumers and prevent consumer harm. This must be set against the responsibility to not cause commercial damage to network operators and providers of services that are currently viewed to be legitimate and benign.

Nature & Content and €0.20 Threshold

ComReg is proposing that a €0.20 price threshold be one of the determining factors to be used when deciding if a service is a Specified PRS or not. The €0.20 amount relates to the price per call, per minute or per text message as the case may be.

Considering the issues that have arisen in the past and the experience in other jurisdictions, eircom is of the strong view that price should be just a minor factor. Indeed it is arguable that price should even be ignored.

The only basis for the €0.20 threshold is by reference to a range of call charges that ComReg cites in Section 7.3¹². €0.30 or some other amount could equally have been chosen as the threshold. The price ceiling, which ComReg proposes to retain¹³, provides sufficient price related protection for consumers. ComReg notes that “These numbering ranges are identified by distinctive 15xx access codes for voice and 5xxxx for messaging, as shown in the Tables, to assist recognition by consumers and to enhance pricing transparency”¹⁴.

Using €0.20, or any monetary value, as the threshold to determine if regulation should be applied becomes futile in the event of price changes. PRS services that were not regulated automatically are regulated if the price moves above €0.20. Conversely regulation is automatically dropped if the price falls below €0.20.

The key determining factors when assessing Specified PRS services should be the nature and content of the service.

- Price (below or above €0.20) may not be a sufficient guide to consumers in assessing the nature or content of services.
- The price level is not a determinant of potential consumer harm.
- The behaviour of service providers with a price point of 19c for example, may be to promote repetitive calling to generate revenues whilst avoiding strict regulation.

¹² ComReg 10/27 pages 27/28

¹³ ComReg 10/27 pages 63

¹⁴ ComReg 10/27 pages 63

- The nature (not the price) of the service will take account of how charging is applied to consumers bills. Certain mobile SMS based services have the potential for considerable abuse by service providers. Competition lines may encourage repetitive calling patterns which results in unexpectedly large bills for consumers. Some services may require longer durations on calls than is absolutely necessary purely to increase the charge to the consumer and the benefit to the service provider.
- Some content provided by service providers is clearly of an adult nature, requiring a Specified PRS designation by default.
- Other services, such as gambling, will have legal age restrictions that must be complied with.
- The content of some services may verge on the questionable but in a liberalised society may be viewed as acceptable. Nevertheless some users, including children, are vulnerable. Therefore such services should either have restricted access to the service or have limits in the promotion and advertising of the service.

Directory Enquiry Services

The directory enquiry services are proposed by ComReg to be considered as PRS services. This proposal is without any justification. The reputation of the Directory Enquiry services could be tainted by the historical perception of PRS services.

Arising from the USO Regulations¹⁵ and established practice, consumers have an expectation of being able to access Directory Enquiry services. ComReg has made it clear that any decision to permit a more liberal interpretation of "relevant value add services" will result in all DQ services being defined as specified PRS, requiring DQ SP's to be licensed. eircom believes that this will result in a requirement for inclusion of the 118xx short code in the call barring product offering of fixed and mobile network providers. Such a move has the potential to lead to the widespread restriction of consumer and business access to a Directory Enquiry service offering, as consumers

¹⁵ European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2003 – S.I. No. 308 of 2003

and businesses who are currently satisfied DQ customers, move to bar access to prevent unauthorised access to the "general information services" provided on the 118xx short codes (reflecting the 15xx experience).

In addition there is a risk that customers across the eircom fixed (9% have PRS barring on their line) and MNO customer base (PRS barring applied by default to Pre-pay base) who currently have PRS barring on their line may now by default have 118xx restricted in order to prevent perceived consumer harm should a decision to permit a more liberal interpretation of "relevant value add services" be applied.

Price Ceiling

In the consultation document ComReg states that it will continue with the current 'price ceiling' arrangement¹⁶. eircom views the current arrangement as proportionate.

It is worth noting that consumers sometimes pay more than the amount specified by the price ceiling. Therefore advertising must be clear as to what charges will apply. Advertising statements such as "network charges may apply" should be more explicit. This is currently required by the code of practice and should continue in force.

Revenue Sharing

In section 10.4¹⁷ ComReg discusses revenue sharing with respect to '0818' numbers and suggests that the volume discounts offered to '0818' service providers by eircom qualifies as a form of revenue share arrangement. ComReg further sets out that "Revenue sharing is a characteristic of a PRS and in cases where service providers avail of volume discounts, the result is that the charges paid by the consumer must exceed the cost of the carriage alone and, consequently, the service provided meets the definition of a PRS". On this basis, ComReg proposes classify '0818' numbers of PRS services. Specifically, ComReg intends to classify them as "... de-facto Premium Rate Numbers".

¹⁶ ComReg 10/27 page 63

ComReg makes reference to eircom's previous agreements with '0818' providers in its consultation and sets out that eircom offered volume discounts to '0818' service providers. However, this is no longer the case as eircom has amended its policy with regards '0818' providers. Therefore, there is no revenue sharing arrangement of any kind in operation between eircom and '0818' providers. Nevertheless, eircom does not believe that the fact of offering a volume discount to a service provider makes that a revenue sharing arrangement. In eircom's view, any proposals to classify services that operate on the basis of volume discounts would require an amendment to the Act. eircom requests that ComReg maintain the existing wording in relation to revenue sharing to avoid industry confusion and regulatory uncertainty.

Voice and Video Short Codes

eircom notes the discussion in relation to the voice and video short codes. In principle eircom has no objections to the extension of the 5xxxx codes for use to provide voice and video services. eircom will provide comment should ComReg consult further on the matter.

eircom notes as ComReg does, that the 5xxxx codes cannot co-exist on the fixed networks where different numbering regimes apply. This matter will need to be included in any consultation on the use of the codes.

The matter of competitive imbalances will be considered by eircom during any consultation process.

