



Commission for
Communications Regulation

Submissions to Consultation

Scope of Premium Rate Services regulation

Submissions received from respondents

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Response to Consultation:	10/50

Index of Submissions

ComReg 10/50s6

1. Magnum
2. Maithú Ltd.
3. mBlox Ltd.
4. Meteor Mobile Communications Ltd.
5. Mike Daly
6. MM Networks Ltd.
7. Mobile Marketing Association of Ireland
8. Modeva
9. National Disability Authority (“NDA”)
10. Neill Roche
11. News International Advertisements (Ireland) Ltd.
12. Office of the Data Protection Commissioner (“ODPC”)
13. Old Lane Ltd.
14. Ombudsman for Children
15. Phonovation
16. Prismfax Services Ltd.
17. Realm Communications Ltd.
18. RTE
19. Shane McAllister
20. Star Newspaper
21. Starlight Networks
22. Sunrise Industries
23. Telefonica Ireland Ltd. (“O2”)
24. TV3 Television Network (“TV3”)
25. UPC
26. Vodafone Ireland Ltd.
27. Xiam Interactive Ltd.

27 Magnum

From: Neil Mulvee
Sent: 14 May 2010 13:53
To: retailconsult
Subject: Submission to Comreg

To Whom It May Concern:

I am writing to you in relation to the ComReg code of practice for premium rate services in Ireland. Our company is Lorea Sol Limited (trading as Magnum Services). We are an Irish mobile content provider, so we are a stakeholder in the industry. We also are active in a number of other European markets including UK, Greece and Spain. From our experience we have learned that regulation is welcome in any market to ensure consumer confidence. We have never seen an example of a premium rate market that banned MT subscription services altogether - this, we believe, would be an over zealous measure to deal with rogue operators. Instead, we support the measures put forward by the IPPSA in their submission to you. In particular, if there is an effective licensing scheme, with penalties then ComReg will have the ability to deal with rogue operators directly. This has worked well in the UK, which has seen a dramatic fall in the number of complaints since it introduced a similar measure. As an international mobile content provider, and an Irish company, we would not support measures which ban normal, International billing methods (e.g. the proposed ban on MT subscription). It would damage the Irish digital economy and this would have a massive knock on impact on other dependant industries including press, TV, radio and digital advertising.

Our customers enjoy the subscription nature of our services. Ireland has a very effective measure of sending a €20 pricing reminder SMS to customers who reach this threshold on PSMS services. This gives the user the option to stay in the service, or to quit at their discretion. It eliminates the risk of users being continuously billed for a service that they do not know how to unsubscribe from. Subscription services add value to many types of mobile content. For example, we have alert services that sends out weekly tips. This service is more than just a subscription, it is a community of niche users that enjoy the regular updates we send them to their mobile. Competitions have come in for a great deal of scrutiny. We agree that customers need to be protected in this area, particularly with confusing phone line services that have run on late night TV (e.g. 'Play TV') - these are unacceptable. But the majority of competitions are fair and give users the excitement and fun of a weekly quiz, with the chance to win great prizes.

Regtel, in their current code of practise have had the tools to deal with areas of contention. In my experience Regtel have not used their code to its ability, nor have they asserted their position as regulator effectively. The current code of conduct would be very effective as it is - if it was enforced. We look forward to Comreg being clear and measured in their approach to dealing with the issues facing our industry.

We fully endorse the IPPSA submission and hope you consider our points above in addition to this.

Kind regards

Neil Mulvee

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28 Maithú Ltd.

From: Kerrill
Sent: 14 May 2010 17:15
To: retailconsult
Subject: IPPSA, Submission endorsement

A Chara,

I am contacting from an Irish software development company involved in creating applications for mobile phones, we employ both PUCA and Zamano as service providers . I have received a copy of the IPPSA's submission and endorse its findings.

In relation to our own business the use of PSMS's are very important for developing useful educational applications, we would welcome any initiatives which give consumers confidence to use premium SMS's without fear that they are being billed excessively or being taken advantage of by unscrupulous operators.

We have developed a number of educational Irish language translation applications which can be downloaded by shortcode text message, e.g. users text the word 'focal' to 53503 and receive a link by SMS to download the application, this text costs 30c. Subsequently users have access to the a limited amount of functionality within the application, full details of the service are available on line at our website <http://www.getthefocal.com> . For access to the full content of the application users are required to unlock the app via a one off premium SMS of €5 - this gives them full access to our applications content and is not a subscription service.

We are a small development company working on a niche product, we have found the use of PSMS a fair way of allowing members of the public access our software and also allowing us to get a small return on the development time we invest in product development. Whilst we welcome any regulations or bodies that target rogue operators, we would be disappointed if a blunt approach was taken that prevented us from providing our software via PSMS. We feel that there is strong growth potential in the mobile applications business and PSMS are a very important platform for reaching a mass market.

Best Regards
Kerrill Thornhill

Maithú Limited

29 mBlox Ltd.

Commission for Communications Regulation

Scope of Premium Rate Services regulation

Consultation Paper

Submission by mBlox

1. Introduction

mBlox is pleased to have the opportunity to comment on the Commission for Communications Regulation Consultation Paper on the Scope of Premium Rate Services regulation.

2. mBlox

mBlox is the world's largest mobile transaction network specializing in providing operator connectivity and mobile billing capabilities to businesses around the globe. We are the intermediary between businesses and mobile operators managing the delivery and billing of mobile content and mobile services. Mblox does not directly contract with end users for mobile content services and does not create or provide the premium SMS/MMS message.

3. 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?

mBlox: We do not agree, that there should be a threshold below which services are exempt from licensing. We do believe however that there might be a relaxation or exemption of certain requirements for services below a threshold in a similar way to the exemptions for services below £0.50 by PhonepayPlus in 5.7.5 of the code.

Q. 2.

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

mBlox: We do not operate in this segment of the market and therefore have no experience upon which to base a view on this question, but common sense dictates that these services should be regulated.

Q. 3.

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

mBlox: Yes we agree that services of a sexual nature should be regulated regardless of cost. The regulation should focus on protecting minors or other vulnerable groups from accessing unsuitable content as well as ensuring that promotion is clear with regards to the nature of the service as well as the price.

We also believe that an age verification process should be established to further these aims.

Q. 4.

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

mBlox: Yes, we agree. These services are driven by consumer demand and if this is to continue, it is imperative that there is clear, unambiguous promotion and running of these services.

Q. 5.

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

mBlox: Yes we agree that children's services need to be regulated. We would also urge ComReg to create greater clarity about children's interaction with all kinds of services as the current default position maintained by RegTel creates uncertainty and is not the most appropriate way of dealing with the issue. The establishment of an age verification process and various service barring options will help deal with this issue in a more satisfactory way for all parties.

Q. 6.

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

mBlox: Yes, we agree with ComReg's position on this.

Q. 7.

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

mBlox: We do not operate in this segment of the market and therefore have no experience upon which to base a view on this question, but common sense dictates that these services should be regulated.

Q. 8.

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

mBlox: Yes, we agree with ComReg's position on this. We would also suggest that there is a requirement to validate the age of participants before any interaction with the service can take place, this is in addition to make sure that marketing of the service is clear, accurate and not misleading as to the nature or price of the service.

Q. 9.

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

mBlox: Yes, we support ComReg's intention to regulate this type of service. There is clear demand from consumers for this kind of service as well as micropayment services that could be included under this category, it is therefore imperative that there is a proper regulatory framework for these services to operate in.

Q. 10.

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

mBlox: All services that appear the same to a consumer should be regulated in the same way as this allows for certainty of outcome for a consumer in terms of redress for any complaints etc. This being the case, we agree, that such services be regulated in a transparent and non-discriminatory way to remove current confusion.

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?

mBlox: See our earlier comments to Q1.

Q. 12 - 16

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

mBlox: We do not operate in the DQ market and therefore do not feel it is appropriate to comment on Q's 12 – 16. We would note in general that where a DQ service provides anything other than a core DQ service it must be subject to the same regulations and controls as other similar services.

Q. 17.

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

mBlox: We believe that there is some confusion over the definition of 'double opt-in', the UK market is held out to be an example of the success of double opt-in in terms of a reduction in complaints etc. It is true that double opt-in has been implemented in the UK, but it only applies to services over £4.50 per week and does not require two texts to be sent by the consumer in all instances, it also allows for the first stage of opt-in to be completed online. It is also true that there are other factors that have contributed to the reduction of complaints about these kinds of services that are not connected to double opt-in.

We agree that the concerns addressed need to be resolved and at present the double opt-in process that operates in the UK does address the concerns, however, we believe that ComReg need to avoid being too prescriptive in how concerns are addressed and should take a more technology neutral approach.

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?

mBlox: We do not agree that ComReg should prohibit MT billing. No compelling argument has been put forward that suggests that the actual cause of harm is MT billing. In many instances it is not the payment per se that is the issue, it is the information that is available to the consumer in advance of making a decision that is of concern. Once this is addressed, the payment method should not make any difference, indeed all subscription services in any industry require the party being paid to control the payment – this is true of direct debit payments as well as credit card subscriptions. The difference being that extra steps are required to set up a mobile paid subscription service and the consumer is sent notice of the payment of the payment with clear description of the terms and how to terminate the service. ComReg need to back up those elements of the Code with enforcement action to ensure that no unscrupulous or rogue providers who tarnish the reputation of the industry.

ComReg's suggestion of an MO rather than an MT would mean in reality a set of one off purchases rather than a subscription service. It is clear from the uptake of subscription services that consumers do value subscription services as a method of purchase.

Q. 19.

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

mBlox: As with all regulation, ComReg should not prohibit the use of ‘invisible’ reverse billed (MT) SM without further study into the actual usage and extent of the problem.

Q. 20.

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

mBlox: No, ComReg should not prohibit chargeable messages being ‘stored-up’ for delayed sending, when a pre-pay account is out of credit. Consumers will have made a conscious effort to subscribe to services and may not want the service not to be delivered because they ran out of credit temporarily. Further work on this is required to ensure that interests of all consumers are met.

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?

mBlox: This is linked to earlier views about the use of mobile services by children, barring of access to premium SMS would be a useful tool for parents in controlling their children’s usage of a phone. More work is needed to ascertain how the barring could work and the impacts were barring to added in the middle of a one off purchase or subscription.

Q. 22.

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

mBlox: No ComReg should not restrict the class, or type, of service that can operate a subscription payment model. Once other issues as mentioned above are resolved, it should be for the market to dictate what services are offered.

Any decision by a consumer to subscribe to any particular service depends on the value the service provides to that particular consumer. Value is subjective and depends greatly on the individual. Perceived value is not a reasonable basis to prohibit or restrict a service.

Any regulation should not attempt to limit the content or services that consumers may choose to consume but rather should ensure there is a framework to ensure consumers are provided with appropriate information about the service, a simple and effective method of discontinuing the service and a clear and timely complaints handling process together with effective enforcement against those that breach the framework.

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?

mBlox: In principle we would agree with the recommendation; subscriptions and opt-ins relate to the individual and the choice that they made – where they no longer have that number those choices are no longer relevant. More work needs to be undertaken to understand how this could work in practice across all networks.

4. Conclusion

mBlox is committed to working closely with the ComReg to ensure that there are proportionate, appropriate and effective measures in place for the provision of premium sms/mms services in the Republic of Ireland.

We can see no evidence to suggest that these services are not of value to consumers and we urge ComReg to create a framework to ensure consumers are able to consume services and content of their choice at a value that they deem appropriate. This can best be achieved by ensuring that they have accurate information about services, a simple and effective method of discontinuing a service and a clear and timely complaints handling process together with effective enforcement against those that breach the framework. This will allow the sector to grow with market demands whilst ensuring that the reputation of the industry is not tarnished by the action of a few. We would also urge that ComReg learn from the experience of PhonepayPlus in the UK and focus regulatory responsibility on the appropriate areas of the value chain.

mBlox is also generally supportive of the IPPSA submission and wish this to be noted.

mBlox is happy to discuss with the ComReg any of the issues raised in this submission.

5. Contacts

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30 Meteor Mobile Communications Ltd.



Meteor Mobile Communications Ltd.

**Response to Consultation -
Scope of Premium Rate Services regulation**

(ComReg Doc 10/27)

14 May 2010

Introduction

Meteor Mobile Communications Ltd (Meteor) welcomes the opportunity to respond to this consultation. The launch of premium SMS short codes in 2001 was the result of the successful collaboration between the industry and ComReg on foot of an initiative to provide greater choice and variety in premium service offerings. This resulted in an entirely new industry segment worth €55m today which makes up 68% of the overall premium market¹. The initiative followed the introduction of premium SMS in other jurisdictions however Ireland was among the first to establish a regulatory framework that delivered clarity within the numbering scheme, regulatory oversight in the allocation of numbers and authorisation of services, and most importantly consumer protection, from the outset. This provided a sound foundation for development of new and varied services that are used by a broad spectrum of consumers, the majority of which provide real value to customers. This can be said of most premium services whether delivered through voice or a messaging medium, however, the actions of a small number of unscrupulous service providers has undermined consumer confidence in this sector.

The current method of service authorisation, the scope of regulation and much of the premium services Code of Practice already provide a solid basis for robust consumer protection, however the crucial elements that have been lacking are regulatory oversight and robust enforcement. Therefore Meteor wholeheartedly welcomes the new legislative footing for premium service regulation which will address previously weak enforcement powers. However we believe that ComReg should be cautious about extending the scope of regulation to those areas in which consumer interests are already well protected, for instance on-portal, pay-for-product and Directory Enquiry (DQ) services that are not subject to premium service regulation today and where there is no evidence of consumer detriment.

We believe ComReg should be seeking to properly enforce the structures that we have and should refrain from looking to expand the scope of regulation to areas where consumer harm hasn't occurred in the past and where there is little likelihood of harm in the future. We comment in more detail on the scope of regulation in response to the specific questions raised in the consultation document. We have also taken this opportunity to comment on some of the other matters touched on in this consultation under the following headings.

Accountability in the Value Chain and Licensing

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, Meteor 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 Act² grants ComReg the latitude to specify that certain conditions do not apply to certain classes or types of premium rate

¹ Regtel Annual Report 2008/09

² Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010

service providers. This provides scope for ComReg to refrain from requiring certain parties in the premium service value chain to hold a licence and Meteor 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 customer's phone account, accountability rests squarely on mobile operators and the track record of these services demonstrate robust consumer protection. Similarly, directory enquiry (DQ) services have been associated with a low volume of customer complaints with DQ service providers delivering accountability and high levels of customer satisfaction³. We expand on this point in response to the related consultation questions and provide strong justification for exempting these services from licensing on the grounds of accountability.

The Premium Service Levy

The Acts⁴ grants ComReg 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 OCPs that do not share in the value added element and on services that do not require oversight by the regulator while creating significant additional administrative costs in the collection of a levy.

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. Indeed it would be perverse to impose a levy on these OCPs where their only opportunity for intervention is in the handling of complaints and refunds. OCPs can not influence the content, promotion or delivery of premium services and as such they do not give rise to costs associated with premium regulation.

Conversely 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 however this has facilitated 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.

The grounds for imposing the levy are closely aligned with the justification for licensing and Meteor believes that the levy should be applied only to those services that should be subject to a licence.

For those services that should be subject to a levy, it should continue to be collected from the Terminating Communications Provider (TCP) that hosts the premium service. The only divergence from the current regime should be the removal of the 50:50 split of the levy between the TCP and the Service Provider (SP). The levy should be treated like any other cost incurred by the TCP which will be passed on to parties further down the value chain whether they be Content Providers (CP) or SPs. The most efficient distribution of this cost would be achieved by allowing the TCP to build this cost into their revenue share

³ 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.

⁴ Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010

arrangements with the likely outcome being a contribution from each party towards the levy, in proportion to the revenue earned by each.

The above approach follows the cost recovery principle of cost causation whereby costs should be recovered from those whose actions cause the costs to be incurred. Indeed Meteor believes that this approach could be taken further by funding the regulation of premium services not only from the levy but also from administration charges on service applications and from penalties in the case of breaches and Meteor would welcome further consideration of this by ComReg in its upcoming consultation on the levy.

Transparency

Transparency on all aspects of premium services will go a long way to resolving the premium service issues that exist today. The current premium services code of practice contains numerous transparency requirements relating not just to price but also to the nature of services, service provider details and details on how to opt-out of services. Meteor is strongly of the view robust enforcement of these requirements may avoid more intrusive regulatory intervention and we would urge ComReg to bear this in mind when further considering the proposals that it has put forward.

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?

Meteor objects to the use of this arbitrary price threshold as a basis for determining whether services should be subject to licensing. ComReg refers to the need for price transparency as a justification for a price threshold. On the contrary Meteor believes that transparency is a prerequisite irrespective of the price of a given service. If consumers are clearly advised of the cost and terms and conditions of a service, there should not be any requirement for a price threshold. Similarly the need for a system of redress which is also touched on in the consultation applies regardless of the price level. This leaves the nature of the service (for example premium SMS subscription services) and the content (for example services of a sexual nature) as the sole determinants of whether a service should be designated.

We perceive 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 20c 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 threshold would 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 will also be of relevance here as services that involve multiple messages per transaction (including but not limited to Mobile Termination (MT) billed subscription services) may need to be licensed to avoid abuse of the threshold.

Therefore Meteor does not agree with the proposal to apply a price threshold. Services should instead be subject to licensing depending on nature and content of the service.

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

Meteor agrees with ComReg's proposal to continue with the regulation of live services where the content of the service may have the potential to cause consumer harm. However as outlined above, Meteor does not believe that the price of the service or the potential cost of the services should be a determining factor in this respect.

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

Meteor agrees with ComReg's proposal to continue with the regulation of services of a sexual nature.

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

Meteor agrees with ComReg's proposal to carry on the regulation of competition services.

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

Meteor agrees with ComReg's proposal to carry on the regulation of children's services.

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

Meteor agrees with ComReg's proposal to carry on the regulation of fundraising and charitable donations made through a PRS. Of particular concern here is the need to ensure in advance of such campaigns being launched, that each relates to a bona fide charity, as highlighted by ComReg in the consultation document.

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

Internet dialler software is covered in section 10 of the RegTel code of practice which deals generally with online/mobile web premium rate services. As stated in the consultation document, at their most extreme abuses of premium numbers in this context would be better described as fraud and subject to a criminal sanction. In this instance a licensing regime is unlikely to address the problem as parties that engage in such fraudulent activities are unlikely to be deterred by a breach of a licensing obligation while being prepared to engage in a criminal act. However the current RegTel code offers useful guidance to parties considering the use of premium numbers in conjunction with internet diallers or any future equivalents. Therefore Meteor agrees with ComReg's proposal to carry on the regulation of dialler software.

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

Meteor agrees with ComReg's proposal to carry on the regulation of contact and dating services irrespective of unit cost.

Q. 9. Do you 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 Payfortl 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 the latter involves a far closer relationship between the party contracting with the Mobile Network Operator (MNO) (the payment intermediary in the case of Payfortl 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 contacts 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 with the relevant SP.

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, Meteor agrees that these should be subject to licensing. However services that are charged directly to customer accounts, should not be subject to licensing and it is these pay-for-product services that Meteor refers 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. Meteor would support the view that consumers are already well served by existing legislation. The Distance Selling Regulations⁵ 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 consumers and vendors.

The UK Phonepayplus Code of Practice⁶ 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.

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.

⁵ European Communities (Protection of Consumers in Respect of Contracts Made By Means of Distance Communication) Regulations, 2001 S.I. No. 207 of 2001

⁶ http://www.phonepayplus.org.uk/upload/PhonepayPlus_Code_of_Practice.pdf

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 providing 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.

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

Meteor does not believe that the regulation of on-portal services is warranted. Due to the fact that the mobile operator as a single entity is responsible for the provision, support and billing for such services, the scope for consumer harm is reduced dramatically.

Regarding access to redress mechanisms, 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 the ability of prepaid consumers to review their prepaid usage, it is stated in the consultation that pre-pay phone users receive no itemised confirmation of their spending history. On the contrary, Meteor prepaid customers can access their call history via the internet by logging into their My-Meteor account. Furthermore, prepaid customers on all networks have the capability to carry out real time balance checks free of charge, which facilitates the immediate interrogation of recent charges against their account. Fundamentally, MNOs have demonstrated that it is in their interests not just as SPs but also as OCPs and primarily as MNOs seeking to retain customers, to operate services to a standard at least as high as that required under the existing premium rate service code of practice.

ComReg raises questions in relation to privacy, issues of decency and honesty, the targeting of children and adult content. Meteor would highlight that MNOs are well equipped to ensure compliance with data protection law given their significant customer bases and that fact that they handle sensitive communications and personal data on behalf of these customers. With regard to the other matters raised, an important driver of the MNO's highly responsible

approach to sensitive issues, such as the provision of service to children, is the need to protect brand image. 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. As for the risk of undue discrimination in favour of MNOs, while the currently high levels of consumer protection are being met by MNOs there is no scope for any unfair competitive advantage and as ComReg states 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.

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 stated in response to question 1, Meteor considers cost not to be relevant in determining whether certain services should be licensed. ComReg suggests that competition services, fundraising and charitable donation, Pay-for-product services, Live information services, and MNO "on-portal" services could be exempt if priced below 20c. With the exception of low value on-portal alert service, there are likely to be very few examples of services in any of the other categories that would be priced below 20c. For example PhonepayPlus in the UK has a lower threshold of £1 in its definition of pay-for-product services and in the case of the Haiti appeal, donations facilitated by the Irish mobile operators were set at €5 per transaction. In the case of on-portal and pay-for-product services we have already provided robust reasoning for these services not to be designated, regardless of price. In particular the motivation to avoid harm to the mobile operators' brands which provides significant protection. Meteor would recommend that ComReg should regulate charitable donations regardless of price as a low price point could result in a high volume of messages in which case a corrupt campaign could cause just as much damage at a low price with any recourse bearing a higher cost due to the higher number of consumers that would be affected and the higher volume of transactions involved. With respect to the Live Services, ComReg should establish boundaries with respect to the nature of the service offered and designate the services offered over the live medium accordingly.

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

Meteor believes that Directory Enquiry (DQ) services, within their current remit, should not be classed as specified services. The primary reason put forward by ComReg for licensing DQ services is the promotion of price transparency. However ComReg already has the power to impose price transparency requirement on DQ services as demonstrated in its Decision relation to access to tariff information on directory services⁷. ComReg also refers to other aspects of the current premium services code of practice; namely privacy, content that may cause offence and the need to offer additional protection to children. Like tariff transparency, privacy is already catered for under the existing regulations while the consumer protection measures contained in the current code would not be necessary for DQ services given that these services would not cause offence nor would they be attractive to children under their current remit.

⁷ Decision 12 of 2004 – ComReg document 04/87

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)

Meteor agrees that DQ services, within their current remit, should be exempted from regulation irrespective of the recommended price threshold. These services have operated at price levels well above the recommended 20c price threshold without presenting any significant risk of consumer harm. Should it be decided that the scope of services that can be offered should remain unchanged, Meteor believes that there would be no requirement for these services to be licensed.

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

The expansion of the scope of 118XX services to general information services would result in unnecessary duplication of the role of existing premium ranges while undermining the established 15XX premium number ranges and good standing of 118XX with consumers. While the 15XX ranges provide greater flexibility to service providers to offer various price points, it is likely that the more memorable 118XX codes would win out and that a large portion of premium services would ultimately migrate to a 118XX code. This would have the effect of diluting consumer perception of 118XX range, tainting it with the historically poor perception of premium services and thereby accelerate the decline that has recently been witnessed in the DQ market. Such a move would also add to the cost of regulation given ComReg’s stated intention to regularly audit the volume and quality of DQ services offered in conjunction with premium services. For these reasons, Meteor considers it preferable to maintain the current clear focus of 118XX services strictly on directory and related services.

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?

Meteor considers it preferable to maintain the current clear focus of 118XX services strictly on directory and related services as outlined in response to question 14.

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?

As outlined in response to the previous two questions, Meteor does not believe that general information services should be permitted on the 118XX short codes.

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

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 internet access is not subject to the character limitations of SMS and facilitates the provision of comprehensive information about

the service it would appear that many of the problem 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 improvements in the code of practice and its enforcement. 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.

The existing premium services code of practice mandates the provision of information in all subscription service promotional material, outlining the level and frequency of the charges, details on how to unsubscribe along with the contact details of the service provider for further assistance. Once they have subscribed they must receive a free message stating to the customer that they have been subscribed, identifying the service and detailing the same pricing and opt-out information. After every agreed spending limit they must be sent free information by SMS providing the same pricing and opt-out information. Furthermore all services must support the Stop command. Meteor is of the view that these measures if properly enforced should provide ample consumer protection. However as outlined in the introduction to this response, enforcement has been lacking and what is needed here is not more regulatory controls but stronger regulatory oversight that facilitates tough enforcement against the few rogue service providers that have undermined consumer confidence.

Meteor would recommend extensive policing of the existing transparency measures and comprehensive investigation of consumer complaints in relation to subscription services by ComReg from July (as this should not require a review of the existing Code), following which the double-opt-in measure could be considered once again, if transparency issues remain with subscription services.

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?

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 that fails to be delivered, for whatever reason. As an alternative to today's MT billed subscription services, ComReg proposes that customers might send a higher value mobile originated (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 underestimate their remaining balance and 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 that operate to very tight budgets who are among those referred to in this section of the consultation as being in need of protection

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

Meteor understands that invisible reverse billed SMS merely provides for greater flexibility in the delivery of chargeable content to consumers which may in fact aid transparency. Provided that the appropriate transparency measures are put in place to ensure that customers are made aware of charges in advance and as they occur, this merely represents an alternative billing mechanism. If such a mechanism poses greater risks these should be explored and appropriate regulatory measures considered before consideration is given to prohibiting this outright.

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

It is important to note that subscription services operate under a contract between the service provider and the customer for the delivery of chargeable content to the customer at predetermined intervals. Therefore consumers are not being charged for anything that they hadn't requested when they receive stored content in accordance with the agreed terms. However as stated in the introduction Meteor is keenly aware of the issues that premium services can create and we recognise that stored messages can give rise to consumer distress while in extreme cases denying customers access to standard voice and SMS communications services which is of particular concern for more vulnerable users. This might be achieved by applying a time limit on service providers beyond which there should be no further attempts at re-sending previously failed messages. It is important to recognise that mobile operators in their role as TCPs have no visibility of the platforms that manage subscription services or frequency of messages, therefore the onus for managing such a solution would have to be placed on the CPs or aggregators.

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?

The platforms that support premium services have evolved separately from those supporting voice services and as a result, the ability to bar premium numbers has not been readily provided on premium SMS service platforms. An SMS barring solution would involve significant development which to date has not been justified by market demand. Meteor would therefore recommend that ComReg defer consideration of this until the new regulatory regime has been in place for a reasonable period, in order to properly assess the need for a premium SMS bar, once many of the underlying enforcement issues have been addressed.

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

ComReg's arguments against certain types of subscription services such as those offering the latest ringtone appear to be based on subjective views about the value of these relative to other services, such as the latest stock market reports. Provided that customers are advised in advance of the nature of the service provided, the cost and frequency of the charges that will apply, as well as the means of unsubscribing and provided these requirements are enforced, there should not be any need to prohibit the application of the subscription model for certain types of services.

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?

Meteor does not agree with ComReg's recommendation. The RegTel code of Practice currently requires where there are no successfully delivered premium messages for 40 days, the consumer must be unsubscribed automatically from that subscription service and must

be removed from the database. Furthermore in 2008⁸ ComReg decided to extend the quarantine period for mobile numbers to 13 months to avoid any risk of customers receiving even promotional messages. These solutions should be even more robust than the alternative that is being proposed here, while also being far less costly to the industry as they don't require an intervention by OCPs.

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

31 Mike Daly

From: michael daly
Sent: 14 May 2010 15:58
To: retailconsult
Subject: Consultation paper

A few points on this paper:

on Question 6

Only registered charities should be allowed to raise funds in this way. I think Com Reg could do more to help charities on this. Having a friend that works in a charity that raises funds this way I am aware that they don't get the full value of the cost to the consumer. Com Reg could introduce charity shortcodes on which much higher if not all the funds raised on these would go to the charity.

on Question 10

Mobile Operators should have their services regulated. Why should they be allowed to do what they want based on the preception that they wouldn't do anything to harm their own brand. There would be nothing stopping them from charging what they want for a service. Also to be unregulated gives them an unfair advantage over any competitors selling mobile services.

on Question 11

Not really as a service that charges 20c per message but is interactive can cost a consumer as much as a service that charges €2 and is not interactive.

If I were to interact 20 times with a 20c service that's €4 plus the 20 standard message cost of my MNO versus €2 and 1 standard message cost.

Now which service has cost the consumer more.

On question 12

DQ services should fall under Com reg in this regulation.

ON Question 13

No as it would mean that another business if they were to set up a premium rate DQ service would be under the regulation while the existing DQ services would not.

Q 17

No to Double opt in. I'm not asked twice when I buy something in a shop.

