Commission for
Communications Regulation

Submissions to Consultation

Scope of Premium Rate Services regulation

Submissions received from respondents

Document No:	**10/50s4**
Date:	**12 August, 2011**

Consultation:	**10/27**
Response to Consultation:	**10/50**

An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation
Abbey Court Irish Life Centre Lower Abbey Street Dublin 1 Ireland
Telephone +353 1 804 9600 *Fax* +353 1 804 9680 *Email* info@comreg.ie *Web* www.comreg.ie

Index of Submissions

ComReg 10/50s4

1. Hutchison 3G Ireland Ltd.

24 Hutchison 3G Ireland Ltd.

Response by Hutchison 3G Ireland Limited
in respect of ComReg Doc. No. 10/27
"Scope of Premium Rate Services regulation"

14 May 2010

Introduction

Hutchison 3G Ireland Limited ("3") welcomes the opportunity to contribute to the debate in respect of the scope of Premium Rate Services ("PRS") regulation in Ireland. 3 is a leading provider of mobile communications services in Ireland and the leading provider of mobile broadband in Ireland. 3 has in excess of 200,000 mobile broadband subscribers. 3 forms part of the 3 Group, a group of companies with a presence in the UK, Sweden, Denmark, Austria and Italy and the international telecoms division of Hutchison Whampoa Limited.

General

The mobile PRS industry is one of rapidly advancing technology with the ability to provide diverse methods for the consumption of and payment for rich media services by consumers using their phone account. This presents significant opportunities for consumers but can also open pathways for some problems.

The role of the Regulator is important and thus more demanding in the mobile premium rate industry than has ever been the case in the fixed line industry and requires significant flexibility to the ever changing landscape, plus strong emerging technology awareness.

It is vital that there is close engagement between the Regulator and the key stakeholders in the mobile PRS industry, through direct contact or through industry bodies, to ensure that the evolution of regulation is as fast as the adoption by consumers of new services on the new technology that serves them.

The regulation of PRS has three components:

- Legislation and the Code of Practice
- Monitoring, Resolution and Enforcement,
- Adjudication, deciding whether a breach of the code or legislation has taken place and imposing an appropriate sanction

3 strongly supports the role that the Regulator plays and we welcome this review of the regulatory scope, along with the proposed Code of Practice review, considering operational changes that would fall into four broad categories:

1. A production cycle of a Code of Practice ("COP") that can react swiftly to changes in the premium rate environment – in particular the mobile environment – as the rapidly advancing technology opens new opportunities for consumer services, but also exposes new areas that could create consumer harm.
2. A suite of COP guidance notes that gives good practise examples of the application of technology in providing PRS. Such documents would eliminate speculation and mis-interpretation of the COP and would enable rapid reaction to new services.

3. A short but inclusive programme of industry consultation prior to any changes to the COP to allow input from key stakeholders (and thus gain their support) without detrimental effect on the programme cycle of COP updates.
4. Regulator led discussions with networks to change practises that have indirectly led to consumer issues such as the economic penalties that have created the shared short code scenario.

3 also feels that the timing is appropriate to produce a separate COP for mobile services that can be kept up to date under a different timetable to fixed line services. There will obviously be some duplication and overlap, but it will mean that the two industries will each have a targeted code to aid focus on the relevant areas.

The COP needs to be less prescriptive and more principles based. This will have the effect of enabling the majority of service providers who provide compliant services to be creative and produce new services that will grow the market while allowing the Regulator, through effective monitoring and enforcement, the ability to weed out the small number of service providers, who pay little notice to the regulatory framework in place and who have been allowed to damage consumer confidence in this industry.

3 believes very strongly that consumers should be provided with enough information that would enable them to make informed choices about the services they consume and the price that they will pay.

3 would like to see changes to wording that would effectively force services that have cost variability (such as downloading using mobile data) to alert consumers to the potential charges.

3 would like to see an industry agreed customer care process that ensures that the first point of redress that a consumer has when experiencing issues with a service is the service provider. The majority of providers are willing and able to handle consumer requests to opt out of services and to provide refunds when appropriate. If a consumer feels that they have not had a satisfactory resolution to a problem within a specified period of time, they should escalate the issue to their mobile network operator. Once it has been determined that there is an issue to be resolved, and depending on the severity of the issue and the number of customers affected, the operator will either contact the service provider and demand that they unsubscribe the customer and/or make a refund, correct an issue within an agreed period of time or shut down the service. In the case where many customers have been impacted the operator may provide bulk refunds and withhold revenue from the service provider. All of these are actions that 3 has taken in the past.

However, if the operator is not able to address the issue under commercial agreements, including the Red/Yellow Card process, then the issue should be brought to the attention of the Regulator. This will enable a targeted enforcement of the COP by the Regulator. If the operator issues a red or yellow card, the Regulator should be cc'd on the communication. This will ensure full transparency of the process and the Regulator can follow up with the service provider if required regarding compliance.