Using International Numbers for PRS

eircom notes the comments in section 10.6¹⁷, that "The new licensing framework, which will aim to capture all parties in the value chain, will ensure that all providers of such services are licensed accordingly, regardless of their location".

¹⁷ ComReg 10/27 page 64

¹⁸ ComReg 10/27 page 65/66

eircom has cooperated with ComReg in the past in relation to international numbers and modem hijacking. In addition eircom has placed its own limits on customers dialling certain international numbers where bad debts risks may arise.

eircom will cooperate with any proportionate measures that ComReg proposes in this regard.

RESPONSE TO CONSULTATION QUESTIONS

What Services should be regulated?

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?

As discussed earlier, eircom is of the view that applying a €0.20 threshold to determine if services should be exempt from licencing is inappropriate. The price ceiling which ComReg separately discusses will provide transparency and protection for consumers on price alone.

The nature and content of the service must be the determining factors when deciding if a service should be licenced. It is the nature and content of the service that will influence how often the service is accessed, if repetitive calling is encouraged. The nature and content of the service will also determine if vulnerable users require protection. That is where the regulation should be focussed.

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

eircom has proposed that the nature and content of the service must be the determining factors when deciding if a service should be licenced. Live services are by their nature open to possible abuses. Some live services are clearly of a sexual and adult nature. These services have the potential to cause consumer harm.

eircom agrees that live services should be regulated. The existing limitations on these services should, at a minimum, be retained in the new regulations.

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

eircom agrees that PRS services of a sexual nature should be regulated to protect children and vulnerable users from harm.

The current arrangements whereby registration and PIN numbers are allocated should be retained.

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

eircom agrees that competition services should be regulated.

The nature of some competition services is that repetitive calling is encouraged. Experience with some television competition shows demonstrates that repetitive calling does not increase the likelihood of making contact with the television show.

Some competitions do not give a fair chance for the entrants to win. The Irish Times reported in relation to a RegTel investigation that "Viewers of TV3's controversial Play TV quiz programme are to receive refunds totalling €47,000 after it was found they had racked up premium-rate phone charges without a fair chance to win."¹⁹.

¹⁹ "Viewers of 'unfair' TV quiz to get refunds on premium call rate" Irish Times 6th May 2010

The potential for consumer harm is significant, through unexpectedly high bills. This in turn has led to increases in PRS related bad debt for some network operators.

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

As previously discussed, eircom has proposed that the nature and content of the service must be the determining factors when deciding if a service should be licenced.

Price, particularly for services targeted at children, should not be a determining factor if a service is deemed as 'Specified PRS'.

It is questionable if any service that is aimed at children or would reasonably be expected to be attractive to children should be permitted as a PRS service.

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

This is a convenient and quick method for consumers to make contributions. eircom agrees that there should be regulation of fundraising and charitable donations. It is necessary to ensure that the recipient bodies are genuine charities.

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

eircom agrees with this proposal. Modem hijacking and similar scams have caused considerable consumer harm in the past and create bad debts difficulties for network operators.

While strict regulation is necessary, ComReg should consider instituting legal actions when scams arise as they perpetrate a fraud against consumers.

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

eircom agrees that, given their nature and content, virtual chat, contact and dating services should be regulated.

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

eircom agrees with ComReg's proposal to regulate pay-for-product services using PRS numbers. Any regulation in this area should be proportionately applied.

It should be noted that customers may purchase products directly from their service providers and have these charged to their bills. For example eircom customers may make CPE purchases that are billed to their accounts, without using PRS numbers. On the other hand customers may be billed by their service provider for pay for product

services that are purchased through PRS numbers and it is these services that require proportionate regulation.

Regulation is not required when consumers make purchases from their own network operators. Network operators have a direct relationship with their customers and issues, should they arise, are easily remedied. Furthermore network operators will be conscious to protect the image of their brands in this regard.

The nature of the service, which allows consumers to make purchases via a PRS number, and be billed to their account, offers benefits to consumers. Currently these services predominantly feature in the mobile arena. Nevertheless the convenience and ease of purchase offers opportunities for consumers and all operators alike.

When there is an indirect relationship between the customer and the service provider there is potential for consumer harm but with proportionate regulation this will be greatly reduced or eliminated. Advertising must be clear and easy for consumers to understand. Terms and conditions must be accessible, with key terms highlighted to consumers. ComReg should also consider the extent to which providers of pay for product services are subject to existing consumer legislation, such as distance selling regulations.

ComReg has extensive powers under the Act and may require network operators to make refunds to consumers. In the context of third party purchases network operators should not be liable in any way for defects or other issues relating to products purchased using PRS numbers.

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

eircom does not agree that "On-Portal" services should be regulated as Specified PRS.

Similar to the response to the previous question, regulation is not required when consumers make purchases from their own network operators. Network operators have a direct relationship with their customers and issues, should they arise, are easily remedied. Furthermore network operators will be conscious to protect the image of their brands in this regard.

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?

As discussed in the General Remarks section and in response to Question 1, eircom is of the view that applying a €0.20 threshold to determine if services should be exempt from licencing is inappropriate. The price ceiling which ComReg discusses will provide transparency and protection for consumers on price alone.

The nature and content of the service must be the determining factors when deciding if a service should be licenced. It is the nature and content of the service that will influence how often the service is accessed, if repetitive calling is encouraged. The nature and content of the service will also determine if vulnerable users require protection. This is where regulation should be focussed.

Directory Enquiry (DQ) Services as “Specified PRS”?

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

eircom is strongly of the view that Directory Enquiry Services within their current remit should not be regulated as “Specified PRS”. While Directory Enquiry Services via the 118xx short codes now fall under the same PRS definition as traditional PRS services provided via the 15xx short codes, eircom believes that this is where the similarity ends. The differences in the nature, type and potential for consumer harm between Directory Enquiry Services and traditional PRS are of such a magnitude that exposing both to similar levels of regulation would be entirely inappropriate.

