



Commission for
Communications Regulation

Submissions to Consultation

Premium Rate Services – Code of Practice

Submissions received from respondents

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1 Hutchison 3G Ireland Ltd. ("H3GI")

Response by Hutchison 3G Ireland Limited
in respect of ComReg Doc. No. 10/92a
“Premium Rate Services Code of Practice”

04 February 2011



Introduction

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

General

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

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

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

The regulation of PRS has three components:

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

3 strongly supports the role that the Regulator plays and we welcome the opportunity to assist in the development of a robust PRS COP, which should cover four broad categories:

1. A production cycle of a “COP” that can react swiftly to changes in the premium rate environment – in particular the mobile environment – as the rapidly advancing technology opens new opportunities for consumer services, but also exposes new areas that could create consumer harm.
2. A suite of COP guidance notes that gives good practise examples of the application of technology in providing PRS. Such documents would eliminate speculation and mis-interpretation of the COP and would enable rapid reaction to new services.
3. A short but inclusive programme of industry consultation prior to any changes to the COP to allow input from key stakeholders (and thus gain their support) without detrimental effect on the programme cycle of COP updates.



4. Regulator should encourage the use of dedicated shortcodes which would negate the issues created by using shared shortcodes and ultimately provide further clarity for consumers.

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

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

Specific to consultation

3 agrees with ComReg's proposed provisions applicable to all specified PRS, particularly the introduction of sub-section (g) Due Diligence.

3 does not agree with ComReg's proposal regarding the introduction of spending limits on PRS. 3 believe customers should have the freedom to spend as much or as little as they see fit and not be restricted by spend limits. With transparent information, subscribers can effectively control their expenditure without the need to implement limits.

3 disagrees with ComReg's proposal to introduce a 'double opt-in'. 3 believes ComReg should assess the effectiveness of its enforcement powers before considering the introduction of this across the board.

3 does not agree with ComReg's proposal to require end-users to provide positive confirmation of their desire to continue in a Subscription Service after a certain expenditure level. 3 supports the need for expenditure updates to be sent, by receiving a clear message of the customers current spend and clear instructions as to how to opt-out i.e. send STOP, the customer can make a decision as to whether they want to continue using or not the service. 3 strongly disagrees with the proposal that the subscription should terminate without their positive response. No other traditional subscription service, whether it be TV, telephony or a magazine subscription, terminate upon certain spend limits so why should premium rate services?



ComReg's Consultation Questions

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

3 agrees with ComReg's proposed provisions applicable to all specified PRS as set out in Section 3 of the draft Code.

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

In general, 3 agrees with the proposed provisions relating to the promotion of PRS.

With regard to section 4.11, 3 believes the following line should be removed *"For the avoidance of doubt no product or service may be described as 'free' if it is obtainable only by the use of a PRS involving a charge to an end-user"* because it could lead to further ambiguity and confusion and it conflicts in part with section 4.13. Additionally 3 believe that the point ComReg is trying to convey is clear from the introduction of the paragraph i.e. *"No PRS may be promoted as being 'free' if it involves any charge whatsoever to an end-user other than the delivery charge (not being a Premium Rate Charge) which is unambiguously and clearly disclosed to the end-user"*.

In relation to section 4.12, the provision seems to treat premium services unfairly compared to other consumer goods i.e. buy one and get one free offer.

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

3 agrees with ComReg's intentions regarding accepted and unacceptable abbreviations. However the table does not provide alternative abbreviations where an abbreviation has been listed as unacceptable for example 'SP' and 'Promo'. The table also conflicts with ComReg's guidelines in other sections of the COP i.e. the table bars the use of the abbreviation "msg" but ComReg have encouraged this abbreviation throughout section 6 of the draft COP. Therefore in order for this table to work, consistency will have to be applied throughout the COP.

If ComReg progress with the table, how and how often will the table be updated?

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

3 agrees with the provisions relating to the price information that should be made available to end-users of PRS. However, 3 would like to see differentiation regarding fixed and mobile PRS services.



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

3 broadly agrees with the requirement to provide end-users of PRS with expenditure limits. It would be worth noting that there are commercial pressures on both Information Providers (IPs) and Service Providers (SPs) related to sending free messages. However, it would be beneficial from the perspective of regulatory compliance if all these service messages were delivered via the SPs direct connections to the MNO of the customer receiving these messages. The MNO would then be able to track these messages when dealing with customer or regulatory complaints or when performing due diligence.

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

3 believes the expenditure levels proposed are appropriate.

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

3 does not agree that there should be a limit on the amount that an end-user can spend on entering a PRS competition. Customer's choice should not be restricted and PRS competitions should not be treated unfairly compared to any other competition service run by third parties. 3 believe that as long as there is clear and transparent pricing information provided to the consumer at the point of purchase then it should be left to the consumer to determine whether the service provides value. With transparent information and effective enforcement of the COP, consumers should then be able to use PRS with absolute confidence, without implementing spending limits and removing consumer choice.

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

As above.

Additionally in order to implement a system to apply limits to customers accounts would require significant IT development and costs on the Network Operator. Customers should be responsible for their own accounts and if PRS providers are compliant with the COP and there is effective enforcement of the COP, issues of bill shock should not exist. 3 hopes ComReg will use its powers to ensure compliance. As outlined above, customers should have the choice as to the expenditure limits they give themselves. PRS should not be unfairly treated compared to other services which require a 'facility' to pay for a transaction i.e. pay tolls etc



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

As above.

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

3 agrees with ComReg’s view on the introduction of purchase confirmation receipts in respect of some once-off PRS transactions.

As previously outlined, it would be worth noting that there are commercial pressures on both Information Providers (IPs) and Service Providers (SPs) related to sending free messages. However, it would be beneficial from the perspective of regulatory compliance if all these purchase confirmation messages were delivered via the SPs direct connections to the MNO of the customer receiving these messages. The MNO would then be able to track these messages when dealing with customer or regulatory complaints or when performing due diligence.

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

3 does not agree with ComReg’s proposal to introduce a ‘double opt-in’ for all services. To introduce this across all services will negatively impact those legitimate services operating within the regulations. Additionally, it would be disproportionate to implement a double opt-in across the board given that (i) ComReg has not had the opportunity to effectively enforce the COP and (ii) not all subscription services have evidently caused consumer harm or damaged consumer confidence.

In the UK a double opt-in was introduced for services which charge £4:50 – if ComReg were to introduce a double opt-in for certain PR services, it should be applied to services which have evidently caused consumer detriment and/or services which exceed possibly €5.

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

3 believes ComReg should assess the effectiveness of its enforcement powers before considering the introduction of double opt-in across the board. 3 maintains that effective enforcement of the COP will deter rogue providers, provide greater consumer protection and restore confidence in the PRS industry.



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

3 agrees with ComReg's provision in Section 6.29 of the draft COP, that allows end-users to access any content that they have already been charged for. In relation to ComReg's proposal regarding sign-up/joining fees to be considered as subscription charges for the first billing period, 3 does not charge any sign-up or joining fee and therefore has no comment on this issue.

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

3 does not agree with ComReg's proposal to require end-users to provide positive confirmation of their desire to continue in a Subscription Service after a certain expenditure level. As outlined previously, 3 supports the need for expenditure updates to be sent, by receiving a clear message of the customers current spend and clear instructions as to how to opt-out i.e. send STOP, the customer can make a decision as to whether they want to continue using or not the service. 3 strongly disagrees with the proposal that the subscription should terminate without their positive response. No other traditional subscription service, whether it be TV, telephony or a magazine subscription, terminate upon certain spend limits so why should premium rate services?

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

3 operates real time billing for premium rate text messaging, therefore a chargeable message submitted is not accepted if they do not have funds or credit available. Once a message is accepted by 3 the customer is billed (the SP is instructed never to re-submit that message) and 3 adopts a store and forward policy for up to 7 days, in order to attempt the delivery to the handset, before the message is discarded. The customer is billed only once.

[Confidential - commercially sensitive]

With regard to ComReg's flow diagram set out in Appendix B, 3 does not believe step 7 is required as outlined in our response to Question 13.

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

3 does not agree with ComReg's proposal in relation to unsubscribing from multiple Subscription Services that operate on the same shortcode. ComReg's proposal seems overly complicated, time consuming for the customer if they are subscribed to multiple subscriptions and may only serve to further confuse customers. Previous versions of the Code of Practice demanded that the last PRS to charge the customer should be terminated upon receipt of the first STOP command to a shared short



code. The use of the STOP ALL command would serve to terminate all subscriptions. The STOP ALL command is clear and in one message would serve the purpose of ComReg's proposal regarding the clarification message from each SP. The STOP ALL command would not have the sms size constraints that the clarification message would have if implemented and ultimately the customer experience would be better if they only had to send one message to unsubscribe from all PRS. Effective enforcement of the COP is key to the PRS market.

With regard to the termination of promotional marketing which is a very separate issue to unsubscribing from PRS, 3 believes that as long as the SP's consult the National Directory Database as required and the Data Protection Commission are happy with its implementation, then the SP should be given flexibility in this regard.

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

3 believes that competition services should be permitted on a subscription basis, as long as the principles of openness and transparency are adhered to then we would let the consumer decide to participate or not in competitions based on a subscription basis.

With regard to each of the points raised by ComReg i.e. a, b and c, 3 believes effective enforcement of the COP would negate the points raised - (a) is not permitted by the COP, (b) SP's are required by the COP to provide in the promotional material clear terms and conditions and (c) if the competition was more of a lottery then as outlined by ComReg the provisions of the Gaming and Lotteries Act, 1956 (as amended) would apply.

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

3 agrees with the provisions in the draft COP relating to Quiz TV Services.

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

3 agrees with the provisions in the draft COP relating to the services referred to in this Section.

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

3 agrees with the provisions in respect of Customer Service.

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



3 agrees with the amount to be refunded to end-users should be the full charge imposed on them, inclusive of VAT, by the non-compliant PRS Provider.

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

3 believes effective enforcement of the COP is key and therefore if a PRS has not complied with the COP, the PRS Provider should be required to refund all end-users.

Alternatively the MNO could be instructed to withhold the revenues and refund the customers. That depends on the time between the customers being charged and the judgement made.

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

Ultimately it would depend on (i) the amount of customers affected, (ii) the amount of money involved and (iii) the parties involved and the mechanism used to gain the funds for example if the end-user used its mobile handset to subscribe to the service and the customers account was debited, then the refund would be applied as a credit to the customers account.

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

Yes, depending on the scale but is there a need for this to be regulated? 3 will, once made aware of a serious issue that affects many customers seek to refund its customers first and then withhold funds from the SP. Where only individual customers are affected we would instruct the SP to refund the customer by whatever means was agreed with that customer.

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

3 agrees with ComReg's position that network operators should withhold payments for at least 30 days after the use of the PRS to which payments relate.

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

With effective enforcement of the COP and PRS licence requirements, this scenario should not happen. However, in the event that it does happen, the PRS Provider should be held responsible for refunding end-users. The other parties in the value chain cannot be held accountable for the actions of a non compliant PRS Provider. A



red card should also be issued by all PRS providers and the PRS Providers licence revoked.

In the event of 3 customers being impacted by the default, 3 will refund its customers and then seek recovery from the SP or the CP with whom it has the contractual relationship.

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

3 does not believe that the PRS Providers contractual partners should be held responsible or be required to refund in the event the PRS Provider defaults on payment. It is neither reasonable nor proportionate. The contractual partners should not have to burden the additional administration costs of this type of activity and ultimately enforcement of the COP is required to ensure this does not happen.

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

It would be covered in the contract terms and conditions.

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

3 fully supports the establishment of an Age Verification Framework for ensuring appropriate access to Adult (including Sexual Entertainment Services). 3 proposes that ComReg engage fully with industry to (i) understand the Age Verification mechanisms that would be employed for age verifying consumers for adult content for example PIN Controls and (ii) produce a content classification framework which would be consistent with standards used in other media that SP's would be required to adhere to.

3 believes in the freedom of choice for its consumers and would be of the view that adult services should be permitted as long as the service is operated within the regulatory and legal boundaries including but not restricted to the National Numbering Conventions, ComReg's COP and Classification framework if and when produced. Mobile users are currently being restricted from using services of an adult nature which are available using other mediums i.e. TV and the internet. The Irish Film Classification Office ("IFCO") states within its guidelines that "*we operate on the basis that as adults, persons who are 18 and over should be free, subject to the law, to watch what they wish*" and 3 believes this policy should be carried through via ComReg's classification framework for PRS.

In 2006, 3 as part of the Irish Cellular Industry Association ("ICIA") launched a Code of Practice ("ICIA COP") for the responsible and secure use of Mobile Phones. The ICIA COP was designed to facilitate the responsible use of new mobile phone services whilst safeguarding children from unsuitable content on their mobile phones. If ComReg produced a classification framework, operators would be able to classify



the content available via its portal and would ensure compliance to same as a requirement of its contracts with third parties. Mobile technology advances mean that phones are being developed with enhanced features, such as colour screens, video and picture messaging allowing access to an increasing variety of services. Whilst many of the commercial content services which are delivered using this new technology will be suitable for all ages, some of the new services may, however, contain content which is only suitable for customers who are over 18 years of age.

Additionally as signatories of the European Framework for Safer Mobile Use by Younger Children¹ (“the framework”) we proactively ensure children and minors are protected with the launch of our KidSafe application and the filters that we apply to the internet. The framework is a self-regulatory initiative of the European mobile industry and it contains recommendations designed to ensure that younger teenagers and children can safely access content on their mobile phones. We support ComReg’s establishment of an Age Verification framework and propose that ComReg also introduce a classification framework, this is the gap that needs to be filled to ensure no minor is subject to inappropriate content whilst giving adults the freedom of choice they are entitled to.

With regard to services accessed over the internet, neither SP’s nor network providers can be held responsible for services accessed by a consumer via the internet as the Internet is unregulated.

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

3’s view is that effective monitoring and enforcement by ComReg of the COP would negate any requirements to bar access to PRS. 3 does not believe Network Operators should be required to bar access to number ranges set aside for Adult services, 3 believes customers choice should not be restricted. From investigation it is possible for Network Operators to bar Voice access to (i) all PR numbers for all subscribers and (ii) an individual PR number for all subscribers i.e. it’s an all or nothing bar on a number range. Additionally for PR SMS services, it is possible to bar all PR numbers for all subscribers, but it is currently not possible to bar individual PR numbers for individual subscribers. In order to implement a system whereby PR numbers can be barred on a subscriber basis, this would require significant development work.

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

3 believes that end-users should be ultimately responsible for controlling access to Adult (including Sexual) Entertainment Services. Effective monitoring and enforcement of the COP is key to preventing consumer harm i.e. inappropriate access.

¹ European Framework for Safer Mobile Use by Younger Children
http://ec.europa.eu/information_society/activities/sip/docs/mobile_2005/europeanframework.pdf



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

3 believes that end-users should be ultimately responsible for access to Adult (including Sexual) Entertainment Services and as a result, a Live Service Providers Compensation Scheme should not be established.

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

3 believes that a designated short code range should be made available for the purpose of fundraising for charitable organisations and propose that donations should be operating under a similar framework agreement to that established in the UK through the Mobile Data Association, <http://www.charitytext.org/>.

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

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

In line with previous guidance from the Revenue Commissioners regarding donation services, if no service is offered then it would be possible to agree to have no VAT payable on the MT charged PSMS donations so the full amount could be passed down the value chain to the charity. This would provide significant benefits to the charitable organisations whilst reducing the administrative burden for ComReg, the Revenue Commissioners Office and within the industry in establishing cross network agreement on whether to support charitable donation campaigns. Any fees charged by mobile operators and aggregators for handling donations would be subject to normal VAT restrictions. Any misappropriation of funds should be brought to the attention of the relevant authorities and dealt with as would any other similar type of fraudulent act. The framework would provide a robust, auditable process which would provide a trusted format for the public. The time taken for charities to launch campaigns would be reduced significantly again increasing the level of donations.