As the saying goes 'Let the Buyer beware' it is up to the Buyer to be sure of what they are entering into. If someone ignores all the T+C and signs up then the problem lies with the buyer as it would in any other instance. If I buy gym membership and set up a direct debit they don't ask me twice I'm sure they just take the DD every month whether I go to the gym or not. The problem mine for signing up to a service I never intended to use not the fault of the gym.

Q18

MT billing is used by loads of people. It's just like a direct debit. Do we need to ban these because a few people were fooled into setting up bogus DD to scammers accounts. No we close down the scammers.

Q22

It is not for the government to dictate what we can access on our phones. Have I moved to China or do we still have freedom to choose in Ireland.

Thanks for looking at my few points on this

Mike Daly.

32 MM Networks Ltd.

From: rafiq.maniar **On Behalf Of** Rafiq Maniar
Sent: 14 May 2010 13:23
To: retailconsult
Subject: Regulation of Premium Rate SMS in Ireland

To whom it may concern,

This mail is in relation to the upcoming regulation of the premium rate industry in Ireland, recently transferred from RegTel to ComReg.

My company (MM Networks Ltd) is a **web development agency** operating out of Dublin, Ireland. We have been a successful business since 2008, continuing to not only survive the recession, but grow at a modest pace and continue to provide more and more jobs to the economy.

This is due primarily and almost entirely to the contracts we have for web development for the premium rate industry.

At a time when companies willing to invest money in new websites are few and far between, Premium Rate was a growth industry and enabled us to employ more staff, expand our services, and simply continue to do business.

We have been sent some documents from IPPSA, and after reviewing them, we believe that they definitively address the many concerns regarding the premium rate industry, and fully endorse this submission, a copy of which we have attached.

The measures proposed by ComReg in its original consultation are severe enough to cause the near-collapse of not only the premium rate industry but will have a major adverse effect on other industries that support it. I can say, without a doubt, if those measures were to go through, MM Networks Ltd would be forced to cease trading within a very short time, leaving all its employees without a job at a time when the economy can least afford it.

Yours sincerely,
Rafiq Maniar,
Managing Director,
MM Networks Ltd.

Copies of IPPSA Submission and Appendices 7&* of same attached to MM Networks Submission

33 Mobile Marketing Association of Ireland

From: Kevin Foley
Sent: 14 May 2010 16:05
To: retailconsult
Subject: IPPSA's submission

Hi,

I would like to send an email to endorse IPPSA's submission. This naturally will have an effect on Marketing and commerce on mobile phones in the market and contribute to a loss of revenues across not only the premium SMS market but also across mobile marketing as a whole. I believe that there should be strong regulation and only those in breach of the code should be penalised and not the entire industry.

Kevin Foley – Chairman of the Mobile Marketing association of Ireland

34 Modeva

MODEVA

Interactive Media & Entertainment Services

Submission to Comreg on the Scope of Premium Rate Services Regulation (Comreg 10/27)

14th May 2010
Author Richard Brennan

1 Table of Content

1	Table of Content	1
2	Executive Summary	3
2.1	Welcome Comreg	3
2.2	Structure of this Document	3
2.3	Focus of this Document	4
2.4	Modeva’s Position on the Consultation	4
2.5	Alignment with Industry Response	5
2.6	Licensing Scheme	5
2.7	Mobile Portal Services	5
2.8	DQ Services	6
3	Comregs Assumptions in Section 9	7
3.1	Commentary	7
3.1.1	Impact of Proposed Changes	7
3.1.2	Benefits of Subscription	8
3.2	Comregs 5 Bad Assumptions	8
3.2.1	Assumption 1 (No Demand for Subscriptions Competitions or Ringtones)	8
3.2.2	Assumption 2 (Subscription is Preferred Sales Method not Purchase Choice)	10
3.2.3	Assumption 3 (Exaggeration of Criminal Threat)	11
3.2.4	Assumption 4 (Consumers Suffering from Information Blindness)	12
3.2.5	Assumption 5 (Unwitting Subscription via Web Opt-in)	17
3.3	Conclusions	18
4.	Response to Comreg Questions	19
	Question 1 (Re-20 cent Threshold).	19
	Question 2 (Re-Should Comreg Regulate Services)	19
	Question 3 (Re-Should Comreg Regulate Sexual Services)	20
	Question 4 (Re-Should Comreg Regulate Competition Services)	21
	Question 5 (Re-Should Comreg Regulate Children’s Services)	22
	Question 6 (Re-Should Comreg Regulate Charitable Services)	22
	Question 7 (Re-Should Comreg Regulate Internet Dialer Software)	23
	Question 8 (Re-Should Comreg Regulate Virtual Chat and Dating Services)	23
	Question 9 (Re-Should Comreg Regulate Pay for Product Services)	24
	Question 10 (Re-Should Comreg Regulate MNO Portal Services)	25
	Question 11(Re-Below 20 Cent Threshold Exemption)	25
	Question 12 (Re-Should Comreg Regulate DQ Services as PRS)	26
	Question 13 (Re-Should DQ Costing Below Minimum Threshold be Exempt from Regulation)	26
	Question 14 (Re-Should the Remit of DQ Services be Expanded)	27
	Question 15 (Re-Is it Unfair to SP’s to Expand the Remit of DQ Services)	27
	Question 16 (Re-Should the Remit of DQ Services Expand for Specific Prior Approved Information Services)	28
	Question 17 (Re-Should Double Opt-In Apply to Subscription Services)	28
	Context	28
	Multi Stage Service Entry Trials	29
	Double Opt-in Confuses and Frightens Customers	29

Indiscriminate Nature of Double Opt-in _____	29
Minimum Thresholds for Double Opt-in _____	30
Impact of Double Opt-in _____	30
Conclusion _____	31
Question 18 (Re-Should MT Billing be Banned and Should Comreg be Allowed to Discriminate Against Specific Services) _____	32
Context _____	32
Modeva Position _____	32
Prohibition of MT Billing and Discrimination based on Class of Service _____	32
Subscription Services Require MT Billing: MO Billing Cannot Work _____	33
MO Undoes the Basic Reson d’etre for Subscription services. _____	33
MO Billing is Applied Immediately and Irreversibly. _____	34
MO Billing Would Require Massive Irreversible Front Loaded Payments _____	34
Should MT Billing be Permitted only for Certain Class of Services? _____	35
Impact of Prohibition _____	35
Conclusion _____	35
Question 19 (Re-Should Invisible Reverse Billed SMS Messages be Banned) _____	35
Question 20 (Re-Should Comreg Ban Storing Up Chargeable SMS Messages) _____	36
Question 21 (Re-Should Premium Rate Opt-Out be Offered to MNO Customers) _____	37
Question 22 (Re-Should Comreg be Allowed to Discriminate Against Specific Classes of Subscription Services) _____	39
Context _____	39
Modeva Position _____	39
Question 23 (Re-Should SIM Expiry Propagate Termination of a Subscription) _____	40

2 Executive Summary

2.1 Welcome Comreg

From a business perspective the most important for thing Modeva is to have a fair, stable and fully transparent environment in which to trade. The role of the regulator is absolutely vital in this. If the regulator behaves irrationally, appears unpredictable or prone to frequent change then investors like Modeva will find it very hard to justify investment in Ireland.

When we heard Comreg were to take over from Regtel we welcomed it whole heartedly given the good rational considered track record of Comreg. We have had good experiences and bad with Regtel. It is not our desire to speak ill of Regtel but we have to put it on the record that under Regtel we have not operated in a stable, predictable, transparent or fair environment for many reasons including:

- **Failure to enforce the Code of Practice:** which meant we had to compete unfairly with operators who did not obey the rules. This also terribly damaged industry reputation in the eyes of the public because rogue operators were operating products directly in competition with us and doing so outside the rules. All services were tarred with the same brush.
- **Continuous change to the rules:** Regtel had an appalling practice of issuing guidelines which they insisted over ruled or complimented the code. These often conflicted with the Code and with other Guidelines.
- **Infinite Shelf Life:** Regtel on many occasions referred us to obsolete versions of the Code quoting rules from it which were no longer in the new code and often conflicted with the new code. When we complained that surely we were to abide by the new code only we were told we had to obey all codes despite their confliction.
- **Obstruction of Customer Service:** The reality of Regtels complaint handling procedure on the ground meant that our customer service help desk was prevented from dealing with its own customers. The procedure also created an automatic channel for unscrupulous customers to wriggle out of paying for content which they had already consumed by complaining to Regtel. We believe this became habitual.

In that context we were quite excited at the news that Comreg would take over. Our experiences with Comreg as a network operator have been good and we have always expected professional process and conduct from Comreg. To date it has always been forthcoming.

Such was our expectation until this consultation document was issued. The document appears to have been written by 2 distinct brains. There is a marked distinction between the content up to and before chapter 9 and that which follows. The later part is radical, dramatic and based on false subjective opinion and inaccurate data. We were shocked.

Our welcome is severely tempered. Are we in for more of the same? Can we continue to invest?

2.2 Structure of this Document

For ease of use we have peppered this document with clickable links to help you navigate around:

- The table of content allows you to click on any index item and go straight there.
- All sections in the document have clickable links to the table of contents for convenience
- References made in one part of the document to another are clickable.

We have structured the document logically as follows

- The executive summary in simple English states our position on key subjects that we feel strongly about. Not everything gets a mention here. The executive summary is not used to prove our arguments, it simply highlights some of them and stresses those things which are most important to us
- [Section 3](#) is used to specifically address some very flawed assertions that Comreg has made as these assertions are the basis of Comreg's suggestion that some catastrophic changes to the regulations are needed. These assertions are so important that we dedicated a whole section to address them.
- In [Section 4](#) we answer each of the specific questions asked in the consultation in the order they were asked.

All of the detailed arguments are presented in Sections 3 and 4

2.3 Focus of this Document

Modeva as a group is a bit more than a traditional premium rate service provider. We are a software design and development company. We design and create all of our own services in a very creative and talented environment. We are a telecoms operator with 10 years experience in everything it means to be a telecoms network operator. We are a marketing firm designing and creating all of our own Television, Press and Online material in house.

Our focus is naturally going to fall on those areas of the consultation which will have direct and immediate effect on our business.

In that respect you will see that we concentrate very heavily on section 9 of the consultation specifically

- Prohibition of MT Billing
- Double Opt-in
- Discrimination against Ringtone and Competition Subscription Services.

We answer all 23 of the questions set out but concentrate strongly on those 3 issues listed here.

2.4 Modeva's Position on the Consultation

We strongly feel that Comreg in Section 9 of the consultation went off the rails. Comreg made 5 very badly founded assertions in which we have dealt with in detail in our own [Section 3](#). These false assertions led Comreg to wrongly conclude that existing PRS Code of Practice does not have the rules it needs to protect consumers and therefore new radical measures are needed.

We demonstrated and proved in Sections 3 and 4 that these assertions are ill founded and in fact the core of the problem lies in 2 areas:

- The existing regulations are not enforced
- Erroneous complaint handling processes in Regtel were damaging the consumer and vendor alike

These were compounded by conflicting rules coming from Regtel to the service providers specifically

- Issuing guidelines that conflicted with the code and other guidelines whilst asserting that both the code and the guidelines had to be obeyed.
- Insisting that older versions of the code had to be obeyed concurrently with the new version despite conflict between the two or the many.

This environment has wrongly led Comreg to conclude that radical change to the rules is needed because the rules don't work. In fact the rules can work, they are simply not enforced.

Each of the 3 extreme changes that Comreg has suggested would on its own devastate the premium rate SMS industry. We have proven so in this document. The proposed changes are:

- Double Opt-in
- Prohibition of MT Billing
- Open Discrimination against Vendors of Ringtones and Competitions

Modeva also asserts that whilst Comreg has an excellent record of professionalism in its traditional background it has no experience in this new field as yet. The measures suggested in section 9 are premature and extreme in nature.

We propose this as the most sensible, stabilizing and effective way for Comreg to begin its new role as industry regulator.

- Establish an effective and globally enforced complaints handling process which allows the service providers to give descent effective customer service to their customers.
- Establish an industry working group immediately to assess the issues raised.
- Establish an information campaign for public awareness about the PRS industry and the complaint handling process using an advertised dedicated website, printed information about the website on phone bills, information on prepaid top up acknowledgments etc.
- Enforce the existing Code of Practice as it stands in conjunction with the new complaint handling process for a period of at least 1 year.
- Use the new complaint handling process to accurately measure and paint a picture of the industry
- Establish an Industry working group after 1 year to assess the results of the year
- If change is considered necessary following analysis of the year then enter the consultation process at that time

We believe it is useful to consult industry now before taking over from Regtel but it is premature to make any changes until Comreg have enforced the existing code for at least 1 year in the presence of an effective complaints handling procedure.

2.5 Alignment with Industry Response

Modeva is a significant player in the PRS industry in Ireland and as such we have taken part in the joint industry submission being made to Comreg by Phonepaid in response to the consultation. We support that submission and all of its contents.

2.6 Licensing Scheme

Modeva agrees with this plan. It makes sense to bring in licensing all the way down the value chain. We have competed unfairly against foreign content providers who have been able to operate outside the rules. This should address all or most of these issues.

2.7 Mobile Portal Services

Modeva fully agrees that mobile Portal Services should be regulated by Comreg.

The definition of PRS services naturally encompasses mobile portal services. It can be argued that the MNO portals have somewhat of a captive audience which gives them an advantage over smaller service providers like Modeva.

It would be absolutely unfair to Modeva and other service providers to compete against service sold via mobile portals which did not have to abide by the same rules as we do.

2.8 DQ Services

Modeva feels that DQ services should be regulated by Comreg but DQ services need to be categorised differently as they have some unique circumstances and attributes over other services:

- DQ operates with 5 digit short codes
- Decades of DQ have engrained the public to perceive them as inexpensive since pricing information has rarely if ever been displayed on advertising. People don't realize they are expensive.

This gives an unfair market advantage to DQ providers should they be allowed to offer content services to their captive audiences.

Modeva strongly feels that they should not.

3 Comregs Assumptions in Section 9

Section 9 of the consultation document from Comreg makes 5 critical assumptions ([See below](#)). We will show here that:

- Some are entirely incorrect
- Some are mostly incorrect.
- All are based on bad data
- All are exaggerated
- All are subjective

Comreg have concluded wrongly from those bad assumptions that the existing regulations are not adequate to protect consumer interests and they need to be changed.

Comreg suggests 3 radical industry and consumer impacting changes to the existing regulations based solely on this false conclusion.

- Double Opt-in
- Banning of MT Billing
- Discrimination against Sellers of Ringtones and Competitions

Lets Summarise that position before substantiating what we have just said:

Comreg have made 5 Incorrect and Wildly Exaggerated Assumptions which have falsely led Comreg to believe that the existing regulations need radical change. The changes proposed are devastating both to the old PRS industry and new wider PRS industry under the new definition.

Below in [Sections 3.2.x](#) we prove that these assumptions are unreliable. Throughout those sections you will see a theme emerge that the existing PRS Code of Practice is perfectly well equipped to deal with all of the assertions that Comreg makes and that the existing code has not been enforced properly. This has been compounded by a severely flawed complaint handling procedure in Regtel which has undermined the ability of service providers to provide basic customer service to their customers and has resulted in falsely inflated figures from Regtel about complaints to their office.

3.1 Commentary

3.1.1 Impact of Proposed Changes

The service providers in this industry are facing financial ruin purely based on false assumptions which are driven by section 9 of this consultation. I can state factually that the impact of any one of the 3 suggested regulatory changes would be catastrophic for the industry and for my business.

- Modeva accounts demonstrate that 62% of all revenue comes from subscription SMS services.
- International Expansion
- (Ireland a test bed for new services for international expansion)
- Jobs

3.1.2 Benefits of Subscription

The benefits to consumer are not complex. They are very simple but very valued both by the consumer and by the vendor.

- **Assurance: The consumer does not have to remember** to go get their “consumable”. It is automatically scheduled. For example Subscription lottery services such as Modeva’s BigSix mean the consumer never has to worry about forgetting to enter the lotto because they are always in with their chosen selection of numbers.

This benefits the vendor too because they can plan their delivery stream and manage their production and supply chains according to that plan.

- **Convenient Fulfillment: The consumer does not have to discommod themselves** to collect their “consumable” because it is delivered automatically. Extending the lotto example above the consumer not only removes the risk of forgetting to the lotto but they also avoid the inconvenience of leaving home to do it.

Once again this is also beneficial from a supplier planning perspective.

- **Convenient Payment: Convenient billing means the consumer does not have to conduct financial transactions** every time they receive their “Consumable”. For example they don’t have to go to the post office to pay Sky-TV because its conveniently billed using DD. This is absolutely similar to MT billing for subscription models.

Again this is also beneficial to the vendor who does not have to employ huge resources conducting financial transactions with each delivery.

These benefits work for both parties in the subscription model and they are the reason why subscription is so in demand both from a user and a vendor perspective.

Subscription is Good!

Comreg have taken the view throughout section 9 that there is something inherently wrong with subscription. This negative approach is extremely alarming from a vendor and consumer perspective alike. **As business people we are extremely concerned about this attitude.**

3.2 Comregs 5 Bad Assumptions

3.2.1 Assumption 1 (No Demand for Subscriptions Competitions or Ringtones)

Section 9.1 Paragraph 3: Asserts that people are happy to subscribe to football alerts but don’t really want to subscribe to ringtones or competitions.

“It is clear that there is a demand for services that involve a form of weekly, or monthly, payment or for pay-per-alert services, where consumers wish to be updated on the latest news, football scores, or share price information, for example. It is less clear that those who buy a mobile ringtone or enter a competition have a wish to do so several times each week or several times a month.”

Subjectivity

Comreg's statement that they believe there is a legitimate demand from consumers for subscription information like football alerts but they don't believe there is a demand for competitions or ringtones is entirely subjective and will not stand up in any arena.

Absence of Supporting Evidence

Comreg have provided no evidence to support this statement anywhere in the consultation document. On the basis of its subjectivity and the absence of any supporting evidence it must be ruled out and deleted from consideration.

Counter Evidence

In contrast to the unsupported and subjective opinion of Comreg that there is no consumer demand for subscription based Competitions or Ringtone services we have evidence to the contrary. Let's take a logical approach in the same manner one might prove a mathematical theorem

Step 1 Prove there is a Demand for Subscription Payment Model.

Many hundred of thousand of main stream products use this model worldwide for example

- Sky TV
- ESB
- Bord Gais
- Xbox Live
- Readers Digest
- Flight Magazine
- National Lottery Pay by Credit Card
- Etc etc etc.

Now lets ignore all that and simply use Comreg itself as our evidential source.

Section 9.1 Page 51

"It is clear that there is a demand for services that involve a form of weekly, or monthly, payment or for pay-per-alert services, where consumers wish to be updated on the latest news, football scores, or share price information, for example"

I think this solidly establishes that there is demand for subscription services.

Step 2 Prove there is a demand for Competition and Ringtone Services

In Ireland the Competition market is estimated 25 % DULR POP ENTER prs COMp AT ;LEATS MONTHLY: 900,000

Over 60% of users resubscribe

Over 700,000 pople have used Modeva...

Competitions most used services

I think this solidly establishes there is demand for Ringtone and Competitions Services.

Step 3 Combine the Two

We know from steps 1 and 2 above that

- Consumers do like subscription as a payment method
- Consumers do like ringtones and competitions

We know that these are not mutually exclusive therefore there has to be an intersection or join between the 2 sets.

This proves categorically that the assertion is false and there is absolutely a consumer demand for Ringtone and Competition services using the convenience of the subscription model.

3.2.2 Assumption 2 (Subscription is Preferred Sales Method not Purchase Choice)

Section 9.1 Paragraph 3: Asserts that subscription is the preferred sales model and not the preferred purchase model.

“The frequency with which consumers claim not to have knowingly entered subscriptions of this kind, added to concerns over the ability to opt-out of the service, suggests that this may be a preferred sales model, rather than a preferred way of purchasing.”

Subjectivity and Proven Demand

Comregs assertion that subscription is the preferred sales method and not the preferred purchase method relies on 2 assumptions both being true:

- It is only true if there is no consumer demand for subscription services
- It is only true if the service providers prefer to sell this way

We have already proven above in [Section 3.2.1](#) that there is demand for subscription ringtone and competition services. Wherever there is demand there will be supply as demonstrated by the age old laws of supply and demand.

Since we have proven there is demand we know there will be supply. In other words service providers will step in to fulfill the consumer demand.

Given that there is genuine and significant consumer demand for Competition services this assertion incorrect.

The assertion is made with no evidence to back it up. It is entirely subjective to say that consumer will have a preference for one form of content over another..

The implication of Comreg’s assertion is that there is something inherently wrong with service providers or sellers of content preferring the subscription model to other models. In fact sales firms in all industry’s use the subscription model not only because it is convenient for consumers but it is also economical efficient to implement, cost effective and beneficial to both sides.

It is inappropriate for Comreg to imply that there is anything wrong with vendors desiring to use the subscription business model.

It is extremely dangerous for regulators to take subjective stances when considering change to regulation and far worse to take these stances when considering PROHIBITION.

Ability to Opt-Out and Regulatory Enforcement

The assertion implies that the reason this is the preferred sales model is because users find it difficult to Opt-out or in other words that service providers are deliberately Opting people into services that are difficult to exit.

If the Code of Practice was obeyed users would receive a subscription confirmation message clearly worded telling them how to exit from the service by sending up the word “STOP”. This is not ambiguous.

If a service is difficult to exit that can only be because it is not compliant with the Code of Practice. The crux of the problem here is once again **Failure to Enforce the Code of Practice.**

It cannot be argued that a service which complies with the Code of Practice is difficult to exit.

3.2.3 Assumption 3 (Exaggeration of Criminal Threat)

Section 9.1 Paragraph 5: Asserts that the Irish market is suffering significantly or is significantly vulnerable to rogue, criminal or “Unscrupulous” service providers. It concludes immediately without consideration of impact or due process that the solution is “**PROHIBITION**” of a legitimate electronic payment method.

“The MT-payment features of a mobile subscription service, which make it an efficient and convenient payment method for both suppliers and consumers, also provides opportunities for unscrupulous “out-of-schedule” payments, where the consumer is billed for receiving more alerts that they should or, in more extreme cases, where the consumer is billed without ever having subscribed to the service. Prohibiting MT-payments would address many of the consumer harm issues that exist in the Irish market at present and this option is considered later in this Chapter.”

Comreg asserted that either there is presently significant consumer damage being done in the Irish market by “unscrupulous” service providers or that there is a significant threat of “unscrupulous” providers entering the market from abroad. Comreg was vague and unclear on this .

Criteria for Rule Change

For this assertion to be valid in the context of using it to justify changes in the PRS Code of Practice it must meet a single fundamental criteria:

The “Unscrupulous” operators either present or pending must be able to operate “Unscrupulously” within the existing rules. ***We do not argue that if you can obey all of the rules and still behave unscrupulously that the rules don’t need changing.*** If however to behave “Unscrupulously” you must operate outside the rules then the rules do not need changing.

This defines the crux of the issue for Comreg as Regulator. ***“Are the rules good enough to cope with the existing operators and the potential new market entrants from abroad”?***

Modeva’s position is very simple. It is not possible to operate in an unscrupulous manner and stay within the rules. If there are any unscrupulous operators in Ireland today they must be operating outside the rules.

For Comreg to substantiate that “Unscrupulous” behavior is possible within the existing rules they must do 2 things:

- Outline the method of behaving “Unscrupulously”. Step by step detail how they believe the “Unscrupulous” services function.
- Demonstrate that NONE of these functions break any of the existing rules in the PRS Code of Practice or any other any other codes which service providers are subject to including
 - Criminal Law
 - Data Protection (ODPC)
 - Consumer Protection

If Comreg cannot show what the “Unscrupulous” functionality is and that this functionality would not be caught by the PRS Code of Practice or other rule sets then there is absolutely no case to change the PRS Code of Practice.

Absence of Evidence to Support Comreg’s Position

Comreg did not give any examples of “Unscrupulous” services in Ireland in the consultation document. They referred to cases from abroad in an effort to imply that there was a threat of unscrupulous behavior coming to Ireland from overseas.

None of the cases presented by Comreg demonstrated that these services could operate without being caught by the existing rules either in

- The PRS Code of Practice
- The ODPC
- Consumer protection Law
- Criminal Law (Fraud, Theft)

In **ALL** of the cases quoted by Comreg the services were dealt with adequately using existing rules in those territories.

Evidence in Support of Modeva’s Position

The Office of the Data Protection Commissioner (ODPC) iterated in recent reports that they are satisfied they do not any new powers or changes to their rules to cope with the current environment. The most recent annual report from the ODPC states:

“Regarding unsolicited marketing text messages, my Office opened 50 fewer complaints in 2009 than in 2008, and almost 250 fewer complaints than in 2007. This decrease can be attributed to the effect on the text marketing sector of prosecution proceedings which I lodged in the District Court towards the end of 2007 against a number of companies operating in the premium rate text messaging sector.”

Conclusion

It has not been demonstrated by Comreg that it is possible to operate unscrupulously and stay within the Code of Practice.

If there are unscrupulous service providers operating in the Irish market they must be doing so in breach of the Code of Practice. Ergo: the problem would rest with enforcement and not with the regulations themselves.

The Code of Practice adequate to deal with unscrupulous service providers and any issue which might exist in this respect is a result of failure to enforce those rules. The presence of an issue has not been demonstrated.

3.2.4 Assumption 4 (Consumers Suffering from Information Blindness)

Section **9.1 Paragraph 7**: Asserts pricing information, terms and conditions are being provided currently in accordance with Regtel rules and consumers either don’t see them or don’t understand them.

“However, with over 9,500 consumers (35% of all callers to RegTel’s Helpline) contesting that they had ever signed up to a subscription service, it would appear that the cost, and other important terms and conditions, are either being overlooked, or misunderstood, by consumers.”

The assertion here from Comreg is that large numbers of consumers are being duped into subscription services despite those services obeying the Code of Practice. For this to be true the following conditions must exist.

- The service providers are obeying the rules:
 - Consumers are being given the correct upfront pricing and terms of use information in accordance with the Code of Practice on service advertisements.
 - Consumers are receiving the subscription confirmation message prescribed in the Code of Practice
 - Consumers are receiving the 20 euro spend message prescribe in the PRS Code of Practice
- Consumers receiving this information are blind to it:
 - They don't notice, read or hear any of the prescribed information on the advertising.
 - They don't notice, read or they ignore the subscription confirmation message prescribed in the Code of Practice.
 - They don't notice, read or they ignore the 20 euro spend text message which they receive every time their spend accumulates by 20 euro.
- Consumers are not blind to the information but they don't understand it.

Modeva's position is simple. The Comreg assertion is incorrect. This figures quoted by Comreg are questionable and the logic put forward about consumer blindness does not stand up to scrutiny given the Code of Practice.

I have addressed individual components (set out above) of the assertion below. Firstly I want to address the inaccuracy of the figures put forward by Comreg.

Inaccurate Figures

Comreg quotes Regtel as saying 9,500 consumers contested knowing they had subscribed into services. This figure is inaccurate for several reasons.

The quotation below is from Pat Breen the current Regulator for Premium rate services in Ireland and the head of Regtel. It is taken from his cover piece of Regtel's 2009 annual report.

"The reduced volume of calls to our Consumer Helpline and the number of written complaints submitted confirms our view that by international standards the incidence of complaints is relatively low. It should be noted that the majority of calls to the Consumer Helpline are from people seeking advice on the operation of what is to them an unfamiliar service, and less than three per cent require regulatory intervention. In 2008/9, some 791 complaints were identified as requiring regulatory action from a total of approximately 28,600 calls, emails and letters."

He says

- The number of complaints is low by international standards
- The majority of calls are from people seeking advice about unfamiliar services
- Less than 3% required regulatory intervention. That's 791.

There is a world of difference between the 9,500 cases that Comreg asserted as being duped into subscription services and the 791 who actually required regulatory intervention.

These 791 cases spanned across all service types both voice and text in all classes of service.

Flawed Complaint Handling Procedure

In the quotation from Pat Breen above we see that the total touches or contacts via all mediums to Regtel was 28,600 in 2009. This figure in his words is relatively low by international standards. It is inline with or better than expectations for a market of our size.

There is no industry wide complaint handling procedure in place for the PRS market. Consumers by default tend to complain to their mobile phone or landline operator when they have billing queries. We are

very experienced in Modeva in this market and we have a very good knowledge of what is happening on the ground.

By default customers with a query about their bill, call credit or even a general query about the operation of a service will call their network provider or MNO for subscription services. It is the default practice of the MNO in our experience to direct the customer to Regtel for anything relating to premium rate.

The first port of call for the customer should be the service provider in question who has all the information necessary to deal with the customers query including their full SMS history, signup dates and times, previous customer contact information and a full understanding of the service the customer has signed up to.

Regtel does not possess any of this information but their default practice in our experience is to register the query in their records as a complaint and attempt to deal with it as a Regtel issue. Very often we (Modeva) are not given the opportunity to deal with the customer and we are regularly directed to refund the customer without any clear reasoning.

In summary

- Customers are being redirected from one body to another
- Service providers are not being allowed to provide basic customer service
- Regtel have created a channel for easy refund which is open to abuse.
- The default practice is not consistent either within Regtel or the MNO. Sometimes the customers are directed to the service provider.
- Regtel figures are falsely inflated.