118xx Services and Service Providers are currently characterised by the following:

- Directory Enquiry Services provided via the 118xx short code are generally delivered by large organisations with established and trusted brands and with reputations for delivering quality services.
- Directory Enquiry Service Providers have consistently demonstrated a strong track record of compliance with regulation implied by the national numbering convention. Guidelines on both the nature and type of services allowed and on pricing transparency are fully adhered to.
- The market for DQ services is highly competitive and there is little room for product differentiation. This results in additional and significant ‘self-regulation’ on service providers as they compete on both Quality and Price in a market which has declined by in excess of 50% over the last 2 years.
- There is clear pricing transparency in the Directory Enquiry Market. Pricing information with respect to the 11811 Directory Enquiry Services is available:
 - Via the eircom.ie and 11811.ie web sites.
 - Via the web sites of all fixed and mobile network operators.

- Via the 1800-411811 pricing information hotline.
 - Via the back of the eircom bill.
 - During Directory Enquiry calls.
 - All advertising material clearly outlines the service provider's details, that charges apply and where a consumer can find the information pertaining to all applicable charges.
- In addition a material amount of Press and Radio advertising employs price based messages.
 - Directory Enquiry Service Providers typically achieve very high levels of Customer Satisfaction. An independent survey recently undertaken by Millward Brown showed that when asked to rate the 11811 service on the basis of speed, friendliness and accuracy over 80% responded as being satisfied.
 - 118xx services generate very low levels of complaints either directly to the Service Provider or via ComReg. When complaints occur Service Providers have well established and robust processes for handling them.
 - Existing 118xx Service Providers have typically invested significant sums in their employees, their technological infrastructure and their brand. They are mature, responsible businesses with long term outlooks and commitment to providing high quality and transparent services.

15xx Services and Service Providers are currently characterised by the following:

- The PRS market is tarnished with a poor image primarily driven by the services and practices employed by some PRS providers.
- The PRS market has consistently demonstrated a strong track record of non-compliance and misconduct. There were over 27,000 calls to the RegTel consumer helpline in 2008/09 with queries ranging from how to unsubscribe to a service, how to seek a refund and also where there was a denial of subscription. In addition there were also 837 code breaches including price issues, omission of service provider details, lack of advice on.
- People are charged for services they do not want, have not received or do not work and consumers are unable to contact the service provider who sells the service.

- There were 569 recorded breaches with respect to Promotions and Advertising within the PRS market in 2008/09 ranging from misleading advertisements and promotional material that induces consumers to subscribe unknowingly, to the omission of pricing and service provider's details.

It is eircom's view that the magnitude of difference between the characteristics of the 118xx DQ market and the 15xx PRS market is such that it would be wholly inappropriate to govern them in the same regulatory framework. Any move to designate Directory Enquiry Services as specified PRS effectively promotes a view that the Regulator perceives Directory Enquiries to be of equal risk of widespread consumer harm as Premium Rate Services such as mobile subscription services which of course is not the case

Furthermore, eircom considers that association of 118xx DQ market with the 15xx PRS market will result in very material reputational harm and damage to the mature and responsible businesses currently serving the Directory Enquiry market, potentially accelerating the market decline with a consequent impact on the 500+ people currently employed in the industry.

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)

Pursuant to our response to Question 12, eircom believes that the current regulatory structure within which DQ services are delivered on the 118xx number range via the National Numbering Convention is extremely effective and that there is no good reason to change same.

Existing DQ providers on the 118xx short code operate within clear guidelines on the nature and type of services that can be provided and on price transparency. All Service Providers operate within these guidelines.

The market for DQ services is highly competitive and there is little room for product differentiation. This results in additional and significant 'self-regulation' on service providers as they compete on both Quality and Price in a market which has declined by in excess of 50% over the last 3 years.

eircom believes that the nature of a service and the risk of such services resulting in widespread consumer harm should be the key factors taken into account when determining if a service should be exempted from regulation. Directory Enquiry Services provided via the 118xx short code are delivered by organisations with established and trusted brands with reputations for delivering quality services. The 118xx code implies safety and reliability and does not infer any of the risks associated with the 15xx codes. Few if any complaints are ever received by the regulator on the nature / quality / price of DQ services – factors which should be critical in establishing whether regulation is necessary.

Given the above it is evident that Directory Enquiry Services within their current remit present a very low level of risk of harm to the consumer and that any concerns regarding pricing are fully mitigated by the level of pricing transparency in the market. As such eircom believe that Directory Enquiry Services should be exempted from regulation.

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?

eircom is strongly of the opinion that it is in the best interests of the consumer to maintain the current clear dividing line between the provision of Directory Enquiry services via the 118xx short code and Premium Rate services via the 15xx short code. As such, the provision of additional value added services should not be permitted via the 118xx short code. Our response to Question 12 clearly outlines the reasoning behind this view.

eircom believes that it is critical to maintain the clear focus on 118xx as strictly directory enquiry services as a move to permit the expansion of the 118xx number range to include a diverse range of “general information services” has the potential to:

- Tarnish the reputation of the 118xx brand through enabling the provision of inferior quality DQ services by “traditional PRS providers” whose sole aim is to obtain a unique 118xx short code for the provision of their core premium rate service offering.
- Cause widespread confusion in the market by enabling multiple services to be delivered across the 118xx and 15xx short codes moving away from the current clearly delineated and understood situation.
- Lead to the provision and promotion of unacceptable content via the 118xx number range.
- Result in the call barring of voice directory enquiry services through the inclusion of 118xx in the Network Operators call barring product offerings.
- Lead to the widespread restriction of consumer and business access to a Directory Enquiry service offering as consumers and businesses who are currently satisfied DQ customers, move to bar access to prevent abuse of or

unauthorised access to the “general information services” provided on the 118xx short codes (reflecting the current 15xx experience).

- Lead to constant challenges, revisions, questions and complaints with respect to the definition of an acceptable “general information service” and where any boundaries to these services may be drawn as was the case with the term “relevant value add services” in the National Numbering convention.
- Constitute unfair competition with “traditional PRS providers”.
- Result in issues where consumers do not have a clear understanding of the service on offer or exactly what they are paying for.