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

3 has no view on which range should be used but would like to outline that it should be separate to the 5xxxx number range to ensure there is no confusion with PRS.



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

As outlined above, only registered charities may apply for a short code within the range chosen.

2 Adforce.ie



Q2. Do you agree with the proposed provisions relating to the promotion of PRS? If not, please provide reasons to support your view.

We do not agree with the provisions relating to promotion.

No evidence is provided within the consultation to suggest that current advertising codes maintained and enforced by the Advertising Standard Authority of Ireland (ASAI) and the Broadcasting Authority of Ireland have been ineffective in making sure that premium rate advertisements do not mislead.

Furthermore there is no evidence provided within the consultation that the current Regtel code has been ineffective in general or with regards to any specific media or target audience.

It is highly unusual for a regulatory body to propose measures that will have such a significant impact on not only the Premium Rate industry but also the Advertising Industry and the wider Media Industry without first having done a detailed analysis of the perceived issue. Following this analysis one would expect a number of possible approaches to be considered in order to identify the most proportional option.

The costs and time associated with remaking TV ads, press creative and other advertising will be a very significant financial imposition on service providers.

Visual Display Requirements

With regard to the Visual Display Requirements it is totally unacceptable to require Service Providers to have what amounts to a paragraph of pricing information displayed at 75% the size of the call to action. In general premium rate advertisements involve displaying the phone number or text number in large type. This requirement would require us to give over up to 50% of the screen/advert size over to terms and conditions. In addition it will effectively prevent us from buying low cost, smaller sized ads as there would be insufficient space to comply with the Visual Display Requirements.

The current practice of displaying terms clearly and legibly at the bottom of the ad seems perfectly reasonable and is the practice used by other industries. This approach would also be consistent with the ASAI and BAI codes.

It is likely that we will be unable to effectively advertise if these measures are introduced.

Spoken Requirements

We do not agree that this approach represents best practice across all retail services. There is no requirement for such spoken regulatory information within the ASAI or BAI codes. The effective impact on Television Advertising will be that Premium Rate Providers will be unable to effectively advertise on TV. It could take as long as 15 seconds to voice over the pricing requirements alone. This combined with the display requirements is totally disproportionate. It is bizarre and in many cases impossible to require website ads to have spoken information.

Use of the Term “FREE”

We do not agree with the proposals regarding free trials. The proposals within the code do not reflect those proposed within the industry notice as suggested. They go far beyond that by requiring the customer to re-initiate the service at the end of the free period.

It is our view that as long as the terms of the free trial were clearly provided within the promotional material at the time the customer chose the service then the customer has been adequately informed. In the event that the trial period is longer than a month then there may be merit in reminding the customer of the terms of the trial.

The costs and time needed to implement this measure across all products within the industry will be very significant.

There is no justification provided for requiring the customer to actively reiterate their desire to continue with the service. The impact of this measure is likely to be that customers are deprived of free trials.

Promotion of Subscription services

While the identification of subscription services is reasonable, the code is overly prescriptive in relation to suggesting that it must be 50% of the call to action and at the top right of the advertisement. Service Providers should be permitted to place the information in the most appropriate position depending on the media being used.

Q3. Do you agree with the proposed table of accepted abbreviations? If not, please provide reasons to support your view.

We do not believe that creating and managing and updating a table of abbreviations is a suitable approach. The ASA are the appropriate body to review advertising to ensure it is clear and understandable.

Each time the abbreviation table is updated there will be significant potential costs for service providers to update their advertising and their services.

Q4. Do you agree with the provisions relating to the price information that should be made available to end-users of PRS? If not, please provide reasons to support your view.

The definition of pricing is extensive and would require up to 15 seconds of airtime to speak. Pricing information should be defined more simply and we do not agree that pricing should be spoken in all cases. This will take significant on the ability of advertisers to see advertising as between 50% and 75% of the airtime will be used to comply with these totally unreasonable requirements.

There appears to be no basis for suggesting that speaking all pricing terms is necessary. Indeed particularly in a visual environment such as TV speaking terms is not common practice since terms can be clearly displayed.

The proposal to require the speaking of terms on websites is senseless and ill conceived. There is no possible justification for this suggestion.

The only medium where spoken pricing should be a requirements is in audio only media.

Q5. Do you agree with the requirement to provide end-users of PRS with expenditure reminders? If not, please provide reasons to support your view.

We do not agree that Expenditure reminders as proposed within the code are reasonable. Consumers should be reminded of their expenditure, but they should not be required to act on these reminders in order to continue using the service.

The reminder process suggested requires that consumers continually respond to these reminders in order to continue their use of the service. Consumers are certainly not going respond positively to this requirement and will cease to use services.

No justification has been provided for requiring spending reminders at all, let along a spending reminder that required the consumer to repeatedly respond.

Q6. Do you consider that the levels at which the proposed expenditure reminders are set are appropriate? If not, please provide reasons to support your view and, where appropriate, suggest alternative limits.

Expenditure reminders at €30 euro intervals would seem reasonable in the absence of any proper analysis or justification. However there should be no requirement for the consumer to act on these reminders other than to hang up or text STOP.

Q7. Do you consider that there should be a limit on the amount that an end user can spend on entering a PRS competition? If so, how much? If not, please provide reasons to support your view.

We do not believe limits are appropriate. Consumers should be free to spend what they wish on any service. The focus should be on providing them with accurate clear information within the promotional material and providing them with regular reminder messages.

No justification or rational analysis has been provided to justify a limit. No other options seem to have been considered and no impact analysis of possible options has been provided.

Q8. Do you think there should be limit on the expenditure of an individual transaction through the use of a "facility"? If so, how much? Please provide reasons to support your view.

We do not believe limits are appropriate. Consumers should be free to spend what they wish on any service. The focus should be on providing them with accurate clear information within the promotional material and providing them with regular reminder messages.

No justification or rational analysis has been provided to justify a limit. No other options seem to have been considered and no impact analysis of possible options has been provided.

Q9. Do you consider that there should be a daily, weekly or monthly expenditure limit imposed in respect of individual PRS? If so, what do you think an appropriate level would be? If not, please provide reasons to support your view.

We do not believe limits are appropriate. Consumers should be free to spend what they wish on any service. The focus should be on providing them with accurate clear information within the promotional material and providing them with regular reminder messages.

No justification or rational analysis has been provided to justify a limit. No other options seem to have been considered and no impact analysis of possible options has been provided.

Q11. Do you agree with ComReg's proposal to introduce a "double opt-in" requirement for Subscription Services? If not, please provide reasons to support your view.

We do not agree with comregs proposal on subscription services.

No justification or rational analysis has been provided to justify a double opt-in. The issue that is being addressed is unclear and no other options seem to have been considered and no impact analysis of possible options has been provided.

Expecting consumers to navigate such a requirement is unreasonable and will almost certainly bring an end to all subscription services in Ireland.

The time and costs of implementing this measure would be considerable. In the absence of any real analysis such a measure should not be introduced.

Q16. Should competition services be permitted on a subscription basis? Please provide reasons for your answer.

Competition services should be permitted to operate on a subscription basis. No justification or rational analysis has been provided to justify such a discriminatory ban.

The suggestion seems to hinge on specific issues within how some competition service may operate rather than competition services in general. This proposed measure seems discriminatory and disproportionate to the suggested concerns.

There are already strict rules relating to competitions within the National Consumer Act 2007.

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



Ms Michelle O'Donnell
Commission for Communications Regulation
Irish Life Centre
Abbey Street Freepost
Dublin 1,
Ireland

7th February 2011

Reference: Submission re ComReg 10/92

Dear Ms O'Donnell,

AIME is the leading trade body representing the interactive media and entertainment industry in the UK. We represent a number of companies which trade in other EU Member States, including Ireland, and we therefore have an active interest in the regulation of the Irish market.

During the consultation period we have been in liaison with IPPSA, Ireland's leading trade body for the PRS sector. AIME has also read and broadly supports the views and concerns highlighted in the IPPSA response.

It is our belief that the restrictions the Comreg Code proposes on trade, as highlighted in the IPPSA response, would pose serious constraints on the ability of our members to operate in the Irish market.

AIME confirms that its support to the IPPSA response has been compiled following a process of distribution of the relevant Consultation documentation to AIME members. A list of AIME members can be found at www.aimelink.org/home/members.aspx

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

We are happy for this letter to be published alongside the other responses to the consultation.

Yours sincerely,

Toby Padgham
General Secretary

4 Alternative Operators in the Communications Market ("ALTO")

alto

alternative operators in the communications market

Response to Consultation Premium Rate Services - Code of Practice Ref: 10/92a

Submission By ALTO

Date: February 7th 2011

ALTO is pleased to respond to the ComReg Consultation on Premium Rate Services – Code of Practice (“PRS CoP”) in Ireland.

ALTO welcomes this consultation and the various works that have been undertaken in order to combine with functions of ComReg and RegTel pursuant to statute in Ireland. We agree that ComReg must find the right balance between facilitating market innovation and consumer protection as outlined in the various consultations on this subject.

General Observations:

ALTO remarks that according to the PRS Act, the definition of PRS providers encompasses aggregator provider, content provider, end-user network operator and terminating network operator. This list also means a differentiation between the types of PRS providers involved in the service chain. We believe, that this is necessary to understand the roles and responsibilities of each party in the whole chain of service provision to the end-user. However, reading through the obligations as set out in the code of practice, the different roles and responsibilities are not clearly marked or defined. This is important for current operators, service providers and new entrants.

For example, when it comes to implementing the limits on spend (section 6), the obligation seem to fall on the PRS provider, hence theoretically to all involved parties. On the other hand, we understand that the limits on spend as set out in the text can for technical reasons only be addressed and implemented by the service provider, but not by the network operators.

Issues:

Transnational operators

ALTO has many members who operate outside of the Irish and indeed EU jurisdictions. This poses certain management challenges in working with numbering in its normal guise but unique policy challenges when and where complex regulatory arrangements are put in place to control the market. While we know that it is the case that ComReg liaise with other National Regulatory Authorities, we feel the need to highlight that in certain instances even proposals that are effective in the UK market will not operate in a similar manner based on ComReg's proposed PRS-CoP.

Delegated Legislation

ALTO has some concerns in terms of the new legislation in the area of PRS that we believe could pose certain issues for ComReg. These issues will not be discussed in this response. We merely mention our concerns at this time.

Response to Consultation Questions:

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

A. 1. ALTO agrees generally with what is being proposed but are missing the 30 day withholding requirement on Network Providers mentioned in the consultation. It is our view that this should be a longer period of time such as 45, 60 or 90 day withholding period. This is due to durations of time to realise and deal with unpaid accounts. We also highlight that AIT is something that requires further work in Ireland.

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

A. 2. ALTO agrees. We note though that ComReg have a tendency to be over prescriptive in terms of items such as font sizing. Regulations or recommended

practices subject to the code should not be viewed as overly restrictive.

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

A. 3. ALTO believes that ComReg should allow for other abbreviations. While we do not propose a list of alternatives we feel that (per answer 2., above) ComReg should not be over prescriptive in this particular area. In terms of Short Message Services – SMS, the same or similar logic should apply.

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

A. 4. ALTO agrees. We also believe that it should be acceptable to direct callers and/or subscribers to other information repositories such as websites in order to get more detailed information.

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

A. 5. ALTO agrees with ComReg's view.

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

A. 6. ALTO agrees with ComReg's view. We note that this area should be monitored for latest developments particularly, in the smart phone markets/environment.

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

A. 7. ALTO does not agree with this. If the pricing information is clearly and thoroughly outlined and made available to consumers or subscribers, then it can hardly be practical to limit this. Freedom of choice and competition are both good factors for the market and consumer.

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

A. 8. ALTO believes that if pricing information and choice data is available then this issue in terms of limitation should not be a problem for subscribers or service providers. The very last thing the market needs now is a “facility” e.g., advice of charge, call cut-off, or other, thrust upon it as a regulatory requirement. The industry and in particular those service providers and wholesale undertakings in the market should be consulted either formally or at an industry meeting in relation to the issue.

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

A. 9. ALTO does not agree with this proposal. Positive consent and advice should remove the need for interventions. Ongoing cost accrual should not be a barrier to subscribing for more or continuing to subscribe for services, see clause 6.5 of the Code.

We believe that the limitation in clause 6.7 is not at all appropriate, proportionate or necessary. Use of telephone calling should not be a disadvantage in terms of competition entry.

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

A. 10. ALTO agrees with ComReg's preliminary view, provided that it applies to text messages and is for transactions in excess of €2 or some other modest level.

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

A. 11. ALTO initially had no view and agreed with ComReg. This has changed though on review of the UK market regulations and practices in this area. We feel that such an arrangement must only apply to purchases via mobile handset. Other proposed "double opt-in" should be reviewed and made slightly more flexible or at least aligned with the UK practices in the area of PRS.

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

A. 12. ALTO agrees with this proposal.

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

A. 13. ALTO agrees with this proposal.

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

A. 14. ALTO agrees with this proposal. A time out and automatic cease should be proposed where a secondary positive response is required.

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

A. 15. ALTO does not agree with this proposal. There are very obvious issues where a unique short code service might contain multiple other information services, e.g., Starsigns, Rail information, competition lines, etc. Users should have to give a minimum level of data in terms of ceasing a service that they had previously subscribed to.

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

A. 16. ALTO believes the answer to this question should be yes, but subject to market demand.

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

A. 17. ALTO agreed with the provisions.

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

A. 18. ALTO generally agrees with this area. Though we remark that the Advice and Information services should be defined. Suggestion: *'means services providing factual information which can be independently verified; and is provided by someone competent to give it'*.

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

A. 19. ALTO agrees with this provision.

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

A. 20. ALTO agrees with this proposal. We suggest though that this is an area where more details are required. It is somewhat complex in terms of what is being proposed, without seeing further information.

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

A. 21. ALTO agrees with this. We suggest that alternative arrangements must be tabled in terms of these proposals. For example, users may not be immediately traceable, etc.

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

A. 22. ALTO believes this is an area that will almost definitely require more detailed consultation with the industry. We are concerned that in certain circumstances refunds may not be reclaimed. In addition, we suggest that the most appropriate mechanism of refund is a direct credit to the telephone account and/or credit/payment card as furnished by the user to the PRS operator.

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

A. 23. ALTO agrees with this. See answer to Q. 22, above. We feel that the most appropriate mechanism is a form of credit to the telephone account of the end user/subscriber from the relevant network or PRS operator. More work may be required here given the nature of Inter-carrier financial settlements in the Interconnection market in Ireland.

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

A. 24. ALTO agrees with this position on the basis that the period is well in excess of 30 days. We would suggest a period of about 60 days.

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

A. 25. ALTO's view is that this may end up being a matter for market forces to resolve. It is almost impossible to manage a company or corporation in terms of what could happen over time. We are rigidly against a scheme of compensation from other operators successfully working in industry.

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

A. 26. ALTO does not feel that this is reasonable or proportionate in the circumstances. We feel that this logic is not operative in other markets on closer assessment.

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

A. 27. ALTO holds the view that PRS Providers who are and who at all times have acted properly and in accordance with compliance guidelines should not be affected. In other words, they should not bare the costs associated with recouping from a non-compliant PRS Provider.

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

A. 28. ALTO supports this. We would caution against over prescriptive remedies thus allowing for valid but different standards of verification.

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

A. 29. ALTO Supports this generally. See answer to question 28.

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

A. 30. ALTO supports this. See general observations, above. We are concerned about the definitions in terms of undertakings that may operate or be perceived to be operating PRS services. This needs to be carefully clarified. In such an example (per the question), we would place all responsibility for such verification/s with the content provider but not the Network Operator.