The net impact on customers is

- They cannot access customer service for basic queries
- They are redirected inconsistently from one body to another
- Customers who don't deserve refunds get them
- Customers who do deserve refunds don't get them
- Customer Frustration

Consumers Overlook the Regulatory Information Messages

When Comreg asserts this they make assumptions:

- The user has received the message (It was sent in the first place)
- The user is genuine (Intends to pay for the goods, IE does not intend to seek refund via Regtel at a later date: see above)
- Text messaging is an inadequate medium of communication. People are blind to the text written in text messages.
- The wording in the text messages is unintelligible.
- The user is predisposed to ignore the pricing information at signup time.

I'll deal with these in order

Assumption 1: Users are receiving the regulatory messages

It is a contradicting within the consultation to suggest there is a problem with unscrupulous service providers and at the same time stating that users are receiving the regulatory messages but they are overlooking them.

No evidence is supplied by Comreg to say that users who contested knowledge of the service had received these messages.

If Comreg asserts this then they should quantify it.

- What percentage of the alleged 9,500 users did receive the appropriate confirmation message, the 20 euro spend warning and were exposed to compliant advertising material?
- What percentage were victims of service that broke the rules by not sending these messages?
- What percentage were of users were trying to wriggle out of paying for content they had already consumed?

We strongly assert that where the user receives the required messages from a compliant service they are not overlooked. We have demonstrated this below. We contend that there is likely to be an issue with enforcement and any users who are genuine in contesting that did not know they were subscribed to a service had entered a service which did not provide the correct messages set out in the Code of Practice.

This is an enforcement issue.

Assumption 2: The User is Genuine

Comreg has assumed that when a user claims they didn't know they had subscribed to a service or they weren't aware how much it cost that the user is telling the truth. I have already demonstrated above that Regtel have created a conduit for easy refund from any and all SMS subscription services via their complaint handling practices.

In our experience users are aware of this and it is being abused. We have not implemented user black listing yet but it is something we are considering.

Comreg has not addressed this possibility or tried to quantify it. Our own figures show that 60% of people subscribing to our services have previously used the service and fully understand it..

This demonstrates massive user knowledge and awareness. In a market with over 4 million mobile phone users it would be no surprise if 791 or 9,500 or (which is the truth?) users tried to wriggle out of payment.

Assumption 3: Text messaging is an inadequate form of communication

Modevas' position is that this is a ridiculous assumption and we utterly refute it. In the context of users subscribing to a text service the most appropriate form of communication is text messaging. It would be absurd to suggest anything otherwise. That is exactly what Comreg have done by stating that users are overlooking this information.

Note: If a user elects to overlook information provided openly to them by a vendor then the user must take responsibility for any consequences that might arise from ignoring that information. This is not a regulatory issue it is an issue of personal responsibility.

The implication by Comreg that derives from this assumption is "If one message is not enough then send Two".

We suspect that this type of thinking is behind the proposal to introduce Double Opt-in. The underlying logic being that maybe the user overlooked the confirmation message, and overlooked the advertising so they should be forced to go through the process twice.

This form of logic is very damaging to the consumer and the vendor alike.

Assumption 4: The wording of the text message is unintelligible

The rules in the PRS Code of Practice are clear:

"On subscribing to a Premium Mobile Subscription Service and before the Premium Mobile Subscription Service commences, the Consumer must be sent a free stand-alone initial information

message setting out the following in clear terms and in the following order:

- (i) the name of the Service;*
- (ii) confirmation that the Service is subscription based;*
- (iii) what the billing period is e.g. per day, per week, per month and, if there is no billing period, the frequency of the messages being sent;*
- (iv) the cost in euro per message;*
- (v) an age warning where appropriate;*
- (vi) Service Provider name and contact details;*
- (vii) the fact that the Consumer can unsubscribe from the Service by sending the word "STOP" to a designated Short Code Number."*

Here is a sample confirmation message from one of our own services.

"Prizeclub.ie- Play for great prizes every month! This is a subscription service and costs €4.00 every week. 18s + SP Inkred 014888999. To Unsubscribe send STOP to 57052"

The Code of Practice sets out that the confirmation message must be in clear terms and in a specified order. If the messages are being sent which are unintelligible then they are in breach of the Code.

Once again the basic criteria for change of code applies. If the current rules do catch the offence then there is no case for change. If in that environment there are significant levels of offence the issue is not with the rules themselves but with enforcement.

Assumption 5: The user is predisposed to ignore the signup confirmation message

This assumption is patently false. At the time the user receives this message they have actively decided to engage with the service in that moment and they are awaiting the response message from the service. The sequence of events below follows:

- The user is engaged by an advertisement for a service
- The user understands the instructions on the advertisement and sends a key word to the service via SMS message.
- The user awaits the acknowledging beep on their phone from the service they have just contacted.

In this moment the user is anticipating the beep and the message it signifies. They are in no way predisposed to ignore this message.

Conclusion

Firstly we contest the figures quoted (9,500) and we have proven above that these figures are very distorted and subject to inaccuracies that Comreg was not aware of.

As I have demonstrated above the assumptions that this assertion is based upon are logically flawed or incorrect.

- Sending unclear information messages would be caught by the PRS Code of Practice
- Its not safe to assume the users are behaving genuinely especially given the easy refund conduit created by Regtel
- Its not safe to assume that service providers are adhering to the Code of Practice given the accusations of unscrupulous behavior by Comreg.
- It would not make sense to suggest that text messaging is an inappropriate form of notification for text message based services.

- The user is actively waiting to receive the subscription confirmation and is in no way predisposed to ignore it or overlook it.

Therefore we conclude it is untrue to say that users are over looking or misunderstanding the subscription process.

If accurate and detailed information was available and it demonstrated that significant numbers of users were entering services unwittingly then the cause of this is not as a result a flaw in the prescribed sales process as we have factually demonstrated. It would simply have to be down to services that were not compliant with this process.

NB: This point is vital. The prescribed process is not at issue here. Clearly it would be an enforcement issue. Comreg assert service providers are at play. If that were so it would prove that the problem lies with enforcement and not with a weakness in the Code of Practice

3.2.5 Assumption 5 (Unwitting Subscription via Web Opt-in)

Section **9.1 Paragraph 8**: Asserts that people are being signed up for subscription services without their knowledge by third parties using Web Opt-in.

“Another area of concern to ComReg is the concept of “Web Opt-In”, where it is possible for SP”s to promote their services via the internet and to acquire mobile subscribers through this medium. Some consumers inadvertently subscribe via the internet when, for example, they provide their mobile phone number to enter a quiz or receive the results of an IQ Test. With MT billing, it is possible, in theory, for those who have “captured” these mobile account numbers to send MT premium text messages and charge these consumers, without the consumer having signed-on for any service. This form of “opt-in” is also open to further abuse in circumstances whereby a person could provide a mobile phone number, which is not their own, thereby subscribing another person to a service without their knowledge or consent”.

Comreg makes the assertion that customers are unwittingly subscribed by third parties into SMS subscription services using web interfaces. We make these points about this assertion:

- In Modeva we implement a process of pin verification for all of our web signup processes. In this model when the user clicks a button on the site indicating they wish to subscribe a 4 digit pin is generated by the site and texted to the user’s mobile phone. The user must enter this pin into the site to confirm their subscription.

This absolutely rules out any possibility of a third party subscribing another person’s phone. The person using the site must be in possession of the phone.

- Comreg have provided no evidence that this is occurring and have not quantified it whatsoever. It is not appropriate process to consider regulatory change without evidence.
- If in fact what Comreg asserts is happening this would be captured by the existing rules. The user must be sent a confirmation message at the time of subscription informing them that they have just been subscribed into a service costing X and the method of exit is simply to reply with the word “STOP”.

We accept that in this one instance (Web Opt-in) or Opt-in from media other than SMS itself perhaps the pin verification system that Modeva uses could be a useful tool to enhance the regulations.

In other words this does not lend to the case for a change in regulation it simply demonstrates that the existing regulations are not being enforced.

Effectively Comreg are saying: "People are breaking the rules therefore we should change the rules." This is ludicrous. Comreg should be highlighting that rules are not being enforced and set about enforcing them.

3.3 Conclusions

We have demonstrated above that the 5 assertions which Comreg is using to infer that the PRS Code of Practice needs to be changed are:

- Incorrect
- Subjective
- Exaggerated
- Conflicting

We have also proved that there are 2 major flaws in the existing regime:

- The Code of Practice is not being enforced properly
- The erroneous complaint handling procedure of Regtel is damaging to vendors and consumers alike.

Comreg have not proven that the Code of Practice is ill equipped. They have proven that it is not enforced. We have proven in all cases above that the existing Code of Practice is well equipped to regulate this industry provided that:

- It is properly enforced and
- An effective complaint handling procedure is implemented

What Should Comreg Do?

- No Change is needed to the PRS Code of Practice.
- Comreg should establish an industry working group to assess the issues raised.
- Comreg should introduce an effective and measurable complaint handling procedure immediately
- Comreg should introduce a public web site dedicated to providing consumer awareness about PRS services such as www.phonebrain.org.uk as soon as possible
- Comreg should enforce the existing regulations properly for a period of at least 1 year and use the new complaint handling procedure to measure accurately the true picture of the industry
- If after 1 year if the picture painted indicates need for change Comreg address it then.

4. Response to Comreg Questions

Question 1 (Re-20 cent Threshold).

“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?”

Links

[Table of Contents](#)

[Question 11](#)

Modeva Position

We disagree with setting any minimum threshold for regulation of PRS services.

Why

- It would be unfair to PRS service providers who are regulated to compete with providers who would be free to operate with no restrictions or behavioral controls.
- It would be unfair to the customers to mix their normal expectation of how services behave such as (Stop Commands, Pricing Info, Contact Info, cumulative spend information, how to complain) with the erratic, irregular and unfamiliar behaviors that would be exhibited by unregulated services.
- It would be open to abuse by unscrupulous operators who could operate without restriction.
 - No need for pricing info
 - No need for contact info (how to complain, customer service, SP name)
 - No limit on quantity of messages (Victims could receive thousands of low price messages)
 - No way to exit a service (STOP is not required)
- Compliance with the licensing scheme would be undermined. Operators wishing to avoid licensing could disaggregate their services into multiple content components falling beneath the 20 cent threshold individually but cumulatively exceeding it.
- More expensive services can be implemented very easily using invisible low cost texts.

10 by 20 cent messages = 2 euro. (and no Rules to Obey)

The business case for an unscrupulous operator to move to this model is compelling!

Question 2 (Re-Should Comreg Regulate Services)

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

Links

[Table of Contents](#)

Modeva Position

Yes. It would be unfair to other service providers if one class of service received positive discrimination. We don't take issue with regulation as long as it is fair, transparent, stable and does not restrict consumer choice or behavior in any way.

We support the industry view that this area needs to be studied by Comreg first before any options can be considered.

We reiterate our position that the false assertions presented by Comreg in section 9 demonstrate that Comreg do not have the information needed to understand the market at present. We strongly state our position again.

- Establish an effective and globally enforced complaints handling process which allows the service providers to give descent effective customer service to their customers.
- Establish an information campaign for public awareness about the PRS industry and the complaint handling process using an advertised dedicated website, printed information about the website on phone bills, information on prepaid top up acknowledgments etc.
- Enforce the existing Code of Practice as it stands in conjunction with the new complaint handling process for a period of at least 1 year.
- Use the new complaint handling process to accurately measure and paint a picture of the industry
- Establish an Industry working group after 1 year to assess the results of the year
- If change is considered necessary following analysis of the year then enter the consultation process at that time.

Question 3 (Re-Should Comreg Regulate Sexual Services)

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

Links

[Table of Contents](#)

Modeva Position

Yes. It would be unfair to other service providers if one class of service received positive discrimination. We don't take issue with regulation as long as it is fair, transparent, stable and does not restrict consumer choice or behavior in any way.

We support the industry view that this area needs to be studied by Comreg first before any options can be considered.

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- Use the new complaint handling process to accurately measure and paint a picture of the industry
- Establish an Industry working group after 1 year to assess the results of the year

- If change is considered necessary following analysis of the year then enter the consultation process at that time.

Question 4 (Re-Should Comreg Regulate Competition Services)

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

Links

[Table of Contents](#)

Modeva Position

Yes. It would be unfair to other service providers if one class of service received positive discrimination. We don't take issue with regulation as long as it is fair, transparent, stable and does not restrict consumer choice or behavior in any way.

We support the industry view that this area needs to be studied by Comreg first before any options can be considered.

Note: We believe competition services represent a much larger share of the industry than Comreg have suggested (14.65%) Our figures show that competition services make up almost 25% of the market in Ireland.

The national appetite for competition services is huge and their importance has not been recognized by Comreg specifically when it threatens to discriminate against them in section 9.

We reiterate our position that the false assertions presented by Comreg in section 9 demonstrate that Comreg do not have the information needed to understand the market at present. We strongly state our position again.

- Establish an effective and globally enforced complaints handling process which allows the service providers to give descent effective customer service to their customers.
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- Establish an information campaign for public awareness about the PRS industry and the complaint handling process using an advertised dedicated website, printed information about the website on phone bills, information on prepaid top up acknowledgments etc.
- Enforce the existing Code of Practice as it stands in conjunction with the new complaint handling process for a period of at least 1 year.
- Use the new complaint handling process to accurately measure and paint a picture of the industry
- Establish an Industry working group after 1 year to assess the results of the year
- If change is considered necessary following analysis of the year then enter the consultation process at that time.

Question 5 (Re-Should Comreg Regulate Children's Services)

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

Links

[Table of Contents](#)

Modeva Position

Yes. It would be unfair to other service providers if one class of service received positive discrimination. We don't take issue with regulation as long as it is fair, transparent, stable and does not restrict consumer choice or behavior in any way.

We support the industry view that this area needs to be studied by Comreg first before any options can be considered.

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- Enforce the existing Code of Practice as it stands in conjunction with the new complaint handling process for a period of at least 1 year.
- Use the new complaint handling process to accurately measure and paint a picture of the industry
- Establish an Industry working group after 1 year to assess the results of the year
- If change is considered necessary following analysis of the year then enter the consultation process at that time.

Question 6 (Re-Should Comreg Regulate Charitable Services)

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

Links

[Table of Contents](#)

Modeva Position

Yes. It would be unfair to other service providers if one class of service received positive discrimination. We don't take issue with regulation as long as it is fair, transparent, stable and does not restrict consumer choice or behavior in any way.

We support the industry view that this area needs to be studied by Comreg first before any options can be considered.

We reiterate our position that the false assertions presented by Comreg in section 9 demonstrate that Comreg do not have the information needed to understand the market at present. We strongly state our position again.

- Establish an effective and globally enforced complaints handling process which allows the service providers to give decent effective customer service to their customers.

- Establish an information campaign for public awareness about the PRS industry and the complaint handling process using an advertised dedicated website, printed information about the website on phone bills, information on prepaid top up acknowledgments etc.
- Establish an industry working group to assess the issues raised.
- Enforce the existing Code of Practice as it stands in conjunction with the new complaint handling process for a period of at least 1 year.
- Use the new complaint handling process to accurately measure and paint a picture of the industry
- Establish an Industry working group after 1 year to assess the results of the year
- If change is considered necessary following analysis of the year then enter the consultation process at that time.

Question 7 (Re-Should Comreg Regulate Internet Dialer Software)

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

Links

[Table of Contents](#)

Modeva Position

Yes. It would be unfair to other service providers if one class of service received positive discrimination. We don't take issue with regulation as long as it is fair, transparent, stable and does not restrict consumer choice or behavior in any way.

We support the industry view that this area needs to be studied by Comreg first before any options can be considered.

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- Establish an effective and globally enforced complaints handling process which allows the service providers to give descent effective customer service to their customers.
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- Enforce the existing Code of Practice as it stands in conjunction with the new complaint handling process for a period of at least 1 year.
- Use the new complaint handling process to accurately measure and paint a picture of the industry
- Establish an Industry working group after 1 year to assess the results of the year
- If change is considered necessary following analysis of the year then enter the consultation process at that time.

Question 8 (Re-Should Comreg Regulate Virtual Chat and Dating Services)

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

Links

[Table of Contents](#)

Modeva Position

Yes. It would be unfair to other service providers if one class of service received positive discrimination. We don't take issue with regulation as long as it is fair, transparent, stable and does not restrict consumer choice or behavior in any way.

We support the industry view that this area needs to be studied by Comreg first before any options can be considered.

We reiterate our position that the false assertions presented by Comreg in section 9 demonstrate that Comreg do not have the information needed to understand the market at present. We strongly state our position again.

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- Use the new complaint handling process to accurately measure and paint a picture of the industry
- Establish an Industry working group after 1 year to assess the results of the year
- If change is considered necessary following analysis of the year then enter the consultation process at that time.

Question 9 (Re-Should Comreg Regulate Pay for Product Services)

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

Links

[Table of Contents](#)

Modeva Position

Yes. It would be unfair to other service providers if one class of service received positive discrimination. We don't take issue with regulation as long as it is fair, transparent, stable and does not restrict consumer choice or behavior in any way.

We support the industry view that this area needs to be studied by Comreg first before any options can be considered.

We reiterate our position that the false assertions presented by Comreg in section 9 demonstrate that Comreg do not have the information needed to understand the market at present. We strongly state our position again.

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- Use the new complaint handling process to accurately measure and paint a picture of the industry
- Establish an Industry working group after 1 year to assess the results of the year

- If change is considered necessary following analysis of the year then enter the consultation process at that time.

Question 10 (Re-Should Comreg Regulate MNO Portal Services)

Having due regard for the issues raised above, do you consider ComReg should regulate MNO's "on-portal" services as "Specified PRS"? 19

Links

[Table of Contents](#)

Modeva Position

Yes. It would be unfair to other service providers if one class of service received positive discrimination. We don't take issue with regulation as long as it is fair, transparent, stable and does not restrict consumer choice or behavior in any way.

We support the industry view that this area needs to be studied by Comreg first before any options can be considered.

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- Use the new complaint handling process to accurately measure and paint a picture of the industry
- Establish an Industry working group after 1 year to assess the results of the year
- If change is considered necessary following analysis of the year then enter the consultation process at that time.

Question 11(Re-Below 20 Cent Threshold Exemption)

"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?"

Links

[Table of Contents](#)

[Question 1](#)

Modeva Position

See our answer to [Question 1](#). We disagree with exempting any services which would fall under the new definition of PRS from regulation as long as other services are regulated.

Question 12 (Re-Should Comreg Regulate DQ Services as PRS)

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

Links

[Table of Contents](#)

Modeva Position

Yes. It would be unfair to other service providers if one class of service received positive discrimination. We don't take issue with regulation as long as it is fair, transparent, stable and does not restrict consumer choice or behavior in any way.

We support the industry view that this area needs to be studied by Comreg first before any options can be considered.

We reiterate our position that the false assertions presented by Comreg in section 9 demonstrate that Comreg do not have the information needed to understand the market at present. We strongly state our position again.

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- Enforce the existing Code of Practice as it stands in conjunction with the new complaint handling process for a period of at least 1 year.
- Use the new complaint handling process to accurately measure and paint a picture of the industry
- Establish an Industry working group after 1 year to assess the results of the year
- If change is considered necessary following analysis of the year then enter the consultation process at that time.

Question 13 (Re-Should DQ Costing Below Minimum Threshold be Exempt from Regulation)

Do you consider that DQ services, within their current remit, could be exempted from regulation, provided their cost is below the recommended price threshold?

Links

[Table of Contents](#)

Modeva Position

No

It would be unfair to other service providers if one class of service received positive discrimination. We don't take issue with regulation as long as it is fair, transparent, stable and does not restrict consumer choice or behavior in any way.

We support the industry view that this area needs to be studied by Comreg first before any options can be considered.

We reiterate our position that the false assertions presented by Comreg in section 9 demonstrate that Comreg do not have the information needed to understand the market at present. We strongly state our position again.

- Establish an effective and globally enforced complaints handling process which allows the service providers to give descent effective customer service to their customers.
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- Use the new complaint handling process to accurately measure and paint a picture of the industry
- Establish an Industry working group after 1 year to assess the results of the year
- If change is considered necessary following analysis of the year then enter the consultation process at that time.

Question 14 (Re-Should the Remit of DQ Services be Expanded)

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?

Links

[Table of Contents](#)

Modeva Position

No

Modeva feels that DQ services should be regulated by Comreg but DQ services need to be catagorised differently as they have some unique circumstances and attributes over other services:

- DQ operates with 5 digit short codes
- Decades of DQ have engrained the public to perceive them as inexpensive since pricing information has rarely if ever been displayed on advertising. People don't realize they are expensive.

This gives an unfair market advantage to DQ providers should they be allowed to offer content services to their captive audiences.

Modeva strongly feels that they should not.

Question 15 (Re-Is it Unfair to SP's to Expand the Remit of DQ Services)

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?

Links

[Table of Contents](#)

Modeva Position

See question 14 above.

Question 16 (Re-Should the Remit of DQ Services Expand for Specific Prior Approved Information Services)

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?

Links

[Table of Contents](#)

Modeva Position

See question 14 above

Question 17 (Re-Should Double Opt-In Apply to Subscription Services)

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

Context

See [Section 3](#) of this document. Comreg has made a number of ill founded assertions based on false assumptions. These assumptions have lead Comreg to believe that the current Code of Practice is not adequate to protect consumer interests in the PRS industry.

This has led Comreg to suggest that change is needed to the Code of Practice. They have suggested 3 radical and severely damaging measures:

- Double Opt-in
- Prohibition of MT Billing
- Discrimination against Ringtone and Competition Services

We proved in Section 3 that the existing regulations are more than adequate to protect consumer interests in all of the instances that Comreg put forward. We identified that there exists 2 core problems which have falsely led Comreg to believe that the regulations are deficient:

- Failure to enforce the existing regulations
- Erroneous and damaging complaint handling procedure in Regtel

Links

[Table of Contents](#)

[Section 3](#)

Modeva Position

Modeva’s position is simple:

- No change is needed to the Code of Practice and double Opt-in should not be introduced where there is not significant scale of risk to the consumer. Any consideration of Double Opt-in should only target services where the level of potential consumer damage is very high. (Extremely expensive services)
- Double Opt-in is undermines the sales process given the demands of SMS as a medium and renders services economically unviable. (See below where this is demonstrated)
- Comreg should introduce an effective and measurable complaint handling procedure immediately
- Establish an industry working group to assess the issues raised.
- Comreg should introduce a public web site dedicated to providing consumer awareness about PRS services such as www.phonebrain.org.uk as soon as possible
- Comreg should enforce the existing regulations properly for a period of at least 1 year and use the new complaint handling procedure to measure accurately the true picture of the industry

- If after 1 year if the picture painted indicates need for change Comreg should run an industry working group prior to running a consultation on change.

Multi Stage Service Entry Trials

Modeva has a very experienced and talented sales and marketing team. We undertake all of our own TV, Web and Creative production in house. The leadership of this team has an in-depth knowledge of the sales process for SMS services and an acute understanding of user sensibilities regarding the medium of SMS.

This team is absolutely insistent that Double Opt-in would render SMS subscription services economically unviable. We have trialed multi stage entry into **non-subscription** text services in the past and found them to be untenable because:

Users find texting reasonably cumbersome. They struggle a little with small keyboards, T9 predictive text or not. This is evidenced by the emergence of an SMS slang or shorthand culture which we see globally especially in young people who are particularly adept and knowledgeable in the use of text services and technology. However the small keyboard and other factors are a deterrent. They require effort.

Its enough to ask the user to type one message to gain entry to a service. When they were asked in the trials to type a 2nd message before receiving their content the fall off rate was dramatic and rendered the products unviable. We tried this in many classes of services always with the same results.

For example we trialed a Horoscope service where users began by sending a key word to initiate the dialogue. The service responded and asked them to reply with their date of birth. This proved to be more effort than the user was prepared to engage in.

When we converted the service to single stage setup it proved successful and generated good repeat business from users proving the demand for the service while at the same time proving that 2 stage entry is simply not tenable.

Note once again for the record that these were non-subscription services which we trialed.

Double Opt-in Confuses and Frightens Customers

Given the knowledge we have about multi stage service entry even for non-subscription services we have very real concerns about asking a user to respond positively to a text message which is contractual in appearance. Advice from our marketing leadership is that this would dupe the user into believing they were signing up for much more than the actual commitments of the service. They would become intimidated and back off.

Such messages we believe would confuse the user into believing there were small print style terms and conditions which committed them to much more than was actually being stated.

Our concerns about this are very real indeed. Compound this with the lessons learnt about multi stage service entry ([above](#)) and it obvious that Double Opt-in is as good as Prohibition.

Indiscriminate Nature of Double Opt-in

We demonstrated in [Section 3](#) that the circumstances which Comreg is trying to remedy using potentially Double Opt-in do not exist. In fact the issues are

- Failure to enforce the existing regulations
- Erroneous and damaging complaint handling procedure in Regtel

The failure to enforce the existing regulations does mean that there are potentially services which are operating outside the rules.

Double Opt-in will do nothing to bring these services into line. Instead it will slam all service providers including those who are running perfectly compliant services. Double Opt-in will close down good and bad services alike.

Note: Without proper enforcement rogue service providers will continue operating outside the rules (including the new Double Opt-in rule) and compliant services providers will be forced to break the rules simply to survive.

Ergo the solution is to enforce the existing rules properly.

Minimum Thresholds for Double Opt-in

Modeva is aware that some of the compliant service providers may suggest that if Double Opt-in is to be introduced there should be minimum weekly spend threshold before a service is required to use Double Opt-in.

Comreg is considering this measure in the context of consumer protection. Modeva points out the where the service is low recurring cost (below 10 euro weekly) for example there is not significant risk of consumer harm.

In this context we point out the following which is provided for in the Code of Practice:

- All advertising material must carry full pricing information including recurring cost and frequency.
- When a consumer signs up they must receive a clear free message informing them
 - How to exit ("STOP" command)
 - Pricing and recurring charge
- Every time their spend accumulates by another 20 euro they receive free message informing them of this and again telling them how to exit.

Consumers can exit easily at anytime provided the service complies with the Code of Practice.

It is clear there is adequate protection for consumers within the Code of Practice. It might be considered by Comreg that any measures which they introduce should be proportional to the level of threat to the consumer. Given that the consumer is already very well protected in services that comply with the Code of Practice it would be disproportionate to consider Double Opt-in for services where the financial consideration or threat to the consumer was not great.

In the UK Double Opt-in was introduced with a minimum weekly threshold of £4.50 sterling. The effect of this was reduction in industry revenues by 70% and in fact today no services operate above the £4.50 weekly threshold. This proves our case that double Opt-in renders services uneconomically viable purely as a consequence of the nature of SMS as a Medium.

Impact of Double Opt-in

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Previous Investment

Service Providers who develop their own software like Modeva have spent many millions of euro and many man years designing, engineering and developing these services to:

- Integrate with the MNO's according to the SMPP architecture
- To ensure the service operates in compliance with the PRS Code of Practice
 - Signup and Sales process
 - Regulatory Signup messages
 - Spend warning messages
 - Spend tracking
 - Customer service screens
 - Etc etc.

Every time there has been a change in the regulatory process, even if the change is apparently minor it has cost us in Modeva hundreds of man programming hours, staff retraining and we have had to write off thousand of hours of developer time for the previous versions of the services which are rendered incompliant by the change.

These costs are absorbed solely by the service provider. The regulator to date has never considered them and does not account for them.

Comreg must bear in mind that implementing Double Opt-in even with a threshold which preserved some amount of business would propagate these costs and write off thousands of man hours of previous development work.

Conclusion

Modeva's position on double Opt-in.

- No change is needed to the Code of Practice and double Opt-in should not be introduced where there is not significant scale of risk to the consumer. Any consideration of Double Opt-in should only target services where the level of potential consumer damage is very high. Consumers are already well protect by the Code of Practice which should be enforced properly.
- Double Opt-in is equivalent to Prohibition of services and will devastate Modeva and the industry.
- Comreg should introduce an effective and measurable complaint handling procedure immediately
- Comreg should introduce a public web site dedicated to providing consumer awareness about PRS services such as www.phonebrain.org.uk soon as possible
- Comreg should enforce the existing regulations properly for a period of at least 1 year and use the new complaint handling procedure to measure accurately the true picture of the industry
- If after 1 year if the picture painted indicates need for change Comreg should run an industry working group prior to running a consultation on change.

Question 18 (Re-Should MT Billing be Banned and Should Comreg be Allowed to Discriminate Against Specific Services)

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

Links

[Table of Contents](#)
[Section 3](#)

Context

See [Section 3](#) of this document. Comreg has made a number of ill founded assertions based on false assumptions. These assumptions have lead Comreg to believe that the current Code of Practice is not adequate to protect consumer interests in the PRS industry.