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?

It is eircom’s view that the provision of general information services by Directory Enquiry Service Providers would no doubt result in an unfair advantage over “ordinary SP’s”.

It is widely accepted that the brand awareness and number recognition achieved by Directory Enquiry service providers who operate on the 118xx number range is substantially greater than that achieved by Premium Rate Service Providers who operate on the 15xx and 5xxxx number ranges.

eircom, Conduit and Numbers Direct have built up substantial brand awareness and number recognition primarily by investing heavily in people, marketing, technology and customer service. Such investments have ensured that the services provided by Directory Enquiry Service providers within their current remit consistently offer high standards and levels of Premium Rate service providers will not be able to compete in this market.

Voice and SMS DQ services require a live operator to ensure the provision of fast, accurate and reliable listing information to the consumer. These attributes cannot be replicated using an automated service which some PRS operators may consider to enable “low cost” entry into the 118xx market. Although “ordinary SP’s” could theoretically secure a 118xx short code and provide Directory Enquiry services in addition to their PRS services, the substantial investment required in technology, people and marketing to offer a reputable service makes this highly unlikely. Without such an investment “ordinary SP’s would be unable to secure any volume or market share from established DQ providers and would also be unable to deliver a service of the quality the market demands.

Given the above, the established DQ providers would have a competitive advantage over existing PRS operators in both the DQ and the current PRS market. This competitive advantage is of such that existing PRS providers may not be able to compete in the DQ market and may suffer in the existing PRS market.

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?

eircom believes that it is critical to maintain the current clear focus on 118xx as strictly DQ services for the reasons outlined in our responses to Questions 12, 13, 14 and 15.

Mobile Subscription Services

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

The current code of practice mandates the provision of full pricing, opt-out and contact details in all promotional material and requires service providers to send a free message to customers immediately on subscribing to a service, advising them that they have been subscribed and reminding them of the pricing, opt-out and SP contact details. SPs are also required to send a reminder at charging intervals of €20 cumulative spend. Furthermore service providers are required to operate the uniform STOP command for opting out of subscription services. These protections if properly enforced should ensure ample consumer protection.

eircom therefore believes that a “double opt-in” requirement cannot be clearly justified at this time. Taking a proportionate approach ComReg should initially focus on the enforcement of the measures currently in place and review the effectiveness of robust enforcement. A double opt-in can be considered if the above measures are not effective and any further remedies should be proportionately implemented.

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?

eircom disagrees that mobile terminated (MT) billing should be prohibited. MT billing forms the basis of subscription offerings and also facilitates other service delivery models. It is particularly effective in ensuring the simultaneous delivery of content and charging. This offers consumer protection against charges for undelivered content.

While MT billing is open to abuse by service providers, the current code of practice if properly enforced is well equipped to deal with any abuse.

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

eircom agrees that the use of invisible reverse billing can cause consumer harm. eircom believes, however, that with correct management, in conjunction with the mobile network operators, invisible reverse billing may provide certain benefits. For example, if technical issues arise when attempting to apply billing simultaneously with the transmission of an SMS message, invisible reverse billing may have advantages.

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

It is not clear that ComReg should prohibit chargeable messages being stored up for delayed sending, when a pre-pay account is out of credit.

It may be the case that some consumers would be happy to receive the stored up messages. Other consumers on the other hand may not wish to have their credit decremented so quickly after topping up.

By way of a solution, eircom would suggest that service providers set an expiry period on attempts to resend messages. This should be managed so as to avoid a large volume of messages being delivered when the customer ultimately tops up.

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?

While the PRS barring facility currently exists on fixed networks, there may be technical issues with respect to mobile networks.

With robust regulation any demand for Premium SMS barring should decline. eircom suggests that this should be reviewed at a later date. This would allow for a more informed decision once the premium SMS services issues have been addressed.

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

Similar to eircom's reply to question 18, eircom believes that there is a place for the subscription payment model and eircom would warn against subjective decisions as to what services should operate under the subscription model. .

As outlined in response to Question 17, the current code of practice mandates the provision of full pricing, opt-out and contact details in all promotional material and requires service providers to send a free message to customers immediately on subscribing to a service, advising them that they have been subscribed and reminding them of the pricing, opt-out and SP contact details. This combined with the reminder messages and the STOP command provides consumer with ample information to make an informed decision as to whether or not they value the content of a subscription

service along with the opportunity to easily opt out should they decide to do so at any point after subscribing.

If the existing rules are enforced, further regulation should not be necessary, including regulate down to the level of controlling the types of sieves being offered over a subscription medium.

Numbering Issues

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

eircom agrees that subscriptions should be cancelled and that marketing communications should not be attempted in the case of expired numbers.

eircom notes that this requirement already exists in the current code of practice and the Regulations. In the case of subscription SMS, there is a limit of 40 days on failed attempts at sending SMS. With regard to marketing communications, ComReg implemented a 13 month quarantine period for mobile numbers specifically for this purpose and we believe that this could be achieved in the case of fixed and indeed all numbers through general guidelines issued by the Data Protection Commissioner.

-- END --

21 Electric Media Sales

From: Micheal Scully
Sent: 14 May 2010 15:23
To: retailconsult
Cc: Dermot Hanrahan
Subject: Scope of Premium rate services regulation ComReg 10/27

To whom it may concern:

We write to express our concern at the prohibition of Mobile Terminate (MT) Billing and the impact that this legislation would have on the indigenous digital advertising industry

Electric Media Sales are Ireland's largest online advertising display sales company. We sell advertising for most of the leading Irish websites (Irishtimes.com, entertainment.ie, Tv3.ie and many more).

As well as being the leading player in the Irish internet display ad market, we have significant investment in the nascent mobile advertising market. As you may be aware, the mobile advertising market is set to be a key growth area for the advertising industry in the next 24 months. We are certain legislation that prohibits MT billing will have devastating and far reaching consequences for this nascent market and the advertising industry.