Q. 31. What are your views on establishing a Live Service Providers Compensation?

Scheme to provide for refunds to end-users whose telephones have been the subject of unauthorised use to call Adult (including Sexual) Entertainment Services?

A. 31. ALTO does not support this at all. The Plain Old Telephony Services – POTS, logic should be allowed apply in this context. There are various mechanisms for controlling access to PRS and content services. The same and more flexible solutions exist on Mobile Network Operator – MNO, networks. Such a proposal could have a detrimental effect on the market is applied.

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

A. 32. ALTO's view is that this should not be limited to mobile markets only. In terms of other access mechanisms, fixed lines may be able to access shortcode services. We are of the view that there is sense in having VAT exempt shortcode ranges in order to avoid VAT recovery issues later on in the billing and payment lifecycle. ComReg might also consider social services as a potential future market requirement.

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

A. 33. ALTO has no particular view on what range should be used. We would caution against a race on numbers as has been seen in previous fixed allocation exercises.

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

A. 34. ALTO has a preference that registered charitable or social services (non-profit) organisations be allowed conditional but unrestricted access to such service numbering ranges.

ALTO

7th February 2011

5 Broadcasting Authority of Ireland (“BAI”)



Reference: Submission re ComReg 10/92

I write on behalf of the Broadcasting Authority of Ireland ("BAI") in response to the ComReg Consultation Document for Premium Rate Services – Code of Practice, ComReg Reference 10/92a.

The Broadcasting Authority of Ireland is the body responsible, inter alia, for the development and regulation of broadcasting in Ireland and makes this submission cognisant of its expertise in this area. In this regard, the Authority is responding to this consultation from the perspective of the broadcast content regulation, and will not deal with matters concerning any other communication platforms.

The Authority would acknowledge, and support, ComReg's vision that the proposed *Code of Practice* governing PRS will serve the end-users of such services, that '*they will be as confident and safe in using PRS as in engaging with best practice retail services*'. The BAI recognises the value in regulation and regarding PRS, that the public are facilitated to make fully informed decisions when engaging with a such a service.

In particular, the Authority agrees with ComReg's proposal to ensure that such services operate in a legal, honest and transparent manner, that spend limits and redress for a person who uses PRS due to misleading advertorial will be implemented.

With regard to references to broadcast content, the BAI is of the opinion that it is important that there is clarity concerning the roles of both regulators in order to facilitate a cohesive approach to regulation, taking cognisance of the needs of all relevant stakeholders. As ComReg is aware, all Irish licensed broadcasters must abide by the BAI Codes, including the *General Commercial Communications Code* and the *Children's Commercial Communications Code*. Further, under the Broadcasting Act 2009, viewers and listeners are entitled to make complaints about broadcasting content and these must be processed by the relevant broadcaster. In the event they are not satisfied with the response, a complainant may refer the matter to the BAI. The guidelines for making complaints refer the viewer and/or listener to the BAI Codes, being the relevant broadcasting codes. The BAI is of the opinion that it must continue to process complaints directed to it in this regard, as it is one of the functions assigned to it by the Broadcasting Act, 2009. To do otherwise could be deemed a neglect of a legislative duty.

In this context, the BAI is of the opinion that ComReg's proposal to regulate both technical and content aspects of PRS concerning broadcast content has the potential to cause confusion amongst stakeholders. It is important, therefore, that the BAI and ComReg would liaise on such matters with a view to the development of appropriate processes and procedures to deal efficiently and effectively with any issues arising with a PRS in broadcasting content. The Authority looks forward to engaging with ComeReg in this regard.

6 Bluestream Mobile Ltd.

From: Daniel Merrilees
Sent: 21 January 2011 10:14
To: retailconsult
Subject: Reference: Submission re ComReg 10/92"

Good morning Michelle,

In response to the proposed regulatory directives outlined in the Consultation on the Code of Practice for Premium Rate Services. 10/92a and 10/92b we are keen to raise a number of issue in opposition and to highlight areas whereby we feel our current services provide more full proof user experiences in terms of clarity and efficiency.

Q.11 Double opt-in for subscription services:

From firsthand experience of implementing double opt in for subscription services in other markets we would strongly oppose the directive. We firmly understand the importance of providing users with a clear and concise pricing information and therefore present this clearly on all our sites. Prior to a user commencing a subscription, they are clearly notified of all costs incurred on the main site and are prompted with a further confirmation page, re-stating all pricing and contact details and are explicitly required to click upon a 'JOIN SUBSCRIPTION' link. Upon commencing the subscription they are then sent a free welcome message which states they have joined a subscription service, the cost entailed, the billing cycle, contact details as well as clear instructions explaining how a user is able to terminate their subscription.

Free MSG; You are subscribed to {subscription service name} at {cost} euro per {billing cycle} (2 texts x 2 euro) 18+ only. SP: Bluestream Ph.1890 928803. To unsubscribe send STOP to {shortcode}

By implementing double opt in, the user flow is significantly disrupted such that we are highly sceptical that it would even be viable to provide a subscription service. By requiring a user to confirm their acceptance by responding to a message will lengthen what is already a lengthy process. Users will be forced to close their browser to retrieve the message, wait for the message to arrive before re-opening their browser upon receipt. Not only are users likely to experience a disjointed service they will also incur higher browser charges in the process. From our experience and view point, double opt in is not the best suited measure for ensuring user awareness and is essentially an over excessive measure.

Q.13 Subscribers must re-opt in (by MO) to their subscription every €20.

We do not feel that such an implementation is completely justified or required. Once again we fully understand the importance of providing clear and concise chargeable notifications and thus ensure all messages whether free or chargeable are clearly presented. All free messages begin with 'FREE MSG'. We also detail instructions required to terminate services not only on our sites but also in billing messages.

Upon each subscription cycle, users are sent a free subscription notification which directs them to the site, here should they wish are instructed as to how they may terminate their subscription. If required, we would also be able to detail subscription termination instruction here.

Free MSG; Reminder: You are a member of {subscription service name}. Thanks for using our service. Provider: Bluestream Mobile. Subscription: billed at €{cost} per {billing cycle} 18+

We firmly believe the implementation of a mandatory re-confirmation is further overly excessive measure. We feel current regulations and our strong customer ethic of ensuring users are not mislead is sufficient enough. It would not be possible for a user to joined to a subscription service without their full knowledge and understanding of the associated costs.

Q.28 Control of Access to Adult (including Sexual) Entertainment Services

As we currently successfully implement numerous adult verification systems in a number of our markets we would welcome the introduction of a age verification framework. We are confident that should the possibility arise to offer such services we would have the technical capability at hand to develop a capable system whereby we would be able to safely determine whether or not users are effectively 'adult verified' or 'non adult verified' and thus determining the level of content they are able to access.

Thank you for providing the opportunity to share our views. We look forward to hearing from you.

Best regards,

Dan Merrilees



7 BT Communications Ireland Ltd. ("BT")



**BT Communications Ireland Ltd (“BT”)
Response to
ComReg’s Consultation Paper entitled “Consultation:
Premium Rate Services – Code of Practice” (ComReg 10/92a).
28th January 2011**

Introduction

We welcome this consultation and the work to update the code of practice for premium rate services in Ireland as part of the process to update the regulatory process with the move of RegTel to ComReg in line with legislation. We agree that it is important to protect the welfare of the consumer whilst also finding the correct commercial balance to facilitate innovation and creativity in the market.

Cross Border considerations

There is a considerable overlap of premium rate type services between the UK and the Ireland due to the physical overlap of terrestrial and satellite transmission; the widespread use of the same language; and the availability of cross border premium rate access, hence we are of the view that ComReg and Ofcom should liaise to minimise consumer confusion going forward.

Please find attached our detailed response to the consultation.

Detailed Response

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

A.1 Yes but cannot see the proposed 30 day withholding requirement on Network Providers referred to in the consultation. We would recommend that this is in fact a 60 day withholding period as often Service Providers need longer before they are aware an end user has not paid a bill. This provision should be included in the code as well

Grand Canal Plaza
Upper Grand Canal Street
Dublin 4
Ireland

tel (+353) 1 4325000
fax (+353) 1 4325800

Chief Executive Officer:
Graham Sutherland

Directors:
Shay Walsh
Andrew Tackaberry
Colm O’Neill

BT Communications Ireland Limited
is a wholly owned subsidiary of
BT Group plc
Registered in Ireland, Registration No. 141524
Grand Canal Plaza
Upper Grand Canal Street
Dublin 4, Ireland
www.btireland.ie

as a restriction on AIT such that any PRS provider responsible for this is in breach of the code.

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

A.2 Yes in general but should be less prescriptive as to font size and no need for a voice over for TV PRS promotion where the call value is under €5.

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

A. 3 Do not agree – the following should all be permitted for visual promotions as they are well understood by the public:-

/ min.

Per wk.

Per mth.

Rec'd/Recv'd

Msg

should also be permitted for SMS

Txt

should also be permitted for SMS

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

A.4 Yes provided it is acceptable to direct callers to a website for more detailed information.

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

A5 Yes – This should be responsibility of service provider to do this at key levels such as each time a spend threshold is reached - to avoid bill shock and reduce complaints due to any lack of transparency in the pricing

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

A6 Yes – for now but will need to be kept under review in line with the market and other technologies – e.g. iphone apps.

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

A7 No – provided pricing information is clearly explained before any decision to purchase/ enter then the consumer should have freedom to choose how much he spends in the same way as with any other retail experience.

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

A8 Happy to discuss at an industry wide level how such a facility might work and we would be interested in ComReg conducting a further consultation on what the

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fax (+353) 1 4325800

transaction caps might be. We would like to encourage a vibrant viable PRS market with a good reputation and would support a maximum if this deterred fraud and provided there were a level playing field across fixed/ mobile/ sms and other payment mechanisms.

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

A9 No - consumers can be sufficiently protected by requiring positive consent to continue once specified spending thresholds are reached – say every €30 as per 6.5 of the code. As long as consumers are advised of the accumulated spend and the ongoing cost there should be no barrier to their informed decision to continue and they should not have to redial if they have given consent to continue. This is very disruptive if a caller is in the middle of receiving a consultation/ horoscope etc and is not consistent with other retail options.

The limit on competition entry in 6.7 is arbitrary and unnecessary – entering via a phone call should not be at a disadvantage to competition entry via other means by having such limits

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

A10 Yes provided it is applicable only to purchases via text message and only for transactions over €2 or a modest level.

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

A11 Yes provided it is applicable only to purchases via a mobile handset.

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

A 12 Yes we do.

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

A13 Yes we do.

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

A14 Yes (within the bounds of subscription services) and with the addition that where the message requires a positive confirmation response, if there is no such response after the last failed attempt the subscription service must be ceased automatically.

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tel (+353) 1 4325000
fax (+353) 1 4325800

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

A15 No – there are technical difficulties where an end user may subscribe to a number of services using the same shortcode and want to stop just one yet the aggregator might not be able to identify which one from any stop command. There should be an obligation on the end user when giving a cease command to provide sufficient information to identify the service to be ceased.

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

A. 16 Yes – if there is market demand, the industry should be able to meet this

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

A17 Agreed.

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

A. 18 Advice and Information services should be defined. Suggest ‘means services providing factual information which can be independently verified; and is provided by someone competent to give it’

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

A. 19 Yes

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

A. 20 Yes – subject to understanding any mechanism for how this would work – Network Operator able to assist provided the PRS provider has placed them in funds. Presumably there will be further consultation on how this will work.

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

A. 21 Yes – but where such users cannot be identified for example where CLI has been withheld there should be alternative arrangements for an equivalent sum to be paid to a charity – or used to create a compensation fund where a defaulting PRS does not provide compensation .

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

- A. 22. A re-credit to the user Telephone account or as a credit on their credit card if known with a fall back option of payment into ComReg to distribute to customers who complain directly, or use as a pot to subsidise regulating the industry for the benefit of the public, if not claimed but we would like further consultation on the details of any mechanism for this.

For example: one approach might be that once ComReg rule that refunds are due, then provided the Originating network provider has been placed in funds – either because no Outpayments have been paid over or because the Service Provider has placed them in funds, such refunds could be administered by the Originating network provider crediting back to the consumers account and where this is not an option any balance could be paid over to a selected charity.

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

- A. 23 Yes –suggest a credit back onto the respective telephone account – administered through the relevant Network Operators.

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

- A. 24 Yes provided this is 60 days

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

- A. 25 Compliant providers should not be required to subsidise non compliance or pick up the fall out from fraudsters. This will damage the industry. ComReg are probably aware that in the UK there is no such compensatory scheme.

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

- A. 26 No. This model does not apply across other sectors.

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

- A. 27 They shouldn’t be required to bear this cost. The sums are relatively small and the service is not like the travel industry where consumers risk being stranded abroad. Consumers should bear this cost – it should not be a penalty imposed on compliant bodies.

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

- A. 28 We support this.

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

A. 29 More detail is required on how this would operate

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

A. 30 We support this provided the responsibility sits appropriately - with the Content provider and not the network provider.

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

A. 31 We do not support this as it is just another tax on the industry. If calls are made from fixed lines, then it is up to the account holder to manage who is allowed access to their line phone line and to bar outgoing calls to such number ranges. Mobiles tend to be personally allocated and also have lock pins so it is the owner's responsibility to safeguard their handset and pin.

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

A. 32 This should not be exclusive to mobile. Ideally there should also be a VAT exempt non short code range on the fixed network for use only by registered charities to maximise the donation to the charity and avoid an irrecoverable VAT issue for them.

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

A. 33 We are open on this.

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

A. 34 We believe that this should be restricted to Registered Charities.

END

8 Community Alliance Sligo

Community Alliance-Sligo

Response and comment to specific relevant questions asked in ComReg Document No. 10/92a dated 1st Dec 2010

All these questions are answered in good faith on the clear understanding that the consensus in our group, comprising unattached members of the public, is that anything other than the outright banning of the “subscription service/reverse billing” device, at least for “fun” items, will not prevent ongoing exploitation and we again repeat that the giving of the power to an Operator the legal right to automatically enter the call credit of another and remove money without specific permission on each and every occasion is an extraordinary one and demands both the highest ethical standards from Operators/Providers and the strongest possible regulations to protect members of the public.

Q 1

Q2. Promotions of PRS

All promotion material must have in the main body, and be most prominent, exactly what the promotion is intending to do. For example, promotions for competitions are constantly dominated by a “prize” rather than emphasising the fact that the promotion is seeking members of the public to “join” a club in which “prizes” can be won. See our analysis of an ad attached to this submission

All visual displays must contain a clear and exact explanation as to what a “subscription service” is and how the “reverse billing” device works. Many, many people simply have no understanding of these terms and that lies at the core of the problems being caused and how citizens are becoming unwittingly entrapped.

As with visual displays the voice over must contain an explanation of how these schemes work with regard to the automatic way in which money is taken without specific permission on each occasion.

The word “free” must never be used where a charge occurs at any stage of the interaction.

Promotional material should not be sent where an Operator is touting for business

What has to be remembered here is the fact that children and the unsuspecting own mobile phones and accordingly all regulations must ensure that these groups are protected from predatory Operators.

2.9 Subscription Services

2.9.1 The scale of the issue.

On reading this section the consensus of our group is that ComReg may be about to make the exact same mistake made previously and that is to conclude that having citizens misled and

exploited is somehow acceptable if the “scale” is within certain parameters. A cursory review of the Annual Reports of RegTel will show that the scale of the problem is enormous and also greatly under reported. RegTel failed to protect members of the public because it got caught between two stools; it tried to protect the interests of the exploiters as well as the exploited. Stopping exploitation is not difficult and could be done easily if the will is there to do so. ComReg, and other regulatory bodies involved, must simply resolve that it is not acceptable that any business should be dependent or based on the need to mislead the misleadable into a position where money is taken where the owner had not intended it to be taken. A business run with any level of business ethic would immediately withdraw any service on receipt of a small number of complaints. Similarly, the regulatory agency should also stop immediately any such “service” on receipt of a small number of complaints and insist on a full refund to all members of the public who responded to the promotion.