In the past, there have been reports of significant issues related to unstoppable subscription services despite the best efforts of all parties and there are several areas that we would like to see addressed:

- There are issues with STOP for PRS arising from consumers subscribing to multiple services on the same short code and STOP only affects the last service. There needs to be industry discussion regarding this problem as it is economic drivers that cause a high number of multiple services to run on the same short code.

- The reintroduction of the STOP ALL command will help but we should also look to service providers to provide an information message to consumers when they have ceased only one subscription service on a shared short code and still have other subscription services open.

- 3 would like to see recommended wording on the advertising, first message and reminder messages for subscription services to avoid the practise of crowding a message with marketing in abbreviated text which can only serve to confuse consumers.

Specific to consultation

3 agrees with ComReg's basic criteria of 'price' and 'nature' of PRS to be regulated as specified PRS as this would provide acknowledgement of services that allow low cost "browse before buying", with clear pricing built in for the ultimate purchases. This would allow a growth in the market for normally rated voice, video and web browsing services that lead to a menu of services available and their pricing. Prior to any charges being applied to consumer bills, the consumer is required to positively opt in to the charge. However, 3 does not agree to the 20c price threshold proposed as we believe it will not have the desired outcome and only add to loopholes. We propose that the threshold should be set in line with standard rates for example at the 51xxxx short code number range. Ultimately the nature of the service should be the main criterion for determining if services are specified PRS, thereby ensuring no ambiguity.

3 does not agree with ComReg's proposals to prohibit the use of mobile terminated premium rate messaging as this will limit consumer choice in the methods by which they pay for compliant services. It could also act as a deterrent to use PRS services due to the removal of one of the main advantages of convenience that PRS services currently have. 3 agrees that there is a need for measures to protect a minority of consumers from running up excessive bills but not at the expense of the freedom of choice for the majority of consumers.

3 supports ComReg's proposal to introduce a licensing condition appropriate to the role played in the delivery chain and agrees with the approach of prohibiting licensed PRS providers from entering into contracts with those not licensed with ComReg.

Additionally 3 agrees with ComReg's preliminary view of the classes, or types of PRS that should be licensed irrespective of price.

3 disagrees with ComReg's proposal to regulate on-portal services. Due to the fact that the mobile operator is solely responsible for the provision, support and billing for on-portal services, the scope for consumer harm is reduced dramatically. On-portal services are very different to third party PRS, firstly the subscribers have a contractual relationship with the content provider, namely 3 in this case. As per Regulation 17 of the European Communities (Electronic Communications Networks and Services)(Universal Service and Users' Rights) Regulations, 2003, as amended (the "USO Regulations"), 3's contracts are regulated by ComReg and as such on-portal services are sufficiently regulated over and beyond that required of third party providers. With regard to redress, 3 subscribers have direct access to 3's customer services team to investigate immediately any issues encountered. Our complaints handling policy is in line with ComReg's Codes of Practice for the Handling of Consumer Complaints D13/01 and to date we have not received any complaints from our subscribers regarding content. Ultimately network content providers endeavour to provide an excellent customer experience thus ensuring return custom. It is not in an operator's interest to go out and cause consumer harm to their subscribers, where as a result the subscriber will churn. Furthermore, operators must comply with additional consumer protection regulations as per their licence conditions regarding billing and customer services. Moreover pricing for all services must comply with ComReg's Code for Tariff Presentation D11/04 and 3 subscribers have access to real time billing via their handsets thereby ensuring 3 consumers can control their spend on content services thus ensuring no consumer harm.

3 agrees with ComReg's proposal to consult further on the proposed PRS levy.

3 supports the development of a robust COP which will instil confidence and support the growth of this innovative and dynamic PRS market.

ComReg's Consultation Questions

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

3 does not agree with ComReg's preliminary view that services below 20c per minute/ per call/ per message should be exempted from licensing. 3 perceives that a 20c or indeed any price threshold may result in anomalies. Taking the 20c proposal, the cost of carriage would in some cases exceed the threshold (e.g. a standard off-net mobile call involving the provision of some form of content) while in others the cost of carriage may be well below the threshold (e.g. SMS – 53XXX premium short codes). The former would result in services being unduly subject to licensing while the latter could result in a loophole for services that should ultimately be licensed. In light of this a single amount threshold may be too blunt an instrument to apply across the various voice, data and messaging traffic types.

With specific reference to the messaging short code range, free-text codes by definition fall outside of the realm of premium services and 51XXX codes are currently limited by the numbering conventions to a maximum charge of 16c per message and therefore do not typically pose any risk of potential consumer harm. Therefore an exemption for 51XXX codes can be justified in certain circumstances. However, the nature of the service is of relevance here as services that involve multiple messages per transaction (including but not limited to MT billed subscription services) may need to be licensed to avoid abuse of the low cost that is generally associated with the 51XXX range. Ultimately the nature of the service should be the main criterion for determining if services are specified PRS, thereby ensuring no ambiguity.