Aside from the very significant and real impact that the prohibition of MT Billing would have on the digital advertising community, we do feel such a proposal is inherently unjust.

Consumers and not government agencies should chose the scope and mechanisms of digital interactions. The spirit of internet and mobile innovation is dependent on keeping this form of deregulation in place. If there is a need to protect consumers, surely penalties and fines to rogue operators and a focus on transparency makes more sense than the extremity of an outright ban.

We believe a ban on MT Billing will certainly have a devastating effect on the digital advertising market and that the ban would be damage Ireland's reputation as an open and transparent knowledge economy

Yours Sincerely

Micheal Scully and (on the behalf of) Dermot Hanrahan, C.E.O

Micheál Scully
Operations Director

Electric Media Sales

22 Enda Farrell

From: Enda Farrell
Sent: 14 May 2010 14:24
To: retailconsult
Subject: PRS Consultation

Hi,

As someone who has monitored the international PRS market for the last 10 years I have read with concern the consultation paper on scope and regulation of PRS in Ireland. Proper regulation and enforcing transparency are surely the means to achieve effective consumer protection in a digital economy ? This can be achieved by more effective use of the information systems already in place with service providers and the network operators.

The proposed approach of limiting choice and essentially prohibiting fair practices to counter the actions of rogue operators is really using a hammer to crack a nut. Surely a proper licensing system coupled with measured penalties is the way to deal with this. I would be confident that Comreg would have the competencies and resources to implement the effective licensing and regulation that has been missing.

I am hoping that the consultation process results in a regulation process that protects consumers and their right to choose. I also hope that those in the industry that have a genuine interest in providing valuable services and products to consumers are given the opportunity to do so.

Mise le meas,
Enda Farrell

23 Ericsson IPX AB



ERICSSON IPX RESPONSE	
Date	Reference
2010-05-06	
Your Date	Your Reference
2010-05-14	10/27

Scope of Premium Rate Service Regulation - ComReg 10/27

Ericsson IPX AB,
SE: 164 80 Stockholm,
Sweden.

(C/o Frank Healy, LM Ericsson, Beech Hill, Clonskeagh, Dublin 4).

For the Attention of: Michelle Townshend.

Commission for Communications Regulation,
Irish Life Centre,
Abbey Street Freepost,
Dublin 1,
Ireland.

RE: Scope of Premium Rate Services Regulation (Consultation Paper, 1st April 2010).

14th May, 2010.

Dear Michelle,

Ericsson IPX appreciates the opportunity to provide some feedback on the proposed structure for premium services and hopes its response serves as useful input.

We believe that there is still a burgeoning community of development companies in this as well as in related areas in Ireland that provide significant value-add to consumers, companies and the wider economy. This represents a fantastic opportunity for innovation as the internet truly becomes mobile. Such companies also provide considerable opportunity for international expansion based on experiences developed in Ireland and due to their involvement in highly dynamic sectors that are constantly evolving and where time-to-market enables advantage, value and experience.

Equally, international companies should be welcomed for their interest in participation and investment in these areas in Ireland. They should not be prevented from doing so and an appropriate framework in the payments sector can strengthen their commitment. Their involvement will ensure competitiveness, innovation and employment both directly within the payments sector as well as in related content, gaming and digital areas generally.

Date	Reference
2010-05-06	10/27

A framework that is clear to end-users and companies alike can be critical in relation to such opportunities and any improvement is welcomed in this regard.

Ericsson IPX is a specialist business-to-business service provider, enabling specific billing and transaction-handling capability for data-oriented companies. Such intermediaries as IPX can be critical facilitators but have, until now, been quite stifled by uncertainty and non-recognition within the value chain. Recognition of a value chain that provides greater clarity of responsibility in relation to promotion and roles of various participants is welcomed. (Ref. Section 4.2 of the Comreg Consultation Paper and previous discussion between Ericsson IPX and Tom Boyce at Comreg).

According to current Regtel processes, since short code applicants are by default defined as SP's (Service Providers), requirements for SP details on content, where those SP's are not content-controllers, is not constructive or practical for either end-users or promoters of content. This can only add to confusion and frustration at a consumer level where that SP is a specialist technical provider. It therefore results in additional call-handling and transfer of user-queries by Regtel, MNO's and specialist intermediaries such as IPX. It also causes inefficiency at the code-application / service-approval stages. Together with a lack of clarity or specific service / wording examples from Regtel it has blocked market entry by well-meaning companies locally and from abroad. It does not recognise the dynamic nature of content or clearly make controllers of content responsible.

Here are some broad comments in relation to the Consultation Paper (i.e. related to all 23 questions) that we hope you find useful:

(Note that use of bold and colour here is for ease of reading).

1. Emphasis on Registration and Visibility of Content Providers as Opposed to Brands, Services or Specialists in the Value Chain

As mentioned in the Consulting Paper, the company that “provides and promotes” services (with the ability to change its details towards users) is the Content Provider (section 4.2.4 on page 17). It is the party that is the effective owner of the customer relationship but may not entirely facilitate the billing mechanism which it may outsource to a specialist Service Provider, such as IPX.

By way of comparison, a mobile phone or device may be required for a transaction to take place via mobile but holding the manufacturers of those devices responsible for individual transactions would be a distraction. Similarly, a bank, credit-card or other

Date	Reference
2010-05-06	10/27

payment mechanism including payment specialist Service Providers (as they seem recognised by the Consultation Paper) can be mere facilitators or conduits for both transacting parties. It must be possible therefore, for reasons of greater clarity, for a well-defined Content Provider to become the only party advertising to end-users.

The proposed definition of “Service” remains broad and it remains somewhat unclear as to whether everything that might be construed as a distinct service would need to be registered (if falling within a regulated category). If this were the case, even if it is effectively the same or a very similar service that has already been registered, then it would certainly lead to unnecessary inefficiency. It seems appropriate therefore for a definition of “brands” to be described and distinguished from service types or categories and from Content Provider companies (i.e. legal company names).