This has led Comreg to suggest that change is needed to the Code of Practice. They have suggested 3 radical and severely damaging measures:

- Double Opt-in
- Prohibition of MT Billing
- Discrimination against Ringtone and Competition Services

We proved in Section 3 that the existing regulations are more than adequate to protect consumer interests in all of the instances that Comreg put forward. We identified that there exists 2 core problems which have falsely led Comreg to believe that the regulations are deficient:

- Failure to enforce the existing regulations
- Erroneous and damaging complaint handling procedure in Regtel

Modeva Position

Modeva's position is simple:

- No Change is needed to the regulations at this stage..
- Banning MT billing is equivalent to banning subscription services as MO billing is not a viable alternative.
- Deliberate discrimination by a regulator based on subjective opinion or any other means is not acceptable and will not stand up in any arena.
- Discrimination will deter future investment in Ireland in all markets including the newly broadened PRS definition which encompasses all of the traditional electronic content industry including Xbox Live, Sky TV, Amazon, Sony etc. Investment in these industries will also contract.
- Comreg should introduce an effective and measurable complaint handling procedure immediately
- Comreg should introduce a public web site dedicated to providing consumer awareness about PRS services such as phonebrain.org.uk as soon as possible
- Comreg should enforce the existing regulations properly for a period of at least 1 year and use the new complaint handling procedure to measure accurately the true picture of the industry
- If after 1 year if the picture painted indicates need for change Comreg should run an industry working group prior to running a consultation on change.

Prohibition of MT Billing and Discrimination based on Class of Service

I find it hard to believe that I am replying to a Comreg consultation which is putting forward the suggestion of prohibiting an entire electronic payment mechanism in the climate of modern day European Union. This is shocking.

If foreign investors wish to find any excuse not to invest in Ireland in any industry they need only to read this consultation document to realize the unstable behavior that Irish regulators are capable of exhibiting.

It should be noted that under European Communities (Directive 2000/31/EC) Regulations 2003 services cannot be subjectively restricted in manner being suggested by Comreg.

The concept of prohibition went out with the drinks prohibition in 1930's America. Is Comreg suggesting that modern Ireland steps back 3 generations.

Subscription Services Require MT Billing: MO Billing Cannot Work

There are several very good reasons why MO billing cannot be used as an alternative to MT billing for subscription services in general and very specifically not for competition services as set out below.

MO Undoes the Basic Reason d'etre for Subscription services.

MT billing is the SMS equivalent to direct debit. It is a perfectly legitimate form of e-payment and the natural way to allow the premium rate industry to compete with credit cards, DD's, standing orders and other e-payment methods used in subscription services worldwide. In [Section 3.1](#) above I set out the advantages to the consumer and the vendor alike of subscription based services.

A subscription service in any medium needs a suitable payment method to implement it. MT billing is ideally suited and in fact is the only viable payment method capable of implementing subscription service in the PRS industry.

The only other billing mechanism in PRS is MO billing. This model inherently breaks all of the core components of a subscription service as outlined in [Section 3.1](#) above. The fundamental value components provided by a subscription service to the user and vendor are:

- **Assurance: The consumer does not have to remember** to go get their "consumable". It is automatically scheduled. For example Subscription lottery services such as Modeva's BigSix mean the consumer never has to worry about forgetting to enter the lotto because they are always in with their chosen selection of numbers.

This also benefits the vendor because they can plan their delivery stream and manage their production and suppliers chains according to that plan.

- **Convenient Fulfillment: The consumer does not have to discommode themselves** to collect their "consumable" because it is delivered automatically. Extending the lotto example above the consumer not only removes the risk of forgetting to the lotto but they also avoid the inconvenience of leaving home to do it.

Once again this is also beneficial from a supplier planning perspective.

- **Convenient Payment: Invisible billing means consumer does not have to conduct financial transactions** every time they receive their "Consumable". For example they don't have to go to the post office every month to pay Sky-TV because its invisibly collected using DD. This is absolutely similar to MT billing for subscription models.

Again this is also beneficial to the vendor who does not have to employ huge resources conducting financial transactions with each delivery.

MO Billing defeats each of these. It cannot be made to work for a subscription service. It is exactly analogous to Sky TV being prohibited from collecting subscriptions by DD. They would be forced to call

each customer monthly and ask them to make a payment by wire transfer or send a cheque. It is preposterous to suggest that MO could be used to implement a subscription service.

In this analogy you must bear in mind the information Modeva learned in its multi stage entry trials for text services ([See above Question 17](#)) where we proved that consumers of text content have a tolerance limit for interactivity simply because the medium can be cumbersome to interact with (Small keyboards, T9 editing etc). Asking them to send more than one message just to communicate with the service is more than they are prepared to tolerate. If Sky were to resort to contacting the customers monthly seeking payment they would fast lose their customer base.

MO Billing is Applied Immediately and Irreversibly.

If competitions use MO-Payment the consumer will be billed upon sending their entry even though the competition may be closed. With MT the service provider can send a free message to the consumer informing them that the competition is closed. A similar issue exists for TV voting where the vote has closed. MT-billing is considerably more suitable for such services.

MO Billing Would Require Massive Irreversible Front Loaded Payments

As suggested in the consultation to use MO billing in an attempt establish a subscription service the consumer would have to prepay for a series of content deliveries otherwise the basic reasons for subscription would be undermined:

- No need to remember
- Automatic delivery without user effort
- No need to conduct a financial transaction for each deliver
- Ability to schedule payments ahead and help manage budgets.

The only way MO could be used as a prepayment mechanism would be to establish a high Tariff price band 10, 20, 30 euro or more. There are major risks and draw backs associated with this

- Customers would be billed even if the keyword they sent was un-recognised and could not be processed. Each further attempt would be billed at €10 or €20 per message even though no content could be provided. Currently SPs can respond with a free error message and therefore the consumer is not billed for content they did not receive
- SMS traffic is subject to network latency or long delays before messages are delivered. This is very common. Impatient users awaiting confirmation of their entry might repeat transmit incurring heavy upfront charges on each occasion.
- It would cost the user €10 or €20 just to send STOP and exit the service. This is not the case with MT billed services.
- Customers attempting to purchase content that was no longer available would incur the full high tariff charge. This is not the case with MT billed services when they can be sent a free message telling them the offer is closed.
- Front loaded billing would be extremely unattractive to users and virtually impossible to sell. In any case users with prepaid phones would not have enough credit to subscribe for text base services given the need for front loading. In MT users can spread their payments in an easy to manage package where smaller payments are made automatically with delivery.
- Unscrupulous service providers could abuse consumers taking advantage of the fron loaded billing and expensive exit mechanism without ver having deliver any content.

MT Billing is an Absolute Requirement to Implement Subscription Services

Should MT Billing be Permitted only for Certain Class of Services?

It is shocking that an Irish national regulator suggested Prohibition of a legitimate e-payment method which is accepted and used worldwide. At least this suggestion was indiscriminate in the sense that it was proposed for the entire premium rate industry across all services.

It is far worse to hear the word “Prohibition” uttered by an Irish regulator in the same sentence that asks us to consider open discrimination.

Fundamental Questions

- How does Comreg intend to implement this discrimination?
- Do they intend to keep a subjective list of services that they will actively discriminate against?
- How will services be added to this list?
- How will services avoid getting added to this list?
- How will services be removed from this list?
- Who will make the decisions?
- What are the criteria for discrimination?

What business investor could consider investing in an industry where the regulator maintained such a list? What assurance would Comreg give them that their business would not be added at a later date based on some unknown subjective criteria.

The suggestion by Comreg is indefensible and would not stand up in any arena.

Impact of Prohibition

[Confidential Text Removed]

Conclusion

I reiterate the Modeva Position

- No Change is needed to the regulations at this stage..
- Banning MT billing is equivalent to banning subscription services as MO billing is not a viable alternative.
- Deliberate discrimination by a regulator based on subjective opinion or any other means is not acceptable and will not stand up in any arena.
- Discrimination will deter future investment in Ireland in all markets including the newly broadened PRS definition which encompasses all of the traditional electronic content industry including Xbox Live, Sky TV, Amazon, Sony etc. Investment in these industries will also contract.
- Comreg should introduce an effective and measurable complaint handling procedure immediately
- Comreg should introduce a public web site dedicated to providing consumer awareness about PRS services such as phonebrain.org.uk as soon as possible
- Comreg should enforce the existing regulations properly for a period of at least 1 year and use the new complaint handling procedure to measure accurately the true picture of the industry
- If after 1 year if the picture painted indicates need for change Comreg should run an industry working group prior to running a consultation on change.

Question 19 (Re-Should Invisible Reverse Billed SMS Messages be Banned)

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

Links

[Table of Contents](#)

Modeva Position

No

These are a legitimate form of e-commerce exactly analogous to DD (Direct Debit) which is inherently reverse billed. Deirect Debit customers are only aware of it when they see their bank statement which in some cases is bi-annual or annual.

If there are issues surrounding reverse billed SMS then these should be investigated, understood and then fair, reasonable rules introduced to address specifically those issues.

It is very worrying to see Comreg speaking about PROHIBITION yet again in this consultation. Service providers have every right to compete on an equal footing with content providers who charge using DD and other means.

We reiterate our position that the false assertions presented by Comreg in section 9 demonstrate that Comreg do not have the information needed to understand the market at present. We strongly state our position again.

- Establish an effective and globally enforced complaints handling process which allows the service providers to give descent effective customer service to their customers.
- Establish an industry working group to assess the issues raised.
- Establish an information campaign for public awareness about the PRS industry and the complaint handling process using an advertised dedicated website, printed information about the website on phone bills, information on prepaid top up acknowledgments etc.
- Enforce the existing Code of Practice as it stands in conjunction with the new complaint handling process for a period of at least 1 year.
- Use the new complaint handling process to accurately measure and paint a picture of the industry
- Establish an Industry working group after 1 year to assess the results of the year
- If change is considered necessary following analysis of the year then enter the consultation process at that time.

Question 20 (Re-Should Comreg Ban Storing Up Chargeable SMS Messages)

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

Links

[Table of Contents](#)

Modeva Position

No

SMS is not a completely reliable transmission medium. Phones come in an out of coverage, batteries go flat, people forget to Top Up etc.

In circumstances where service provider is scheduled to deliver content and credit is available it is right and proper that the service provider try again later if that content could not be delivered for whatever reason.

Once again this is directly analogous to direct debits (DD's) which are stored up if the bank balance did not have enough credit to pay them on the first attempt.

This is normal practice. The user has committed to pay and the provider has committed to deliver. In the case of SMS subscription services it is extremely easy for the user to back out of the service at any time simply by sending STOP.

Once again Comreg have suggested PROHIBITION as a measure to control a perceived problem. If there is a problem it should be specified, then quantified and specific solutions proposed for those parts of the service that cause problems if necessary.

The issue has not been specified or quantified by Comreg.

We reiterate our position that the false assertions presented by Comreg in section 9 demonstrate that Comreg do not have the information needed to understand the market at present. We strongly state our position again.

- Establish an effective and globally enforced complaints handling process which allows the service providers to give descent effective customer service to their customers.
- Establish an industry working group to assess the issues raised.
- Establish an information campaign for public awareness about the PRS industry and the complaint handling process using an advertised dedicated website, printed information about the website on phone bills, information on prepaid top up acknowledgments etc.
- Enforce the existing Code of Practice as it stands in conjunction with the new complaint handling process for a period of at least 1 year.
- Use the new complaint handling process to accurately measure and paint a picture of the industry
- Establish an Industry working group after 1 year to assess the results of the year
- If change is considered necessary following analysis of the year then enter the consultation process at that time.

Question 21 (Re-Should Premium Rate Opt-Out be Offered to MNO Customers)

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?

Links

[Table of Contents](#)

Modeva Position

Yes.

Note: Customers already have the option to block either their landline or mobile from PRS voice calls. It makes sense for them to be able to block them from PRS text services also.

This measure is extremely useful for enabling parent control. We support it.

NB

This is very important.

When considering this measure Comreg should be sure that the introduction of this measure cannot result it being interpreted backwards whereby an operator fixed or mobile is free to automatically opt all phones out of PRS and require users to Opt-in.

This would devastate the industry and remove user choice.

We reiterate our position that the false assertions presented by Comreg in section 9 demonstrate that Comreg do not have the information needed to understand the market at present. We strongly state our position again.

- Establish an effective and globally enforced complaints handling process which allows the service providers to give descent effective customer service to their customers.
- Establish an industry working group to address the issues raised.
- Establish an information campaign for public awareness about the PRS industry and the complaint handling process using an advertised dedicated website, printed information about the website on phone bills, information on prepaid top up acknowledgments etc.
- Enforce the existing Code of Practice as it stands in conjunction with the new complaint handling process for a period of at least 1 year.
- Use the new complaint handling process to accurately measure and paint a picture of the industry
- Establish an Industry working group after 1 year to assess the results of the year
- If change is considered necessary following analysis of the year then enter the consultation process at that time.

Question 22 (Re-Should Comreg be Allowed to Discriminate Against Specific Classes of Subscription Services)

“Should ComReg restrict the class, or type, of service that can operate a subscription payment model?”

Links

[Table of Contents](#)

[Section 3](#)

[Question 18](#)

Please read our response to [question 18 above](#) for detail. We have stated the Modeva position on this issue and vital contextual information also. This question appears to be restating the later part of question 18 and for the sake of efficiency we refer you to question 18 above.

Context

See [Section 3](#) of this document. Comreg has made a number of ill founded assertions based on false assumptions. These assumptions have lead Comreg to believe that the current Code of Practice is not adequate to protect consumer interests in the PRS industry.

This has led Comreg to suggest that change is needed to the Code of Practice. They have suggested 3 radical and severely damaging measures:

- Double Opt-in
- Prohibition of MT Billing
- Discrimination against Ringtone and Competition Services

We proved in Section 3 that the existing regulations are more than adequate to protect consumer interests in all of the instances that Comreg put forward. We identified that there exists 2 core problems which have falsely led Comreg to believe that the regulations are deficient:

- Failure to enforce the existing regulations
- Erroneous and damaging complaint handling procedure in Regtel

Modeva Position

Modeva's position is simple:

- No Change is needed to the regulations at this stage..
- Deliberate discrimination by a regulator based on subjective opinion or any other means is not acceptable and will not stand up in any arena.
- Discrimination will deter future investment in Ireland in all markets including the newly broadened PRS definition which encompasses all of the traditional electronic content industry including Xbox Live, Sky TV, Amazon, Sony etc. Investment in these industries will also contract.
- Comreg should introduce an effective and measurable complaint handling procedure immediately
- Establish an industry working group to assess the issues raised.
- Comreg should introduce a public web site dedicated to providing consumer awareness about PRS services such as www.phonebrain.or.uk as soon as possible
- Comreg should enforce the existing regulations properly for a period of at least 1 year and use the new complaint handling procedure to measure accurately the true picture of the industry
- If after 1 year if the picture painted indicates need for change Comreg should run an industry working group prior to running a consultation on change.

Question 23 (Re-Should SIM Expiry Propagate Termination of a Subscription)

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?

Links

[Table of Contents](#)

Modeva Position

Logically it should.

Practically it cannot.

In reality there is no point in trying generate legislation or responsibility onto the service provider to know when a SIM has been expired by a mobile operator.

Logically if a mobile operator expires a SIM they should notify all service providers that this SIM has been expired. The service provider can then remove the SIM from the service.

It is impractical to try and implement this any other way.

We reiterate our position that the false assertions presented by Comreg in section 9 demonstrate that Comreg do not have the information needed to understand the market at present. We strongly state our position again.

- Establish an effective and globally enforced complaints handling process which allows the service providers to give descent effective customer service to their customers.
- Establish an industry working group to assess the issues raised.
- Establish an information campaign for public awareness about the PRS industry and the complaint handling process using an advertised dedicated website, printed information about the website on phone bills, information on prepaid top up acknowledgments etc.
- Enforce the existing Code of Practice as it stands in conjunction with the new complaint handling process for a period of at least 1 year.
- Use the new complaint handling process to accurately measure and paint a picture of the industry
- Establish an Industry working group after 1 year to assess the results of the year
- If change is considered necessary following analysis of the year then enter the consultation process at that time.

35 National Disability Authority (“NDA”)



Submission

to

ComReg Consultation 10/27

on

Scope of Premium Rate Services Regulation

15 May 2010

Introductory Remarks

The National Disability Authority (NDA) welcomes the opportunity to make a submission to ComReg on its consultation document regarding the Scope of Premium Rate Services Regulation. The NDA, as the lead state agency on disability issues in Ireland, is making this submission within its remit on disability issues and universal design.

Premium Rate Services (PRS) can play an important role in providing people with access to a host of services from entertainment to weather forecasts and sports results as well as delivering a range of public information services. Such services have the potential to enhance the quality of life for people with disabilities, for example Census 2006 showed about 120,000 persons having difficulty leaving their homes alone. For people, who are confined to their homes, having access to certain services through telecommunications may be of benefit to them, providing that such services are appropriately regulated. In addition, it is critical that all charges pertaining to such services are available "up front" in a clear and transparent way, so that people know and can understand the charges that are applying to any Premium Rate Service. In this way, people with disabilities and older people can make informed choices about using such services.

ComReg in making regulations for Specified Premium Rate Services should have regard for potential vulnerable consumers across the age spectrum from children to older people but also in terms of peoples capacity to understand and comprehend information and/or how a particular Premium Rate Service operates. Some people because of the nature of their disability, for example, a person with an intellectual disability or an acquired brain injury or a person with a mental health difficulty who could be particularly vulnerable to compulsive behaviours, should be protected through regulations that reasonably provide for "opt in" and "opt out" facilities in relation to these services.

The NDA would also recommend that when it comes to the development of guidelines to support the regulatory framework, that consideration be given to a voluntary compliance, in the first instance, of Specified Premium Rate Service Providers making all information pertaining to such services, available in accessible formats and that related media such as websites should be compliant with international best practice. The current recommended international standard regarding web accessibility is WCAG 2.0. (See guidance on this from NDA's Centre for Excellence in Universal Design www.universaldesign.ie).

The NDA are happy to continue the constructive working relationship with ComReg and to provide advice and support if required.

Consultation Questions

The NDA makes the following responses in regards to the specific 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?

The NDA supports this preliminary view of ComReg and that this is a proportionate price threshold. The NDA would also support the view that cost alone would not be the sole determining factor regarding the regulation of these services and that other determinants would also apply such as potential harm to consumers; the type or nature of the service and compliance with other laws.

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

The NDA supports the view that live services should be regulated in order to prevent such services from charging excessively or people being unaware of charges being accrued to an account etc.

The NDA would recommend that live services providing advice and information of a professional nature such as legal, financial, medical etc must provide accurate information regarding the identity, status and qualifications of the individual or organisation providing such services and that these are readily available in accessible formats to the consumer.

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

The NDA would support this approach particularly in relation to minors. NDA would also highlight the particular issue of people who have the chronological age of adults but may lack mental capacity to understand fully what the service is offering, the costs and any related notifications pertaining to such services and therefore could be subject to exploitation and/or targeting by such services.

The NDA welcomes the proposed approach by ComReg both in terms of regulation and also engaging with the industry to identify a classification framework for content and thus ensuring a robust approach to applying standards for the industry in this regards.

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

The NDA notes that Competition Services are an important category for Premium Rate Services accounting for 14.65% of revenue. The NDA also notes that such services can result in significant charges because of the use of higher rate premium numbers; lack of clarity around recurring charges for entering competitions; time spent accessing a competition line etc.

As highlighted in the Introductory remarks in this submission, there are some consumers who may be particularly vulnerable with such services. In addition, there are over 200,000 people in receipt of disability related payments of €196 per week. As a result, they may run the risk of accumulating bad debt because the information supplied regarding the terms and conditions of competitions is not understood and or presented in a way that is not transparent. It is critical that such competitions are fair, the cost of participation is transparent and that harm to consumers is minimal. NDA would support the regulation of Competition Services.

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

The NDA would support ComReg's view that services aimed at children, irrespective of price, should be regulated. The NDA also is of the view that spend limits should be considered in such regulation.

This would reduce consumer harm risk to children with disabilities, who like other children (under 18 years of age) may not read or readily understand terms and conditions that are applying to such services; may not realise the importance of personal data protection or may accumulate bad debt for others like parents/guardians as bill-payers.

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

The NDA would support the principle that donations intended for charities etc should go to charities and therefore there is a need for regulating such donations that are made using premium service rate so that there is public trust in such systems of making donations.

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

The NDA notes the reducing risk of "dialler hijacking" with the advent of "always on" broadband and also the emerging risk with new technologies of "malware" and hijacking of mobile phone software resulting in potential significant costs to consumers. Therefore, NDA would support the case for retaining an explicit duty to regulate Premium Rate Services in this area.

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

The NDA would support ComReg's view that contacting and dating services that use phone- payment should be regulated considering the potential consumer harm when issues of cost, content and contact are combined.

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

The NDA would support the view of the need to develop a regulatory framework for these services that would complement existing consumer legislation with regards to purchase of goods etc.

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

As MNO's are defined and come within the scope of the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act, such "on- portal" services(over the proposed €0.20 price threshold) should have a regulatory framework that prevents consumer harm and provides an effective consumer redress system where harm has arisen.

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?

The NDA would support the approach outlined in the consultation document in this regards that certain categories below the €0.20 price threshold,, other than those distinct services listed by ComReg, would be exempted from regulation.

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

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?

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?

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?

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?.

With regards to Questions 12 - 16 relating to Directory Enquiries, the NDA is of the view that Directory Enquiries are an important service to people with disabilities and in particular to people who are blind and have vision impairments. This service for this sector is important not only in accessing telephone numbers but also in having such services provide a “call completion” to registered customers. Call completion is a vital service for a person who is blind or has a vision impairment.

The NDA notes that 118XX numbers have a readily established branding as a national and/or directory enquiry service. It would be important that if 118XX numbers were to be permitted to be used for other information provision that there is a system in place that ensures no diminution in the quality of directory services provided and that no additional costs would be incurred by the user in accessing directory enquiry service, if for example, that the user would now have to access a directory enquiry through an automated menu of information services etc.

The NDA would be supportive of the proposed approach outlined in Appendix C of the consultation document and thus guaranteeing that a credible telephone directory service lies at the core of all 118XX offerings.

The NDA would also be supportive of a quality of service monitoring system being introduced.

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

NDA notes the scale of complaints (56.5%) received by in 2009 by Reg Tel about how to unsubscribe from services and the international experience where there are similar statistics regarding consumers and subscription services.

NDA also notes that where "double opt in" has been introduced in other jurisdictions saw reductions in complaints in one year range from 50%-85%.

The NDA would be supportive of the introduction of a "double opt in" requirement particularly to safeguard vulnerable consumers, as previously outlined. It would also address related issues such as free of charge opt in services that subsequently impose charges on consumers once they have entered the service.

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?

NDA would suggest that ComReg work with the industry in establishing the range of services that are appropriate for reverse billing and establish an agreed framework for same which would include, inter alia, consumer protection measures such as options for renewing such methods of payment etc.

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

The NDA is not aware of any situations where "invisible" messages can be sent by Premium Services to mobile phones where the customer has no indication and or alert that they are the recipient of such messages. This particular practice is one that has significant potential to cause financial harm to consumers, particularly where people are using pre-paid mobiles and their credit is just being wiped out.

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

This should be prohibited as both children and vulnerable consumers can be at serious financial risk with this practice. A direct consequence is that people will not top up their phone because as soon as they do their credit can be taken and therefore could leave a person who relies on that phone as a means of contact because they are confined to their homes etc in a more vulnerable position.

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?

Consumers should have the option of barring premium calls or restricting access which is in line with the European Regulations whereby a consumer can request a telephone service provider to bar outgoing calls of a defined type in order to assist in the control of expenditure.

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

NDA would suggest that ComReg work with the relevant stakeholders in establishing the range of services that are appropriate for this subscription payment model and establish an agreed framework for same and for those that should be "once off" payments.

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?

NDA would support ComReg's recommendation in this regard.

36 Neill Roche

From: nroche **On Behalf Of** Neill Roche
Sent: 14 May 2010 12:21
To: retailconsult
Subject: Scope of Premium Rate Services regulation - ComReg 10/27

Hi

I believe that a consultation period for regulation of premium services is to end today so I thought I'd get in my own contribution as an Irish citizen, consumer and someone with a particular interest in IT.

IT and telecommunications are central to economic and commercial activity in the country. Convenient payment mechanisms for services must be responsibly allowed to evolve and grow rather than be crudely hindered. I would advise against a heavy handed approach to regulating the premium rate industry. Rather I would advise that before any decision is taken for tougher regulations that first very thorough research is conducted to evaluate the possible impact on all parties including the industry. I personally am very against knee-jerk responses by authorities, in response mostly to a media campaign, rather than in response to proper information collecting.

In conclusion I would like to see Comreg assume its new powers first and take a cautious approach to making any potentially harsh changes. It is in the interests of everyone not to damage an existing indigenous Irish industry, and for there to be a responsible, measured and consultative regulatory regime.

Please feel free to respond to this concerned citizen.

Thank you

Neill Roche

37 News International Advertisements (Ireland) Ltd.

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Bishop's Square
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14 May 2010

Ms. Michelle Townshend
The Commission for Communications Regulation
Irish Life Centre
Abbey Street
Dublin 1

Dear Ms. Townshend,

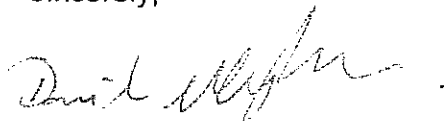
I am replying to your document and its proposals, which I have read in full and I would like to relay some concerns I have on certain sections.

I do appreciate that the consumer has to be protected and the 'cost and nature' of the PRS they subscribe to must be regulated. I would however object to the severity of some potential changes to the current T&C's. In particular, questions about double opt in and MT billing. As I understand it the ASA independently handle any consumer queries or complaints but to enforce SP's to send a second text for each and every subscription seems excessive and unnecessary. Another question suggests getting rid of MT billing and I fully agree this area needs to be closely monitored. I am also aware of a minority of SP's who misuse this option but surely an increase in how we monitor and discipline these companies would improve the situation rather than implementing a blanket ban?

We are of course concerned from a commercial standpoint about the potential loss of revenue but it is the certain and considerable job loss in the PRS sector which is most worrying. This will in due course have a knock on effect with further job cuts in advertising departments and buying agencies who service premium line companies.

I would conclude by saying that I do agree with much of the concerns detailed in the document and appreciate how difficult it must be to police every ad that appears in our papers, however we hope we can look after the long standing companies who adhere to your guidelines. I fully believe this can only be done by enforcing the current rules to the best of your abilities rather than enforcing new ones, which could have a crippling outcome for their business.

Sincerely,



David Monaghan
NGN Sales Manager

38 Office of the Data Protection Commissioner (“ODPC”)

"Scope of Premium Rate Services Regulation - ComReg 10/27"

Submission from the Office of the Data Protection Commissioner - April 2010

The Office of the Data Protection Commissioner (ODPC) welcomes the Consultation Paper (10/27) and the opportunity given by ComReg to make submissions.

Set out hereunder is the submission of the Office of the Data Protection Commissioner. We are confining our submission to those aspects of the Consultation Paper which, from the perspective of the Office, have a linkage to compliance with the Data Protection Acts 1988 & 2003 or SI 535 of 2003 (as amended).

Chapter 7: What services should be regulated?

Having regard to the potential data sharing issues which we have noted, the ODPC submits that ComReg should regulate MNO's "on-portal" services as 'Specified PRS.'

Chapter 8: Directory Enquiry (DQ) Services

The ODPC submits that ComReg should regulate Directory Enquiry services, within their current remit, as specified PRS. The ODPC considers that it is preferable to maintain the current clear focus of 118XX on strictly telecommunications directory services and that it should not be expanded to allow a diverse range of general information services. Where the general information services to be provided by such services involves either the processing of personal data or the sending of marketing messages/making of marketing calls, prior consent of the customer is required by law. On the basis of complaints received in the past by the ODPC in relation to issues around Directory Enquiry services, the provision of general information services to consumers who avail of DQ services tends to operate without the consent of those consumers and certain DQ services appear unable to provide a mechanism to consumers by which the consent issue can be addressed.

Chapter 9: Mobile Subscription Services

The ODPC does not disagree with the suggestion from ComReg that it should consider the introduction of a "double opt-in" requirement for entry into a mobile subscription service. Over the past number of years the ODPC has been inundated with complaints from the public concerning the entry of their mobile phone numbers into mobile subscription services apparently without their knowledge or consent. The introduction of a "double opt-in" requirement would assist in eliminating this problem for consumers. In particular, this requirement is essential where mobile phone numbers are entered into a mobile subscription service on the basis of an application made on a website or on the basis of contact details collected by means of cards handed out to individuals at promotional events, festivals, etc. The collection of mobile phone numbers by these means, or similar, is prone both to error and to the giving of false information on an intentional basis.

The ODPC further submits that an outright ban should be imposed on the further use of telephone numbers collected by means of a person entering a competition or availing of a service which is promoted via a radio or television advertisement. It is

the view of the ODPC that advertisements on such media do not afford consumers who respond to them an adequate opportunity to either understand or consider the terms and conditions which apply to the further use of their personal data (i.e. how and in what circumstances their phone number may be used in the future).

General

Telephone numbers of individual subscribers constitute personal data within the meaning of the Data Protection Acts, 1988 & 2003. Accordingly, the full range of responsibilities on data controllers which are set down in those Acts apply to the processing of telephone numbers by data controllers.