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

3 agrees with ComReg's intention to regulate live services. 3 believes if such PRS services are in service, there should be a requirement to operate the services with moderators. Moderators should have the ability to pop in and out of conversations and terminate the session if the regulations are broken. 3 also proposes that SP's should retain a log or a record of some sort for the purposes of audits. Robust monitoring and enforcement by ComReg is key

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

3 agrees with ComReg's intention to regulate PRS services of a sexual nature, irrespective of cost.

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

3 agrees with ComReg's intention to regulate competition services.

In relation to ComReg's concern regarding consumers running up large bills, 3 believes very strongly that consumers should be provided with enough information regarding the price and mechanism for withdrawing from the service that would enable them to make informed choices about the services they consume.

We would suggest that there are mechanisms to prevent forms of "bill shock" within the existing COP but would welcome workable suggestions to further reduce any situations where excessive spending is occurring due to lack of awareness.

3 believes in ensuring consumers are empowered through information and control. We suggest that the areas to focus on as an industry are:

- Pricing transparency to ensure that users are aware of charges;
- Charge point notification such as the €20 Text reminders for mobile or the forced call termination for fixed line;
- Control of cost by a rigid mandate of the use of STOP or "STOP ALL" on mobile;
- Consumer complaints and redress procedures to ensure that genuine complaints are able to be redressed.

3 agrees that there is a need for measures to protect a minority of consumers from running up excessive bills but not at the expense of the freedom of choice for the majority of consumers.

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

3 agrees with ComReg's intention to regulate children's services, irrespective of cost.

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

3 agrees with ComReg's intention to regulate fundraising and charitable donations made through a PRS.

3 believes that fundraising and charitable donations should be operating under a similar framework agreement to that established in the UK through the Mobile Data Association, http://www.charitytext.org/.

Under this type of framework a specific short code number range would be established to facilitate donations, ideally not in the 5xxxx range. The purpose of this would be to separate charitable donations from the traditional premium rate short code ranges which will aid consumer confidence and also recognition of charitable donation services. Only registered charities will be able to make use of these numbers.

The mechanic of the donation is that a consumer wishing to make a donations texts a keyword, the name of the charity for instance, to a short code (charged at either standard rate or zero rated). A Mobile Terminated (MT) premium text is returned thanking them for their donation.

In line with previous guidance from the Revenue Commissioners regarding donation services, if no service is offered then it would be possible to agree to have no VAT payable on the MT charged PSMS donations so the full amount could be passed down the value chain to the charity. This would provide significant benefits to the charitable organisations whilst reducing the administrative burden within the industry in establishing cross network agreement on whether to support charitable donation campaigns.

Any fees charged by mobile operators and aggregators for handling donations would be subject to normal VAT restrictions. Any misappropriation of funds should be brought to the attention of the relevant authorities and dealt with as would any other similar type of fraudulent act. The framework would provide a robust, auditable process which would provide a trusted format for the public.

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

3 agrees with ComReg's intention to regulate internet dialler software, irrespective of unit cost.

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

3 agrees with ComReg's intention to regulate virtual chat, contact and dating services, irrespective of cost

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

3 does not agree with ComReg's intention to regulate pay-for-product services. ComReg suggests that these services are typically charged via reverse billed SMS however this is not the case in all jurisdictions. For instance PayforIt in the UK involves a direct charge against customer accounts without using reverse billed SMS. A clear distinction needs to be drawn between payment that involves a premium number and payment directly through a prepaid or post-paid mobile phone account. The distinction is important because of the close relationship that exists between the party contracting with the MNO (the payment intermediary in the case of PayforIt in the UK) and the MNO itself.

The close proximity of the parties involved provides the MNOs with far more control, enabling the MNO to better protect its customers. The MNO can build the necessary protections into its contracts or as in the UK, through the common rules under which the PayforIT scheme operates, in addition to its own contract terms. In circumstances where consumer harm may occur, MNOs have the power to terminate the contract. As outlined by ComReg in section 4.3 MNO's have the capacity to, as appropriate cut off access to numbers, disconnect mobile short codes and stop the payment of customer charges to providers for non-compliant services.

Where payment for products is transacted through premium numbers MNO's have less control as they are obliged to provide access to premium numbers in the first instance. This also limits MNOs ability to withdraw access thereafter, particularly where multiple services providers are hosted on a single short code. In this instance, access to service providers that may be causing harm cannot be withdrawn without impacting other compliant service providers. Conversely where pay-for-product services are charged directly from customer accounts MNO's can respond rapidly and thereby limit consumer harm.