2.9.2. The high numbers presenting with problems indicates clearly that “welcome” texts are not clear and legible to all. However, the fact is that the initial ad must have been misleading given that those in the “service” responded to the ad. Again what must be borne in mind here is the fact that after the initial response all interaction thereafter is between professional organisations and those that have already been misled by an ad and in many, many cases these are children and the unwitting.

2.9.3 Substantiated Subscription Confirmation

It is our view that this is not relevant. A member of the public who comes forward and expresses problems, having being entrapped in a “service”, has been misled into that position, there is no other explanation and the onus must be on the Operators to ensure that their promotional material is not misleading. It is clear reading ComReg’s comments that they regard this whole area as a minefield and this should support the calls to simply ban “subscription service/reverse billing” devices. In addition, ComReg must acquire sufficient powers so that when an Operator is found to be behaving inappropriately, such Operators can be heavily fined and have their licence to operate removed.

2.9.4. Proposed Remedy

The suggestion that the introduction of a “double opt-in” may be a remedy is not correct. In fact ComReg also notes that in the UK the introduction of this measure only resulted in a reduction of 50% average. Our investigations indicate that the main reason for the fall off in complaints was due to a corresponding reduction in advertising and Operators running these “services” Over the past year here in Ireland the volume of advertising for all “fun” items has dropped significantly, mainly due the announcements by Minister Ryan that he was unhappy with the prevailing situation, and this led to a significant drop in complaints. However these events by themselves did not solve the problem and it remains wide open for abuse as we witnessed with the surge in activity in the closing part of 2010 which led directly to a high increase in complaints. A massive problem still exists and quite clearly tinkering with the problem, as opposed to the eradication of it, will result in opportunistic surges from time to time. The evidence of the capacity of some in the business to circumvent the best efforts of

regulatory agencies is compelling and strongly suggests that banning is the only real option available that will afford the public the protection they deserve.

Why is it acceptable that thousands of members of the public can be misled each year into a “service/club” and suffer loss and undergo great stress and annoyance? What good occurs that might justify this situation being tolerated?

Q 3. Acceptable Abbreviations. The use of abbreviations is akin to the use of business specific jargon and will therefore mislead the uninitiated; the widespread use of abbreviations is a major contributor to the problems arising. It is also clear that some Operators use abbreviations as a means of circumventing their obligations and responsibility to properly inform customers. For example “€4/7d” which is widely used on lures is meaningless however is used to satisfy the requirement that cost information be shown on all advertising. In addition the use of the health warning “this is a subscription service” as a means to alert the public that the “service” carries ongoing charges and such charges are removed automatically is totally inadequate as many, many people do not relate the warning with what will actually occur should they respond to the ad. In all cases the respondent is of the mistaken belief that a response will carry a single one-off charge. It is our view that where an ongoing charge is required and where that charge is to be automatically deducted from call credit or billed, that arrangement must require a written signed permission as is used in the any other direct debit arrangement. The document to be signed must contain, in clear plain English, what the consequences of signing are. Citizens have a right to retain full control over their hard earned money.

Q 4. Price information. The test here is relatively simple. Phone owners range in age from 9 to 90 therefore all pricing information must be present in a format that all within that range can understand. Samples from within that range must be asked do they understand any specific wording and charges made where necessary. When our group was investigating what was happening in this business we approached a local school and spoke to children to establish exactly what level of understanding there was regarding “subscription services/reverse billing” generally and that is what is required again to arrive at some level of understanding as to what is and what is not likely to convey information that is understood across the spectrum. At all stages of the process information is required and our group is willing to work with any entity to create an array of wordings to cover all requirements in the entire process designed to ensure that all potential end-users understand what they are becoming involved with..

Q 5. Expenditure Reminders. ComReg are correct in their view that the end-users should remain in control of the amount that they spend on premium “services” and this really goes to the heart of the matter. In the current arrangement end-users are being misled and once that occurs the present arrangements see them lose that control. It is our view that should “subscription services/reverse billing” be allowed to continue, payments should be made by the phone owner sending a response text “OK” to a clear, plain English request for payment.

That arrangement would go a long way to cut out the numbers suffering loss and Operators, who say that these “services” generally have a legitimate demand, should have no problems with this arrangement where control is given totally to the phone owner. In addition, where there is an ongoing interaction between a phone owner and Operator, then a monthly statement via post should be required.

Q 6. see Q 5

Q 7. Entry charge. There is no need whatever to level such a charge and this “entry charge” was most likely created so that it could be used on the main body of advertisements to mislead readers into thinking that “entry” carried a single charge with no ongoing costs involved.

Q8. Individual transaction limit. We propose that the limit per transaction should be set at no more than €2 for all “fun” items and with a limit of €5 for “non-fun” items. The position at the moment is that some Operators are charging up to €10 per week and this means that by the time an unwitting phone owner realises that his/her money is being taken, a considerable amount is gone before they escape. This is a very serious matter in the case of children having their call credit stripped and therefore being unable to contact parents or help should they encounter difficulties. As in other areas under consideration, the benefit of the doubt must be given to the phone owner and what must be borne on mind is the fact that some Operators and Providers created this controversial situation by failing to enter into the spirit, as well as the letter, of the self regulatory code. Most in this business has known for years now that a serious problem exists however they failed to intervene preferring to make short term profits.

Q 9 Spending limits. This must take into account the fact that many likely to interact with these “services” are children so therefore expenditure limits must be set accordingly. Again, for “fun” items €2 per week. Where a Provider/Operator has come to a written arrangement with a phone owner, which verifies that the phone owner is over 18, this limit for “fun” items should be mutually agreed

Q 10 Receipts. It is our view that a full comprehensive receipt should issue for all expenditure on each and every occasion that a transaction occurs. This is the norm in business generally and there is no good reason why it is not extended to this business. It is the failure to introduce normal business practise that has led some in this business astray and into disrepute.

Q12 Sign-up Fees. The question here must be, “what is the end user getting for this fee”? Of course such fees should not be allowed as they reinforce the notion that it is Ok for some Operators to take end users money and give nothing of like value in return. It goes to condoning general low standards in this business.

Q13 Expenditure Update Messages. The proposal here is again tantamount to rewarding some Operators for entrapping members of the public in these “services” Surely the best solution here is for the phone owner to be asked on each occasion that the Operator feels that

he/she is due a payment and if the phone owner does not wish to pay, he/she simply ignores that text. We are back again to extending to an Operator the extraordinary power to remove money from call credit without specific permission and this must require an extraordinarily good reason to be allowed to continue. Why should the Operator be allowed to take and keep €20 for which nothing has been given of like value in return? We have asked many times for an answer to this point and to date have not received one from any quarter.

Q 14.

Q 15. Unsubscribing from Multiple Subscription Services. The solution here is for ComReg to initiate a special short code number to which any phone owner can text "Stop" and this will automatically release the owner from any "services" he/she is caught up in. In addition, phone owners can text "stop" to this special number weekly or monthly as a cleaning operation to remove any membership of a "service" This would be of great benefit to parents wishing to protect their children and would go a long way to assisting in the rehabilitation of the reputation of mobile phone services in general. This can be run again by a levy imposed on those Operators running "subscription service/reverse billing" services.

Q 16 Competition Services. These "services" constitute the greatest number of complaints received by us. (Followed by "IQ tests" on the internet and Tarot Cards etc.) These must be excluded for the simple reason that there is no good reason why the running of "competitions" needs to use this device and some running these competitions have demonstrated beyond doubt they care little for their "customers" and many hold the view that they deliberately set out to entrap children and the unwitting in these schemes. Any person who is willing to pay each week for an enhanced chance to win a prize will do so without handing over control of their call credit to the Operator. However, entrapping those that enter thinking that there is only a one-off charge must be very lucrative and so long as "competitions" are allowed to be run using the "subscription service/ reverse billing" devices problems will persist. All advertising for these "competitions" is misleading for reasons that we have outlined previously, the main one being the predominance given to the "prize" as opposed to the "joining" of a "service/club" which carries ongoing charges.

Q 17

Q 18

Q 19 Customer care. There have been attempts, and regrettable RegTel were very much part of this problem, to understate the extent of the exploitation. RegTel did not regard a contact with their helpline as a complaint unless the caller specifically stated that a complaint should be lodged. Those entrapped in these "services" are usually more than happy simply to escape from the reach of the Operator and to have stopped the taking of their money. The fact is that the vast majority of callers are from phone owners experiencing difficulties which they do not know how to resolve and this is clear evidence that they are entrapped in a "service" which they had no intention of "joining". In order to properly regulate these "services" it is vital that all contacts, other than basic enquiries, must be recorded as a complaint for purposes of

assessing the scale of difficulties being created by any specific “service” and this will allow ComReg to initiate proactively intervention to stop any ongoing exploitation.

Q 20, 21 Refunds. It is of critical importance that when a problem is detected by a number of complaints received about a specific “service” that the Operator be immediately instructed to cease the “service”, to immediately release all callers to that “service” and to issue full and immediate refunds to all such callers. Aside from this ensuring that no Operator can gain by engaging in activity that will mislead, it will also act as a deterrent if the consequence is immediate and full refunds to all in the “service” concerned. The simple rule of thumb that must apply here is that if callers are being misled then the advertising/promotion for the “service” is misleading.

Q 22 Refunds. Re-credit of telephone accounts/call credit is regarded as sufficient and reasonable.

Q 23 Refund. How the refund is undertaken is not considered a major factor only that the refund is prompt and complete. The deterrent effect is the important point.

Q 24,25,26,27. Default. Our experience indicates that all stakeholders in the provision of these “services” may be culpable to some degree. We are aware that pressure to lightly regulate these “services” has come from many stakeholders in the past and a survey of responses to this consultation may well bear that out. It will do the business no harm at all if deterrence is in place for all connected with the delivery of these “services” when it is found that callers and end-users are being misled. Again it is important to state that Operators initiate, in all cases, these “services”. The phone owner bears no culpability for any exploitation. No sane rational person would respond to an ad full in the knowledge that he/she was agreeing to pay on an ongoing basis for which little or nothing is given in return. “Membership” in itself has no value and cannot be regarded as value in kind for money taken. What ComReg might consider is to seek an upfront bond prior to the issuing of a licence to operate a “subscription service/reverse billing” service. It may also be prudent for those involved in the delivery of these “services” to do likewise or to insure against payouts.

Note: For so long as this problem is occurring all those involved in the delivery of these “services” have done so in a lightly regulated environment and have profited. It will do no harm at all if they are now obliged to at least review precisely what “services” they are being asked to become partners in and to be discerning as who they agree to enter into arrangements with. This of itself could have a maturing effect which will stand to this business into the future and will see standards improved and cowboys exit the business.

Q 28. Age verification (adult entertainment). This really is a must in order to protect children. We have dealt with cases where youngsters, caught up in an adult “subscription service”, were reluctant to seek help from parents because of the material that he had accessed. The onus must fall entirely onto the Operator to ensure that those accessing these “services” are over 18 years, regardless of how cumbersome such verification may prove to be.

Q29. Bar access. Agree that all numbers which are not verified as in the ownership of an adult must be barred from either receiving or accessing adult “entertainment numbers.

Q 30. Responsibility for controlling access. This must always rest entirely with the Provider and those operating and profiting from the “service” It is they who initiate the process through either advertising or commercial messaging.

Q 31. Compensation Scheme. Regardless of how it is organised, the phone owner must be fully compensated in all circumstances. The phone owner interacts with advertising in good faith and unless it can be clearly shown that this interaction is wholly voluntary and deliberate, the Providers and Operators must take full responsibility. In addition, it is vital that other sanctions, such a removal of licence to operate, are available to ComReg so as to ensure that cowboys can be properly deterred.

Q 32. Charitable fundraising. We have recently had contact from members of the public concerned with the arrival into the market of an entity, not directly attached to a specific charitable cause, who is organising the raising of funds via the “subscription serviced/reverse billing” model. This is a very worrying development and the consensus among our group is that allowing the use of the “subscription service/reverse billing” facility for this purpose will leave it open to wide open to abuse. We propose that a separate and special number be made available to all charities for the purposes of raising funds. The number should be distinct and easily recognisable by members of the public such as 88888. Each charity should apply to use the number and should ComReg decide it appropriate to allow its use, then that charity will receive an agreed code for members of the public to place before the number when sending their donation. Example; the Samaritans would be issued the code SAM. Members of the public simply send SAM 88888 indicating the amount they wish to donate. It is recommended that there be fixed amounts to avoid any serious errors and these should be set at €2 or €5 only. Under no circumstances should the “subscription service/reverse billing” device be allowed. Each donation must require the specific and deliberate intention and action of the donor to be delivered.

Q 34 Types of Organisations. The facility should be open to known individual charities only. The recent intervention into this activity by a third party not attached to any specific charity should not be allowed. It is our view that that model of fund raising is seriously flawed, will impact negatively on those charities excluded and on the margins and is wide open to abuse.

9 Dialogue Communications Ltd.

Sent by email only

07/02/2011

Ms Michelle O'Donnell

Re ComReg Consultation

Q2. Do you agree with the proposed provisions relating to the promotion of PRS? If not, please provide reasons to support your view.

We do not agree with the provisions relating to promotion.

No evidence is provided within the consultation to suggest that current advertising codes maintained and enforced by the Advertising Standard Authority of Ireland (ASAI) and the Broadcasting Authority of Ireland have been ineffective in making sure that premium rate advertisements do not mislead.

Furthermore there is no evidence provided within the consultation that the current Regtel code has been ineffective in general or with regards to any specific media or target audience.

It is highly unusual for a regulatory body to propose measures that will have such a significant impact on not only the Premium Rate industry but also the Advertising Industry and the wider Media Industry without first having done a detailed analysis of the perceived issue. Following this analysis one would expect a number of possible approaches to be considered in order to identify the most proportional option.

The costs and time associated with remaking TV ads, press creative and other advertising will be a very significant financial imposition on service providers.

Visual Display Requirements

With regard to the Visual Display Requirements it is totally unacceptable to require Service Providers to have what amounts to a paragraph of pricing information displayed at 75% the size of the call to action. In general premium rate advertisements involve displaying the phone number or text number in large type. This requirement would require us to give over up to 50% of the screen/advert size over to terms and conditions. In addition it will effectively prevent us from buying low cost, smaller sized ads as there would be insufficient space to comply with the Visual Display Requirements.

The current practice of displaying terms clearly and legibly at the bottom of the ad seems perfectly reasonable and is the practice used by other industries. This approach would also be consistent with the ASAI and BAI codes.

It is likely that we will be unable to effectively advertise if these measures are introduced.

Spoken Requirements

We do not agree that this approach represents best practice across all retail services. There is no requirement for such spoken regulatory information within the ASAI or BAI codes. The effective impact on Television Advertising will be that Premium Rate Providers will be unable to effectively advertise on TV. It could take as long as 15 seconds to voice over the pricing requirements alone. This combined with the display requirements is totally disproportionate. It is bizarre and in many cases impossible to require website ads to have spoken information.

Use of the Term “FREE”

We do not agree with the proposals regarding free trials. The proposals within the code do not reflect those proposed within the industry notice as suggested. They go far beyond that by requiring the customer to re-initiate the service at the end of the free period.

It is our view that as long as the terms of the free trial were clearly provided within the promotional material at the time the customer chose the service then the customer has been adequately informed. In the event that the trial period is longer than a month then there may be merit in reminding the customer of the terms of the trial.