The ODPC stresses that the regulatory regime must be clear as to who the data controller of telephone subscriber data is in the area of premium rate services, given the potential multiplicity of players in the chain as well as the long-term issues in relation to the sharing of information contained in customer databases. Under Data Protection law, there can only be one data controller in these circumstances and it is critical that those companies engaged in any way in premium rate services delivery are clear as to who the data controller is. Needless to say, the identification of the data controller does not relieve the other players in the chain of their lawful obligations.

Office of the Data Protection Commissioner

29 April, 2010

39 Old Lane Ltd.

From: glennon.robert **On Behalf Of** Robert Glennon
Sent: 14 May 2010 15:22
To: retailconsult
Subject: A submission in support of the IPPSA

Comreg,

I am writing to express my strong support for the IPPSA's submission in relation to Comreg's consultation paper. Having worked in the industry for a number of years I have found the majority of industry players to be professional and ethical in their conduct. The current Comreg proposals appear to be a knee jerk reaction to the small number of rogue operators who have ignored regulations. In particular I take issue with Section 9 of the consultation document and fully support the IPPSA's position on this matter.

The current proposals are tantamount to the removal of services that the regulator feels the consumer does not require. It is damaging to competition and consumer choice as well as going completely against international best practice. Furthermore it would be detrimental to an industry at the forefront of Ireland's knowledge economy.

The mobile services industry is a dynamic industry employing large numbers of people. It requires effective regulation which increases consumer confidence and allows the industry to flourish. It is the duty of any regulator to promote best practice, protect consumers while allowing them to choose which products they wish to consume. It is imperative that Comreg take into consideration all aspects of the IPPSA's submission.

Kind Regards,

Robert Glennon
Director
Old Lane Limited
Cubetek

40 Ombudsman for Children

Mr. Shay O'Malley,
Director – Retail and Consumer Services
Commission for Communications Regulation
Abbey Court
Irish Life Centre
Lower Abbey Street
Dublin 1

18th May 2010

Dear Mr. O'Malley,

Thank you for your letter of 26th April 2010 requesting our observations on ComReg's Consultation Paper regarding the *Scope for Premium Rate Services regulation*. Given the change in legislation in 2010 and the new responsibilities outlined in the preamble of the consultation paper I welcome the opportunity to comment on the document as it may affect children.

As you may be aware the Ombudsman for Children's Office (OCO) is a statutory, independent office with a mandate to carry out three core functions:

- to provide an independent complaints and investigation handling service regarding actions by public bodies affecting children up to the age of eighteen;
- to actively promote children's rights, including through national participation, communication and education activities; and
- to conduct research, monitor law, policy, and practice, and provide advice to any Minister of the Government on any matter relating to the rights and welfare of children.

By way of interest, although we do not hold any investigatory role in this regard, we have received calls from concerned parents on some of the issues raised in your consultation paper. These include:

- receipt by children of unsolicited inappropriate messages, including of a sexual nature;
- losing of credit through premium rate messages, when a child does not understand or is unaware of terms and conditions;
- losing of credit through accessing ringtones, again in the absence of understanding that terms and conditions attach; and
- issues of data protection.

One of the key instruments I am obliged to communicate is that of the UN Convention on the Rights of the Child. Ratified by Ireland in 1992, the UNCRC recognises that children,



ombudsman
for children • do leanaí

by virtue of their age and stage of development, are more vulnerable and, as such, require special safeguards and care. Correspondingly, the UNCRC provides a comprehensive delineation of rights that all children and young people under 18 are entitled to. These rights include the right to privacy; the right to receive and impart information; the right to be protected from harmful information; and the right to protection from all forms of harm, abuse, maltreatment and exploitation. A key principle, which underpins and can facilitate the balancing of these and other rights set out in the UNCRC, is that the principle of best interests of the child should be a primary consideration in all actions and decisions concerning children.

While not best placed to comment with any expertise on the detail of the proposals set out in ComReg's Consultation Paper in relation to the scope for PRS regulation, I welcome the Paper's explicit recognition of children as a vulnerable group in this context and ComReg's corresponding interest in ensuring that future regulation of PRS provide adequate and appropriate protection for children and young people under 18 from any risk of harm or exploitation from the types and costs of particular PRS. In determining what services should be regulated it is good to see in particular that this is based on the potential for consumer harm, which of course in children is greater.

More specifically, and having regard to the rights and welfare of children and young people under 18, the OCO welcomes and supports ComReg's proposals to regulate as *'specified'* PRS:

- live services (Q.2., p.31);
- services of a sexual nature, irrespective of cost (Q.3. p.32);
- children's services, irrespective of cost (Q.5., p.33);
- virtual chat, contact and dating services, irrespective of cost (Q.8., p.35).

The OCO would also welcome any additional measures in respect of PRS as well as any measures relating to mobile subscription services that ComReg feel are required or merited. Given the growing targeting of children as consumers in this area it is important that a greater obligation of responsibility is placed on the service provider than the child.

I hope the above comments are helpful and I wish ComReg well in this important piece of work.

Yours sincerely,

Emily Logan
Ombudsman for Children

41 Phonovation

Submission on the Consultation Paper

Scope of Premium Rate Services



**Phonovation Ltd
Phonovation House
8 Clarinda Park North
Dun Laoghaire
Co Dublin**

<http://www.phonovation.com>

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.

Phonovation feel that a 25c price point may be more suitable on the condition that it is a once off and does not make up or is part of a subscription service.

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

Phonovation would agree that there is a requirement to regulate live services.

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

Phonovation would agree that there is a requirement to regulate adult services.

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

Phonovation would agree with the regulation of all competition services. Phonovation also believes that subscription based competitions should be prohibited. Unlike other competition models, there is absolutely no conceivable understanding as to why consumers would subscribe to such a service if they were made aware of the potential cost.

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

Phonovation agrees that all children's services across all price points should be regulated. The promotion of services targeted towards children especially on popular culture websites should be tightly regulated.

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

Phonovation agree that there is a need to regulate donations on PRS.

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

Phonovation would agree with the regulation of internet diallers, however with the penetration of broadband this comes less of a threat to consumers. There is a requirement to look at LAN services where the public can access online content by for as long as they are connected to a premium rate number.

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

Phonovation would agree with the requirement to regulate contact services and more emphasis should be placed on the authenticity of the adverts that appear both online and in print.

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

Phonovation would agree and there need to be clear definitions as to what is regarded as a "product".

Q.10 ComReg should regulate MNO's "on portal" services as "Specified PRS"?

Phonovation fully agree that MNO's portals should be regulated as we believe on-portal sites carry as much risk as any other. Any consumer complaints relating to the portal go directly to the MNO so there is no real proof that on-portal sites are in any way a lower risk to consumers. While this may be not a direct responsibility of ComReg, consideration must be given to the issue of unfair competition and the abuse of a dominant position in the cases of MNO's portal sites.

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 20c (€0.20) threshold.

Phonovation believes all PRS services should be regulated no matter the category or price point.

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

Phonovation has for some time believed that DQ services should come under the same regulation as PRS services.

Q.13. Do you consider that DQ services within their remit, could be exempted from regulation, provided their cost is below the recommended price threshold?

Some DQ provider state the call may be free however should the caller be connected to the enquired number the cost is always in excess of 20c. So the possible cost of the call is in excess of 20c hence the requirement to regulate DQ services.

Q.14. Do you consider that it 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?

DQ SP's should not be permitted to provide any form of information service apart from telecommunications directory services.

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 or does the option for them to provide DQ services mitigate this?

DQ SP's should not be permitted to provide any form of information service apart from telecommunications directory services.

Q.16. Do you think 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.

DQ SP's should not be permitted to provide any form of information service apart from telecommunications directory services.

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

See answer to Q.18

Q.18 Should ComReg prohibit the use of MT billing by PRS providers? Should MT billing be permitted only for certain types of services?

Phonovation believe that before consumers are billed for an MT message, they should be sent a free message which outlines the cost and nature of service. The consumer would need to accept the billed message by replying, if no reply is sent, the billed message should not be sent. In the instance of subscription services, this should be done for each billed message and not just acceptance to receive the charge for the amount of the subscription service.

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

Phonovation believe there is no justifiable reason why any service provider would find the need to send billed "invisible" messages.

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

Phonovation believe that no messages should be stored for more than a 48 hour period.

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

This option of call barring has been available to fixed line customers since 1988 and it should be implemented by the MNO's on an MO/MT basis.

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

Phonovation believe that majority of subscription services such as competition, mobile content and offers of free phone credit or free text messages run on this model should be prohibited. Information and alert services with a maximum of 60c should be permitted to continue as these cause little or no consumer harm.

The less effective action on subscription services would to compel SP's to send out a free message which outlines the cost and nature of service. The consumer would need to accept the billed message by replying, if no reply is sent, and then the billed message should not be sent. This should be done for each billed message on a subscription service and not just acceptance to receive the charge for the amount of the subscription service

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?

Phonovation agree with this recommendation.

42 Prismfax Services Ltd.

From: Mark Richardson
Sent: 14 May 2010 12:28
To: retailconsult
Subject: Scope of Premium Rate Services regulation - ComReg 10/27

Attention: Michelle Townshend

Dear Michelle

I would like to take this opportunity to respond to your consultation paper.

My company has built up a successful business offering competition services to consumers. Our business is run in a responsible manner in a regulated environment.

Our competition services are and will continue to be marketed and operated in a transparent and clear fashion. I am very concerned at the quite forceful suggestion in the consultation paper that both the MT and subscription PRS models might be banned.

I believe that it is very important that our market is effectively regulated in order to protect the consumer. However I feel that rather than banning MT and Subscription services which meet a proven consumer demand the priority should be to implement clear and effective enforcement of their marketing and operation.

The proposed licensing and penalties for the industry will I believe serve to deter rogue operators from setting up in Ireland

To this end I feel I can endorse the submission that has been made to you by the Irish Phone Paid Services Association.

Please do not hesitate to contact me if you have any questions.

Best Regards

Mark Richardson

Managing Director
Prism Fax Services Ltd.

43 Realm Communications Ltd.



**Consultation Submission to ComReg regarding
Scope of Premium Rate Services Regulation (Comreg 10/27)**

Submitted 14th May 2010

Realm Communications Ltd Submission on the ‘Scope of Premium Rate Services Regulation’

Contents

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?	Page 3
Q. 2. Do you agree with ComReg’s intention to regulate live services?	Page 5
Q. 3. Do you agree with ComReg’s intention to regulate PRS services of a sexual nature, irrespective of cost?	Page 5
Q. 4. Do you agree with ComReg’s intention to regulate competition services?	Page 5
Q. 5. Do you agree with ComReg’s intention to regulate children’s services, irrespective of cost?	Page 5
Q. 6. Do you agree with ComReg’s intention to regulate fundraising and charitable donations made through a PRS?	Page 6
Q. 7. Do you agree with ComReg’s intention to regulate internet dialler software, irrespective of unit cost?	Page 7
Q. 8. Do you agree with ComReg’s intention to regulate virtual chat, contact and dating services, irrespective of cost?	Page 7
Q. 9. Do you agree with ComReg’s intention to regulate pay-for-product services?	Page 7
Q. 10. Having due regard for the issues raised above, do you consider ComReg should regulate MNO’s “on-portal” services as “Specified PRS”?	Page 8
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?	Page 9
Q. 12. Do you consider that ComReg should regulate Directory Enquiry services, within their current remit, as <i>specified PRS</i> ?	Page 9
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?	Page 9
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 “ <i>general information services</i> ” and, therefore, become subject to PRS regulation?	Page 10
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?	Page 10
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?	Page 10
Prelude to question 17	Page 11
Q. 17. Should ComReg introduce a “double opt-in” requirement for entry into a mobile subscription service?	Page 13
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?	Page 15
Q. 19. Should ComReg prohibit the use of “invisible” reverse billed (MT) SMS by PRS providers?	Page 16
Q. 20. Should ComReg prohibit chargeable messages being “stored-up” for delayed sending, when a pre-pay account is out of credit?	Page 17
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?	Page 17
Q. 22. Should ComReg restrict the class, or type, of service that can operate a subscription payment model?	Page 18
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?	Page 19

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?

Realm does not agree with ComReg's preliminary view that a €0.20 threshold should be used to determine which services require licensing and regulation. We believe that any service where the cost is above the cost of communications carriage, should be regulated and licensed by ComReg. Whilst we take on board ComReg's suggestion that a low threshold reduces the chance of harm being caused to the Consumer, we do not feel that this risk constitutes an exemption from regulation. ComReg seems to be of the belief that low cost services result in minimal complaints. However it could be strongly argued that because the service is low cost, the Consumer is less like to report their complaint. A Consumer may not feel it appropriate to follow up on a complaint of an SMS costing 20c, where they might pursue a complaint if the SMS was more significant in cost, even though the grounds for both complaints might be the same. Simply because a Consumer might be less likely to complain, does not mean that 20c services should not be licensed. Indeed it is vital that they are licensed to ensure that all players in the market abide by the same regulations and all consumers are protected.

It is also quite possible that a Service Provider, might start out in the PRS market with services which do not exceed a €0.20 cost, for instance radio stations who operate competitions. However this SP may decide in the future they might wish to expand their services and offer services at a higher price band, at which point in time they would need to be licensed by ComReg. Therefore it is important that any SP providing PRS is familiar with the Code of Practice and Guidelines and operating their services within these remits. If an SP decides to operate services at a higher price point, it will make the transition much easier as they are already operating within the regulated environment.

It is clear from ComReg's report that it believes there is some sort of inherent corruption with a number of Service Providers currently operating, even though there is very little to support this theory. Throughout the Consultation, there are several references to 'unscrupulous operators' and the harm they do to Consumers. Whilst we would question the true extent of this problem, the issue is clearly of great concern to ComReg and this in itself is a very good reason why no SP should be permitted to operate any service unlicensed. For instance an SP can use a 20c per call or a 20c shortcode and encourage Consumers to use their services many times resulting in significant costs. Similarly an SP would have the capability to send a large number of 20c SMS to one Consumer again incurring significant cost and causing significant harm and it would be beyond ComReg's remit to control this. Clearly one of ComReg's main criteria is consumer protection, therefore taking into account these scenarios there is simply no way ComReg can overlook this section of the PRS market.

Whilst ComReg might feel there are legitimate reasons for excluding certain services from its regulation, the Consumer is unlikely to be aware of these reasons. Therefore there is a strong possibility that the Consumer will use certain premium services, in the belief that they are licensed and regulated by ComReg, when this is not actually the case. Therefore if a Consumer is not satisfied with the service they have received, they may in all likelihood contact ComReg believing that their complaint will be handled. However if the service in question, has a low threshold, then there is no

regulatory body in place who can assist the Consumer.

In conclusion Realm does not agree with any proposal which would allow ComReg to use its discretion to decide which services require a licence, whether this is based on type of service or price of service. The Code of Practice and Regulation should be applicable across the board, to all those operating premium services. We would be concerned that operating in any other way would run the risk of an individual within ComReg using their own personal opinion or views to determine when and where the Code and Regulation is applied or indeed if a service is worthy of being licensed. This must be avoided at all costs. There must be an even playing field for all Service Providers in the PRS industry and to ensure that the Consumer is protected.

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

As previously stated Realm believes that all PRS Providers must be licensed and regulated by ComReg. All parties operating in this market must be subject to the same rules and regulations. To begin to distinguish between services, based on any grounds, including cost, is a dangerous road and has serious consequences. Therefore Realm agrees with ComReg's view that live services should be licensed and regulated.

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

Due to the sensitive nature of Adult PRS, Realm agrees with ComReg's intention that it should regulate all PRS services of a sexual nature irrespective of cost.

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

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

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

All of Realm's services are for Consumers over 18 years. We do not market any services to children and we try our very best to ensure that our advertisements cannot be seen by anyone under 18. Therefore we feel very strongly that all services which are aimed at children, without exception, should be subject to ComReg's regulation.

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

It is important that ComReg's remit covers fundraising and charitable donations made through PRS. The Consumer must have the upmost faith that the donation which they are making through PRS is handled in the correct manner, anything else simply undermines the entire industry. The only way to do this is to ensure that these services are regulated and licensed by ComReg. Similarly if this sector of the industry was exempt from regulation, it would provide a window of opportunity for whom ComReg refer to as 'unscrupulous operators'. One of these operators would merely have to claim that a very small percentage of the call/text cost is being donated to a charity whilst retaining the vast majority of the revenue for themselves. The Provider would then be free from ComReg's regulation allowing them to operate the service in any manner which they wish. It is important that this window of opportunity is closed and this can be done by ensuring that ComReg regulates fundraising and charitable PRS.

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

Realm agrees with ComReg's suggestion that internet dialler activities could and should be construed as fraud. Therefore it is questionable as to whether there should even be any attempt to regulate and manage this 'service'. However Realm also takes on board the suggested uncertainty of these 'services' being successfully pursued by other means and so we agree with ComReg's intention to regulate internet dialler software, irrespective of cost.

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

Realm believes that any virtual chat, contact and dating services which uses the Consumers phone bill or credit balance as method of payment, should be regulated by ComReg. Once again, we would like to echo our belief that no service should be exempt from regulation, regardless of the criteria used.

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

Once again Realm believes that this service, along with all other PRS must be licensed and regulated by ComReg, on a non discriminatory basis to ensure that both the Consumer and Service Providers are treated fairly.

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

MNO's 'on-portal' services quite often mirror quite closely PRS services. For instance both a PRS and 'on portal' service might offer the Consumer the opportunity to purchase a ringtone. This can be purchased via a deduction from the Consumer's mobile credit balance or as a charge to their phone bill. Therefore to all intents and purposes the service on offer by both operators is the same, except that the PRS Provider uses a premium channel to facilitate to service. Why then should two entities providing a identical services with identical costs be treated differently? Both parties should be subject to the same scrutiny and regulation. Clearly ComReg is concerned with the issues of consumer redress, transparency of charging etc and these issues affect both the on-portal and off-portal markets. VC. Therefore there is simply no way that this section of the market can or should be ignored. The risk and dangers to Consumers are the same irrelevant of whether the Consumer uses an on-portal or off-portal method to access a service.

Realm also believes it is anti competitive for two Providers who offer similar or even identical services, to not be regulated by the same body. Competition Law is quite clear on this issue and as such this suggestion is something which needs to be addressed and avoided at all costs.

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?

Realm believes that for the Licensing Scheme to be successful, it must be applied to all operators within the PRS sector, regardless of the type of service or cost of service being offered. There are significant pitfalls and dangers in distinguishing between services and price points for regulation and licensing. Many of these are covered off in detail in our response to questions one. We firmly believe that there should be no criteria or thresholds in place which decides whether a service is licensed and regulated. All Providers of Premium Rate Service must be licensed and regulated by ComReg, with no exception.

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

The services provided by Directory Enquiry services, are charged at a premium rate, potentially the same as services operated by other PRS operators and run the same risk of consumer harm as other PRS services do. Therefore to avoid anti competitive legislation and reduce the risk of to the Consumer then ComReg must regulate all Directory Enquiry services.

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?

Our response to question one, clearly explains our position regarding regulation of any service where the cost is above the 'standard' charge for a call/SMS. Any service, whether it is a Directory Enquiries or any other service with a premium charge, should not be exempt from regulation, simply because they are using what is deemed as a low payment threshold. We have explained at length that a low cost service does not necessarily equate to a consumer friendly service. Similarly, transparent and across the board regulation will allow the Consumer to have faith that all premium services are properly regulated and in turn it will dramatically reduce the chance of a Consumer coming to any harm whilst using a premium rate service.

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?

Realm believes that all Directory Enquiry services should be regulated and licensed by ComReg, irrelevant of any potential diversification. Please see response to question 13. In relation to whether these Providers should be able to expand on the services they currently offer, we feel that this depends solely on the type of services proposed. Realm would have no objection to Directory Enquiry services offering services which have a direct relationship with the existing nature of their business. However if they were permitted to operate services with no connection to their existing service, then they are operating at a competitive advantage to all other PRS Providers who do not have a 118 shortcode. Throughout this submission we have made it very clear that any proposals which have any anti-competitive consequences must be avoided at all costs.

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?

The numbers operated by Directory Enquiry services, have distinct advantages to the numbers which other PRS Providers operate. For instance current PRS Service Providers are unable to use their shortcodes for IVR calls, whereas 118 numbers have this capacity. Therefore if Directory Enquiry services were able to expand their current services, using their existing numbering, then they would be at a huge competitive advantage to other Service Providers as they would be able to provide two means of accessing the same premium number. Once again it cannot be deemed acceptable for one sector of the market having a competitive advantage over.

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?

Realm completely agrees with this proposal.

Prelude to question 17

Before Realm responds to ComReg's proposal regarding 'double opt-in', we feel it is important to assess the content of ComReg's Consultation from question 17 onwards. We believe that the tone and details of the Consultation from this point is very concerning. IPSA's submission goes into great detail regarding the clear bias and inaccurate information which is contained in this section of the document. Clearly IPSA's submission does a very good job in highlighting the issues, however Realm would like to echo these concerns. It is quite clear that this section of the consultation has been compiled based on an individual's (or several individuals) personal opinion of certain sections of the PRS industry. Sweeping statements are made, with little or no evidence and when ComReg does provide evidence to back up some of its claims, it is clearly flawed. It is clear that Realm, along with the other members of IPSA, want to work with ComReg to ensure that the PRS is managed in a fair and balanced manner, to protect both the Consumer and the Service Providers. However if such bias and partiality continues, then this is not going to be possible.

ComReg ascertains that the majority of Consumer issues arise from mobile subscription services, and as such there are inherent and deep rooted problems with these types of services. However ComReg appears to overlook the fact that subscription services account for the vast majority of the overall PRS industry. Mobile subscription services make up approximately 80% of Realm's entire business, this is reflective of the entire industry as highlighted by the KPMG submitted by IPSA. Therefore the level of queries received by RegTel regarding these service, should be proportionate to level of subscription service activity in the Irish market. IPSA's submission highlights several key issues which can be attributed to the complaint volumes RegTel claim to receive regarding subscription services. These are very valid and insightful issues. In particular the points raised about ineffective enforcement of the Code of Practice and the inadequacies of RegTel's complaint handling process. IPSA also shows the contradictory nature of the Consultation, where RegTel's figures clearly show that the numbers of calls to their call centre in 2009 was 4% lower than 2008, but yet they later suggest that the number of complaints during this period actually increased. Clearly the figures shown by the RegTel call centre have no foundation and cannot be relied upon for the basis of any change

Realm can only assume that the figures quoted in section 9.2 of the Consultation (Scale of the Issue?) were sourced from RegTel. However when one looks at the figures quoted, they are actually meaningless, as it is impossible to determine the true number of customer complaints received by RegTel. The Consultation states that RegTel received 28,600 queries and complaints in 2009. but 15,698 (the majority) of these were in relation to seeking advice and information regarding unsubscribing. No further clarification is given on what the remaining queries/complaints were in relation to. Therefore it is implied that the remaining number must relate to complaints. However this simply cannot be the case, as there are countless issues with which a Consumer might contact RegTel, without their issue being classified a complaint and none of these are accounted for in this Consultation. As a result it is actually impossible to accurately identify the true extent of the complaints issue. Without accurate and documented information, it is completely unacceptable that ComReg would even consider making major changes the industry.

The unreliable nature of RegTel's claims and figures extends beyond the 2009 data which the Consultation relies upon. Realm completed extensive work in 2008 and 2009 regarding the true

extent of customer complaints with subscription services. This work was carried out as part of the High Court case between Realm Communications Ltd and The Regulator of Premium Services. During the course of this case, Realm submitted documentary evidence which clearly showed that complaint figures produced by RegTel were continually flawed and grossly misrepresentative. RegTel issued Realm with an Adjudication as part of the High Court process. In this Adjudication they make reference to complaints they claim to have received regarding Realm subscription services between the six month period of January to June 2009. The Adjudication states that on the shortcode 57700 (a Realm shortcode) there were 32,074 complaints / queries regarding Realm services. On the face of it, this sounds extreme; however when Realm looked further into RegTel's figures we saw that these figures were hugely exaggerated and disproportionate.

Realm submitted an Affidavit in response to this Adjudication and its findings seriously damaged the credibility of RegTel's claims. In this Affidavit, we showed that RegTel's 2007 Annual Report claimed that their call centre handled 30,227 queries/complaints during the six month timeframe in question. However only 1135 were complaints relating to relevant services. Therefore only 3.7% of the queries handled by the call centre throughout this time were actually official complaints. If this 3.7% figure is taken as an average and applied to the complaints / queries regarding Realm services which RegTel claim to have received during the 2007 year i.e. approximately 6504 (3252 x 2), then RegTel's call centre received on average just 240 complaints, which equates to then handling approximately 4 complaints per week for Realm's subscription services on 57700.

RegTel's 2007 Annual Report also states that they received a total of 407 written complaints in 2007. However 28 of these could not apply to Realm as they were regarding children's services. Therefore this left a total of 379 complaints which could be applied to Realm. Assuming we made up 7% of the total market share in 2007, this means that approximately 27 written complaints were received by RegTel in 2007, which when broken down equates to one complaint every two weeks. As a result we are looking at RegTel handling approximately 5 complaints a week for Realm services. This is a far cry from the 32,704 complaints/queries initially quoted by RegTel in their Adjudication.

Therefore ComReg simply cannot make drastic changes to the PRS market based on the level of customer complaints which RegTel is purporting to have received. The figures they have quoted throughout the years have been proven to be grossly inaccurate and misrepresentative. Realm fully accepts that one of ComReg's main aims is to minimize consumer harm and we completely agree with this. However until the true level of the problem is established, then ComReg simply cannot make drastic changes to the PRS market. We propose that ComReg carry out its own investigations to establish the true level of consumer complaints within the industry and along with this, put in place an industry wide complaints handling process. Only when this is done, will ComReg be in a position to see the true landscape of the PRS market and be able to identify what major changes, if any, need to be made.

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

Realm would strongly object to a 'double opt-in' requirement for mobile subscription services. As already stated the grounds to introducing this across all subscription services, is dubious and tenuous to say the least. We believe that in the majority of cases, a double opt-in is not required, however it is worth noting that Realm already has a 'double opt-in' mechanism in place for web based subscriptions. We are mindful of the security issues with web subscriptions, whereby we, along with the other IPSA members ensure that a pin mechanism is used for these subscriptions. This means that if a Consumer requests a service (not just subscription based) via a web-site, a unique pin is generated and sent via a SMS to the mobile number which was entered into the web-site. It is only when this pin is entered on screen that the subscription begins. Therefore this eliminates the possibility of any individual subscribing random mobile numbers into services, as it is a requirement that the handset be present at the time of accessing the service. As already stated all members of IPSA already engage in the double opt-in process. However Realm has introduced several other steps to ensure that this process is even more secure from the Consumer's perspective.

1. The IP address which requests the PIN number through the web-site, must match the IP address used when entering the PIN number.
2. The PIN number is valid for only a short period of time 5-10 minutes. If the Consumer does not enter this number within this timeframe, then the PIN is invalid and the Consumer must request another one if they wish to access the service.
3. If the Consumer navigates away from the web-site, after the PIN has been requested, then they cannot return to the web-site and re-enter the same PIN, once again, they would need to request another one to access the service.

We propose that ComReg take some or all of these steps into consideration when looking at the double opt-in process for web based services.

Realm accepts that web-based services can cause consumer harm, if a double opt-in method is not used and we are therefore very stringent when operating these services. However we do not believe that other subscription services, cause significant consumer harm when operated in accordance with the Code of Practice. Once again IPSA's submission refers in detail to how Consumers are already very familiar with subscription/MT type services outside of the PRS industry. Therefore Consumers want and expect to be able to purchase these services via their mobile phone and it is not ComReg's place to override this decision. The submission also refers to other ways in which the industry might be improved, without the drastic action of double opt-in, for instance a cooling off period, improved consumer awareness, overhaul of the complaints process and an industry working group. IPSA also refers to the UK measure of introducing a double opt-in once a certain payment threshold has been reached. Whilst this is a very valid suggestion, we feel it is important that this option is considered if a problem remains after all other measures have been implemented. We believe that IPSAs proposed measures would significantly reduce any potential for consumer harm, however if a problem persisted then the double opt-in at a certain threshold could be introduced. Realm would propose that this threshold be approximately €1.50 per day or the cumulative equivalent over

whatever the billing schedule is e.g. weekly, twice weekly or monthly basis. This means that services offering high end products with significant costs will need to implement the double opt-in, to completely ensure that the Consumer is fully aware that they are entering a service with a relatively high ongoing cost.