Therefore in the case of pay-for-product services that operate over premium short codes, we agree that these should be subject to licensing. However services that are charged directly to customer accounts and in the case of travel tickets and parking payments which are not consumed over the device, nor delivered over the mobile network should not be subject to licensing and it is these pay-for-product services that we refer to in the remainder of this response.

ComReg's basis for proposing to regulate pay-for-product services is that products sold in this way are purchased from third parties that have no high street retailer to which the product may be returned. However ComReg also states that consumers seeking redress when pay-for-product transactions go wrong may be better served by more general consumer rights legislation. We would support the view that consumers are already well served by existing legislation. The Distance Selling Regulations[1] provide significant protection in the form of a seven day cooling-off period that allows customers to return goods purely because they are limited in their ability to inspect them in advance. In addition the Regulations require comprehensive information to be provided in advance of entering a contract with additional information being provided, at the latest on delivery of a product or service including the address to which products can be returned. This in many respects mirrors the information that is required under the current RegTel Code of Practice. Furthermore, the absence of a high street retailer to which products may be returned forms much of the basis for the Distance Selling regulations, therefore any attempt to address this in parallel through a separate regulatory framework would merely result in unnecessary duplication and confusion for both the consumers and vendors.

The Phonepayplus Code of Practice[2] refers service providers to the Distance Selling legislation while stipulating a limited number of additional obligations which appear to cater specifically for payments involving premium numbers. Measures included here, such as the retention of records and measures to deal with refunds in the case of unauthorised use, mirror Distance Selling requirements. The only exception would be spend limits. In the case of the PayforIt scheme, the UK MNOs have self imposed spend limits. Arguably the presence and indeed the level of spend limits should be left to the discretion of MNOs as this may in the future allow for more targeted protection of customers, for example, if limits may be tailored to each customer in a similar fashion to credit card limits.

---

[1] European Communities (Protection of Consumers in Respect of Contracts Made By Means of Distance Communication) Regulations, 2001 S.I. No. 207 of 2001

[2] http://www.phonepayplus.org.uk/upload/PhonepayPlus_Code_of_Practice.pdf

It is important to recognise that mobile operators closely guard their brands, a vital aspect of which is the integrity and good standing of billing systems. Given that payment-for-services transactions involve a very direct relationship between the vendor and the MNO that is billing its customers on their behalf, MNOs exercise significant control over these transactions. In the UK each PayforIt intermediary must be accredited with each of the mobile operators. The scheme also sets out clear obligations regarding the structure of services right down to the content and structure of the screens that are presented to customers when checking out and paying for services.

Notably pay-for-product transactions are carried out over WAP or internet sessions thereby avoiding many of the shortcomings of SMS and obviating the need for them to be treated as licensed premium services. Transactions must be performed in accordance with a standard template that ensures a high level of consistency and transparency across all providers. As a result, pay-for-product purchases offer a similar level of protection to that offered in the case of on-portal services with far clearer accountability for all aspects of service delivery, thereby far superior protection against issues arising while ensuring satisfactory and speedy resolutions to any complaints that may arise.

In conclusion, we believe that pay-for-product services that involve premium numbers specifically should be licensed, however given the high level of protection that is afforded by pay-for-product such as PayforIt which are billed directly to customers accounts, licensing is not required. Any attempt to apply the same controls to such offerings would result in duplication and additional, unnecessary regulatory overhead, while potentially limiting the ability of operators to apply targeted protection which would benefit more vulnerable consumers.

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

Having due regard to the issues raised above, 3 does not consider on-portal services should be regulated as "Specified PRS". MNO's are the single entity responsible for the provision, support and billing for on-portal services, the scope for consumer harm is reduced dramatically and as such should not be regulated.

As referenced by ComReg, Ofcom noted that "*on-portal services appear to generate fewer complaints than similar forms of PRS delivered via SMS or MMS (or when there were complaints, they appear to be dealt with by the MNO's in a satisfactory manner).*"[3]

Ultimately, MNO's have a contractual relationship with the subscriber, as per Regulation 17 of the European Communities (Electronic Communications Networks and Services)(Universal Service and Users' Rights) Regulations, 2003, as amended (the "USO Regulations"). 3's contracts are regulated by ComReg and as such on-portal services are sufficiently regulated. As MNO's are fully responsible for on-portal services, the consumer via their contracts have direct access to redress. 3

[3] See page 37 of ComReg 10/27

subscribers have direct access to 3's customer services team to investigate immediately any issues encountered. Our complaints handling policy is in line with ComReg's Codes of Practice for the Handling of Consumer Complaints D13/01 and to date we have not received any complaints from our subscribers regarding content. Ultimately network content providers endeavour to provide an excellent customer experience thus ensuring return custom. It is not in an operator's interest to go out and cause consumer harm to their subscribers, where as a result the subscriber will churn. Furthermore, operators must comply with additional consumer protection regulations as per their licence conditions regarding billing and customer services. Moreover pricing for all services must comply with ComReg's Code for Tariff Presentation D11/04 and 3 subscribers have access to real time billing via their handsets thereby ensuring 3 consumers can control their spend on content services thus ensuring no consumer harm.