The costs and time needed to implement this measure across all products within the industry will be very significant.

There is no justification provided for requiring the customer to actively reiterate their desire to continue with the service. The impact of this measure is likely to be that customers are deprived of free trials.

Promotion of Subscription services

While the identification of subscription services is reasonable, the code is overly prescriptive in relation to suggesting that it must be 50% of the call to action and at the top right of the advertisement. Service Providers should be permitted to place the information in the most appropriate position depending on the media being used.

Q3. Do you agree with the proposed table of accepted abbreviations? If not, please provide reasons to support your view.

We do not believe that creating and managing and updating a table of abbreviations is a suitable approach. The ASAI are the appropriate body to review advertising to ensure it is clear and understandable.

Each time the abbreviation table is updated there will be significant potential costs for service providers to update their advertising and their services.

Q4. Do you agree with the provisions relating to the price information that should be made available to end-users of PRS? If not, please provide reasons to support your view.

The definition of pricing is extensive and would require up to 15 seconds of airtime to speak. Pricing information should be defined more simply and we do not agree that pricing should be spoken in all cases. This will take significant on the ability of advertisers to see advertising as between 50% and 75% of the airtime will be used to comply with these totally unreasonably requirements.

There appears to be no basis for suggesting that speaking all pricing terms is necessary. Indeed particularly in a visual environment such as TV speaking terms is not common practice since terms can be clearly displayed.

The proposal to require the speaking of terms on websites is senseless and ill conceived. There is no possible justification for this suggestion.

The only medium where spoken pricing should be a requirements is in audio only media.

Q5. Do you agree with the requirement to provide end-users of PRS with expenditure reminders? If not, please provide reasons to support your view.

We do not agree that Expenditure reminders as proposed within the code are reasonable. Consumers should be reminded of their expenditure, but they should not be required to act on these reminders in order to continue using the service.

The reminder process suggested requires that consumers continually respond to these reminders in order to continue their use of the service. Consumers are certainly not going respond positively to this requirement and will cease to use services.

No justification has been provided for requiring spending reminders at all, let along a spending reminder that required the consumer to repeatedly respond.

Q6. Do you consider that the levels at which the proposed expenditure reminders are set are appropriate? If not, please provide reasons to support your view and, where appropriate, suggest alternative limits.

Expenditure reminders at €30 euro intervals would seem reasonable in the absence of any proper analysis or justification. However there should be no requirement for the consumer to act on these reminders other than to hang up or text STOP.

Q7. Do you consider that there should be a limit on the amount that an end user can spend on entering a PRS competition? If so, how much? If not, please provide reasons to support your view.

We do not believe limits are appropriate. Consumers should be free to spend what they wish on any service. The focus should be on providing them with accurate clear information within the promotional material and providing them with regular reminder messages.

No justification or rational analysis has been provided to justify a limit. No other options seem to have been considered and no impact analysis of possible options has been provided.

Q8. Do you think there should be limit on the expenditure of an individual transaction through the use of a “facility”? If so, how much? Please provide reasons to support your view.

We do not believe limits are appropriate. Consumers should be free to spend what they wish on any service. The focus should be on providing them with accurate clear information within the promotional material and providing them with regular reminder messages.

No justification or rational analysis has been provided to justify a limit. No other options seem to have been considered and no impact analysis of possible options has been provided.

Q9. Do you consider that there should be a daily, weekly or monthly expenditure limit imposed in respect of individual PRS? If so, what do you think an appropriate level would be? If not, please provide reasons to support your view.

We do not believe limits are appropriate. Consumers should be free to spend what they wish on any service. The focus should be on providing them with accurate clear information within the promotional material and providing them with regular reminder messages.

No justification or rational analysis has been provided to justify a limit. No other options seem to have been considered and no impact analysis of possible options has been provided.

Q11. Do you agree with ComReg's proposal to introduce a "double opt-in" requirement for Subscription Services? If not, please provide reasons to support your view.

We do not agree with comregs proposal on subscription services.

No justification or rational analysis has been provided to justify a double opt-in. The issue that is being addressed is unclear and no other options seem to have been considered and no impact analysis of possible options has been provided.

Expecting consumers to navigate such a requirement is unreasonable and will almost certainly bring an end to all subscription services in Ireland.

The time and costs of implementing this measure would be considerable. In the absence of any real analysis such a measure should not be introduced.

Q16. Should competition services be permitted on a subscription basis? Please provide reasons for your answer.

Competition services should be permitted to operate on a subscription basis. No justification or rational analysis has been provided to justify such a discriminatory ban.

The suggestion seems to hinge on specific issues within how some competition service may operate rather than competition services in general. This proposed measure seems discriminatory and disproportionate to the suggested concerns.

There are already strict rules relating to competitions within the National Consumer Act 2007.

Yours Sincerely



Alex Crisp
Compliance Manager
Dialogue Communications Ltd

10 Eircom Group (“Eircom” & “Meteor”)

eircom Group

Response to ComReg Doc. 10/92a

***Consultation on
Premium Rate Services
Code of Practice***

7st February 2011



Please note that for the purposes of the Freedom of Information Acts, 1997 and 2003, and indeed generally, information supplied by eircom/meteor to you may contain commercially sensitive information consisting of financial, commercial, technical or other information whose disclosure to a third party could result in financial loss to eircom/meteor, or could prejudice the competitive position of eircom/meteor in the conduct of its business, or could otherwise prejudice the conduct or outcome of contractual or other negotiations to which eircom/meteor is a party.

Accordingly, you are requested to contact a member of eircom/meteor's Regulatory Operations where there is a request by any party to have access to records which may contain any of the information herein, and not to furnish any information before eircom/meteor has had an opportunity to consider the matter.

This document constitutes the eircom Ltd and Meteor Mobile Communications Ltd (jointly referred to as eircom Group) response to the ComReg Consultation Document 10/92a of 1st December 2010 "Consultation on Premium Rate Services Code of Practice".

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Introduction

In this consultation ComReg provides the reasoning behind changes that have been proposed to the existing Code of practice that was originally published by RegTel in October 2008.

The consultation and the draft Code of Practice published as Document 10/92b, contain a number of significant proposals. We welcome many of the changes that have been proposed in the draft Code and we concur with ComReg's view that customers are the key to their own protection. Like ComReg, we believe that in the past consumers have not always been sufficiently informed about the price, nature and provider in the case of certain premium services provided by 3rd parties and we are confident that the proposals contained in the draft Code will, with proper enforcement, ensure that consumers are fully informed on all of these aspects. This will arm consumers with the information necessary for them to make informed choices in full awareness of all relevant charges for services. Informed consumers will in turn lead to an efficient market for premium services in which market forces will ensure the survival of services and service providers that deliver value for money while driving out any that fail to deliver value.

With respect to due diligence, the draft Code strays from the provisions of the Act¹ and the associated regulations as it proposes extensive enforcement obligations upon all parties in the value chain. While questioning ComReg's powers to impose such obligations, we also highlight the importance of providing clarity with respect to ComReg's enforcement role. In the interest of consumers in particular, this must be clearly and consistently communicated within the Code of Practice. Similarly in the case of customer service, the proposal that any party in the value chain must accept complaints relating to third parties and forward them to the third party, would create uncertainty in customers' eyes as to which party is responsible for handling their complaint.

We are confident that the transparency requirement contained in the draft Code will be effective in ensuring consumer protection and we welcome in particular the introduction of a solution for dealing with the problem faced by consumers that wish to opt out of multiple subscriptions operating on a common short code. However we call on ComReg to refrain from introducing multiple layers of regulation where elementary measures in the form of clear communications are likely to be sufficient. For instance we view the double-opt-in requirement for subscription services as a welcome and effective means of ensuring that customers have been fully informed before entering a subscription; however we do not believe it necessary to require customers to repeat the opt-in process on receipt of reminder messages at each €20 spend interval. Spend reminders also remind customers on how to opt-out, therefore it would be reasonable to assume that customers that do not opt-out on receiving a spend reminder are happy to remain on the service. Requiring end-users to opt back in would inconvenience customers adding an unnecessary layer of bureaucratic regulation. In a similar vein, we have identified a number of proposals in the draft Code that should at a minimum be deferred for further consideration should the need arise including restrictions on competition services and sign-up fees for subscriptions.

In response to various questions we highlight the need for clearer delineation between general obligations and those specific to voice, SMS, MMS and internet based services. When drafting the final Code, we would recommend a review of the general conditions to ensure that any conditions that are specific to the provision of these specific categories of services are re-ordered to appear in those sections that are dedicated to each. Conversely we have identified requirements relating to the promotion of SMS and MMS services that have broader application and are proper to the general provisions section of the code.

We support the principle of ensuring that comprehensive information is provided to consumers in advance of availing of premium services and we appreciate the additional clarity that is being proposed with respect to

¹ Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010



the use of abbreviations in marketing communications. We would recommend however, that further consideration should be given to the limitations that apply to SMS communications with a view to reconciling the character limitation inherent in SMS with the need for transparency. Also in the interest of transparency we consider it essential that the Code requires the cost associated with a premium SMS short code to be clearly communicated in promotional material alongside the short code. This would be of particular benefit in the case of reverse billed SMS. We have proposed amendments to the wording of the relevant sections of the draft Code to address these concerns and others that arise in response to the consultation questions.

RESPONSE TO CONSULTATION QUESTIONS

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

eircom Group supports much of the content of section 3 of the draft Code while highlighting the need to ensure that the obligations set out in this section are indeed general. We refer in particular to section 3.25 which refers to the charges being incurred for the delivery of busy tone or silence prior to connection, charges for services that are not available or charging for error messages. While these are valid examples of consumer detriment, the general requirement should be stated here with respect to end users not being charged in respect of PRS, or parts thereof where the service in question is not delivered.

Section 3.6 provides flexibility for ComReg to allow Service Providers to meet the requirements of the Code through alternative means. While we appreciate the need for some flexibility, ComReg should be mindful of the possible implications of making exceptions in the case of individual services. Consideration should be given to the fact that operators will be advising their customers in accordance with the requirements of the Code. For example if ComReg were to allow an alternative operation of the stop command for unsubscribing from subscription services, this could result in incorrect instructions being given to customers by mobile operator help lines as helpline staff rely on the Code as their point of reference for queries. There are clear consumer benefits for maintaining a single standard in respect of the stop command which highlight the importance of ensuring consistency in the application of all aspects of the Code.

The wording of section 3.28 is ambiguous as it suggests that parties contracted with a service provider whose licence has been amended would need to comply with new provisions. We assume the intention of section 3.28 is to require service providers to ensure compliance by contracted service providers with any amendments that have been applied to the latter's licence.

In any case, the proposed sections 3.26, 3.28 and 3.29 exceed the limits of ComReg's powers under the Regulations by proposing unduly onerous obligations on service providers with respect to compliance with the Code by other service providers in the value chain. For the avoidance of doubt, we acknowledge that each service provider is fully responsible to ensuring that the services that it offers are compliant, and we recognise that it is in the interest of all service providers to support the enforcement of the Code generally. However the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010 clearly identifies it as ComReg's responsibility to ensure compliance by premium rate service providers with their obligations in relation to the provision, content and promotion of premium rate services. Regulation 5(8) of the SI338 of 2010² states that premium rate service providers only enter into contractual arrangements for the provision of specified premium rate services with other premium rate service providers where the other service providers hold all necessary licences and/or certificates as provided for under the Regulations. Neither the Act nor the regulations impose obligations on service providers to take actions to address specific incidents of non-compliance by other service providers either with the general conditions of the Code or to special amendments to the licences of 3rd party service providers. Furthermore in the case of licence amendments we would expect that ComReg itself would more closely monitor the operations of those service providers that have had cause to have their licences amended as a result of previous breaches of the Code.

We therefore recommend that ComReg removes sections 3.28 and 3.29 and revises section 3.26 such that it obliges service providers to support ComReg in its activities in enforcing the Code. We have proposed the following amendments to this section:

3.26 PRS Providers must take all reasonable steps in the context of their roles to assist ComReg in ensuring that the provisions of the Code are complied with in respect of any PRS with which they are concerned.

² Communications Regulation (Licensing of Premium Rate Services) Regulations 2010

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

Sections 4.4, 4.9 and 4.16 of the draft Code set out a significant amount of detail that must be present in promotions communicated visually, verbally and via SMS and MMS respectively. These contain unnecessary duplication of requirements that apply to all promotions. With a view to establishing common requirements and highlighting those that are specific to the various media, we would recommend that a general requirements section is created and that the specific requirements for each of the other media be set out separately in the relevant sections for each.

Section 4.13 (d) proposes that at the end of any free trial period or when the end-user has already availed of a free entry and prior to the commencement of charging, customers must provide positive confirmation of their acceptance of impending charges by texting 'Agree' to the short code number.

This would effectively operate as a double opt-in to the service, the latter part of which could be transacted at any stage during the free period. Where the service provider decides to transact this double opt-in at the beginning of the free trial, a significant period of time may elapse between the customer's acceptance of the service and the commencement of charging. In this instance we would recommend that a further reminder message be sent prior to the commencement of charging. We would suggest that a reminder should be required where more than 5 days has elapsed since the customer agreed to the subscription (double-opted-in) and where such a reminder is required that it be sent up to two days prior to the commencement of charges (or less in the case of shorter trial periods).

This would allow service providers the flexibility to double-opt in customers at the start of a free trial, thereby making customers fully aware of an impending chargeable subscription without a forced removal from the service at the end of the trial. In this way, customers would be protected by the reminder on how to unsubscribe before they start to incur charges while service providers would be less likely to suffer the loss of legitimate custom through customer inertia at the end of the free trial.

Alternatively service providers could choose to secure customer agreement to the service at the end of the free trial, thereby avoiding the requirement to send a reminder message. Based on our proposed timeline, this would occur within 7 days of the commencement of charging.

Section 4.17 proposes that "Push Messages are recorded in a call log in clear text format to facilitate the easy reading of the content of the message". It is not clear what is meant by a call log.

Section 4.18 requires that the word Subscription is used in promotions relating to subscription services. Clarification is required here as to whether the abbreviations Subs/Subsd can be used in promotions.

In Section 4.22 ComReg makes allowances for the space limitations when sending promotions for competition services via SMS. However the draft Code fails to set out the minimum requirements for such promotions. We also note that these space limitations apply to all promotions sent via SMS however no consideration is given to this in respect of promotions for other service types. We believe that consumer protection is paramount and that it should not be compromised by the limitations of any particular medium therefore we would welcome further guidance in the code on the appropriate use of SMS as a medium for promoting premium rate services.

Section 4.26 sets limitations on the retention of customer data to the period that an end-user remains on a direct marketing database. This confuses data retention with the customer's right to opt out of direct marketing. The Code must ensure that service providers retain the relevant information for a period sufficient to accommodate investigations by ComReg or indeed the Data Protection Commissioner and in accordance with the Data Protection Acts³ and the guidance issued by the office of the Data Protection Commissioner on the retention of customer data. Clearly this will extend beyond the date on which a customer requests to be removed from a direct marketing database.

Section 4.27 requires that records of promotional activity (including direct marketing) must be retained for a period of 12 months. eircom Group supports this requirement but recommend that it should be extended to

³ Data Protection Act 1988 as amended.

ensure that service providers retain a record of customers opting in to direct marketing and subscribing to services as well as customer requests to opt out of receiving direct marketing and to unsubscribe from services. In addition the Code should require the retention of records of end-users actually being opted out and unsubscribed by the service provider.