Realm believes that the introductions of double opt-ins for all subscription services is a very severe measure which will have seriously negative effects both on the Consumer and the PRS industry. Introducing a double opt-in method for non web-based subscription services, will only serve to confuse the Consumer. For several years now, Consumers have been familiar with single opt-in methods, for instance the sending of an SMS, and are well versed with how it operates. Introducing a second stage to the process, where the Consumer needs to reaffirm their decision, will simply perplex Consumers who may interpret this second step as something which will result in him/her being charged twice or result in a subscription them to more than once service. This means that the Consumer might ultimately decide to forgo the purchase of the service/product they initially wanted, so in its own way creating another level of Consumer harm. It will also result in a dramatic drop in the success of all premium rate services. We would predict that the number of Consumers of Realm services would drop by at least 60-65%. Clearly this means that our services would no longer be viable and it would have a devastating effect on our overall business, with job losses etc being unavoidable. Realm is not disputing that the PRS industry does not have its problems, however double opt-in across the board will merely serve to negatively impact operators who currently comply with the Code and fail to address the problems caused by those who don't comply. IPSA summed it up very well in their submission when they state *'It is a disproportionate remedy that does not target the likely cause of the root issues but rather impacts everyone'*. ComReg must first look in detail at the factors which result in what appears to be high levels of complaints regarding subscription services before making any changes to how services currently operate. Until this is done, it would be grossly unfair to dramatically overhaul the entire subscription process, which will no doubt have a catastrophic effect not only on the Consumer but on the entire 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?

The Consumer has a right to purchase goods and services, in whatever way they wish. Purchasing via a subscription and direct debit (ComReg itself refers to the likeness between MT and Direct Debit billing) is a consumer friendly and well understood payment method. ComReg cannot prohibit a perfectly legitimate payment method, simply because it feels that the method might be open to being used by the 'unscrupulous operators' it keeps referring to. It is the Consumer who must decide which products they wish to purchase and how they wish to pay for them; it is not the responsibility of ComReg or any other government agency to decide this on the Consumers behalf.

Once again, we refer to the dubious and unsubstantiated claims made by ComReg in this consultation. IPSA and Realm have shown clearly that the problems referred to by ComReg have been blown completely out of proportion and many of the claims which have been made are mis-informed and biased. Therefore it is not acceptable that a drastic measure such as prohibiting MT billing be implemented based on these grounds. An industry could be decimated if this happened. Surely the other options outlined in this and IPSA's submissions should be taken on board, before such drastic steps are even considered.

In relation to the second part of ComReg's suggestion, Realm reiterates its view that all premium services should be subject to the same regulation and licensing laws, there must be an even playing field for all operators. The Code of Practice should be non-discriminatory, proportionate and transparent. It should not be up to any individual (s) to decide what types of services are permitted to use MT billing, clearly a service which is of value and worth to one individual may not be viewed the same by another. Therefore there can be no grey area with regulation which leaves it up to an individual to decide the fate of a service or business, especially then the Consultation at times shows blatant bias against certain types of services. Whilst ComReg might argue that the criteria with which it determines whether services can use MT billing, can be clear and non biased, we do not see how this can be the case. If ComReg uses the classification of services for this purpose, it would still leave significant room for doubt. For instance if ComReg decided that Information Services should be exempt from MT prohibition, but that Entertainment Services should not, this would cause considerable confusion and it simply could not be properly enforced. In the case of a service which does not fit into either category, the decision to categorise the service might be left to an individual, which is completely unacceptable and unfair.

Realm predicts that if MT billing was prohibited, we would lose approximately 80 - 85% of our annual turnover, the KPMG report in IPSA's submission shows this figure typical of other operators in the market. The potential results of this proposal are obvious. It would lead to inevitable job losses, significant losses to Revenue and a strong possibility that businesses would not survive. It is simply unthinkable that operators might face such a fate, when ComReg is basing its suggestions based on what is clearly unreliable and inaccurate information. Similarly these consequences are completely unacceptable when the current Code of Practice (when properly enforced) and other legislation can already effectively deal with any rogue traders. The effect of prohibiting MT goes further than just individual PRS operators. MT billing is a method of billing which is used throughout the world. If MT billing was prohibited in Ireland, it would put Ireland at as severe disadvantage to other countries. It would seriously jeopardise and compromise Ireland's digital economy as we

would not be able to compete with other nations, something which Ireland simply cannot afford in the current economic climate.

Instead of simply prohibiting MT billing, ComReg needs to consider and implement the suggestions put forward by IPSA which they believe would allay any concerns it might have about MT billings. In particular working to heighten consumer awareness, SMS sent periodically by MNOs showing billing information, additional regulatory SMS sent by PRS operators and an industry working group which will continually work with ComReg. Realm believes that it is effective and fair enforcement of the current Code of Practice and not the prohibition of fair and established practices which will lead to 'unscrupulous operators' being dealt with. All of these options must be explored, implemented and assessed before any further thought is given to the possibility of prohibition of MT billing.

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

Realm believes that the true extent of the problem with 'invisible' billing needs to be established before any decision is made regarding its prohibition, as the this method of billing goes beyond the areas covered in ComReg's Consultation.

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

When the Consumer uses or subscribes to a service, they are making a conscious decision to do so. ComReg cannot over-ride the Consumer's choice, simply because he/she is temporarily out of credit. Similarly ComReg cannot assume that simply because credit is not available to pay for the product immediately, that the Consumer is not willing to pay for it at a later date.

Realm appreciates ComReg's concerns that the storing up of chargeable messages might lead to debt accumulation. Despite this, we ascertain that more research needs to be done to establish if there really is a significant problem with this issue before any decision can be made about prohibiting this practice. That said, there are measures which we would be happy to see introduced which would reduce the threat of debt accumulation with Consumers. The stored up charges should not exceed the costs beyond one subscription period for instance if the consumer is signed up for a daily news alert, the maximum amount of message which are stored up would be just one day. IPSA listed a more extensive list of suggestions which would minimise harm from the storing up of messages. These should be given due consideration, before ComReg makes any decisions regarding this issue.

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?

Realm would have no objection to MNOs providing the facility of barring premium rate services from a mobile number, if it is requested by the Consumer. We believe that this would be particularly useful for parents wishing to bar their children from accessing these services.

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

ComReg's suggestion of restricting the type of services which can operate a subscription service is based on their belief that there is significant consumer harm intrinsically linked with these types of services. ComReg ascertains that there are serious issues with 'unscrupulous operators', awareness of the implications of a subscription service, non secure web-optins and additional billings beyond the subscription price. This submission along with IPSA's submission explains that the problem is nowhere near as extensive as ComReg is claiming. However both submissions address ComReg's concerns and explain various steps that can be taken which will reduce the risk of any consumer harm. When viable suggestions like these are on the table, there is simply no way ComReg can ignore them and go ahead with restricting the operation of services.

The one key thread running throughout our submission is that ComReg cannot place restrictions and prohibitions on certain types of services, based on their own agenda. Licensing and regulation must be across the board, it must be transparent and non discriminatory. This is the only way to ensure that not only the Consumer is protected, but that no Service Provider is operating at a competitive advantage. Whilst ComReg might argue that it might use strict criteria when deciding whether to restrict a service, there is no clinical way in which services can be classified; this was already discussed in response to question 18. Therefore there is a significant risk that this decision will be left to an individual (s) with their own personal agenda and bias. Given the accusations levied in certain sections of the Consultation, and the clear bias shown, it is unacceptable that any individual should have the power to decide what type of service is worthy of being licensed. As already stated in this submission, a service might be of high value to one individual whilst it might not hold any value to another, however this is just personal opinion and it cannot be used to determine whether or not a service can operate. Ultimately it is the Consumer, and not a government agency, who should be allowed to choose what digital services they wish to consume. Whilst ComReg might feel that this may not reduce the risk of Consumer harm, ultimately an effective licensing and regulatory scheme with appropriate penalties will always deal with rogue operators, without infringing on the Consumers right to choose and a transparent and fair market for Service Providers.

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

Realm agrees in principal that subscription service and marketing opt-ins should be cancelled once a number is quarantined or the account expires. However this is easier in theory than it is in practice. Unfortunately without correspondence with MNOs it is not possible for PRS Providers to know when a mobile phone account has been cancelled or when a number is going to be quarantined/ recycled. Currently the various MNOs have different lead times for mobile numbers being cancelled quarantined and recycled, meaning that a mobile number on network might be re-assigned to a new Consumer whilst a number with a different MNO is still in the quarantine phase. Unfortunately it is not possible for the SP to know the reason why a mobile number is failing to deliver messages, it could be for any number of reasons - insufficient credit, the Consumer being out of the country or if the number has been cancelled. For this recommendation to work there needs to be a very clear process in place which all MNOs and SPs adhere to. The MNOs need to inform SPs of numbers which have been cancelled or whose number is about to enter the quarantine phase. The SPs then need to use this information to remove these numbers from their subscription and promotional database.

Currently Realm and all other IPSA members remove numbers from their subscription database who have not received a billing message within 40 days. We then remove numbers who have not received a promotional message in the past year from the promotional database. Unless the MNOs produce a clear process on how this issue is going to be handled, and this process must be agreed and implemented by all MNOs, then there is simply nothing further that the PRS Providers can do other than follow the procedures currently being followed. However once again, we believe that this is another concern of ComRegs which could be effectively dealt with via the establishment of an industry working group allowing SPs to bring initiatives forward to ComReg.

44 RTE

From: Mullen Conor
Sent: 14 May 2010 15:54
To: retailsconsult
Cc: Kenny Clodagh
Subject: Scope of Premium Rate Services Regulation - ComReg 10/27 / RTÉ Response

SCOPE OF PREMIUM RATE SERVICES REGULATION – COMREG 10/27

RTÉ RESPONSE TO CONSULTATION QUESTIONS

RTÉ is a significant generator of standard and premium rate SMS and IVR traffic in Ireland.

RTÉ welcomes any measures which can offer greater protection to consumers and enable consumers to use premium rate services with trust and confidence. It is with this objective in mind that the responses to the consultation questions below are given.

The consultation process and the opportunity to partake in any future discussions surrounding the establishment of a new regulatory framework for premium rate services and premium rate service providers is welcome.

In the event of any queries and for future correspondence please contact:

Clodagh Kenny, Programme Interaction & Promotions Manager, RTÉ
DD: 01-2082672 email: clodagh.kenny@rte.ie

CONSULTATION QUESTIONS AND RESPONSES

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?

It is important that all services, irrespective of price point, be subject to licensing and regulation. It may be more appropriate that services are categorised as low risk and high risk (irrespective of price point) with the options for ComReg to exempt certain low risk services from licensing if it so wishes. Creating a base price below which certain services may be exempt from licensing may create opportunity for PR service providers to exploit lower price points whilst operating within the written regulations.

Should ComReg decide to proceed with this option, appropriate measures would need to be taken to ensure that consumers are protected, be it from another body.

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

Yes, particularly with a view to ensuring that live agents are not excessively encouraging consumers to remain engaged with a high premium service for long periods in order to drive revenue and all consumers should be protected in this regard.

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

Yes, with particular focus on increasing safeguards to prevent children accessing such services. Also advertising of such services should be well regulated to ensure the scope of service is truly represented to the consumer prior to engaging with the service with a view to honest representation of the service to the consumer from the offset. False claims surrounding services of a sexual nature in order to hook the consumer into a service would appear to be common.

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

Yes, as this will provide clarity to service providers and consumers alike. Currently many promotions which require consumers to connect to a premium rate line to claim their prize and competition services which run on a subscription model can prove confusing and frustrating to consumers.

It may be appropriate to categorise competition services as 'high risk' and 'low risk' dependent on the potential risk of consumer harm based on a number of factors as determined by ComReg with higher risk competition services more heavily regulated than lower risk services.

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

Yes, irrespective of cost. A clear definition of 'child' and what qualifies as a 'children's service' would be welcome.

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

Yes, the establishment of a dedicated charity SMS short code and IVR number with a view to full transparency and prompt payment of all funds raised, would allow ease of service approval by all those involved in the supply chain, ease of recognition by the general public (over time) as a genuine charitable service. It might be considered that any dedicated charity short code / IVR number would be VAT exempt so as to better benefit registered charities.

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

Yes.

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

Yes, honest representation to the consumer at the call-to-action point and improving safeguards to protect children and the more vulnerable is welcome.

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

Yes.

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

Yes.

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?

It may not be appropriate that certain categories of services could be exempt from regulation, irrespective of price point. All services should be open to regulation by ComReg with a view to consumer protection. Should ComReg choose to exempt certain

categories from regulation, some other body would need to ensure that consumers are protected.

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

Yes, given the consumer is paying a premium, the price of which is sometimes unclear.

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)

RTÉ does not consider it appropriate that certain categories of services could be exempt from regulation, irrespective of price point. All services should be open to regulation by ComReg with a view to consumer protection.

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

A clear delineation of services should be considered so as to avoid any potential confusion of services being accessed by consumers. It may also be appropriate so as to allow differentiation on consumers' bills for services accessed.

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?

The cost of funding a DQ service is likely to be significant and therefore may be restrictive for many SPs. It would be desirable for competition between suppliers with a view to delivering the best possible service at the best possible price to the consumer. However, cost of entry to operate such a service may prove prohibitive and as such may restrict the potential for competition.

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?

Yes.

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

Yes. Many subscription services can prove confusing for consumers to differentiate between once off charge mechanisms and subscription services, thus damaging consumer confidence in the PRS sector.

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

Yes, consideration should be given to prohibiting MT billing or restricting this to certain service types with a view to restoring consumer confidence. Ensuring greater transparency around costs incurred when engaging with a premium rate service is a necessity.

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

Yes, greater transparency around charges being incurred by consumers is always welcome.

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

Yes, a limit, for example, based on time could be introduced.

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

Yes, RTÉ welcomes any developments which will further empower and protect the consumer.

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

Yes, as consumers may be unaware of a similar type of service having different charge mechanisms, for example some competitions operate on once off drop charge whilst others operate on a subscription mechanism.

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, as a further protection to consumers.

45 Shane McAllister

From: Shane McAlister
Sent: 14 May 2010 13:15
To: retailconsult
Subject: Response to Scope of Premium Rate Services regulation - ComReg 10/27

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

I have read your document on "Scope of Premium Rate Services regulation - ComReg 10/27" and wish to make some comments.

Your approach to SMS services seems particularly harsh and it is my view that prohibiting or restricting services should be a last resort. It is strange that comreg has chosen this as a starting point in many cases.

The consumer has in the main only 3 major considerations; Cost, Delivery and Competition.

Should ComReg create new and onerous restrictions onto the consumer then their costs will inevitably rise as a large number of consumers will be put off participating in PRS. As well as this happening it is quite possible that a number of existing Service Providers may opt out completely therefore reducing competition.

Of course cost is one of many factors governing consumers choice, but should the new regulations be cumbersome e.g. Confirming MT by using Mo, is bound to reduce the numbers of consumers using the service.

The existing "STOP" is so easy to use it would seem unnecessary to restrict or prohibit services as suggested. So as your new rules infringe on the time tried current delivery system you must implement any changes with great care.

Again with less competition higher unit costs and possibly a smaller market, avoiding needless new complexity in these trying times should be the way forward.

My opinion to your questions :

Q.1 Ans No;

Q.2 Ans YES;

Q.3 Ans YES;

Q.4 Ans YES;

Q.5 Ans YES;

Q.6 Ans YES;

Q.7 Ans YES;

Q.8 Ans YES;

Q.9 Ans No;

Q.10 Ans YES;

Q.11 Ans No;

Q.17 Ans NO. "STOP" is still available to the consumer and therefore they can unsubscribe at any time.

However the subscription should be made obvious to the consumer on advertising.

Q.18 Ans a) NO. With "STOP" in current use the consumer has full control.

b) No. As explained in 18) a) above

Q.19 Ans Yes, unless the consumer has been informed elsewhere.

Q.20 Ans No, but there should be a reasonable limit to how much can be stored up. I'd still want my service delivered when I top up, but I wouldn't want messages that were send a month ago.

Q.21 Ans YES A consumer should have full authority of their PRS access.

Q.22 Ans NO. The consumer should have full choice of whatever services they wish. It is not for Comreg to decide what services consumers want.

Q.23 Ans YES

Kind regards

Shane McAlister

46 Star Newspaper

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

Michelle

I am writing with regard the consultation paper on the “Scope of Premium Rate Service Regulation” issued by Comreg on April 1st, 2010. I have concerns regarding the impact on the media industry of some of the measure being proposed in the document, in particular around the area MT and subscription services.

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

In this context, the €25.8.m investment by the PRS sector represents an increasingly important source of income for the Irish media and advertising industries. A large proportion of the PSR operators that offer these services are promoting to the Irish market in the Star Newspaper. This industry sector accounts for a significant proportion of The Star’s overall advertising revenue. Were PRS services unduly restricted as suggested then I calculate that it could lead directly to the loss of jobs within the advertising function in the Star Newspaper.

The questions of particular concern to me are;

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

body to independently handle any consumer complaints regarding the clarity and fairness of any advertisement.

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

I would strongly advise that a detailed analysis of the market be conducted before any significant measures are taken that would significantly affect the media industry

Should you ever need to contact me please do so on 087 8390727 or 01 4993405.

Regards,

Diarmuid O' Leary

Advertising Sales Director

cc. Paul Cooke Managing Director, Star Newspaper Group

47 Starlight Networks

From: dleddin
Sent: 14 May 2010 13:42
To: retailconsult
Subject: Consultation - Scope of Premium Rate Services Regulation

Hello,

I am mailing with regards to the premium rate services regulation consultation as posted on your website.

Starlight Networks are a search engine marketing (SEM) and search engine optimisation (SEO) company specialising in marketing campaigns for premium rate services.

Over the past number of years we have successfully marketed many premium rate services, and members of the premium rate industry provide the bulk of our revenues.

The suggestions made by ComReg will result in a complete stoppage of premium rate services, and thus will destroy our main source of revenue.

While I hope we would be able to recover from this with other contracts, in the short to medium term this would result in us having to lay off a number of staff. I don't need to tell you that sending the unemployment rate up even further is not ideal!

It has been clear to us for a while that there needs to be more regulation in this area, but we would implore that you do not regulate the industry (and us!) out of business.

--

Douglas Leddin
Director of Marketing
Starlight Networks Ltd

48 Sunrise Industries

From: Paul Kinsella
Sent: 14 May 2010 12:37
To: retailconsult
Subject: Regulation in Ireland

Hi

We are a mobile service development company in Wexford and use premium sms, and we endorse IPPSA's position on the consultation.

We would like to add that we feel:

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

//

Paul Kinsella
Sunrise Industries

49 Telefonica Ireland Ltd. ("O2")



O₂

Scope of Premium Rate Services Regulation

Response to Consultation ComReg Document 10/27

14th May 2010

Introduction

ComReg has issued Consultation document 10/27 on the Scope of Premium Rate Services (PRS) and O2 welcome the opportunity to provide a response at this time. This document sets out O2's opinion on the matter.

O2 understand that some of ComReg's concerns in relation to PRS stem from the wide and varying reports throughout media and via complaints to The Regulator of Premium Rate Telecommunications Services (RegTel) about abuse of subscription services and consumers inability to opt-out of these. It must also be recognised that it is a widely held view amongst industry and current Regulators that such issues stem from a small minority of operators in the PRS market.

As the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010 (the Act) expands the functions of ComReg to include 'ensuring compliance by premium rate service providers with their obligations in relation to the provision, content and promotion of premium rate services' for the purpose of providing more effective regulation of the PRS sector with the intention to provide greater consumer protection, ComReg should be conscious of the potential to stifle a key element in the delivery of products and services in the Mobile Communications industry.

O2 believe that there is a need for further consultation on a number of important issues and these are highlighted throughout this response.

ComReg's Approach

While O2 welcomes the consultative approach taken by ComReg in this regard, as it provides the platform for all concerns and the relevant factors to be duly considered and assessed in advance of determining the scope of future regulation in this regard, it is likely that further consultation is required. ComReg should also consider the potential establishment of an industry working group to focus on specific elements and ensure that the full scope and impact of proposals are considered from all perspectives.

As the express intention of the Consultation process is to ensure that those services which cause widespread consumer harm are designated as 'specified PRS' and duly regulated as such, O2 believe that some of the proposals and some of the terminology throughout the consultation referring to 'prohibition' and 'barring' should be curtailed. ComReg should be cognisant of introducing barriers to the advancement of new technology and the introduction of new innovative services, as existing service providers seek to alter their business models to adapt to the fast pace of the market and the current economic climate. If it is effectively demonstrated that a particular piece of technology or model is a significant factor in the cause of consumer harm preventative measures should be taken. These measures however, should not amount to an outright ban on a particular technology or model. Complete prohibitions on certain elements will only stifle innovation and prevent the ability to meet consumer demand through this medium, ultimately resulting in further deterioration of the PRS industry. O2 believe that ComReg should approach such issues with a graded or blended approach whereby efforts are focused on regulating through effective enforcement of the Code, and only in the event of non-conformance should more restrictive measures and prohibitions be implemented.

While the new definition of what constitutes a Premium Rate Service has been broadened under the Act to encompass many more services than that which was covered by the previous definition, thereby providing for regulation of a far wider range of services, this should not be taken as an opportunity to over-regulate existing services which do not account for consumer harm. Neither should it be taken as an opportunity to commence regulation of services which were not initially intended to be regulated under the new legislative definition, especially in circumstances where a regulatory framework is already in existence.

O2 agree with ComReg's general approach to proportionate regulation, focusing measures on those areas which hold a higher potential for consumer harm and to take a more proportionate approach to services that pose less of a risk. However, we do not believe that this intention is being borne out through the proposals contained therein.

Industry Trends

While the consultation document states that industry trends suggest that the range of products and services made available will grow rapidly, particularly on mobile devices it must be acknowledged that the revenues derived from the use of traditional PRS is in rapid decline across the industry. This reflects the fact that while the varying and wide range of services may be increasing, the take-up of those services by consumers is decreasing.

RegTel's Annual Report 2008/09 reflects this trend in terms of the level of complaints and calls received. Similarly, O2 has seen a decline in the level of contact from customers in relation to premium SMS services through our Customer Care Centre. Customers predominantly contact their Mobile Network Operator (MNO) as the first point of contact when they have an issue in relation to PRS and our call volumes, in comparison to those of RegTel, reflect this. Internal statistics indicate that there was a 39% decrease in the level of customer contacts in 2008 versus 2007 in relation to Premium SMS and statistics for 2009 indicate a further 54% decrease versus 2008 levels. While some of this decrease is attributable to the decline in usage of Premium Rate Services a considerable amount is due to greater customer awareness as well as the fact that there are less unscrupulous practices in operation in the market today.

The above industry trends are an indicator that consumer harm is decreasing throughout the industry.

Regulatory and Technological Development

A number of factors are provided as being the source of the continuance of PRS-related complaints including technological advances, new delivery channels and new payment mechanisms. However, it is O2's view that while these factors may have contributed to such complaint levels, these could have been better managed by the previous regulatory regime through a more flexible framework and code of practice that is technology neutral and easily adaptable. It is O2's view that while a rigorous framework and Code of Practice are required to provide the boundaries of operation of PRS these should be supplemented on an 'as needs' basis by specific guidelines to steer the industry on matters as they arise. This will prevent the emergence of unscrupulous practices through any potential loopholes exploited

by new technologies or business models, allowing them to be addressed in an efficient and consultative manner.

Furthermore, to ensure that new technological advancements do not surpass the understanding of consumers, as has been the case in the past with the development of WAP subscription services ComReg should seek to address the issue of consumer awareness. This could be achieved through a dedicated consumer website providing information and advice to consumers. Callcosts.ie and askcomreg.ie have both provided similar platforms for consumer information and have been well accepted by consumers as a primary reference point for information.

Licensing

The Act provides ComReg with the power to specify the class or type of service which require to be licensed. The purpose of the introduction of this licensing regime is to introduce accountability where otherwise there may have been ambiguity. Those services which are delivered, serviced and billed through a direct relationship between MNO's and the customer where accountability resides completely with the MNO such as 'on-portal' and 'pay-for-product' services do not represent a risk of consumer harm. Such services have not historically been a source of a high volume of customer complaints and MNO's have a good record of demonstrating consumer protection and as such these services should not require licensing. This point is examined further through our response to the consultation questions.

Covering the Cost of Regulation

While ComReg are granted the power to impose a levy on premium rate services providers O2 believe that this should not be strictly applied to all Premium Rate Service Providers in the value chain. Rather, the levy should be applied only to those services which are required to obtain a licence to operate as Premium Service Providers. Services such as 'on-portal' or 'pay-for-product' which are not a source of Consumer harm and should not require regulatory oversight should be exempt from the licensing requirement and imposition of a levy.

Further consideration should also be paid to the current levy model whereby the levy payment is equally split between the MNO and service provider. The mandating of this split should be removed allowing for the levy payment to be attributed to those actions which cause the costs to be incurred in the first place.

If a greater range of services subsequently become subject to a levy payment this should result in administration efficiencies providing for a reduction in the levy as a percentage of overall premium traffic revenue.

O2 currently pay a levy based on which includes Premium Rate Revenues. This amounts to double regulation and needs to be addressed by ComReg. Those operators who currently pay a levy based on turnover to ComReg could be exempted from further levy payments regarding PRS or the PRS revenue could be excluded from the general turnover levy.

While ComReg have indicated an intention to consult on this matter separately O2 recommends that these points be considered at this time.

Response to the consultation Questions

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?

O2 agree with ComReg's general approach to focus the regulatory arrangements on those areas which hold a higher potential for consumer harm and to take a more proportionate approach to services that pose less of a risk of causing consumer harm. In this regard O2 feel that a price threshold below which an exemption from regulation may apply is a relevant and appropriate approach.

However, O2 would like to propose that greater emphasis is placed on the nature of the service and the relationship that the customer has with the service provider as a starting point for determining whether a service should be subject to regulation or not. O2 propose that the nature of the service be considered first to determine whether the particular service is likely to be one that could cause consumer harm. Certain services which have historically never been a source of consumer harm should be considered for exemption from regulation, irrespective of price. These are discussed later in response to particular consultation questions but include 'pay-for-product' and MNO 'on-portal' services. If an assessment of the nature of a service determines that there is potential for consumer harm then a subsequent price threshold could be applied, thereby providing an exemption for services which by virtue of their price would be deemed not to cause consumer harm.

In terms of the specific 20c threshold suggested, which is based upon an analysis indicating that customers currently expect to pay in this region for voice and text services at present. Alternatively, this may need to be reviewed from the perspective of what costs would actually be deemed to cause adverse customer harm, rather than just focusing on what is determined to be the expected cost of communications from consumers. The current expected cost of a communication does not necessarily equate to the base price beyond which consumer harm occurs. It is agreed that consumer harm occurs above the point where customer expectations of cost are exceeded but the particular point is not clear. This threshold could potentially be raised to 50c or €1 where the transaction is a 'once-off' competition entry or input to a radio or TV show. A higher threshold in this price range would allow for a broader range of PRS to avail of an exemption whilst ensuring proportionate regulation by maintaining focus on those services which have the potential to cause consumer harm.

ComReg should redefine the price bands i.e. 1520XXXXXXX and 51XXX, within the Numbering conventions to take into account the proposed price threshold, thereby limiting particular bands to non-specified PRS?

O2 believe that this is a necessary step from a customer perspective. Such alignment of the number ranges with generally exempted PRS would provide further clarification and understanding for customers. Consumers reasonably expect that the sending or receiving of a message to or from a 50XXX or 51XXX shortcode will incur little or no cost. It may be beneficial from a customer perspective to extend the 51XXX shortcode range to allow for costs up to the proposed base price threshold to allow for recognition of the range as such.

O2 believe that voluntary adherence to the general code would suffice for those services which have availed of an exemption. If the proposed solution above were introduced any failure to comply with the code would likely result in minimal consumer harm. Compliance on a voluntary basis could allow for exempted PRS to take advantage of potential loopholes and certain non-compliant practices to take hold, potentially causing consumer harm but such issues could still be addressed by ComReg by revoking a specific exemption and requiring regulation on an ongoing basis.

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

Yes, O2 are in agreement with the proposal to regulate all 'Live Services' due to the nature and potential consumer harm that these may cause if accessed inappropriately or abused. However, it should be recognised that technical support or customer care centres, which meet the definition of PRS, should be exempt from licensing by virtue of the nature of the service, which would not cause consumer harm.

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

Yes, O2 agree that services of a sexual nature should be regulated at all times regardless of cost. However, due to the lack of a classification framework at this present time there are a number of services in operation which possibly could be deemed to be of an adult or sexual nature. Potential for consumer harm will continue while this remains the case with minors possibly accessing content that is not suitable through 57XXX shortcodes. While ComReg have indicated that they intend to consult on this matter O2 believe that this is needed sooner rather than later.

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

Yes, O2 agree that Competition Services should be specifically regulated due to the potential consumer harm that can arise as a result of the cost and potentially addictive nature of such services. There have been incidents and services in the past which could not be classed as being fair or honest in either their advertisement or operation.

In relation to the applicability of a subscription model to Competition Services it is hard to see the value of such a subscription from a consumer perspective. While it may be reasonable to promote other competition services where a consumer has indicated an interest, subject to Data Protection Regulations and guidelines, it is difficult to understand the viability of a subscription based model which charges the customer for receiving a question.

O2 agree that where the cost of such competition services are below the set threshold that they should be exempted. However, such services should not be subject to voluntary

compliance with the Code. Specific guidance should be provided requiring compliance to ensure price transparency and promotional controls.