MNO's have demonstrated high levels of customer care which encompasses on-portal service support. Due to MNO's control of all aspects of the service delivery, they are best placed to guard against problems with content delivery while also being best capable of comprehensively remedying any service issues that may arise. Furthermore due to the fact that such services are not subject to the strict character length limitations of SMS, a higher level of price transparency has been achieved to date relative to that which is possible in the case of compliant premium SMS based services.

With regard to pricing transparency of on-portal services, see Annex 1 which highlights the clear and transparent manner in which pricing is presented to the customer prior to them making an informed decision. In respect to prepay subscribers and billing, 3 prepay customers can request customer care to confirm their spending history. Operator's customer care teams can investigate the customer's interactions on their account and provide the customer with the requested information. MNOs' are best placed to provide this information as they hold the relationship with the customer.

With regard to fair trading and the specific issues raised by ComReg with respect to the Code of Practice please note the following:

With regard to privacy, issues of decency and honesty and offensive material, 3 believes operators already adhere to strict privacy and data protection legislation. 3's editorial guidelines for commercial contracts outlines the national standards we adhere to for taste and decency, thus ensuring consumers would not be offended by the choice of services or content offered.

With regard to protection of children, an important driver for 3's highly responsible and proactive approach to sensitive issues, such as the provision of service to children, is the need to protect brand image. 3's proactively leading the industry in providing a product which provides the ultimate control of the handset and the services available on it i.e. KidSafe[4]. 3's Free KidSafe application enables parents to manage their children's mobile phone use. Using an Approved Numbers List, only those on the list can communicate with the childs handset. 3's application is the only

[4] http://www.three.ie/about3/corporate_responsibility/child_protection.htm

application which can block all forms of communication including voice calls, text messages and Bluetooth. Furthermore, 3 abides by the industry agreed COP for the Responsible and Secure Use of Mobile Services. The code establishes the standards which mobile operators adhere to on the issues of Parental controls for minors' access to mobile services, malicious or offensive person to person communications, Spam, Internet access, PRS and Access Controls for content services.

With regard to marketing or targeting of children, 3 abide by section 5 of the Advertising Standards Association of Ireland's ("ASAI") COP[5] and the Broadcasting Commission of Ireland ("BCI") Children's Advertising Code[6] for such marketing activity. The ASAI is an independent self-regulatory body and it promotes the highest standards of marketing communications. The BCI now replaced by the Broadcasting Authority of Ireland ("BAI") is an independent statutory body and under section 19 of the Broadcasting Act 2001, the Commission was given responsibility to develop a broadcasting advertising code specifically for children's advertising. The code specifies standards to be complied with and rules and practices to be observed. Moreover, as an industry, MNO's do not target children in advertising or marketing campaigns.

Additionally as signatories of the European Framework for Safer Mobile Use by Younger Children[7] ("the framework") we proactively ensure children and minors are protected. The framework is a self-regulatory initiative of the European mobile industry and it contains recommendations designed to ensure that younger teenagers and children can safely access content on their mobile phones. As outlined in the consultation document, ComReg is not seeking to impose regulation for its own sake. Its primary purpose is consumer protection and the regulation of highly consumer friendly on-portal MNO services would only distract from this objective

Ultimately, operators endeavour to ensure subscribers have the best possible experience using their on-portal services. If a subscriber has a negative experience the cost to the overall operator is significant as they would have effectively lost a subscriber. MNO's brand and reputation as a Network Operator is at stake and therefore all protective steps are taken to ensure customer satisfaction.

As for the risk of undue discrimination in favour of MNOs, due to the currently high levels of consumer protection being met by MNOs there is no scope for any unfair competitive advantage and as ComReg states that it can at any point in the future regulate for the licensing of additional categories such as on-portal service, in the unlikely event that these standards might slip in the future.

Fundamentally, on-portal services present a low risk for consumer harm, consumers have direct access to a very effective redress mechanism, services are marketed clearly and honestly and ultimately the customer is treated fairly.

---

[5] http://www.asai.ie/entiresection.asp?Section_Num=5

[6] http://www.bci.ie/documents/childrens_code_oct_04.pdf

[7] European Framework for Safer Mobile Use by Younger Children
http://ec.europa.eu/information_society/activities/sip/docs/mobile_2005/europeanframework.pdf

As per the **Electronic Commerce Act, 2000** services available on the internet are not to be regulated.

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?

Please see our other responses above.

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

No.

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?

Yes.

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.

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?

Yes, 3 believes the provision of general information services by DQ SP's would be unfair given the reasons outlined by ComReg in the consultation document.

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?

See response to Q14.

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

3 believes ComReg should not introduce a 'double opt-in' requirement for entry into mobile subscription services.