Amendments are required to the wording of sections 4.4 (c) (v) and 4.9 b (v) as the wording in the current draft requires service providers to communicate the minimum number of messages required to complete a transaction. In order to adequately communicate the potential cost of a service we believe that customers should be advised of the maximum possible number of messages required. We also note the need for a minor amendment to the first paragraph of section 4.16. Therefore we are proposing the following amendments:

4.4 (c) (v) and 4.9 b (v) the ~~minimum~~ ~~maximum~~ number of messages required to complete the transaction (assuming these can not be combined under a single common requirements section)
 4.16 All PRS Providers that send promotional messages to an end-user's mobile handset by SMS or MMS must ensure that the following information is included clearly in the body of all such promotional messages ~~are~~:

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

eircom Group have reservations about the use of the abbreviations Subs/Subsd. We believe that Sub and Subd to be more readily associated with the full words while also taking up fewer characters. We would recommend that the Code provides clear guidance as to the context of the abbreviations which should lend to their interpretation. If the context refers to the unit cost and frequency the meaning of the abbreviation should be clear. For example:

“To Subs to news alert at €2 per day text ‘news’ to 5XXXX”
 “You have been Subsd to news alerts at €2 per day”

With regard to the abbreviation for the word ‘received’ ComReg proposes two optional abbreviations ‘Rec’d and ‘Recv’d’. In the interest of consistency we would recommend that only ‘Rec’d’ be permitted as we consider this to provide equal clarity while also taking up fewer characters.

We note the absence of the abbreviation UnSub and recommend its inclusion in the list.

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

Section 5.1 (a) of the draft Code requires that end-users should have the ability to exit from a PRS on being fully informed of the cost of the service, prior to incurring a charge. For content that is required on a real-time basis, there may not be any opportunity to exit the service in advance of content delivery and charges being applied. Also, this would be impractical in the case of premium voice calls offered over premium rate numbers as it is not technically possible to inform customers that have commenced the service of the cost of the service, without the customer incurring a premium charge. Furthermore it implies that customers might not have been fully informed of the cost in advance of availing of a PRS. We therefore propose that Section 5.1 be amended to refer generally to the requirement to fully advise customers of the price of PRS as laid out in Section 4 which deals with the promotion of services, as follows:

5.1 PRS Providers must ensure that, in the case of all PRS:
 (a) end-users ~~are have been duly advised~~ ~~fully informed~~ in a transparent and clear manner of the cost of using a PRS prior to availing of the service and incurring any charge.

We also consider that section 5.1 (e) makes unnecessary reference to calls from mobiles. The reference to calls from other networks would suffice. Also the reference to calls from eircom networks is incomplete. Therefore we propose the following amendments:

5.1 (e) the required pricing information for voice services states the rate from calling from the eircom network and that calls from networks other than eircom may vary ~~and calls from mobiles normally cost more~~

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

Section 6.6 (a) of the draft Code requires that the existing €20 spend reminder that applies under the RegTel Code should be extended to services other than subscription services.

In the case of services that do not operate on a subscription, no justification has been provided for spend reminders in the consultation document. ComReg suggests that there is a loss of control in the case of reverse billed SMS but fails to draw the important distinction between reverse billed SMS that arise from subscription services as opposed to one off purchases while also overlooking the benefits that will accrue from other improvements to the Code. In the case of one off transactions, customers are making an active decision to make a purchase on each and every transaction. There is currently very little scope for consumer harm arising from these services and there is no apparent need for a spend reminder for services that are purchased through discrete transactions. Furthermore, given all of the other transparency requirements that are proposed in the draft Code which are designed to comprehensively inform customers, spend reminders for these services can not be objectively justified.

Also under 6.6 (a) it is proposed that end-users that are availing of a subscription service, on receiving notification of having spent €20, would be required to positively confirm that they wish to continue subscribing to the service. For similar reasons to those stated above, we do not believe this to be proportionate or justified. Under the revised Code, end-users will be presented with extensive detail about the service provider, the price of the service and the method of unsubscribing. In addition, end-users will be provided with a comprehensive mechanism for opting out of multiple services operating on a single short code. Most significantly, through the double-opt-in requirement, end users will be offered significantly more protection on entering a premium rate subscription service including details on the service, its price and on how to opt-out while spend reminders would ensure that end users continue to have this information to hand. Having been provided with the above, there is no reason to believe that customers should unwittingly avail of a subscription service or unwillingly continue with such services.

Notwithstanding the aforementioned objections to the proposed extension of the scope of reminder messages to services other than subscription services, we have identified the need for amendments to the related sections of the draft Code:

Section 6.6 (b) (i) states that expenditure updates must be a standard SMS. In order for this to be technology neutral while clearly stating the requirement that customers should not be required to pay for these updates we propose that the reference to SMS is removed and that the focus is on the free delivery of this information.

Section 6.6 (b) (iv) refers inappropriately to call charges. We propose that this be amended to refer more generally to charges for services. We also recommend that spend reminders be bounded within a 30 day limit. Subscription services that involve a low monthly spend are unlikely to cause consumer harm while spend reminders for such services could in fact cause unnecessary alarm and confusion among end-users. For instance a daily SMS alert costing 20c per message would trigger one reminder approximately every 3 and a half months. As price plans and billing periods are typically associated with monthly usage, end-users are likely to associate spend reminders with monthly spend. Hence our recommendation that counters for accumulated spend should reset every 30 days.

With regard to the format of the expenditure updates, in the interest of practicality we recommend a standard spend reminder message as opposed to one that would communicate a running balance on spend. We therefore propose the below amendment to the format that service providers would be required to follow. Our proposed wording also replaces the text seeking the end-user's agreement to continue with the subscription with detail on how to unsubscribe:

SUBSCRIPTION EXPENDITURE UPDATE MESSAGE

You are subscribed to [name of service and optional description] for [cost of service in €] per [billing frequency - message received/time] and have spent €20 (or €20 since your last spend update). To unsubscribe send STOP to [originating service short code]. Helpline [not more than national rate phone number]. ~~{€20/€40/€60 etc.}. To continue, text AGREE[or other unique keyword for the service] to short code 5XXXX. Helpline number [not more than national rate phone number].~~

Section 6.6 (b) (v) must be amended to take account of services that don't involve short codes.

Section 6.6 (b) (vi) requires that where relevant end-users are also provided with information on how to opt out of receiving Promotional Material. We do not consider this requirement to be consistent with ComReg's objective of avoiding any confusion between service messages and promotional messages. Therefore we would propose the deletion of this subsection.

Section 6.6 (b) (vii) requires detail to be provided on how to continue or renew the subscription. As outlined above we do not believe that an enforced removal from subscription service is justified in which case this subsection should be removed.

In summary we recommend the following amendments

6.6 (b) Expenditure Updates must:

- (i) be a standard SMS provided free of charge to the end-user
- (iv) inform the end-user that they have incurred €20 in ~~call~~ charges for the service within the previous 30 days
- (v) give information on the reason for incurring the charges by providing the name of the PRS and the short code where relevant.
- (vi) ~~if relevant explain how to opt out of receiving Promotional Material, and~~
- (vii) ~~in the case of Subscription Services, provide details of how to continue/renew the subscription.~~

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

As outlined in response to question 5, we do not consider there to be any justification for an extension of the scope of spend reminders. With respect to the existing reminders for subscription services, we would not recommend any change to the limits as this would cause unnecessary confusion and may result in additional costs on the industry in meeting new threshold requirements.

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

In common with other services, competition services have in some cases been a source of consumer harm. As outlined in the consultation document, this related primarily to a lack of transparency in the promotion and delivery of subscription based competition services. However we are confident that the proposed new transparency measures will address such cases. In light of the proposed changes, the merits of spend limits for competition service should be reviewed and limits should only be continued if they can be objectively justified. For reasons outlined in response to question 6, if a continued limit can be justified, it should remain at the current level.

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

We do not support the proposal to extend the limit on individual transactions. This would place unnecessary constraints on the provision of premium rate services in an era when consumers will be better informed than ever before. Neither our experience of the premium sector to date nor RegTel commentary on the cause of consumer complaints point to the need for transaction spend limits. In the absence of any evidence of consumer harm which may justify such limits and evidence of the proportionality of such measures, this should be left to market forces.

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

While noting our objections to further spend limits we would recommend that the existing limits that apply to subscription services should apply to spend over a 30 day period for reasons outlined in response to question 5.

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

Section 6.12 and 6.13 are overly prescriptive in requiring that such confirmation be sent via SMS. Bearing in mind the fact that the definition of a premium services is now far broader than that which applied when the RegTel Code was drafted, the Code must account for service delivery media other than SMS. Therefore we recommend that section 6.12 and 6.13 be amended to refer more specifically to once-off SMS based transactions.

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

We support the thrust of the proposed amendments to the Code with respect to confirming customers' intentions to enter subscription services and we agree with the principle of double opt-in for SMS based subscription services.

However the wording of sections 6.12 to 6.18 are focussed solely on SMS based subscription services though it remains unclear as to whether ComReg intends these requirements to be limited to SMS as a delivery medium. As outlined in response to question 10, a subscription service could be supplied via the internet (e.g. on a mobile operator's internet portal) and directly billed to the customer's account without using premium SMS. In these instances, existing regulations provide ample protection to consumers; therefore we do not believe that further obligations are warranted in the case of other media such as the internet.

We appreciate the need to address SMS as a medium given the 160 character limitation that applies to SMS. Therefore this section of the Code should expressly focus on the requirement to ensure that subscription services promoted, entered and provided over premium SMS are communicated in such a way as to address issues relating to SMS such as the need to head up information messages as free messages and the association of charges (in particular reverse billed) with the short codes against which they are billed.

With regard to the association of charges with short codes, we believe that the Code could be further enhanced by mandating the direct association of short codes with the premium charge that is incurred when either sending SMS to or receiving SMS from the short code. This is particularly important in the case of reverse billed SMS short codes as it assists end-users in being vigilant about the receipt of SMS from a short code that gives rise to a charge. Sub-sections 6.16 (e) and 6.18 (f) of the draft Code state the requirement to include the basis for calculating charges; however specific reference to the premium short code and the association of the charge with the short code is lacking. We therefore recommend the following amendments to these sections and the associated examples:

6.16 (e) and 6.18 (f)

include the basis for calculating charges including any:

- (i). charges for each message received, associated with the premium SMS short code
- (ii). charges for each message sent, associated with the premium SMS short code, and
- (iii). charge per charge period and that charge period

(h) follow the format of the example provided below:

SUBSCRIPTION REQUEST MESSAGE

To subscribe to [name of service and optional description] for [sign-up cost] and [cost of service in €] per [billing frequency - message received from 5XXXX /time] and confirm that you are over 18 yrs, text AGREE [or other unique keyword for the service] to Short Code 5XXXX.

SUBSCRIPTION CONFIRMATION MESSAGE

You have subscribed to [name of service and optional description] for [sign-up costs] and [cost of service in €] per [billing frequency - message received from 5XXXX /time] until you send STOP to [originating service short code]. Helpline [not more than national rate phone number].

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

We do not consider it appropriate for such a specific requirement to be included in the Code, while we believe that ComReg should have the discretion not to permit the provision of services that involve excessively complicated charging mechanisms. We would recommend that this discretion should be exercised on a case by case basis when services are being authorised.

One of the key principles outlined by ComReg in the consultation document is that of arming consumers with information that will assist them in protecting themselves. If sign-up fees have in the past resulted in consumer harm, this most likely arose as a result of a failure on the part of the service provider to properly communicate charges. The draft Code enhances consumer protection in this respect; therefore, provided that ComReg can be satisfied that the charging mechanism can be clearly communicated to consumers, market forces will ensure that charges are structured and applied at levels that will satisfy consumer demand. Consequently services that involve excessive up-front costs or indeed that are priced excessively in any form would prove unattractive to consumers and will not be taken up. Therefore in the same vein as our comments in respect of spend limits; ComReg should refrain from applying excessive regulation to premium services where market forces in conjunction with other protective measures contained in the draft Code will suffice.

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

We do not agree with this proposal. As outlined in detail in the response to question 5, we do not believe that the requirement for end-users to provide positive confirmation of their desire to continue in a Subscription Service after a certain expenditure level can be objectively justified in light of the extensive transparency requirements that are being proposed in the draft Code.

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

We agree with and welcome the provisions in the Draft Code that restrict the number of attempts that a PRS Provider may use to send an undelivered message.

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

We welcome these proposals which achieve the desired balance between consumer protection and the facilitation of service provision in such a way as to ensure optimal utilisation of short codes through the sharing of codes across multiple services.

However we propose one amendment with respect to section 6.26 (f) of the Code which proposes that service providers be required to provide instructions on how to unsubscribe from all services on the short code. Given that section 6.27 requires that service providers do not apply any further charges on the code in question until they receive an instruction from the end-user, a “Stop All” command is superfluous. Furthermore, under the current draft proposal, consumers would be misled into thinking that services would continue, provided that they don’t send a “Stop All” or individual “Stop” command.

We therefore propose that communications to end-users should be worded to reflect the proposed mechanism for multiple subscriptions on a single short code. Thus, Section 6.26 (f) should instead require service providers to advise end-users that they will be unsubscribed from all services in the absence of any instruction to unsubscribe from individual services. We therefore propose the following amendments:

6.26 (f) advise end-users that they will be unsubscribed from all services, in the absence of any instruction to unsubscribe from individual services.

UNSUBSCRIBE FREE CLARIFICATION MESSAGE

U are subscribed to more than 1 service. To stop [name of service] text STOP [keyword], to stop [name of 2nd service] text STOP [2nd keyword] [this format continues to identify the service to which the end-user is subscribed], ~~Otherwise all services will be stopped to stop all services text STOP ALL to 5XXXX~~

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

We recommend that competition services should be permitted to continue on a subscription basis. We believe that the subscription model may be well suited to competition services provided that the terms are clearly communicated to end-users. We do not believe that the subscription model should be vetoed with respect to any service type without clear justification. As outlined in response to previous questions, the key to consumer protection is transparency with respect to the price, content and supplier of services. We would therefore recommend that ComReg refrains from applying additional levels of regulation in advance of establishing the effectiveness of the enhancement and proper enforcement of the other critical protections that are being built into the revised Code.

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

We agree with the provisions in the draft Code relating to Quiz TV Services.

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

We agree with the provisions in the draft Code relating to the services referred to in this Section;

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

With the objective of ensuring that end-users make as few calls as possible in order to find redress, ComReg is proposing that end-users should be able to initiate a complaint with any party in the value chain. This proposal gives rise to a number of concerns. Firstly it is unclear as to whether this applies to every contact and it assumes that every complaint is a legitimate one, yet this is something that other service providers in the value chain may be unable to establish. More importantly, it would add significant cost to the provision of service by each and every party in the value chain as each would have to implement systems for capturing, forwarding and recording interactions. It is also likely that such a regime would result in subsequent contacts

from end-users to the first point of contact in order to follow-up on the complaints. It would give rise to duplication as end-users could initiate complaints about the same issue with multiple service providers and this would cause confusion. All of this would result in unnecessary additional cost for the industry. Most significantly, it could create conditions that would allow unscrupulous service providers to neglect their responsibility to provide adequate support for their services while hampering ComReg's ability to enforce obligations as investigations could be unduly extended as ComReg seeks to unravel multiple interactions in order to determine the facts about the handling of a single complaint.

We support the need for a speedy route for customers to instigate queries and complaints about services; however this can be better achieved through the redirection of customers to the service provider that is responsible for the service. In the case of a service that requires prior authorisation and certification from ComReg this can be achieved by referring customers to the on-line register. In the case of other services offered over premium rate numbers and short codes, the party to whom the number or code is allocated can be identified on ComReg's web site.

In addition ComReg might consider the enhancement of its short code register in order to provide an enhanced level of detail such as pricing information and reverse charging along with contact information, similar to that provided by PhonePay Plus in the United Kingdom⁴.

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

We agree that the amount to be refunded to end-users should be the full charge imposed on them, inclusive of VAT, by the non-compliant PRS Provider.