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

Yes, O2 are in agreement with ComReg's proposal to regulate Children's services, irrespective of cost. The nature of such services which are specifically targeted at or could reasonably be expected to appeal to those under 18 years of age requires close scrutiny to ensure that the relevant terms and pricing are sufficient to be readily understood by those to whom it is targeted.

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

Yes, O2 agrees with ComReg's proposal to regulate fundraising and charitable donations to ensure the integrity of those services. This requirement should apply irrespective of price.

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

Yes, O2 agrees that ComReg should regulate internet dialler software irrespective of unit cost for the purpose of preventing damage to trust in phone-payment services. However, as highlighted by ComReg these 'scams' may be better construed as fraud and subject to criminal sanction. As such, any such instances should ultimately be referred to the appropriate body for further investigation and prosecution where necessary. It is hard to see how any party who is involved in such issues would be so concerned with the regulatory sanctions, enforcement procedures or compliance with a code of practice that specific regulations would be merited. Regulation of such services may help to avert future developments of services which have the potential to cause consumer harm and adversely affect the PRS industry.

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

Yes, O2 agree with ComReg's intention to regulate virtual chat, contact and dating services irrespective of cost where these services are either paid for or availed of through an electronic communications network. There are a number of reasons for regulating such services. These include the potential for children to access as well as the potential privacy concerns and the honesty required to ensure that all users are genuine participants and not moderators of the Service Provider.

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

O2 agrees that it is prudent to establish a regulatory framework for pay-for-product services. However, we do not believe that this framework best sits within the remit of ComReg under the proposed PRS Framework but rather is the responsibility of the Financial Regulator pursuant to the Payment Services Regulations 2009 (SI 383 of 2009). The Payments Services Regulations clearly provide a regime and framework for those instances where the consumer executes a transaction through their handset or other digital device and the payment is subsequently made to the telecoms provider or network operator, who is acting only as an intermediary between the consumer and the supplier. The provision of such services requires authorisation as a payment institution and is subject to rigorous financial regulatory controls. The Payments Services Regulations however, do not apply to instances where a transaction is executed by means of a telecommunications or other digital or IT device, where the goods or services purchased are delivered to and are used through that device and the operator does not act only as an intermediary between the consumer and the supplier of the goods and services i.e. Premium Rate Services.

The legislation clearly draws a distinction between those services which do not involve content which is to be consumed through the telecommunications or IT device but which are charged via either MO or MT premium rate text (PSMS) through the customer's handset and account and those charges which are generated and applied pursuant to the execution of a transaction for goods, services or content which are not consumed through the handset e.g. travel tickets and parking. These are not Premium Rate Services but simply transactions ordered and paid for using a telephone account. These should not be classified as being any different to other financial mediums such as credit/debit cards.

There is currently legislation and sufficient controls in place regarding pay-for-product services and any attempt by ComReg to regulate these services would result in duplication of a regulatory regime and cause confusion. Such efforts to regulate would further increase the potential to stifle innovation and the impact the introduction of new e-products and services.

ComReg suggests that these services are typically charged via reverse billed SMS, however this is not always the case. The example of PayForIt in the UK demonstrates how charges are raised against customer accounts without the need for a Premium SMS to be used. The charge is applied directly to the relevant account on foot of a customer executed transaction through the mobile internet.

Typically the charges that apply on a customer's bill are a result of their usage of voice, SMS or data services. However, it is possible to apply other charges, often of a recurring nature which are not directly a result of such usage and which do not result from the application of a PSMS. These include text bundles, data add-ons and other exclusive MNO offerings such as handset applications. Such services are a direct result of an executed transaction between the customer and their MNO and should not be considered as Premium Rate Services.

10. Do you consider ComReg should regulate MNO"s "on-portal" services as "Specified PRS"?

No, O2 do not believe that it is necessary for ComReg to regulate MNO 'on-portal services'. The standards laid down in the code can be complied with on a voluntary basis but the nature of the direct relationship between the parties ensures that such services are delivered in a manner that satisfies customer requirements as well as providing the after-sales care and support to resolve any issues. This single point of contact for provision, support and billing dramatically minimises any potential for consumer harm.

As ComReg have outlined 'on-portal' services have not historically represented a source of consumer harm. This is due to the fact that there is a clear contractual relationship between the MNO and the customer primarily for the provision of a pre-pay or postpay mobile communications service. Such a close relationship between the parties provides the customer with clear and well established channels for redress both through customer care centres and online through dedicated assistance portals. Dedicated support centres which have consistently been recognised at an industry level for providing excellent service ensure that customers can readily gain access to the assistance and after-sales care they need should they have an issue with any product or service that is offered by O2. This single point of contact for provision, support and billing ensures that we have the technical ability to identify any issues and resolve them first time without minimal customer impact or need to refer to other parties.

From a price transparency perspective O2 believe that this can be managed directly on a voluntary basis by the MNO's who ordinarily adhere to rigorous price transparency requirements when bringing products and services to market. It is paramount that customers are clear about the pricing of services which they choose to avail of so as to guarantee a positive customer experience. O2 pre-pay customers can avail of detailed transaction records through their online account for a 45 day period after the creation of the record. This is available to all registered O2 pre-pay customers. This facility provides customers with the ability to monitor and review their records after the fact.

In terms of Fair Trading O2 similarly believe that the highlighted provisions can be adhered to on a voluntary basis. These provisions are adhered to in all circumstances of product development and dedicated resources for child protection and privacy ensure that these standards are upheld at all times. Such matters of Fair Trading are intrinsically linked to brand and reputation and any failure in respect of one of these issues could have a major impact to brand and reputation which are similarly of great value to our business. Clear business principles, rules and practices are already in place to support these points and these readily apply to on-portal services as they do to all other O2 developed products and services.

O2 do not believe that the offering of 'on-portal' services outside the scope of regulation would provide any commercial advantage as such services would not only comply with the provisions of a code of practice on a voluntary basis but would quite often provide a higher standard than that mandated to Service Providers in the Code due to our own internal business principles, rules and practices. The direct nature of the relationship between the MNO and the customer ensures that these standards are upheld in all of our dealings.

For the reasons outlined above O2 believe that all MNO 'on-portal' services should be exempt from regulation regardless of price. As outlined in our response to question 1 we do not believe that price should be the determining factor in exemption and the nature of the relationship for these services should ensure that no consumer harm is caused.

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

Yes, O2 welcomes ComReg's wishes to reduce, where appropriate, the administrative burden on industry by exempting certain services from regulation where there is no consumer harm. This is an important step in ensuring that focus is placed on those services which have historically or are likely to cause consumer harm.

As highlighted in our response to Question 1 O2 believe that a greater emphasis should be placed not on establishing a price threshold for exemption but on providing exemptions by virtue of the nature of the service in that the service is one that is not likely to cause consumer harm. On that basis, it is O2's view that certain services should be completely exempt from regulation. These have already been highlighted in our response and include pay-for-product services and MNO 'on-portal' services.

If a threshold is to be introduced O2 recommends that ComReg undertake an in-depth review and analysis as to the establishment of a price threshold at which consumer harm occurs. The proposed 20c threshold could possibly be increased to 30, 40 or 50c before consumer harm is deemed to occur.

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

No, O2 do not believe that Directory Enquiry (DQ) services, within their current remit, should be regulated as specified PRS. However, they should be subject to compliance with particular elements of the PRS Code of Practice or subject to compliance with a specific subset of the Code of Practice on a mandatory basis. Issues of price transparency and promotional practices are areas of particular relevance and DQ services have the same potential to cause consumer harm as other premium rate services. However, this area has not historically been the cause of significant customer harm and as such, there is no need for significant regulatory focus at this point. ComReg will however retain the ability to apply regulation to this area if it becomes necessary further to the provisions under the Acts.

O2 believe however, that if the scope of services that could be provided within 118XX number range were to be extended that this would warrant classification of DQ services as 'specified PRS' and require regulation as such.

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, O2 believe that the 'nature' of DQ services, within their current remit, are not likely to generate consumer harm and as such could avail of an exemption. If ComReg decide to regulate DQ services it would appear reasonable to allow an exemption where such services satisfy any threshold requirements. If the scope of services that could be offered through

118XX number range were to be broadened then it would be appropriate for those services to be classified as 'specified PRS' and regulated accordingly.

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?

O2 believe that DQ services should be allowed to expand to allow a more diverse range of 'general information services' and thereby become subject to PRS regulation. It would be necessary that the full scope of the code of practice applies to the broader range of DQ services as well as those core services. In allowing such an expansion clear rules need to be established surrounding the availability and promotion of such services. Such services should be relevant to the purpose of the consumers call to the DQ service i.e. for a consumer requesting a phone number for Heuston Station it would be relevant to offer or promote a train time-table service. It is hard to see the relevancy of a tarot or chat service however and we believe that relevancy needs to be demonstrated in all such services.

It is imperative however, that the integrity and trust that exists in the current DQ services is maintained. To that end O2 agree with the proposals to maintain service standards and prevent the creation of inferior DQ services through the application of a Primary Purpose Test and Quality of Service monitoring.

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?

O2 do not believe that the provision of general information services by DQ Service Providers would be unfair to 'ordinary' services providers. While the use of well recognised 118XX numbers which have generated considerable brand awareness and value would possibly provide DQ service providers with greater recognition in the market, 'ordinary' service providers would have the option of providing a similar service and building value for their brand in a similar manner.

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?

O2 share ComReg's concerns regarding the potential vast range of services that may be offered on DQ numbers if a broadening of range were to be permitted. For that reason O2 agree with the class of services outlined in section 8.4.3 as proposed by ComReg as not being suitable to be provided through a DQ service. O2 believe that such services should be limited to those of a general information nature and 'related' to the purpose of the consumer call as already outlined.

A 'prior permission' model of approval for the introduction of general information services appears reasonable while this area is developing. It may be possible thereafter to develop

set criteria for permitting certain services and define a list of class or type of service that is permissible for use through DQ services.

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

While we must recognise the impact that certain unscrupulous mobile subscription services have had on the reputation of the Premium Services Industry and the fact that these represent the predominant cause of consumer harm and complaint throughout the industry as depicted by RegTel statistics. In addressing any perceived abuses of mobile subscription services it is imperative that any solutions do not inhibit legitimate users and service providers by mandating cumbersome opt-in or subscription requirements which are disproportionate and do not target the root cause. While ComReg may regard the subscription model as the preferred sales model rather than the preferred method of purchasing it should still be acknowledged that it is a successful and widely used model for particular types of information alert services and as such the behaviour of a number of Service Providers should not be attributed to the entire industry.

O2 believe that a number of steps can first be taken in an attempt to alleviate the perceived issue. These would include specific regulation of the information and clarity thereof, which is made available during the promotion and delivery of a subscription service. It must be recognised that important terms referring to the recurring nature of a service may not have been prevalent at the time of consumer purchase and rigorous regulation of this point through the code of practice should reduce the potential for consumer harm. Tighter regulation and enforcement accompanied by ComReg’s powers in this area should contribute to alleviating consumer harm in this regard. Only if this is deemed to be unsuccessful should ComReg consider the introduction of double opt-in.

Nonetheless, O2 are in agreement that the suggestion of a double opt-in solution as a means of ensuring that customers are aware that they have opted-in to a subscription service as well as informing them of the associated costs and duration involved appears to be a balanced approach. If introduced, such a solution will ensure that those customers who wish to take part in a subscription service have positively agreed to do so, while also minimising the potential for customers to unwittingly opt-in to a service.

ComReg refers to the introduction of this solution in the UK but there is no reference to the applicability of this solution to services which incur a charge of in excess of £4.50 per week. The merits of a similar threshold should also be considered and explored here in advance to ensure that the solution is focused on those services that are deemed likely to generate consumer harm rather than further obstructing unharmed services.

In introducing such a solution there also needs to be a clear distinction between a double text opt-in and an opt-in through the mobile internet. The mobile internet is more readily adaptable to providing a double opt-in mechanism without the requirement to complete the process via SMS. Such a double opt-in can be completed on screen through a second confirmation page similar to how Payforit operates in the UK. A requirement to revert from a WAP session to SMS to complete a double confirmation would have a huge impact on the

ability of all Service Providers to offer innovative products in the desired manner for consumers. Any such requirement would negatively impact the WAP transaction process and result in confusion and unnecessary complication from a consumer perspective with the ultimate result of driving legitimate uses away from the services.

If this measure were to be introduced O2 believe that this would negate the introduction of further measures as suggested in questions 18 and 19.

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?

O2 do not believe that there is a necessity to prohibit the use of MT Billing by PRS Providers. The concerns highlighted by ComReg that simply introducing other solutions, as occurred in the UK will not prevent MT Billing to be used by unscrupulous PRS Providers are legitimate concerns but there are other factors which need to be considered. MT Billing is an essential element to premium rate services and enables consumers to interact efficiently with various services such as casting of votes or making charitable donations. It is also essential in the operation of subscription services such as news and weather information alerts. To apply such a prohibition would limit consumer choice in the methods by which they pay for compliant services. Where MT Billing is used correctly it provides an innovative channel for transactions and a positive customer experience. However, if it were to be used incorrectly it has the possibility to cause consumer harm and this should be prevented in all circumstances.

O2 believe that this can be achieved however, not through the prohibition of MT Billing entirely, but through effective monitoring and enforcement. The Acts provide ComReg with powers to revoke, amend or suspend a PRS licence and the ability to apply conditions to a license regarding refunds of impacted customers of any charges paid where they have been deemed to be in contravention of the license. O2 believe that these powers should initially be sufficient to deter any unscrupulous activity.

However, if this were not to have the desired effect O2 recognise that it may then be necessary to only allow MT Billing to operate for certain prescribed services. In advance of the application of any such restriction it would be necessary to carry out an in-depth review of the particular services that should be subject to such restrictions and consult further with the PRS industry.

In terms of ComReg's suggested alternative of operating subscription services on a front loaded MO basis. This would most likely deter customers from using such services due to the level of interaction involved and could cause considerable confusion due to the variances in duration that these could be applied for. Presumably, such a solution would require a customer to send an MO message purchasing credits for such a subscription service allowing them to avail of updates while those credits remained. Depending upon the pricing of such services this could require a large initial cost for the MO message to allow it to operate for a month without requiring the customer to further interact and purchase further credits. With an initial cost of circa €10 this would be further limiting customer choice by creating a barrier for certain customers who would prefer to pay in smaller increments of a greater period of time.

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

O2 do not believe that 'invisible' reverse billed SMS should be prohibited on the basis that it can be used effectively where the requisite controls are in place. O2 believe that this can be achieved through effective monitoring and enforcement against the Code of Practice. ComReg's powers under the Acts to revoke, amend or suspend a PRS licence as well as the ability to apply conditions to a license regarding refunds of impacted customers of any charges paid where they have been deemed to be in contravention of the license should be sufficient to deter any unscrupulous activity.

'Invisible' MT messages could legitimately be used by a Service Provider to carry out billing subsequent to a compliant transaction where the cost may be greater than the available price point i.e. a charge to download an album for €7.50 could be delivered through 3 premium messages at a cost of €2.50 each. The first of which could provide the customer with the necessary confirmation receipt and the following messages could be invisible so as not to bombard the customer with trivial messages, which could cause confusion. A customer receiving three messages informing them that they have been charged €2.50 may lead them to believe that they have been over-charged by virtue of the receipt of three messages, causing greater concern and negative impact to the industry.

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

No, O2 believe that storing of chargeable messages for delayed sending, subject to sufficient credit on a pre-pay account, should not be prohibited. To do so would represent a further example of limiting consumer choice. The fact that a consumer has insufficient credit should not be taken as evidence that they do not wish to maintain a subscription service which they have correctly agreed to. This could result in a situation where a consumer applies credit in anticipation of receiving particular content only to find that the messages and subscription have lapsed.

O2 believe that the potential consumer harm that could arise through the storing of such messages can be alleviated through provision of specific conditions in the Code of Practice. Specific premium message retry policies could be introduced allowing only for the re-sending of a message for a particular duration. Such a policy would allow customers to retrieve anticipated messages within a short period of time and would also ensure that customers are not inundated with premium messages upon 'topping up'.

Furthermore, particular provisions should provide for a staggered re-sending of such stored messages thereby allowing customers in receipt of these messages to opt-out from receiving any of the further queued messages. This could be facilitated by providing for no more than 1 premium message, which was queued to be sent per hour.

To further alleviate the issue of Consumers being unable to opt-out or send STOP due to insufficient credit the Code of Practice could provide Code of Practice conditions providing that the MO leg is free for all shortcodes that deliver MT billing messages, thereby allowing the recipient to reply STOP in any given circumstance.

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, O2 believe that MNO's should not be required to provide all customers with the option of barring premium messaging. ComReg readily acknowledges that consumers frequently use premium messaging to take part in voting and TV competition services and that these services are likely to continue to grow. The introduction of such SMS barring would have an impact on low cost 'impulse' services which consumers may not anticipate when applying such a bar.

The cost of developing such premium SMS functionality is likely to be considerable and O2 request that further assessment be carried out in advance of the introduction of such a solution.

Within O2 there has been a very limited take-up of premium voice bars and we do not believe that the situation would be any different for premium SMS bars. As such, O2 believe that the relevant costs in developing such barring functionality would not be merited and the costs would far outweigh the benefit availed of by consumers through the prevention of consumer harm.

While the proposed solution may be consistent with the approach in Regulation 9 of the European Communities (Electronic Communications Networks and Services)(Universal Service and Users Rights) Regulations 2003 this only applies to the designated USO undertaking and does not extend to other communication service providers. If, despite the arguments to above, such a solution were to be introduced O2 suggest that it would have to be on an 'opt-in' basis only and should not be applied by default to all consumers. Any development in this context will require further consultation with industry.

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

No, O2 believe that no restriction should be applied to the class or type of service that can offer a subscription service. To implement such a control could give rise to potential anti-competitive claims. The commercial basis for particular services should not be interfered with and the perceived consumer harm could be addressed through rigorous monitoring and enforcement of the Code of Practice and use of ComReg powers to revoke or suspend a licence.

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, O2 agree that subscription services and marketing opt-ins should be cancelled when an account expires or a number is quarantined. However, there are a number of requirements already in place which currently achieve this requirement. These include the existing

quarantine period of 13 months implemented by ComReg as well as the Data Protection rules requiring the necessity to maintain the validity of a marketing consent for 12 months and the current RegTel Code of Practice requirement that if no successful premium messages are delivered for a 40 day period that the account should be removed from the subscription service and relevant databases. O2 believe that these processes achieve the desired effect of ComReg's proposal and that there is no need for further regulation on this point.

If ComReg wish to introduce further controls in this regard O2 suggest that these be implemented in line with suggested provisions for a standard to regulate premium MT message retry policies.

O2 would like further clarification as to the exact nature of ComReg's particular proposal. If it is intended that cancelled or quarantined numbers are to be communicated to the PRS industry as a whole this will require further assessment by ComReg. Such a process could require significant development, costs and may give rise to Data Protection concerns regarding dissemination of data.

50 TV3 Television Network (“TV3”)

TV3 RESPONSE TO COMREG CONSULTATION DOCUMENT
10/27
SCOPE OF PREMIUM RATE SERVICES REGULATION

Premium Rate Services (PRS)

TV3 would like to thank ComReg for initiating the Consultation process in respect of Premium Rate Services Regulation. TV3 notes that ComReg has gone into some considerable detail to analyse Premium Rate Services in the Republic of Ireland. Whilst it is not TV3's intent to comment on all of these questions, TV3 does answer the ones most relevant to its business, as set out below. TV3 does also believe that it is appropriate to make some general comments, which should inform ComReg generally in regard to its approach to Premium Rate Service Regulation.

Consistency of Regulation:

TV3 would state that it is absolutely essential in respect of whatever Code of Practice and draft Regulations that ComReg puts in place, that it ensures that these are applied in a coherent and consistent manner, to all comparable services.

Overlap with other Regulatory Authorities:

It is TV3's experience that the Regulation of certain aspects of the quiz TV industry (as discussed in Section 7 of the Consultation document) may, in certain circumstances, fall to be decided by the Broadcasting Authority of Ireland. It is essential both for the purposes of general legal principles and natural justice (i.e. no double jeopardy) and further, fully in accordance with current Government guidance on general sectoral Regulation (flexibility and a uniform approach), that ComReg ensures that it has a Cooperation Agreement between the BAI and itself, similar to the one between the Competition Authority and ComReg), so that parties are subject only to one set of regulations and not multiple regulations.

Question 1:

Do you agree with ComReg's preliminary view that 20c is a reasonable price threshold below which certain services may be exempt from licensing?

TV3 Response:

We accept that it is reasonable to select a price point below which services need not be regulated, due to the improbability of consumers running up unmanageable bills with a minimal cost per call. However, we feel that 20c is too low a price to put on this cut off point, as the cost to enter competitions by text is usually higher than this. Since these require few texts and are non-subscription services, we do not see any harm in these services being at a slightly higher

cost while also being exempt from regulation. The current point below which services are exempt in the UK is 50p. We recommend that a similar price point is introduced in Ireland, as it is more reasonable for Service Providers and does not pose any great risk of harm to consumers.

We feel that there should be a distinction made between a price per call and price per minute tariff. There is little danger of extremely high bills being run up on a fixed price per call tariff, since it bears no relevance to how long the consumer stays on the call. In order to run up a high phone bill the consumer would have to take the positive action of calling the number many times.

Question 2:
Do you agree with ComReg's intention to regulate live services?

TV3 Response:

We appreciate the need to regulate some live services, however we feel that there should be some exemptions to these regulations. There are listed exemptions in the UK in this area which are updated regularly. The cost of calls is made clear to consumers and if they wish to avail of these services we do not believe there is a need to have them stringently regulated. The consumers are adults making a positive act by calling to avail of a live service and should be entitled to do so if they wish. We are aware of the need to ensure that the consumers are above the age of 18, but aside from this we do not feel there is much requirement for regulation. We would also note that if these services are broadcast after 12 midnight, it is overwhelmingly clear that these services are adult services and thus the regulatory requirements need not be as stringent.

Question 4:
Do you agree with ComReg's intention to regulate competition services?

TV3 Response:

In regard to the regulation of competition services, we accept that Premium Rate Numbers need to be regulated. However we feel that the following steps should be taken;

- 1. Regulations should be clear and should be uniform for all Premium Rate Services. All rules should be clearly set out.*
- 2. In the case of any breaches, all actions/penalties should be clearly set out. The Government's White Paper on Regulations should be taken into account, particularly that all regulations should be clear, transparent and no more than necessary to achieve the aim sought.*
- 3. Some of the responsibility should lie with the end-users, particularly where the price per call is clearly laid out and there are limits set on the number of calls allowed per day/month. The consumer is making a positive act by calling and this should not require further regulation.*

We note that the BAI, in their draft General Advertising Code, makes it clear in Section 3.4 that, in assessing commercial activity, factors such as time of broadcast, type of programme and likely composition of audience must be taken into account. Given that these series are late night adult shows the end viewer must accept a high level of responsibility for their own actions.

With regard to gambling addiction issues, we feel this is regulated by the Gaming and Lotteries Act 1956 and is solely a matter for the gardai. It should be accepted that people in Ireland may call to enter competitions and this should not be viewed as a lottery.

In respect of Quiz TV programmes we would like to bring to ComReg's attention OfCom's decision in the UK to allow more teleshopping and television quiz programmes in order to offset the effect of falling revenue in the commercial sector. We feel it is imperative that ComReg consider this in the Republic of Ireland in order to assist commercial broadcaster in an extremely difficult economic climate.

Question 8:

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

TV3 Response:

In respect of virtual chat, contact and dating services, we appreciate the need for some form of regulation. However, since these are services for adults we feel that a lot of responsibility should lie with the end user. Once the cost of the calls is clearly highlighted and the callers are identified as being over 18, we do not feel there is much requirement for further regulation.

Question 17:

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

TV3 Response:

We do not feel that a "double opt-in" requirement is necessary for subscription service. If it is made clear that it is a subscription service we do not believe that sending an extra text would be required. RegTel have set out the Terms and Conditions in relation to this and we feel they contain sufficient consumer safeguards. It is also very simple to be removed from a subscription service by texting "STOP" to the number, thus it seems excessive to require two text messages simply to subscribe to a service that is not contracting the consumer for a definite period of time.

Question 18:

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

TV3 Response:

We do not feel that ComReg should prohibit the use of MT billing by PRS providers. MT billing is useful as it confirms to consumers that they have been successful in a competition entry for example. Once the Terms and Conditions specify that two texts will be required and the cost is laid out, we do not see the need for further regulation. We believe if ComReg is intending to prohibit the use of MT billing in certain circumstances, it should remain in use for comment lines, competition entries and voting, where it is in the consumer's interest to know that their text has been received. There is no hidden cost involved here.

Conclusion:

TV3 believes that whilst Premium Rate Services must be regulated and consumers protected, in respect of cost per call services aimed at an adult audience, it is incumbent upon consumers to exercise control, provided the cost of the call is clearly set out, the terms and conditions are transparent and appropriate "back stop" measures – such as monthly restrictions on levels of calls – are put in place.

In the event of any queries, please contact:

David McMunn,
Director of Government Regulatory and Legal Affairs
TV3 Television Network Limited
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Dublin 24

51 UPC



Response to Scope of Premium Rate Services regulation – ComReg 10/27

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, retail mobile rates can be up to 30c to 40c and therefore the threshold price should be above this rate and classed as premium. We believe 20c to be too low a threshold.

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

All live services should be regulated with the exception of technical support services. These are the only live services that we believe should be permitted.

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

Yes, all services of a sexual nature, irrespective of cost should be regulated

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

Yes, we believe that competition services should be regulated

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

All services aimed at children under the age of 18 should be regulated

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

Yes, we agree that fundraising and charitable donations through PRS should be regulated to ensure that they are run by legitimate organisations and reduce the potential threat to subscribers.

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

Yes, but would rather see dialler hijacking classed as fraud and pursued as such

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

Yes

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

Yes

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

No, if these are not accessed via a premium rate number they should fall outside of this regulation

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?

UPC agrees that certain categories of services could be exempt, however, we do not necessarily agree with the list proposed. We feel that technical support services could be exempt

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

No, directory enquiry services provides numbering information only and are designated a specific short code

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)

The price for DQ services is over the price threshold but is still not considered premium rate

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?

UPC believe that the current focus of DQ only should be maintained

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 blurs the lines between DQ on 118xx and content providers on 15xx. 118xx should be maintained as DQ services only

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?

We believe it should not be permitted.

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

Yes, this would provide protection for consumers in that two free texts are required

prior to charging commencing

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

Yes, sign up should be another method or use double opt in text with clear terms and conditions

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

Invisible reverse billing should not be permitted

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

Chargeable messages should not be stored up for delayed sending. All Stop and Opt out messages should be free of charge

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

Yes, this option is available on fixed lines so should also be available on mobile services

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

It should be possible to implement barring to Premium SMS

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, UPC agree

52 Vodafone Ireland Ltd.



Vodafone Response to the ComReg Consultation on Scope of Premium Rate Services regulation

Introduction

Vodafone welcomes ComReg's consultation paper on the scope of the premium rate services regulation. We agree with ComReg's view that this consultation offers the first opportunity to establish a new regulatory framework which will offer greater protection to consumers where required while at the same time providing a clear and rational set of rules and guidelines to service providers (SPs) who wish to offer their content and other services to those customers.

Because there is now this opportunity to establish a more effective regulatory regime for premium rate services (PRS), it is incumbent on ComReg to take on board the views of the overwhelming majority of operators and SPs who have supplied a wide range of services for a considerable time without customer harm or material levels of complaints. Vodafone sees this consultation as an opportunity to clarify our view that on-portal and direct-to-bill payment mechanisms as such should not automatically be included within the scope of premium rate services regulation. We believe that sector-specific regulation should only include within its scope those services which have a significant potential for consumer harm. It has been obvious from the history of PRS that harm can arise where access to a service and the charge for that service are concurrent, combined with a third-party service provider having access to the revenue sharing mechanism but without a direct relationship with the end customer. Vodafone sees the intent of the Act¹ as clearly dedicated to including within its scope just such services where access and charging are concurrent. With this in mind, we believe that implementing the proposed regulation of on-portal and direct to bill payment mechanisms, or their proposed prohibition would be totally disproportionate and unjustified.

In drafting the regulations therefore, ComReg should be guided by principles which ensure its attention is focussed only where it is required to mitigate known or potential consumer harm. Additional regulatory obligations should not result in a diminution of the utility of the services to consumers that exceed the protection afforded by the increase in regulation. Nor should the new framework be about prohibiting particular payment methods – be they MT billing, Pay-for Products or other mechanisms. In our opinion, the focus area for regulation is already clear, namely those transactions where the promotion of the service by a third party (i.e. those further down the value chain than OCP) is combined with a charging mechanism that concatenates the carriage/access to the service with the charge for the content. In such cases, ComReg should speedily use its enforcement powers to eliminate any harm and to apply the appropriate sanctions. Where ComReg believes harm can be reasonably anticipated and can support that belief, it should use this consultative process to determine the most appropriate and effective means of preventing this occurring. In all other cases and where it has discretion to do so under the Act, ComReg should refrain from further regulation or licensing.