ComReg has outlined in its consultation paper that the existing COP mandates certain information that must be presented to the consumer regarding the service they are subscribing to, the service being delivered, the cost and frequency of the charges, how to opt-out of the service and the contact details of the service provider in the case that they need redress. Once the customer has subscribed they must receive a free message detailing the same information. After every agreed spending limit they must be sent a free text informing them that they are subscribed to a service and how to opt-out. The service must support the STOP command.

3 believes if the current code was adhered to by all service providers then the number of complaints would be minimal, if not zero. RegTel lacked the enforcement powers to penalise service providers for non compliance with the COP. What is required now by ComReg is proper monitoring and enforcement of the existing COP, not introduction of more regulation which is likely to be ignored by the few rogue service providers it is intended for.

A double opt-in has been introduced in the UK for services that charge £4.50 or more per week or that utilise a pay per page model. 3 would be happy to consider the introduction of such a model for double opt-in in Ireland for services which exceed certain spending limits.

In the case of the Payforit scheme in the UK it was granted an exemption from this change to the UK COP. Payforit provides a transparent and simplistic way of subscribing to services. Payforit payments are made within a single browsing session on the mobile internet so there is the potential to have a double opt-in without significant impact to the user experience. The nature of text messaging and the lack of guaranteed delivery mean that the introduction of a second text message would lead to such a poor user experience, that customers would not use legitimate and compliant services which is not the desired effect. Furthermore, the cost in terms of legitimate business being lost has yet to be estimated. We believe ComReg should assess the effectiveness of its enforcement powers before considering the introduction of double opt-in across the board.

ComReg points to the scenario of a web opt-in whereby customers may be unaware that they are committing to a subscription service. Given that large screen internet access facilitates the provision of comprehensive information about the service it would appear that many of the problematic services have been the result of service providers actively disguising the fact that the customer is entering a subscription service. This can easily be addressed through effective enforcement of the COP. Web subscriptions activated in conjunction with the entry of a mobile number on a web form are very different from an action by a customer sending a key word to a short code to activate a subscription. ComReg could further enhance the COP by providing clear guidelines as to what and how information should be provided by service providers offering web subscriptions.

With regard to billing information and control of expenditure for PRS, ComReg explicitly references prepay accounts and 15-17 year olds whom have limited access to billing information. 3's prepay users have access to real time billing information using MY3 on their handsets. Furthermore 3 customers can request at any stage a breakdown from Customer Services of their expenditure to date.

3 maintains that effective enforcement of the COP will deter rogue providers, provide greater consumer protection and restore confidence in the PRS industry.

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

3 does not agree with ComReg's proposal to prohibit the use of mobile terminated premium rate messaging as this will limit consumer choice in the methods by which consumers pay for compliant services. Prohibiting MT billing could also act as a deterrent to the use of PRS services due to the removal of one of the main advantages of convenience that PRS services currently have. As outlined by ComReg MT billing compliments PRS, it provides an efficient and convenient method to make legitimate purchasing decisions. The industry should not suffer as a result of a number of rogue service providers. The industry needs ComReg to be robust and vigilant in monitoring and enforcing the COP, not prohibit services or payment methods which may only lead to stifling growth and innovation of PRS.

MT billing allows a charge to be applied as content is delivered to customers. This is very useful in avoiding a situation whereby customers might otherwise be charged on requesting content and then for whatever reason the content isn't delivered. ComReg proposes as an alternative to MT billing, for subscription services, that customers might send a higher value MO SMS that would equate to the value of multiple MT messages. However this could result in a form of bill-shock whereby customers might effectively wipe out their balance in a single transaction thereby denying them access to standard voice and SMS services on their phone. This presents a potentially greater risk to more vulnerable users such as children that are referred to in this section of the consultation. Prohibiting the use of MT billing is not reasonable. Currently subscribers receive an SMS advising the customer of their accumulated spend. The customer can at any stage send STOP to the service provider thus stopping the service. Ultimately what is required is robust enforcement of the COP.

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

3 considers that ComReg should not prohibit any services, effective enforcement of the COP is key to the industry.

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

3 maintains that ComReg should not prohibit any services, as this removes consumer choice. ComReg should focus on monitoring and enforcing the COP which will lead to a consumer friendly industry.

If a consumer has chosen to subscribe to a service but at the time of billing for the service the customer's account is out of credit or has no funds available, we do not believe that there are grounds for the service provider to not expect to continue to seek that payment for the service received. 3 requests that a retry pattern is adopted by service providers whereby regular attempts are made over a period of 30 days to retrieve a payment at which point the service provider should cease billing requests and remove the customer's mobile number from their database, ceasing the service.

The service provider should ensure that the terms and conditions of the subscription service are clear and transparent to the subscriber. Service Providers should tighten the process around subscription services particularly if the subscriber is out of credit, thereby advising the customer of what will happen to the content if an 'out of credit ' response is received. Once the subscriber is aware of the process, subscribers can effectively control their expenditure. Compliance with the COP is key to subscription services.