Pre-registration of every single brand or service should however presumably not be required provided there is compliance and clarity of the content owner (i.e. advertiser / Content Provider company as defined in section 4.2 of the Consultation Paper). This seems critical to efficiency and should perhaps be clarified further by Comreg.

There does appear however to be greater recognition that any registration process (where it may be required) can or could have greater focus on the retail owner (Content Provider company), i.e. where control towards end-users actually lies, rather than the payment mechanism or in relation to a specific service item or brand. This would be welcome. Where registered Content Providers advertise it should not be necessary or relevant for a specialist Aggregator or Service Provider like Ericsson IPX to also advertise. This is currently a key point of confusion.

2. Facilities Shared by Multiple Content Providers

Short code ownership and billing activation appear within the Consultation Paper to finally be appreciated as being separate to Content Provision and advertising. One Aggregator / Service Provider (as defined in section 4.2 of the consultation Paper) should be able to cater for separately-accountable Content Providers if those Content Providers are registered and wish to advertise. By extension therefore, one short code (or other billing facility) should be possible to provide, on a shared basis, to separate Content Provider companies. Those Content Providers should be distinct from the Short Code and can be directly responsible for separate services. This would also allow the Service Provider and compliant Content Providers to continue with that shared short code in the event of an individual Content Provider becoming non-compliant. It is a clear approach and places responsibility closer to where control actually exists. This would allow compliant companies to continue and would seem to be a proportionate approach.

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We would therefore disagree somewhat that the point between the PRS and the operator is an “*optimum point at which the PRS can be terminated*” [Section 4.3, page 18]. This may be similar to closing down an entire street if an issue exists with a single retailer. In the interest of efficiency, Ericsson IPX would suggest that responsibility should remain primarily at the individual retailer (Content Provider) level.

3. Overall Regulatory Structure and Priorities

In general, the degree of regulation or exemption of individual service types is dependent on the extent of that regulation (i.e. actual day-to-day requirements). Regulation need not be used as an interchangeable term for “inhibit”. All services are currently required to be compliant with consumer law. If “regulation” as it is described in the Consultation Paper implies registration of all services or brands [i.e. the situation as it appears to exist today], where the service is a standard type and is already operating within guidelines, then it may just cause bureaucracy, backlogs and uncertainty.

It would seem that the definition of “regulation” as interpreted in the Consultation Paper may potentially mean:

A) exclusion of certain categories (price points) entirely from regulation, combined with

B) operation within a fair Code of Practice generally for all other services, and

C) Content Provider registration (as opposed to brand or content item descriptions) and

D) further prior approval for specific content categories. *

This structured approach seems generally welcome and seems to place responsibility with content controllers (“Content Providers”) without over-interference or micro-management of individual content items or brands by Comreg. We further hope that Comreg will be consultative, mindful of the benefits from innovation in this sector (as outlined above) and helpful in ongoing facilitation of that innovation.

The UK regulator has, quite successfully, questioned which services need to be registered and has specified certain, quite narrow categories:

<http://www.phonepayplus.org.uk/output/Prior-permission.aspx>

*In relation to D) above we would suggest a possible adjustment of approach. Comreg is currently considering which services might be excluded from regulation / registration (whereas Phonepay Plus in the UK operates from the opposite direction in terms of requiring prior approval of certain service types). Using a similar approach to specifying which companies and services might be pinpointed and require further,

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special attention, as opposed to which ones might be excluded, may further help Comreg to prioritise.

We also note that the latest data provided by Phonepayplus in the UK (dated 22nd April, 2010) has shown a quite dramatic (41%) decline in customer complaints in the past 2 quarters compared to the previous 2 quarters. This has much to do with consumer awareness and clarity of guidelines. Similar reductions can easily be expected in Ireland. Clarity of roles and reduced confusion at a consumer level as described above could have a huge benefit in Ireland in terms of reducing calls to Operators or Comreg (previously calls to Regtel).

In general however, in relation to section 7.5 of the Consultation Paper, (if Comreg is working on the basis of exemption (of controls B, C or D above), it may also be worth considering the possibility to exempt the following from more than general Code of Practice guidelines:

1. “One time” as opposed to regular (time or event-based subscription-based) services, provided of course the promoter / advertiser / Content Provider is known to and contactable by the end-user.
2. Content and in particular, text-based content that is freely available on the web (in effect the mobile user is therefore paying for mobile “convenience” rather than the content itself).
3. Subscription services might also be partially excluded from further regulation if the Content Providers are registered, clearly associated with services and working within clearly defined Code of Practice guidelines. (This is the case elsewhere e.g. in the UK as long as subscription services are compliant with general guidelines then they only need to be specified if billing above £4.50 per 7-day period).
4. The same principle as 3-above might also be possible to apply to competition services, charity donations or pay-for-product services. If pay-for-product services are partially consumed on the mobile device (e.g. tokens received by phone) and if the Content Provider / retailer is registered and clearly committed to Code compliance and retailer refunds as provided for under other legislation then required regulation should be minimal if any.

The key point here would seem to be that: if clear Code of Practice guidelines are provided then legitimate or registered Content Providers should be able to work within these guidelines as long as their identities are clearly known to end-users and they are directly contactable. Further involvement or regulation by Comreg need not be significant but could pinpoint specific service types.

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Please see below some further responses on behalf of Ericsson IPX AB in relation to Comreg's recent consultation paper and specific questions:

<http://www.comreg.ie/fileupload/publications/ComReg1027.pdf>

We are aware that Ericsson IPX participates in a number of forums that may also be submitting to Comreg in this regard. Where differences occur please consider this submission to take precedence.

We appreciate the Comreg initiative to improve things in this regard and welcome any further discussion in relation to our initial responses here and in relation to the specific questions below.

Yours sincerely,

Frank Healy.