Before addressing ComReg's specific consultation questions, Vodafone would like to comment in detail below on the following area of the consultation:

- Accountability in the Value Chain and Licensing
- Specified PRS
- On-portal Services

¹ Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010

- Service Levy

Accountability in the Value Chain and Licensing

Vodafone acknowledge that the current legislation defines a PRS provider in such a way as to include all entities in the PR service delivery chain. However Vodafone believe that ComReg should exercise its discretion under the Act and not seek to licence or to further regulate origination communications providers (OCPs), for the following reasons;

- (a) There is no evidence of consumer harm arising from the action of OCPs in the conveyance of PRS and thus no justification for further regulation. Accountability for customer satisfaction rests squarely on OCPs who must deal effectively with adverse consumer experience or suffer the commercial and reputational consequences. In the case of on-portal and pay-for-product services that are charged directly to a customer's phone account, accountability again clearly rests with mobile operators such as Vodafone who clearly have a huge incentive to ensure a consumer centric proposition is implemented. In such cases where accountability is clear and robust, additional regulation (particularly in the absence of an evidence of consumer harm) is neither proportionate nor warranted. .
- (b) OCPs are already effectively regulated in this area, by way of licence conditions, the General Authorisation regulations, and telecommunications law (specifically Section 45 of the Telecommunications Regulation Act 2002) and other ComReg decisions and must comply with relevant requirements or risk sanction.
- (c) OCPs are by definition either ECS or PATS providers and must have a General Authorisation. Condition 15 of the General Authorisation (Accessibility of Numbers) provides that *"The Authorised Person must at all times comply with the National Numbering Conventions in force from time to time in respect of numbers allocated from the national numbering scheme, as well as any special conditions that ComReg may attach to specific numbers from time to time."* Clause 3.2.2.6 of the Numbering Conventions provides that non-SMP network operators shall *"...open access from their networks to all relevant numbers allocated by the NPM, subject only to commercial negotiations between operators"*.
- (d) The operation of the condition 15 of the General Authorisation and Clause 3.2.2.6 of the Numbering Conventions means that Network Operators have no discretion but must open access to PRS ranges. Therefore requiring OCPs to be licensed means that a PRS license becomes a pre-condition for Network Operators. In effect the PRS license becomes a mandatory requirement for Network Operators imposed by way of the General Authorisation. If ComReg were to pursue this course it must clearly set out the legal provisions that allow it to mandate the PRS licence by way of the General Authorisation.
- (e) OCPs will be made aware of PRS consumer problems as they arise since they are in the front line of service delivery and will be the first port-of-call if there is a problem. OCPs have a commercial incentive to deal effectively with these issues in order to reduce customer care costs, avoid billing disputes, and ultimately minimise customer churn.

- (f) OCPs invest heavily in their brands and operate in an extremely competitive environment. They have no commercial or other incentive to behave in a manner which is to the detriment of their own customers. These commercial imperatives militate against any requirement for additional regulation in addition to that which is already in place.
- (g) OCPs cannot be held accountable for the actions of other entities in the value chain whether they are content providers, service providers or terminating operators whose actions are outside of OCP control.
- (h) PRSMS is an area which ComReg says leads to most consumer complaints. However ComReg does not in anyway suggest that these complaints relate to the role of the OCP. On the contrary Mobile OCPs already police premium rate SMS (PRSMS) through their contracts with messaging aggregators and directly connected content providers and they have the power to block services in the event of errant behaviour. In this context there does not appear to be a justification for the imposition of regulatory burden on OCPs where the evidence is that issues arising for consumers are not with the OCP but with the content provider.

Article 28 (1) of Directive 2002/22/EC (Universal Service Directive) is to be amended with a transposition date of May 2011. The Article will then require that

*“Member States shall ensure that, where technically and economically feasible, and except where a called subscriber has chosen for commercial reasons to limit access by calling parties located in specific geographical areas, **relevant national authorities take all necessary steps to ensure that end-users are able to...access and use services using non-geographic numbers within the Community.**”* [emphasis added]

The implementation of this requirement means that end users in Ireland would be able to access PRS services hosted in other member states. It is not clear how ComReg’s desire to be able to regulate the entire value chain for specified PRS will be realised in the context where a significant portion of the value chain lies outside of the jurisdiction.

In the context of accountability in the value chain Vodafone would welcome ComReg’s views on how this might be achieved in the light of the changes in the Article 28.

Specified PRS

Vodafone believe that ComReg should apply a series of tests or filters to any particular PRS before deciding if it is to be designated as ‘specified’ and subject to licensing and regulation. ComReg has already identified some of these tests which when applied should demonstrate, either solely or in combination with other tests, that the particular service should be ‘specified’. Vodafone believe, the relevant tests should include the following;

- i. Does this service or similar services have a history of significant amounts of customer complaints?
- ii. Is the target market readily identifiable as vulnerable or in need of additional consumer protection?
- iii. Is the price of the service such that customers could incur considerable financial loss in the event of a problem?
- iv. Is the nature of the service or content unsuitable if accessed by children or minors?

Answering affirmatively to any one of these questions should not automatically mean the particular service is designated as specified. For example, Directory Enquires (DQ) would not pass test (iii) but should not be designated as specified since the history of DQ or the nature of the service would not lend itself to causing consumer harm. However, affirmative results to one or more of the tests do give ComReg grounds for further examining whether a particular service should be designated as ‘specified’.

On-portal services

Vodafone believe there is no evidence that value added services sold by the OCPs themselves, such as mobile ring tones, video clips, or anti-virus software require specialist regulation beyond what general consumer law or existing telecommunications legislation requires. Research² conducted by OFCOM revealed that 70 customers out of 824 had experienced a problem with PRS (c.7%). Of the 70, 4 had experienced a problem using a ‘walled garden mobile Internet’. Of the two that complained, both had the matter satisfactorily resolved by their service provider. The research indicates that on-portal services are not a source of significant consumer harm and there is no reason to believe that if similar research was conducted in Ireland in relation to on-portal services that the findings would be significantly different. In the absence of evidence to indicate that there is a current or prospective issue with OCP on-portal services Vodafone does not believe that the designation of these services as “specified PRS” is proportionate or justified.

Service Levy

Vodafone agree that the issue of a service levy in relation to PRS should be subject to further consultation and we will comment further and in greater detail at that stage. Nevertheless, Vodafone would make the following initial observations on the subject at this time.

- The recovery of costs through the levy should be directly linked to the activity giving rise to those costs. If ComReg incurs overhead in the process of license applications, then these costs should be recovered via an appropriate license fee.
- Where ComReg’s monitoring, enforcement and other compliance costs are more directly related to the volume of PRS transactions, then these should be recovered via some form of usage levy. Vodafone would advocate the continuance of the current PRSMS levy arrangement for this purpose.
- The relative proportions of any usage levy collected from OCPs and service provider should be in proportion to the relative share of retail revenue.
- Where PRS is already contributing to an existing ComReg levy (e.g. via the Telecommunications levy), ComReg must ensure that no double levying occurs on implementation of the new regime.

Response to Consultation Questions

² Figure 21 and Page 36, The Consumer Experience of PRS (Ofcom research in 2007), published 14 May 2009

Q1. Do you agree with ComReg’s preliminary view that 20 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?

While Vodafone agrees that there is merit in setting a reasonable threshold rate below which services may be exempt from licensing, Vodafone would not support the assumption that services which are charged at rates above the threshold should automatically be required to be licensed. Vodafone believes that, in addition to pricing, there are other criteria which need be evaluated before a service should be considered for ex-ante licensing.

For example, on-portal content delivery or Directory Enquiries may cost considerably more than €0.20 on a per event or per call basis. However, Vodafone believes neither of these would warrant licensing since there has been no demonstrable consumer harm arising from access to the services, both of which have been available for many years.

Conversely, services costing €0.20 or less could in theory lead to consumer complaints and harm if the safeguard effect from the low charge was negated by the frequency with which that charge was incurred. This would be particularly true of PRSMS which was billed on termination. However, it could also arise for a service which was billed per minute since a 30 minute call would still cost €6. Vodafone agrees that the potential for harm would be greatly reduced by the imposition of a €0.20 threshold but would wish to make the point that it is not always the price that is the source of complaint.

Notwithstanding the above, Vodafone would like to see the minimum price point set at 30c (not 20c) as many radio and TV stations run comment lines and children's competitions at prices between 25c and 30c per event. Both of these services would be viewed as low risk in terms of the potential for consumer harm.

Q2. Do you agree with ComReg’s intention to regulate live services?

Yes, Vodafone agrees that there is a clear need to regulate live services and in particular live services of a sexually explicit nature. Vodafone would welcome strict regulation and compliance monitoring of services of a sexual nature. However Vodafone notes that there is an almost infinite range of content that can be provided on a “live” basis. This ranges from services of a sexually explicit nature to technical support for a consumer’s new car, to an “ask me anything” search service. Vodafone believes that some thought is required to avoid the unnecessary regulation of content classes which pose no issue.

Q3. Do you agree with ComReg’s intention to regulate PRS services of a sexual nature, irrespective of cost?

Yes, this could be managed by opening up the 58XXX (gambling/gaming) and 59XXX (Adult) ranges so that the public are aware of the nature of the service and it will be easier for moderators to monitor the services.

Q4. Do you agree with ComReg’s intention to regulate competition services?

Vodafone believe there is currently no need to regulate competition services as there are sufficient powers outlined in the regulations to address the situation where service providers do not issue clear and transparent pricing information. Competition services should be permitted for either subscription purposes or as a once off event. However there should be greater clarity around the costs of using subscription services e.g. TV advertisements should have spoken pricing details, as well as the relevant text on the screen as is currently is the case.

Vodafone believes that free text shortcodes (50XXX) should not be used as an entry mechanism into subscription competitions, but should be allowed for competitions which are genuinely free to the consumer.

Q5. Do you agree with ComReg’s intention to regulate children’s services, irrespective of cost?

Yes, Vodafone agrees that Comreg should regulate children’s services However we believe that 16 years of age is an appropriate age threshold and one which, while ensuring consumer safety also recognises the nature of the market for many premium services.

Q6. Do you agree with ComReg’s intention to regulate fundraising and charitable donations made through a PRS?

Yes, we are receiving increasing volumes of requests from charities who wish to fundraise via PRSMS. We would however seek more clarity and transparency around how VAT should be handled as not all charities are VAT exempt. We believe that when PRS is used as a fundraising mechanism and when, due to VAT, not all monies go to the charity, it must be made clear to the consumer what proportion of their donation goes to the charitable cause.

Q7. Do you agree with ComReg’s intention to regulate internet dialler software, irrespective of unit cost?

Vodafone agrees that in cases where modem-hijacking occurs using clearly identifiable number ranges, ComReg should intervene in the interest of consumer protection. ComReg’s powers are clear where the hijacking makes use of national premium rate numbers and enforcement is relatively straight-forward in these cases. However, where high cost international number ranges are used, the issue of ongoing monitoring and effective intervention is more problematic. Hijackers are free to change ranges, number length and even country code. Operators may have technical difficulties barring individual numbers within an international number range and to bar access to an entire international destination would have wider customer impacts.

Vodafone is not aware if modem hijacking continues to be a major issue and whether the wider availability of broadband has reduced the impact. Vodafone does believe where cases of hijacking are clearly identified, it is in all stakeholders' interest that the information is made available to all operators as quickly as possible so that protective measures can be instigated with the minimum delay.

On the issue of future hijacking of 'smartphones' and similar devices, Vodafone is aware of the risks posed to consumers with this form of malware and we welcome Comreg interest in this area. We would be happy to review or discuss any plans or proposals that ComReg may be considering in relation to this issue.

Vodafone is in agreement with ComReg's intent on this issue but is unclear on the mechanism which would allow regulation of auto-dialler software or malware.

Q8. Do you agree with ComReg's intention to regulate virtual chat, contact and dating services, irrespective of cost?

Yes, Vodafone agrees with ComReg's intention to regulate virtual services irrespective of cost. Proper conduct of the relevant providers must be regulated where there is a possibility that such services could have a negative impact on vulnerable members of society.

Q9. Do you agree with ComReg's intention to regulate pay-for-product services?

Vodafone does not agree that there is a need to regulate pay-for-product services at this stage. Any new regulation should be aimed only at those areas where there is evidence of consumer harm. We do not believe it is appropriate or justified for ComReg to be extending its scope of regulation based purely on concerns about a particular payment mechanism and not on evidence of consumer detriment. Consumers in the wider economy already avail of numerous payment methods to pay for the same product or service. Simply because an additional method is available (payment by means of ones telephone bill or top-account) and ComReg has power to regulate in this area, does not mean that these powers must be exercised. It is incumbent on ComReg to demonstrate with robust evidence that there is a failure or material level of potential consumer harm before imposing ex-ante regulation. It is not evident to Vodafone that such evidence exists in relation to this form of payment.

Q10. Having due regard for the issues raised above, do you consider ComReg should regulate MNO's "on-portal" services as "Specified PRS"?

Vodafone does not believe that there is any evidence of consumer harm which would justify Comreg regulating on-portal services. Content has been offered by Vodafone via on-portal for a number of years without any material level of customer complaints or dissatisfaction. Customers choosing to purchase services by this means are protected by existing consumer legislation. In

addition, Vodafone has very clear pricing and access controls in place to protect our entire customer base.

By definition the provider of on-portal services has a much wider relationship with the customer than just the purchase of the on-portal service. To access such services the customer must first have a relationship with the provider buying access to the portal. As the value of this access relationship to the provider is likely to be much higher on an ongoing basis than the value of the on-portal service there is a strong commercial incentive for providers of on-portal services to ensure that they are delivered to the highest possible standard.

Vodafone believe that any debate or consultation regarding the extension of premium rate service regulation must firstly focus on those areas which have the greatest potential for causing consumer harm. This is where ComReg should concentrate its attention and resources and where the most benefit will accrue to end users. Extending regulation into areas where there is no discernible consumer harm – simply because it is possible under legislation to do so – is disproportionate and represents unwarranted regulatory creep. We note that ComReg does not provide any evidence of consumer harm which would warrant an extension of regulation into on-portal services and OFCOM's 2009 PRS scope review which did look at PRS complaints in general was able to find only 2 examples in a full year which could be characterized as harmful. While any number of complaints is regrettable, the paucity of evidence demonstrating consumer harm from on-portal service means that ComReg should forbear from regulation in this area.

Q11. Do you agree with ComReg's proposal that certain categories of services could be exempted from regulation, provided the cost is below the proposed 20 cent (€0.20) price threshold?

Yes, Please see the response to Q1 above.

Q12. Do you consider that ComReg should regulate Directory Enquiry services, within their current remit, as specified PRS?

Vodafone does not believe that ComReg should designate Directory Enquiry services (DQ), within their current remit, as specified PRS. As is the case with on-portal services, ComReg has not provided any evidence of consumer harm relating to the current provision of DQ. Vodafone's own experience in relation to our customers availing of DQ services has been that such services are not a material source of customer complaint. Vodafone believes that DQ services are not associated in consumer's minds with typical Premium Rate Services and DQ services differ from standard PRS in a number of important ways;

- a. Current DQ provision on 118xx is not subject to the RegTel Code of Practice for Premium Rate Services and absent the current transfer of regulatory remit for these services to ComReg, it is unlikely that DQ would ever have become subject to RegTel's CoP.
- b. Unlike Premium Rate Services providers, DQ providers consider their 118xx numbers as a brand in themselves and invest on the basis that the brand can be leveraged for legitimate commercial purposes. The 118xx number itself is highly valued by the Service Provider and

thus is less likely to be debased or in any way associated with ‘problem’ services. This is not the case with Premium Rate Services.

- c. The target market for DQ is quite different from that for Premium Rate Services with DQ having a far greater focus on the business market.
- d. The level of investment associated with DQ provision is significantly greater than that for Premium Rate Services and entails a longer term perspective in seeking a return on that investment. Again this is not always the case with Premium Rate Services.

Vodafone accept that the current legislation and in particular the definition of a premium rate service obliges ComReg to consider the treatment of DQ services. This derives from the fact that;

1. DQ retail prices are generally higher compared to standard calls to fixed or mobile numbers and that there is a charge for the service that is greater than the cost of the carriage alone, and;
2. ComReg is considering whether DQ providers should be permitted to also offer ‘related’ services (in addition to directory information). Many of these ‘related’ services will have characteristics similar to other services offered by way of standard PRS codes.

On the issue of a ‘higher’ price, Vodafone believe that the decision to designate a particular service as ‘specified PRS’ should not be triggered by the level of retail price in isolation. It must also be demonstrated using robust evidence that the service itself is an existing or potential source of consumer harm. Simply because a service is higher priced due to its cost of provision (as is the case with DQ) should not automatically mean that it should be subject to ex-ante regulation. Such an approach can only stifle innovation and competition in the market concerned.

Vodafone also believes that if ComReg is minded or obliged by law to impose some form of obligation on DQ and particularly if DQ providers are permitted to offer a related set of services using their 118xx code, then this should be done by way of a voluntary code of practice (CoP) specifically governing these services. The CoP could specify, inter alia, that DQ providers must,

- (a) Inform ComReg of their intention to launch a ‘related’ service using their existing 118xx code at least 1 month in advance of launch.
- (b) Inform ComReg of the nature of the service and demonstrate to ComReg’s satisfaction, how the service qualifies as ‘related’ to DQ.
- (c) Inform ComReg of the retail charge applying to the service and the means by which that charge will be collected.
- (d) Provide ComReg (on a quarterly basis or otherwise) and for each 118xx code, information which shows the relative percentage of total service revenue accruing to standard directory information provision (including onward call completion) and ‘related services’.

The use of this voluntary regime would allow ComReg to monitor the use and relative importance of ‘related’ services and to assist it in assessing whether there are competitive issues vis-à-vis, other non-DQ service providers.

Vodafone does not believe ComReg should be overly concerned about the ‘dilution’ of the 118xx range brand perception in consumers’ minds should other services be made available on the same number. As previously stated, DQ providers have invested considerable amounts in branding their number even when only standard DQ services are provided. It is also Vodafone’s belief that standard DQ will continue to be the main revenue source for DQ providers and it is in the provider’s interest to keep DQ services associated with the number.

Neither does Vodafone believe that there is a risk of unfair competition if DQ providers are allowed to provide general information services for to the following reasons;

- 118xx codes are available for any entity wishing to provide DQ and other services if allowed. Two new DQ providers have launched services since 2007 demonstrating the lack of barriers to entry.
- If ComReg limits the list of services allowed to include only 'related' services, then the boundaries on the areas where there are competition concerns will be very much limited.
- There is currently no limit on the number of services that can be offered on a single Premium Rate Services number or a Premium Rate SMS code. Vodafone does not believe that there should be an absolute limit on the services provided on an 118xx code subject to the proviso mentioned above.
- It is equally likely that DQ providers wishing to compete in the market for information services will have to compete with those services currently offered via Premium Rate Services or Premium Rate SMS. It is conceivable that this will put downward pressure on DQ prices as DQ providers will have to have similar prices for access to similar services offered via their 118xx codes.

Q13. Do you consider that DQ services, within their current remit, could be exempted from regulation, provided their cost is below the recommended price threshold (Refer to Paragraph 7.5)

Yes, if the cost is below 20 cents, DQ services should be exempt from regulation. However, as outline in our answer to Q12, Vodafone does not believe that DQ services should be specified as PRS.

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

Please see the answer to Q.12.

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

Please see the answer to Q.12.

We view this as general competition in the industry if other service providers can also avail of 118XX numbers. [Ciara / Lorna – can you elaborate a little on this point if possible]

Q16. Do you consider it appropriate to delineate the additional “general information services” that would be acceptable on 118XX short codes where prior approval by ComReg would be required on a case-by-case basis?

Please see the answer to Q.12

Vodafone agrees that there should be some delineation between DQ and general information services that would operate on 118XX codes. It is Vodafone’s view that Comreg should review and pass judgement on what it determines to be a core DQ business or general information offering to end consumer and should classify the two distinct services.

Q17. Should ComReg introduce a “double opt-in” requirement for entry into a mobile subscription service?

As long there is complete transparency in relation to pricing Vodafone believe that double opt in is not necessary as the user experience of having to confirm opt in twice is not ideal and is likely to lead to confusion. However it is imperative that the new code of practice - in terms of how pricing is portrayed to the customer - is very clear and unambiguous and is properly enforced by Comreg. Under any new proposed code there should be clear guidelines regarding pricing presentation and appropriate consent capturing mechanisms.

Q18. Should ComReg prohibit the use of MT billing (reverse-billed SMS) by PRS providers? Should MT billing be permitted only for certain types of services?

Vodafone believes that it is neither proportionate nor objectively justified to prohibit any type of billing mechanism as long as pricing is very clear and regulation is enforced. MT billing accounts for approximately 70% of market revenue, and is an appropriate form of billing for such services as the nature of the requested service means it is delivered on a push basis by the SP rather than a pull basis from the consumer. Many services simply would no longer have a market as they rely on the service provider initiating a communication to a consumer for a specified and requested service. Breaking News, Live Sports updates Lottery updates etc all rely on this form of payment and are simply not as valuable if they are to be mandated as MO services. To prohibit this will have a major negative impact upon the industry, however as mentioned above, regulation around clarity of pricing is crucial. It should be noted that given the proportion of the market revenue that uses this form of revenue collection there is strong empirical evidence that consumers are willing to subscribe to services which use this method. To simply introduce a prohibition on this billing method risks “throwing the baby out with the bathwater”. A more proportionate approach is to deal with transparency issues regarding pricing.

Q19. Should ComReg prohibit the use of “invisible” reverse billed (MT) SMS by PRS providers?

Unless a compelling case can be made to show that the use of ‘invisible’ reverse billed MT SMS is clearly in the consumer’s interest, Vodafone believes that this practice should be prohibited and the facility should not be made available by MNOs to aggregators or other service providers.

Q20. Should ComReg prohibit chargeable messages being “stored-up” for delayed sending, when a pre-pay account is out of credit?

Vodafone believe that storing up chargeable messages for delayed sending is necessary as many consumers will still want the subscribed services but may be out of credit at that particular moment as many subscribers may top up in small increments over a regular period.

However we do believe that a time limit should be imposed so e.g. after X period, if the service provider cannot bill for the service, then the customer should be removed from their database. There is currently a process and mechanism for informing a service provider that a message is not deliverable for this very reason. Vodafone believe that after a period of 3 months of inactivity (from last confirmed delivery message) a service provider should remove the subscriber from their database.

Vodafone notes that provided that there is transparency in the pricing and service conditions the consumer has willingly and knowingly committed to pay for services they have received and on the other side the SP has committed to provide the requested services.

Q21. 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?

Vodafone is not aware of any pent up demand for such a facility and believe that any decision to offer the facility should be left to individual operators and therefore form part of normal competitive dynamics. Vodafone Ireland does not currently have the functionality to provide this barring facility and believe that any imposed regulation to implement it would impose significant and disproportionate cost on Vodafone that could not be objectively justified. We do not believe that this measure should be considered by Comreg as an ex-ante obligation without first undertaking a thorough cost/benefit analysis.

Q22. Should ComReg restrict the class, or type, of service that can operate a subscription payment model?

No, the subscription model is a proven method of supplying services and is appropriate for all types of services as long as there is clarity in relation to pricing. Please see the response to Q18 above.

Q23. 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?

Vodafone agrees with ComReg’s view that, upon cancellation of a customers’ mobile service account, consent for receipt of further marketing communications should be void. There are existing data protection guidelines on this basic principle i.e. where a commercial relationship is ceased, it is expected that any consent to marketing communications should be removed. Vodafone believes that there is sufficient technical capability currently in place for a service provider to use judgement that where a message is not delivered within a certain period of time it would be reasonable to expect that the customer is no longer with that original serving operator.

Vodafone further notes that there are a number of commercial services which allow the current host network of a number to be identified. This would allow SPs identify if numbers have been ported and as a consequence the customer’s mobile service account with the original operator has been terminated.

53 Xiam Interactive Ltd.



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

Submitted 14 May 2010

The views expressed in this document are those of Xiam Interactive Limited at the date of this document. They do not represent the views of any other person or entity

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 ComReg has recognised for many services there is a point below which they do not present a significant risk of harm to consumers. Xiam agrees with ComReg that there is merit in considering distinguishing between services to reflect the potential for consumer harm attached to such service. We would recommend however a slightly different approach than the one suggested by ComReg: all premium rate services should be dealt with under the same regime, so as to create a level playing field in the market; the degree of regulation however should reflect the potential consumer harm inherent in the service; the proposed regulations should protect consumers without restricting innovation in the market. For example, studies show that price regulation stifles innovation, it would be appropriate for the proposed regulations to require the charges to be clearly communicated but not to specify what the charge should be. Furthermore, ComReg also needs to consider its proposed regulation in a pan-European context, as to create similar standards across the EU and not create potential market/entry barriers in one country. Legal certainty would need to apply across the EU and take into account also existing self-regulatory initiatives. Xiam broadly agrees with ComReg that the potential for consumer harm is a function of the type of service and the fee. The previous behaviour of the entity providing the service needs however to also be taken into account. By way of example, if the entity had previously breached the Code, this might warrant tighter scrutiny of that specific entity.

Xiam's position is that premium rate services that have the potential to cause significant consumer harm should be regulated on a per event basis i.e. a license should be obtained for each promotion. For services which are unlikely to cause significant consumer harm, Xiam believes these should be regulated by category i.e. a company having obtained a license for a certain category of premium rate service would be able to undertake any number of promotions within that category.

A flexible licensing model could be designed around:

- (i) Considered applicant's previous history;
- (ii) The characteristics of the services; and
- (iii) The proposed individual charge and the maximum possible charge.

This type of structure might result in reduced administrative burdens for both ComReg and the service provider, whilst providing a flexible structure that can easily be modified to reflect changing market practices but also fast evolving consumer needs and behaviour.

History is a good indicator of whether a type of premium rate service is likely to cause harm to consumers. History suggests that the following types of services have a more harmful potential than others to cause significant harm to consumers: live services, subscription services, services of a sexual nature and services aimed at children.

Xiam is not sure that it is appropriate to set a general fee threshold below which premium rate services are exempt from regulation. Firstly, Xiam reiterates that it believes all premium rate services should be regulated. Secondly, experience suggests that issues arise at differing price points reflecting the consumer's view of the value of the service. For example a consumer might think a charge of €1.00 is fine for one type of a very innovative and new service, but think the same charge excessive for travel information. Thirdly, applying a fee threshold for individual calls would not necessarily address the potential harm posed by repeat charges.

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

See answer to Q.1. In addition, ComReg would need to undertake its actions in the context of the current European discussions around new services and in particular content related ones. Self-regulatory initiatives by industry also need to be taken into account.

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

See answer to Q.1

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

See answer to Q.1

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

See answer to Q.1. In particular on this issue, industry is very active, working at different levels with the European Commission in order to achieve a mutual understandable and beneficial approach.

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

See answer to Q.1

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

This is outside Xiam experience and it is therefore unable to comment.

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

See answer to Q.1. The proposed regulation should be considered in the context of existing privacy laws, the current European discussions around new services and self-regulatory initiatives by industry.

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

Same as Q.9. Xiam does not think this is a good idea, the market should be able to self-regulate themselves, plus industry is working on self-regulatory models.

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

Xiam's view is that all services that satisfy the definition of a premium rate service should be regulated. This provides clarity for all concerned. It may however be appropriate to consider the activities of MNO's for lighter touch regulation.

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. See answer to Q.1,

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

This is outside Xiam experience and it is therefore unable to comment.

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)

This is outside Xiam experience and it is therefore unable to comment.

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?

This is outside Xiam experience and it is therefore unable to comment.

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?

This is outside Xiam experience and it is therefore unable to comment.

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?

This is outside Xiam experience and it is therefore unable to comment.

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

The "double opt-in" reminds Xiam of the "cooling off" period that provides protection to consumers in other commercial transactions. The implementation of such a scheme presents some operational issues. There are other methods that provide similar protection for consumers e.g. a clear opt-out process. Which method of protection is appropriate will depend of the nature of the service. This decision is best left for the service provider to make.

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?

History shows that MT billing is an appropriate method of charging for certain services but not others.

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

As a question of fairness, consumers should know when they are being charged. 'Invisible' reverse billing is incompatible with this principle.

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

The non-delivery of stored messages may create problems. By way of example, where the consumer has subscribed to receive daily notification of the closing price of a stock market, this information only has value until the next close. The consumer would only wish to receive the latest text. The situation would be different if the consumer discount codes for purchases, they will wish to receive all the stored-up coded.

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?

History indicates that there are certain categories of consumers who might benefit from such an option. For example children. Xiam is unable to comment on the feasibility of introducing such an option as it is not a MNO.

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

No. Xiam does not believe that certain types of service should be prevented from using the subscription model. To do so would potentially stifle innovation. There are other better methods to address abuse of subscription payment models for example the 'double opt-in' discussed above.

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?

Xiam does not currently provide any subscription services and is therefore unable to comment in detail. Xiam observes that the expiration of an account or the quarantining of an account do not always result in the phone number being transferred to a new user. Sometimes a customer will reactive the account. This situation should be considered in any proposals. Further the deletion of data may raise data protection issues.

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