3 operates a real time billing mechanism, so a charging message is not accepted from the service provider until it has been confirmed that the customer has funds or credit available to receive the message. The only scenario when this does not work is in the unlikely event that the billing system is out of service. Coupled with the retry mechanism outlined above we believe there is less risk of consumer harm.

With regard to ComReg's reference to prepay subscribers being charged to send a STOP message to unsubscribe from a subscription service, if a prepay subscriber has insufficient funds they can call for free 3's Customer Services team by dialling 1913 to request customer services to actively unsubscribe the customer from the subscription service. This service should be available by all network providers whereby the customer would call using the free network support number i.e. 1913 for 3.

As outlined above, 3 prepay customers can access real time billing information using their handset, therefore they are always aware of how much credit they have, thereby having control over their expenditure and enabling them to make an informed purchasing decision.

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?

Regulation 9 of the European Communities (Electronic Communications Networks and Services) Universal Service and Users Rights) Regulations, 2003 provides that telephone service providers are obliged to bar outgoing voice calls only:

> *(b) Selective call barring for outgoing calls, free of charge.*
>
> *i.e. the facility whereby a subscriber can, on the request to the telephone service provider, bar outgoing calls of defined types or to defined types of numbers free of charge.*

3 complies with the above obligation. 3 does not believe the regulation provides for SMS/MMS barring. 3 believes that MNO's in Ireland should not be required to provide the option of barring PRS via SMS/MMS. Effective monitoring and enforcement by ComReg would negate any requirements to bar access to PRS.

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

3 believes that all service providers who have been licensed by ComReg should not be restricted in the way they request subscribers to pay for services received. As outlined previously, ComReg should not restrict consumers choice of payment methods. Restricting the class or type of service that can operate subscription payment model may be seen as anti-competitive favouring one class or type over the rest. Ultimately effective monitoring and enforcement of the COP is key to preventing consumer harm.

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?

The RegTel code of Practice currently requires where there are no successfully delivered Premium Mobile messages for 40 days, that the consumer must be unsubscribed automatically from that Premium Mobile Subscription Service and must be removed from the database. Furthermore in 2008[8] ComReg decided to extend the quarantine period for mobile numbers to 13 months to avoid any risk of customers receiving even promotional messages.

3 believes ComReg's proposal is a practical one. Expiry would have to be defined as the termination of an account and not purely suspension. As MSISDNs are capable of being associated with a number of subscribers if users churn for example, it is not always practical to associate any preferences or subscriptions with MSISDNs, rather with the subscriber for the time being associated with that MSISDN. Opt-ins to third party (i.e. non-operator) services should also be cancelled when accounts expire. This should lead to fewer queries being issued to mobile network operators regarding such services which previous users of a MSISDN may have subscribed to. This would appear to be in tandem with data protection legislation and offering opt-outs to customers when they sign up.

Additional comments

1. Premium Rate Levy

The Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010, provides ComReg with the power to impose a levy on premium rate service providers. If this power were applied indiscriminately to all premium rate services that are captured under the premium service definition contained in the 2010 Act, it would impose a levy on Originating Communications Provider ("OCP") that (i) only serves as a communications channel and (ii) does not share in the revenue generated from the provision of the PRS i.e. the value added element.

[8] Response to Consultation – National Numbering Conventions, Update to Version 6

Communications services are already subject to the Telecommunications Levy. Therefore, in pursuing its objective of partitioning the premium services levy, ComReg should ensure that this levy is applied only to the value added element and not the communications or carriage element. OCPs cannot influence the content, promotion or delivery of premium services and as such they do not give rise to costs associated with premium regulation.

Mobile operators that offer on-portal or directly billed pay-for-product services have full control over the content, promotion and delivery of these services which provides for a highly responsible approach to consumer protection. Regulatory oversight is not required and regulatory costs are not incurred therefore it follows that ComReg should refrain from imposing a levy on these services.

2. Licence conditions appropriate to the role played in the delivery chain

ComReg states that there are three key parties in the premium services value chain; Telecoms Networks (which receive revenue share), Aggregators and Content Providers. Focusing on Telecoms Networks, the presence or absence of revenue share draws an important distinction between the Originating Communications Provider (OCP) and the Terminating Communications Provider (TCP). The OCP earns retention which covers merely call origination and transit and does not share in the premium value added element.