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

We agree with ComReg's assessment of the issue of misleading information. Of particular concern here is not so much the intention of the service provider as the impact on end-users. If consumers have been fundamentally misled it would be appropriate to require a refund of all affected customers; however in cases where a breach of the Code might be less fundamental and where it could reasonably be assumed that those consumers that remained silent are satisfied with the product or service received, ComReg might legitimately consider a more limited obligation to refund those that complain.

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

In order to ensure that refunds are provided promptly and to minimise the administrative effort involved in providing refunds, the service provider responsible for the service should provide any refund directly to the customer in question. The involvement of network operators merely adds to the administrative burden. This is particularly so in the case of a refund involving a small number of customers. Furthermore, in the case of refunds for premium SMS services, which are typically aggregated across multiple networks, this would lead to the involvement of multiple operators. ComReg has been granted significant powers of oversight and enforcement which should help to ensure that refunds are applied comprehensively and promptly where required, therefore eircom Group is confident that this approach can be relied upon, with ComReg's oversight.

Both eircom and Meteor have, on occasion, voluntarily facilitated larger scale refunds in the past by applying refunds directly to customers' accounts. eircom Group remains amenable to providing such refunds on a voluntary basis on terms commercially negotiated with the service providers. However we expect the incidence of large scale refunds in particular to decline as a result of improved customer protection under the revised Code,

⁴ See <http://www.phonepayplus.org.uk/output/check-a-number.aspx>

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

We agree that differing methods of refund should be used depending on the scale of the issue. As outlined in response to question 22, refunds to a smaller number of customers should typically be provided by the service provider without any involvement of the network operator. For the avoidance of doubt, network operators should continue to have the freedom to voluntarily administer a refund at the operator level and to recoup the cost of doing so from the service provider that gave rise to the miss-charge in the first instance.

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

We do not support the inclusion of such a requirement in the Code. Under the terms of our agreements with service providers we currently withhold payment for at least 30 days. As the industry has demonstrated its ability to establish appropriate lead times for revenue share settlements, we do not believe it necessary to mandate a minimum period.

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

Protections currently afforded through the withholding of payments to service providers have served the industry well to date. We do not envisage the need for a mechanism to deal with the unlikely event of a default that might go undetected for a period in excess of 30 days. Indeed it would typically take longer, than 30 days for payment to reach the final party, given the various levels in the value chain and the probability that less established or opportunist rogue service providers are likely to be well down the value chain. For the avoidance of doubt, in the event that a breach goes undetected for an extended period during which time the offending service provider has been paid its share of revenue, ComReg should use its enforcement powers to require the service provider to provide refunds.

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

We consider it neither reasonable nor proportionate to require any of the other PRS Providers in the value chain to issue refunds in the case of a default by a non-compliant third party service provider. As outlined in response to question 25, ComReg appears to be attempting to regulate for an issue that has not arisen in the recent past and one that is unlikely to arise given the protections already built into the payment terms of the contractual agreements between service providers. As outlined in response to question 25, in such circumstances, we would expect ComReg to pursue the offending service provider.

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

Please see the response to question 26.

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

We understand that the provision of a robust age verification system involves significant development by any party implementing age verification and access controls. Nonetheless we believe that robust age verification and access control are prerequisites if adult or indeed sexual entertainment services are to be provided.

Any proposal to assert responsibility for access control whether on service providers or otherwise gives rise to a number of issues such as the need for standards of access control, the brand implications associated with controlled services and the problem of coordination across various service providers. This also gives rise to the question of credit card verification of over 18's and over-arching solutions such as a national identity card scheme.



Given the wide ranging issues that are associated with access control for adult and sexual entertainment services, we would recommend that ComReg consults separately and in more detail on this issue.

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

Please see the response to question 28.

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

Please see the response to question 28.

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

We consider such an approach would be open to abuse. We would therefore recommend that the current preventative measure of premium call barring be relied upon and that service providers and host operators should retain the discretion to apply refunds on a case by case basis.

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

We would support the proposal for a designated short code for the purpose of charitable donations.

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

We would recommend a code in the 57XXX range to allow for donations exceeding 80c.

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

We agree with ComReg's proposal to rely on the current VAT exemption status of charitable organisations until such time as the official register is in place.

If ComReg ultimately designates specific short codes as charitable codes, we recommend that ComReg should closely monitor activity on such codes in order to ensure that no abuse of the exemptions that apply, in particular through the provision of other non-charitable services on these codes.

Other Issues not addressed in the questions

New Definitions

We note reference in the Code to the following terms:

- Call Log
- Error messages,
- Informational messages
- Instructional messages
- Internet Promotion
- IVR
- Mobile Internet Promotions
- Message/SMS Header
- Message/SMS Body
- Reverse-billed

To aid the understanding of the Code we would recommend that these terms be defined in section 2 of the Code.

Service Provider and Contact Details for Internet Promotions

Section 4.7 (c) and (d) of the draft Code respectively state that required information to be provided by PRS providers under the Code must be presented on the landing page for internet promotions and at the top of the landing page for mobile internet promotions. This would include the requirements under section 4.4 of the draft Code to provide the name and contact details of the service provider. In the case of on-portal services that are promoted on operator web sites, this would be unduly onerous as proprietary services promoted and purchased directly via company web sites are clearly offered by the company in question, and contact details are typically provided on a dedicated contacts link on the same web site.

Section 6.10 (c) repeats this requirement specifically in relation to on-portal services.

We do not believe these requirements to be proportionate or objectively justified as no evidence has been provided in relation to difficulties identifying or contacting the providers of on-portal services. While we appreciate that the proposed protections may be required for stand alone internet based promotions ComReg could address these concerns through more precise definition of internet and mobile internet promotions so as to avoid the imposition of draconian regulation upon on-portal services.

Use of the “Stop” Command for Opting Out of Direct Marketing and the Need for Confirmation Messages

Section 4.16 (g) associates the “Stop” command with requests to opt out of receiving promotional messages. While there are clear benefits in using the “Stop” command with respect to direct marketing, we believe that this could lead to confusion among customers who may be in doubt as to whether they are opting out of a subscription service or future direct marketing communications. We would therefore recommend that a confirmation message should also be required under the Code which clearly communicates that customers have been opted out of the service provider’s direct marketing database.

Requirements for Reverse Billed SMS

Meteor agrees with the intent of section 6.10 (a) and (b) with respect to the presentation of the sending short code in the case of reverse billed SMS. However this section is worded such that the requirement to present a short code would apply to all premium SMS. We therefore propose the following amendment to the wording:

6.10 When a PRS, which is not a Subscription Service, is provided by:

- (a) Reverse-Billed SMS or MMS, the PRS Provider must ensure that the short code of the service is displayed as the sender information
- (b) Reverse-Billed WAP, the PRS Provider must ensure that the short code of the service is the first information contained in the body of the message

Charges for Viewing Internet Images, Web Pages and Videos

Section 6.11 (a) states where pages contain more than one image or video end users must be informed of the charges that apply for viewing same. It is not clear to us why this requirement is limited to cases where a page contains more than one of either elements. Taking the example of mobile content operators typically communicate the data charge for browsing. This would constitute prior notice of the cost for accessing any amount from one to many images or video clips.

Section 6.11 (b) proposes to restrict charges for revisiting pages that customers have already paid to view. We do not consider this to be proportionate as the content of a page may change over a very short time period. For example weather forecast information and stock prices associated with a particular page may change such that there is added value in re-visiting that page. Furthermore it may not be technically feasible to avoid charging in all cases. We also consider such a requirement to be discriminatory. Taking the analogy of directory enquiries services it would equate to an imposition on directory service providers not to charge a user that makes a second request for a number that had already been provided.

Restrictions on Charging for Service Messages

With regard to section 6.30, we agree with the first sentence which prohibits premium charges for informational messages however the second sentence which states “A Premium Rate charge may only be raised when the Subscription Service itself has been requested by, confirmed and delivered to an end-user”, would prohibit premium charges that apply on sending to a premium short code e.g. to register a vote. We therefore recommend that section 6.30 should be amended as follows:

6.30 PRS Providers must not raise a premium rate charge to provide information about a Subscription Service or its availability. ~~A Premium Rate charge may only be raised when the Subscription Service itself has been requested by, confirmed and delivered to an end-user.~~

Lead time from Code launch to compliance being required.

In the case of previous revisions to the RegTel Code, the industry was granted a lead time of 3 months in order to become compliant with new aspects of the Code. We would recommend that ComReg grant a similar lead time at least for those aspects of the Code that would reasonably require changes to the way that services are operated and promoted.

11 Electric Media

Q2. Do you agree with the proposed provisions relating to the promotion of PRS? If not, please provide reasons to support your view.

We do not agree with the provisions relating to promotion.

No evidence is provided within the consultation to suggest that current advertising codes maintained and enforced by the Advertising Standard Authority of Ireland (ASAI) and the Broadcasting Authority of Ireland have been ineffective in making sure that premium rate advertisements do not mislead.

Furthermore there is no evidence provided within the consultation that the current Regtel code has been ineffective in general or with regards to any specific media or target audience.

It is highly unusual for a regulatory body to propose measures that will have such a significant impact on not only the Premium Rate industry but also the Advertising Industry and the wider Media Industry without first having done a detailed analysis of the perceived issue. Following this analysis one would expect a number of possible approaches to be considered in order to identify the most proportional option.

The costs and time associated with remaking TV ads, press creative and other advertising will be a very significant financial imposition on service providers.

Visual Display Requirements

With regard to the Visual Display Requirements it is totally unacceptable to require Service Providers to have what amounts to a paragraph of pricing information displayed at 75% the size of the call to action. In general premium rate advertisements involve displaying the phone number or text number in large type. This requirement would require us to give over up to 50% of the screen/advert size over to terms and conditions. In addition it will effectively prevent us from buying low cost, smaller sized ads as there would be insufficient space to comply with the Visual Display Requirements.

The current practice of displaying terms clearly and legibly at the bottom of the ad seems perfectly reasonable and is the practice used by other industries. This approach would also be consistent with the ASAI and BAI codes.

It is likely that we will be unable to effectively advertise if these measures are introduced.

Spoken Requirements

We do not agree that this approach represents best practice across all retail services. There is no requirement for such spoken regulatory information within the ASAI or BAI codes. The effective impact on Television Advertising will be that Premium Rate Providers will be unable to effectively advertise on TV. It could take as long as 15 seconds to voice over the pricing requirements alone. This combined with the display requirements is totally disproportionate. It is bizarre and in many cases impossible to require website ads to have spoken information.

Use of the Term "FREE"

We do not agree with the proposals regarding free trials. The proposals within the code do not reflect those proposed within the industry notice as suggested. They go far beyond that by requiring the customer to re-initiate the service at the end of the free period.

It is our view that as long as the terms of the free trial were clearly provided within the promotional material at the time the customer chose the service then the customer has been adequately informed. In the event that the trial period is longer than a month then there may be merit in reminding the customer of the terms of the trial.

The costs and time needed to implement this measure across all products within the industry will be very significant.

There is no justification provided for requiring the customer to actively reiterate their desire to continue with the service. The impact of this measure is likely to be that customers are deprived of free trials.

Promotion of Subscription services

While the identification of subscription services is reasonable, the code is overly prescriptive in relation to suggesting that it must be 50% of the call to action and at the top right of the advertisement. Service Providers should be permitted to place the information in the most appropriate position depending on the media being used.

Q3. Do you agree with the proposed table of accepted abbreviations? If not, please provide reasons to support your view.

We do not believe that creating and managing and updating a table of abbreviations is a suitable approach. The ASA are the appropriate body to review advertising to ensure it is clear and understandable.

Each time the abbreviation table is updated there will be significant potential costs for service providers to update their advertising and their services.

Q4. Do you agree with the provisions relating to the price information that should be made available to end-users of PRS? If not, please provide reasons to support your view.

The definition of pricing is extensive and would require up to 15 seconds of airtime to speak. Pricing information should be defined more simply and we do not agree that pricing should be spoken in all cases. This will take significant on the ability of advertisers to see advertising as between 50% and 75% of the airtime will be used to comply with these totally unreasonable requirements.

There appears to be no basis for suggesting that speaking all pricing terms is necessary. Indeed particularly in a visual environment such as TV speaking terms is not common practice since terms can be clearly displayed.

The proposal to require the speaking of terms on websites is senseless and ill conceived. There is no possible justification for this suggestion.

The only medium where spoken pricing should be a requirements is in audio only media.

Q5. Do you agree with the requirement to provide end-users of PRS with expenditure reminders? If not, please provide reasons to support your view.

We do not agree that Expenditure reminders as proposed within the code are reasonable. Consumers should be reminded of their expenditure, but they should not be required to act on these reminders in order to continue using the service.

The reminder process suggested requires that consumers continually respond to these reminders in order to continue their use of the service. Consumers are certainly not going respond positively to this requirement and will cease to use services.

No justification has been provided for requiring spending reminders at all, let along a spending reminder that required the consumer to repeatedly respond.

Q6. Do you consider that the levels at which the proposed expenditure reminders are set are appropriate? If not, please provide reasons to support your view and, where appropriate, suggest alternative limits.

Expenditure reminders at €30 euro intervals would seem reasonable in the absence of any proper analysis or justification. However there should be no requirement for the consumer to act on these reminders other than to hang up or text STOP.

Q7. Do you consider that there should be a limit on the amount that an end user can spend on entering a PRS competition? If so, how much? If not, please provide reasons to support your view.

We do not believe limits are appropriate. Consumers should be free to spend what they wish on any service. The focus should be on providing them with accurate clear information within the promotional material and providing them with regular reminder messages.

No justification or rational analysis has been provided to justify a limit. No other options seem to have been considered and no impact analysis of possible options has been provided.

Q8. Do you think there should be limit on the expenditure of an individual transaction through the use of a "facility"? If so, how much? Please provide reasons to support your view.

We do not believe limits are appropriate. Consumers should be free to spend what they wish on any service. The focus should be on providing them with accurate clear information within the promotional material and providing them with regular reminder messages.

No justification or rational analysis has been provided to justify a limit. No other options seem to have been considered and no impact analysis of possible options has been provided.

Q9. Do you consider that there should be a daily, weekly or monthly expenditure limit imposed in respect of individual PRS? If so, what do you think an appropriate level would be? If not, please provide reasons to support your view.

We do not believe limits are appropriate. Consumers should be free to spend what they wish on any service. The focus should be on providing them with accurate clear information within the promotional material and providing them with regular reminder messages.

No justification or rational analysis has been provided to justify a limit. No other options seem to have been considered and no impact analysis of possible options has been provided.

Q11. Do you agree with ComReg's proposal to introduce a "double opt-in" requirement for Subscription Services? If not, please provide reasons to support your view.

We do not agree with comregs proposal on subscription services.

No justification or rational analysis has been provided to justify a double opt-in. The issue that is being addressed is unclear and no other options seem to have been considered and no impact analysis of possible options has been provided.

Expecting consumers to navigate such a requirement is unreasonable and will almost certainly bring an end to all subscription services in Ireland.

The time and costs of implementing this measure would be considerable. In the absence of any real analysis such a measure should not be introduced.

Q16. Should competition services be permitted on a subscription basis? Please provide reasons for your answer.

Competition services should be permitted to operate on a subscription basis. No justification or rational analysis has been provided to justify such a discriminatory ban.

The suggestion seems to hinge on specific issues within how some competition service may operate rather than competition services in general. This proposed measure seems discriminatory and disproportionate to the suggested concerns.

There are already strict rules relating to competitions within the National Consumer Act 2007.