**Ericsson IPX, Western and Central Europe,
(C/o LM Ericsson, Beech Hill, Clonskeagh, Dublin 4).**

Below is the List of Questions together with our responses:

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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.

While we appreciate the intention here is for Comreg to remove regulation or licensing where they may not be required, it is likely that a large number of uncontrollable market participants would wish to participate at 20 cents, or as close to it as possible. (Currently 20 cents is an active price break on various MNO networks, whereas 19 cents is not. It is not entirely clear if 20 cents itself would be included). As the market is structured and likely to be structured in future, a resulting influx of unlicensed and unregulated participants should be of concern to Comreg and all participants as they are defined in section 4.2.

Despite the seemingly low price point of 20 cents, in a current (and likely future) scenario where consumer prices in telecoms are likely to fall then 20 cents could well be considered "Premium" by comparison to other mobile or web-based services.

Therefore we would suggest an 11 cents (€0.11) threshold. This is more consistent with "standard" rates of text and less likely to cause damage. All Content Providers (regardless of pricing) should be reminded of principles within a Code of Practice and reminded that clauses in Sales of Goods and Supply of Services legislation apply.

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

Yes.

In principle this is welcome, especially where the protection of minors is an objective. The definition of "live services" may need to be clarified together with the meaning of "regulate". E.g. does regulation involve service-flow approval or registration of every service and branded variant (as discussed in the introduction above)? Or simply: compliance with a framework / Code provided by Comreg? Or Service-Provider (underlying advertising company) registration, regardless of the number of brands it may own or use? A clearly defined

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framework that still provides for rapid launch of well-meaning services and evolution of such services over a short timeframe should be provided for, especially where the Content Provider is clearly identifiable.

See also the 3rd heading within the cover letter above “Overall Regulatory Structure and Priorities”.

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

Yes. As per Q.2, above, in principle this is welcome, especially where the protection of minors is an objective. Subject to age verification however and compliance with a framework for such services then the ability of companies to rapidly launch and evolve services could be provided for.

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

Yes.

Again however, as per Q.2 above, it should not be difficult for compliant companies where the framework / code is clear and Content Providers are pre-registered to promote.

It should also be possible to distinguish between competitions requiring a single entry (which would require minimal if any regulation) and subscription-based competition services (club-style exclusive entry services).

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

Yes.

Again, this should not be difficult for compliant companies where the framework / Code is clear and Content Providers are pre-registered.

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

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Yes.

Again, this should not be difficult for compliant companies / charities where the framework / Code is clear and Content Providers are pre-registered.

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

Yes.

This is outside the scope of IPX but if dialers are used with the objective of fraud it seems clear that Comreg may have a role to play.

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

Yes.

Again, this should not be difficult for compliant companies where the framework / Code is clear and Content Providers are pre-registered to promote.

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

Yes.

These services need not necessarily be distinguished from other services consumed wholly or partly on the phone i.e. similarly, the service owner / advertiser should be responsible for the service.

Due to innovations within this sector, the definition of "Pay-for-Product" may need to be clearer. i.e. some services may be partially consumed on the phone and partially online (i.e. not on the phone itself) e.g. tokens for online gaming. If there is partial / possible consumption on mobile or where consumption is inextricably linked with the mobile phone (e.g. parking tokens or ticketing) then it should probably simply be treated like a "normal" mobile service.

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Where delivery of an item is entirely separate from the mobile phone but payment takes place on the phone in advance then IPX would agree that there is scope for Comreg to be more involved. Other legislation presumably covers well here also. There is potential risk here that an intermediary / enabler is made wholly responsible when in fact the provider or controller of the physical goods is probably responsible for any fraud. In other words proportionality is required here.

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.

Presumably insofar as they may provide similar end-user services then the MNO's would be governed by similar requirements from Comreg. As per the above however this can be structured to allow for efficiency and based on the company owning / advertising the service (i.e. the MNO and its requirement to register itself) as opposed to individual services, sub-brands, individual items or companies sub-contracted to manage short codes or other payment mechanisms.

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?

No.

As per Q1 above, a lower threshold: approx 11 cents would be more appropriate.

Where there is clear abuse of consumer rights then Comreg may wish to reserve its right to become involved in specific cases at lower price points. All services may need to be subject to general principles and guidelines as promoted in a general code of practice. This would not necessarily mean onerous regulation or prior-approval. They would be subject to Sales of Goods and Supply of Services legislation in any event and could be reminded of this within a generally applicable code.

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

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Yes.

DQ in its traditional (voice) form is currently outside the scope of IPX. Presumably however insofar as DQ services provide direct-to-consumer premium content (data) services then they would be treated equally to other such Service Providers or MNO's.

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)

No.

Please refer to responses to Q.1 and Q.11, above.

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

Yes.

As above however, presumably insofar as DQ services provide direct-to-consumer premium content services then they would be treated equally to other such Service Providers or MNO's.

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, this is not unfair.

It would seem unfair to restrict DQ providers from providing any kind of mobile service that other companies can provide already, provided both providers can do so under the same conditions.

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?

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Yes,

As above however presumably insofar as DQ services provide direct-to-consumer premium content services then they would be treated equally to other such Service Providers or MNO's. Also as above, presumably clarity to the user-level of the Content Provider responsible (as opposed to billing mechanism) is key to the end-users. Presumably this is reasonable to DQ firms.

Further, as per the cover-letter above we would suggest all categories of content should be subject to a general Code of Practice with some specific services subject to Prior Approval as is the case in the UK. See: <http://www.phonepayplus.org.uk/output/Prior-permission.aspx>

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

No.

Sending an MO to opt-in is, by definition, “active confirmation”.

Provided up-front pricing and information is available then such double opt-in should not be required as it is likely to simply be seen as burdensome on user purchases and content owners alike. It should be compared to simply going to a counter, handing over your item and exact amount to purchase in a shop and receiving a receipt of purchase. The receipt is itself evidence of purchase, whether it is a single purchase or opt-in. Any double-check with the consumer is likely to implicitly cause doubt and damage to a simple-to-understand transaction flow. A reduction in usage should not in itself therefore be considered a success or beneficial to consumers in a modern ICT-oriented economy. Consumers already have a contract with their MNO and a single MO and receipt is an extension of this.