The OCP is generally the first port of call for customers raising complaints or queries about premium services because they are the billing entity. As an OCP for both SMS and Voice services, 3 is acutely aware of the harm that rogue services can cause to consumers. Illicit activities have an immediate knock-on impact on OCPs in the form of increased customer care call interactions, billing disputes and potentially bad debt, while OCPs also play an important role in delivering refunds to customers. As ComReg has highlighted in the consultation document, the OCP has no direct interest in the PRS element of these services and is merely providing a communications service. The Act grants ComReg the latitude to specify that certain conditions do not apply to certain classes or types of premium rate service providers. This provides scope for ComReg to refrain form requiring certain parties in the premium service value chain to hold a licence and 3 believes that such discretion should be exercised in the case of OCPs due to the fact that they cannot be held accountable for the actions of Content Providers (CPs), service Providers (SPs) and TCPs.

The Act also grants ComReg the power to make regulations specifying the class of type of service which require to be licensed. Licensing introduces accountability where this may otherwise be lacking. At a service level, in the case of on-portal and by extension pay-for-product services that are charged directly to a customers phone account, accountability rests squarely on mobile operators and the track record of these services demonstrate robust consumer protection.

3. Numbering Issues, section 15.5 Voice and Video Short Codes

3 requests that ComReg consult separately on the use of PRS numbers. Currently operators are restricted by the numbering conventions which prohibit short codes or

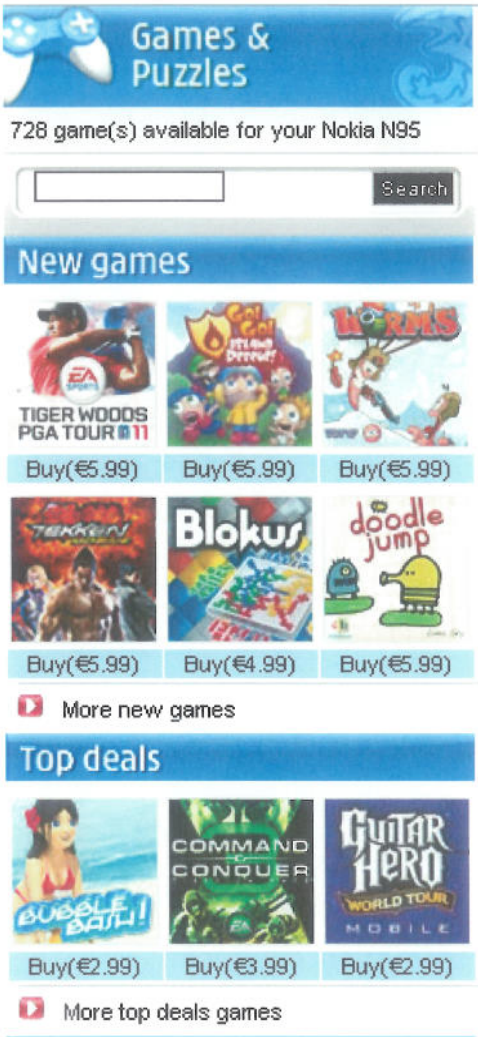
PR numbers to be used for all mediums of communications i.e. SMS, MMS, Voice and Video.

4. Statements of Intention, section 11.2 Protection of Minors and Classification of Adult Content

3 welcomes ComReg's intention to engage with industry to develop a robust content classification framework that SP's will be required to adhere to. However, SP's nor network providers can be held responsible for services accessed by a consumer via the internet. The Internet is unregulated.

Annex 1

Pricing transparency

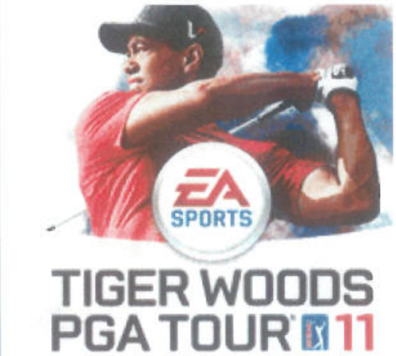


Games & Puzzles

Games

Tiger Woods PGA TOUR 11

3 ratings



Buy(€5.99)

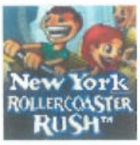
Experience the PGA TOUR® like a pro with new golfers and courses. Tee off on 6 courses and enjoy the smoothest 3D gameplay ever.

More >>

Ratings & comments

- Rate and comment on this game
- My Games

You might also like...



Buy(€5.99)

Games & Puzzles

Download your games

Thanks you for your purchase. your new game is just one click away. Click on the link below to start the download.

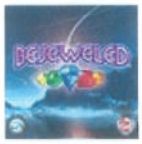
- Tiger Woods PGA TOUR 09

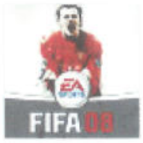
If you're having problems downloading, click the above download link again. if that doesn't work, the game you've bought will be available for 90 days in My Games.

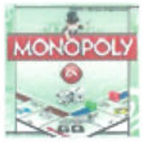
You'll find My Games by going to the main Games & Puzzles homepage.

- Game & Puzzles Help

You might also like...







Buy(€4.99)	Buy(€3.99)	Buy(€3.99)

Control Expenditure – MY 3