Similar comparisons can be made to web-based purchases where a user can simply click to purchase following previous registration of a credit card (or simple click and paste of card details into a field). In the mobile sense, the previous registration is the contract with the MNO.

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Any doubt by the consumer can be mitigated via a well promoted “STOP” (stopping the last service) or “STOP ALL” (stopping everything from that short code) command. These are already well known at a user level and should be promoted by well-intentioned Content Providers. Such compliant Content Providers should not be punished by a few, regularly offending Content Providers.

The key here is verifiable reasonableness by registered Content Providers and accessibility to them directly by end-users in the event of dissatisfaction.

This is covered in the cover letter above. As the market structure currently exists and in particular due to the current broad definition of “Service Provider”, end-users are undoubtedly confused in relation to ownership of services and clarity of roles and this is likely to be adding to volumes of complaints and calls to various parties.

Similarly, a number of complaints may need to be measured against the popularity of a service. So, for example a number of users of a well-known service such as Google or Facebook might complain to them about aspects of their services but this should be considered against the popularity of the services.

Assuming an MNO move in Ireland to a structure similar to “Payforit” in the UK this issue should be eliminated. (Payforit is a move toward a more web-oriented environment with specifically defined payment pages and content and removal of end-user visibility of SMS as a payment mechanism). To require double opt-in does not anticipate online future development in this area.

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?

No.

The default billing mechanism within the Irish market (and most other markets, especially in the EU) is MT. It is perfectly suited to end-user expectations that they should request a service and be billed for it upon receipt. Any attempt to alter this, whether in relation to subscription services or single purchases, would be likely to damage consumer expectations, cause enormous confusion and severely disrupt innovation.

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Any move towards MO could also mean an increased likelihood that users would be billed in advance (on the MO send) but not receive their requested item on MT e.g. if their inbox was full or if they are out of mobile coverage etc. Currently as the billing is typically inextricably linked to delivery (via MT) then this is not an issue. Any such move to MO has not been successful in any market that we are aware of. It must be assumed that the basis (i.e. reason) for sending the MT can be provided by compliant, visible and as necessary, registered Content Providers.

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

Not completely.

Normally, silent SMS should not be needed but it can improve the end-user experience e.g. some MNO’s in the UK have used it to provide a more seamless billing experience to end-users (i.e. users receive their billing confirmation via WAP pages rather than seeing SMS’s pop up in the background). (Currently being used on T-Mobile and Orange in the UK in the context of “Payforit” billing pages).

It may not therefore be practical to exclude the possibility that “silent” SMS is needed in order to improve the user experience, of course subject to other guidelines.

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

No.

Retries may be acceptable for a number of days at least. If a user is subscribed to a service or has ordered content simultaneously with depletion of their prepaid account then it might in fact be expected by users that they should be charged and have content delivered upon top-up. Some services may be considered critical (e.g. medical reminders). Retries within the billing period are considered acceptable in the UK and this may be a constructive approach. E.g. if it is a weekly subscription service then a user could be retried for the following 6 days if they are not successfully billed and delivered to on day one.

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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?

No. (Though we appreciate the concerns in relation to this. Please read on).

This may not be preferable since presumably such blanket barring is heavily dependent on MNO network capabilities or would be awkward to lift versus allowing users to promptly consume services on an individual or ad-hoc basis and choose flexibly whether to consume individual services or not (which is the current situation and user-expectation). While we appreciate that certain categories of consumers (such as minors, described above), may require priority in terms of protection, blanket barring seems counter to principles of needing a population to be fluent with ICT knowledge and usage. It is difficult for users to envision which services they may want or even need in the future and more practical to allow them to choose individual services on an ad-hoc basis than to enable barring of all services. Provided pricing of individual services is clear and users are given a choice not to purchase (including purchases at low prices) then this must be seen as better for society than blanket barring. In short, consumers should be empowered to flexibly choose, given the wide and increasing variety of services available.

Non-premium services (i.e. under €0.11) would presumably be excluded. How easy it would be to technically differentiate these from higher-cost services and exclude services costing €0.11 or below would presumably be heavily dependent on MNO billing systems and databases in any event and may not be practical.

Certain services may also be “free” to a point and have elements you would pay for. An example might be a free newspaper service with specialist reports that could optionally be paid for. It may be impractical to differentiate or allow free elements of the same service versus paid-for elements. It may also be counter to consumer rights. The dynamic nature of pricing and need for flexibility might also need to be appreciated here.

Further, already today, users can typically, quite easily disable data functionality at the handset level. This will bar data charges. Reverse-billed (MT) charges are addressed via the market structure and Content Provider visibility that ComReg

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is proposing and allowed for in legislation. Mass-market intervention along the lines that Comreg suggests here may not be easy to implement by the MNO's and would seem likely to cause mass confusion at an individual contract level in an existing market. We understand that some MNO's already have some capability in this regard in relation to corporate (postpaid) clients.

As mobile handsets improve to become more like small PC's it is likely that individuals will be more cleanly and easily empowered with opting out in a way that is more user-friendly and more easily understood at the handset level. This would negate this suggestion and ease things at a contractual level for MNO's.

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

No.

These services are already subject to controls and legislation as well as obligations on MNO's and service providers e.g. in relation to adult content. There is also a risk in attempting to create categories or subject certain categories of service to restrictions as it is likely to fragment the market, create uncertainty and bureaucracy and reduce innovation. Although specific categories and services can be highlighted there is often overlap. E.g. in relation to the examples provided at the top of page 8 of the Consultation Paper, many end-users are likely to consider sports-related content to be entertainment although the implication is that they fall into separate categories.

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.

It is practical to set a time-limit on un-billed subscriptions or in relation to inactive MSISDN's.