12 Ericsson IPX AB



ERICSSON IPX RESPONSE

Date Reference

Feb 07 2011

Your Date Your Reference

Feb 07 2011 10/92a & 10/92b

Scope of Premium Rate Service Regulation - ComReg 10/27 & 10/92b

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

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

For the Attention of: Michelle O'Donnell.
Commission for Communications Regulation,
Irish Life Centre,
Abbey Street Freepost,
Dublin 1,
Ireland.

RE: Code of Practice Consultation, December 2010 (Comreg refs 10/92a & 10/92b)

7th February, 2011.

Dear Michelle,

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

Ericsson IPX is a specialist business-to-business service provider, enabling specific billing and transaction-handling capability for data-oriented companies. Such intermediaries as IPX can be critical facilitators but have, until now, been quite stifled by uncertainty and non-recognition within the value chain. Recognition of a value chain that provides greater clarity of responsibility in relation to promotion and roles of various participants is welcomed. (Ref. Section 3.1.2 of the latest Comreg Consultation Paper in relation to the Code of Practice and previous discussion between Ericsson IPX and Tom Boyce at Comreg as well as the previous IPX submission in May 2010).

We believe that there is still a burgeoning community of development companies in this as well as in related web and payment areas in Ireland that provide significant value-add to

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consumers, companies and the wider economy. This still represents a fantastic opportunity for innovation as the internet becomes truly mobile. Such companies also provide considerable opportunity for international expansion and employment based on experiences developed in Ireland and due to their involvement in highly dynamic international sectors that are constantly evolving and where time-to-market enables advantage, value and experience.

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

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

IPX remains concerned that the mobile payments sector is disproportionately regulated in Ireland when existing consumer regulation already applies. There are various elements of the proposed Code of practice that are likely to be detrimental to both the end-user experience as well as the industry sector. These should not be accepted simply because they appear to be in line with considered or even implemented elements of regulation in other territories. This is not a sufficient basis for their inclusion. Taken inflexibly they may have a highly disruptive and destructive impact on an industry sector that is striving to compete with the broader and merging web-based payments sector in general. Success should not be measured solely by reduction in end-user complaints when the market for mobile payments has been shrinking in any event.

While a lot of work appears to have been done by Comreg there is concern on the part of Ericsson IPX that IPX comments or responses from industry participants generally will not be sufficiently considered. We are also concerned that Comreg has already simply decided on its course prior to consultation (since the Code is already drafted) and may be under disproportionate pressure to create industry-wide change due to some previously non-compliant or disengaged industry participants.

It should be considered that mobile services already often compete with existing “real world” services. For example mobile games compete with online (fixed internet) games and information services compete with print magazines. Consumer legislation already exists in relation to Sale of Goods and Supply of Services and adding any additional, unnecessary requirements may simply result in further, negative contraction of an industry rather than its positive development.

There have already been significant industry changes with regards to licensing of Service Providers and while this is to be welcomed it will take some time for the industry impact to be established and for further consideration of what is necessary as opposed to over-burdensome and industry-specific requirements.

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Consumers have also become much more discerning for reasons of economic necessity in the past 18 months. We hope that changes can be considered more in the context of existing consumer legislation than is reflected in the draft Code and strike a more positive balance than the proposed Code in relation to industry development in Ireland. We believe this is possible in addition to a simple and of course critical objective of protecting consumers.

Consumers must be allowed to consume. They must also be respected for their ability to distinguish service terms and conditions. They must experience efficient service and be allowed to innovate in the way they consume. It is extremely doubtful whether the draft Code of Practice optimises these requirements.

In this context, please see below some specific responses on behalf of Ericsson IPX AB, which we feel are well considered, in relation to Comreg's recent request for consultation and its specific questions in relation to the proposed Code of Practice.

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

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

Yours sincerely,

Frank Healy.

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

Date	Reference
Feb 07 2011	10/27

List of Questions

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

Yes.

This section seems to be reasonable at this stage. Some of the wording in relation to proposed section 3.17 may however need to be clarified e.g. it is unclear what the definition of a "horrible" service could be or limitations in relation to "foul" language. These have potential to be very subjectively interpreted by Comreg as well as Service Providers.

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

Not fully.

Section 4.2 (a) mentions the need to include "... any costs, additional to the costs of the service, relating to delivery charges". It is important for Comreg to appreciate the number and variety of data plans that Operators provide in Ireland that can be flexibly changed without prior notice to Service Providers. While Service Providers can accommodate this requirement by inclusion of such wording as "*Please check your data plan for additional operator charges*" or "*Data charges are not included*", it must be appreciated that these Operator charges are not fully visible or controllable by Service Providers. This is well accepted within the international telecoms industry and should be made explicit within the code. This seems to be acknowledged under section 6.5 (Spend) but may also need to be considered in relation to section 4.11 ("Free" content).

Section 4.4 (ii) mentions a "national rate" phone number. Increasingly in Ireland, previously defined "local" numbers e.g. Dublin numbers are now charged at all-Ireland or national rates regardless of where a caller is located. Depending on the caller's bundle these "local" numbers are increasingly charged at a national rate or may be free to call. Calling all (previously "standard" or "local") landline numbers internationally has fallen in price. It should be fully acceptable for e.g. Dublin or Cork numbers to be advertised as they are effectively now "national" numbers. This is an important issue for some Service Providers as they have existing numbers that have been promoted through various means for years. It does not prevent modern day consumers from calling and it should be acceptable to Comreg for businesses to have a "local", standard rate e.g. Dublin or Cork number. Insisting on a national rate number (e.g. 1800... or IP-based 076.... range) may simply place an unnecessary burden on established companies when local Dublin or Cork numbers are more easily understood by end users and most likely do not cost them any more than "national" numbers. In many cases they are likely to cost less as they now fall within a bundle while national numbers may not. Conversely, not allowing local numbers e.g. Cork or Dublin numbers could simply increase the overall cost to users (everywhere) if a standard rate "national" number is required whereas at least the local callers in Cork or Dublin could have a reduced cost. There seems to be no logic for not allowing such (previously "local", standard rate) numbers.

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All fixed line numbers are national rate when calling from a mobile phone in any event. ***We would like to see Comreg further clarify and confirm that these standard rate "local" numbers are acceptable.***

Section 4.13 (d) (iii): positive confirmation following the free period seems to negate the earlier use of a free period and its usefulness as a promotional tool. It therefore negates the usefulness of the earlier sections of 4.13 in discussing free content as a promotional tool. It seems to ignore the ability of consumers to understand the use of a free trial period prior to automatic commencement of a service which is not reasonable or a realistic comparison to other service sectors e.g. one month free at the start of a magazine subscription.

Section 4.13 (d), especially subsection (iii) is therefore unreasonable, unnecessary, not practical or useful to end-users and should be removed.

Section 4.20: Sexual Entertainment Services: it is unclear how these are defined. There is no reference to a framework or definitions in Ireland.

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

No.

The list seems to contradict the earlier body of the proposed code in some respects e.g. 4.15 specifically mentions "Free Msg" but the list states that "Msg" is not permitted.

It also seems unreasonable to not permit "/min" as it is normally acceptable in print and the context must be considered.

"Txt" like "Msg" is commonly acceptable and may relate to branded services so efforts to prevent their usage seem irrelevant to end-users.

There is a high risk here that any list would be imperfect. User language in the technology space changes rapidly and while users should be protected, reasonableness, innovation and practicality should be allowed to prevail. There are presumably many other abbreviations that have not been mentioned.

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

Yes.

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

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In general consumers are reminded of spend upon receipt of subscription content already. Consumers know that short code usage relates to spending. They are well educated in the difference between non-premium codes and premium codes and tend to err on the side of caution by assuming codes are charged on a premium rate unless otherwise advised. This is a factor of the success of the "STOP" promotion by the industry in the past. Additional spend reminders should not be required and are not required following subscription to other online or "real world" products such as printed magazine subscriptions. Once users have actively subscribed and know what they are subscribed to the provider should not be required to provoke end-users to unsubscribe.

There is a risk here that over-burdensome requirements on the mobile payments sector result in it becoming uncompetitive relative to other non-electronic sectors as well as removing any local competitive advantage that the industry has in Ireland.

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

No. There is inconsistency between amounts mentioned (€30 under section 6.5 and €20 under section 6.6).

Section 6.6 (a) requiring positive confirmation is unreasonable and disproportionate in an environment where the majority of service providers must be assumed to be well-meaning and compliant towards their retail customers. Such positive confirmations are not required e.g. in relation to magazine subscriptions, utility (e.g. electricity) purchasing or broadband / cable subscriptions and would be disproportionate.

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

Provided the entry amount is clear to end-users and an upper-limit and also made clear then the upper limit should not matter.

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

No. Provided it is clear what they are spending any limits should either be high or non-existing. They should be treated as per other product or service sales or retail outlets.

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

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In general, similar to other consumer services (e.g. gas and electricity) there should be no upper limit but clarity of advertising and fairness of provider behaviour should of course be expected, as with other services.

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

Normally the Premium SMS serves well as purchase confirmation. In the event that transactions are online (i.e. provided by the Operators today) then some form of receipt should of course be expected for payment e.g. non-premium SMS or email. In the case of premium SMS, the premium SMS itself should be more than sufficient.

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

No. We do not agree with this proposal. If a service is sufficiently well advertised then it is not necessary or useful.

A simple MO (mobile originated) SMS followed by an MT (mobile terminated SMS) is more than sufficient.

A properly advertised service (including Service Provider phone number) which is WAP (mobile-web) initiated is also sufficient. The suggestion of exiting the mobile web to check SMS's is likely to ruin the end-user experience and flow and destroy innovation within the sector.

If a service is initiated via the internet then simple entry of the user's mobile phone number (MSISDN) on the relevant website followed by receipt of an SMS (with a unique code) to the phone and re-entry of that code on the website is in effect double opt-in and works well. It is unclear from the consultation paper whether this will be considered sufficient though it should be. If further requirements were needed beyond this flow then it would undoubtedly do further damage to the sector and may destroy it.

It must be remembered that Service Providers are already directly handling end-user care and have a direct incentive to reduce poor customer experiences in an already declining market.

Simple measurement of the reduction in end-user calls is insufficient and should be measured relative to increases in service demand. Therefore references in the consultation paper to the UK are not sufficient.

Suggestion of a double-opt in as described in the consultation paper implicitly assumes poor and / or misleading advertising which is already legislated for. Additional requirements place an unnecessary burden on the overwhelming majority of companies that are well-meaning towards consumers and wish to improve the consumer experience in any event. They should not be punished for the sins of a few.

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

No. Provided they are clearly described as separate to the subscription charges and clearly described then the consumers should be respected for their maturity and ability to understand as they do in other sectors of life.

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

No. Once again it should not be necessary and it is not required in other subscription services (e.g. subscribing to a magazine – where renewal is often automatic and / or for a duration of many years until the subscriber actively stops it).

Does a user of gas or electricity have to confirm the need to continue? This would be a nuisance.

If the user has a good idea of what they are spending, why should it be assumed that they have opted-out? It would be an inconvenience to the end-users. They already know how to STOP.

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

No. There is a natural limitation on the number of retries carried out by Content Providers.

There could be a basis for requesting that Content Providers ensure that there is not "bill shock" by their not billing for more than 2 x subscription periods within the current billing period while ensuring that the user has access to content provided for both billing periods.

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

Users know how to STOP.

Some time back it was acceptable for STOP to stop the last service received and STOP ALL to stop all services from that short code. This worked well for users and enabled efficiency but its promotion and encouragement seemed to dwindle on the part of Regtel.

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i.e. usage of STOP + Keywords is a poor user experience compared to the above and is not necessary.

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

Yes. Again, provided promotion is clear then it should be no different to "closed draw" style competitions or lottery entries in the "real world" environment.

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

Yes.

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

Ericsson IPX does not provide voice services.

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

Yes.

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

No. This is unfair since the Service Provider bears a disproportionate burden. It may earn 50% or less of the end-user price. While this provides an incentive to be compliant, well-meaning Service Providers do not need this incentive.

We do however appreciate the practicalities, in particular the Operator network limitations in enabling refunds initiated by Service Providers but not fully borne by Service Providers.

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

No. For the reasons outlined above, refund is not efficient. Service Providers already have a huge incentive to be compliant because of this and the

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operational costs associated as well as their disproportionate burden associated with refund.

A refund obligation already exists where services or goods are not of merchantable quality or as a result of misleading advertising. Where large numbers of subscribers are impacted, this refund should only be enforced where end-users actively complain. This would most likely be the case in the normal retail environment. Well-meaning retailers may suffer the burden to try to contact ALL end-users to provide refunds but this itself has an additional cost.

Irish consumers are well informed by international standards and this response (contact with Service Providers / retailers) can and should be expected. Changes to the service would of course be enforceable according to existing legislation. Non-compliant Service Providers have a huge incentive to become compliant due to their disproportionate refund amount (greater than their revenue receipt) as acknowledged by Comreg.

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

It is important that users receive value where necessary. Due to the lack of Operator-provided refund interfaces for Service Providers the Service Providers need to find alternatives to meet or exceed end-user refund requirements. It should also be considered that many of these providers are located abroad.

These refund alternatives might include but would not be limited to:

- Vouchers for online stores or retail outlets that can be distributed online,
- Additional free content or services from the provider's own stock
- Cheque
- Online payment mechanism (e.g. paypal)

The important thing is to satisfy the end-users' refund requirements. We are aware that where a significant volume of refunding has been required in the UK, postal stamps were considered to be a valid and appropriate alternative.

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

Please refer to the response under Q21- above.

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

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Yes. This is commonly the case already and if it becomes a requirement it should address most of Comreg's concerns regarding refunds.

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

Please refer to the response under Q21- above.

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

Please refer to the response under Q21- above.

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

It seems extremely unreasonable for compliant providers to be forced to refund on behalf of non-compliant parties. This seems counter to and disproportionate compared to other sectors of business e.g. would one responsible high-street retailer be expected to refund on behalf of irresponsible retailers in another part of the street? It should not be required.

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

Closer reference should be made to the UK framework.

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

Closer reference should be made to the UK framework.

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

Closer reference should be made to the UK framework.

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

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It seems reasonable but may not be required if correct operator-level controls are in place.

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

Yes.

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

A non-5-series range seems appropriate.

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

Registered charities only.

13 Institute of Advertising Practitioners in Ireland (“IAPI”)

Consultation Paper on Premium Rate Services Code of Practice

The Institute of Advertising Practitioners in Ireland (IAPI) is the representative body, trade association and professional institute for Irish advertising agencies.

Its primary role is to promote the highest professional and creative standards in the production of advertising, across all media. IAPI plays a key role in the Irish advertising industry, which is reflected in the range of its activities.

IAPI is pleased to have worked with ComReg, Department of Communications / Health / Justice/ Enterprise and numerous other State and semi-state organisations in the past and has always provided help and assistance when asked and has always participated in a positive manner to any request for submissions.

IAPI is also an active supporter of the Advertising Standards Authority of Ireland (ASAI), and is represented on its board; we are committed to its core objectives for what advertising should be; we are also active participants with other organisations relating to the regulation of advertising and commercial communications, e.g. Central Copy Clearance Ireland (CCCI), the Department of Health and the Alcohol Marketing Communications Code.

Whilst not being 'experts' on many of the issues raised, IAPI still wish to submit its views on the proposed changes to the rules governing Premium Rate Services (PRS).

A detailed response to each question posed is given below, together with a rationale for these answers and substantiation, where appropriate.

Question 1:

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

We have no issue with these proposed general provisions that are applicable to all specified PRS.

Question 2:

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

It's important to note that in respect of all advertising & promotions that IAPI and its members adhere to the central ASAI request that all communications be honest, decent, legal and truthful and so we believe that the promotion of PRS should also be legal, decent, honest and truthful.

Question 3:

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

We believe that the ASAI are the most suitable and apt body to review advertising content and abbreviations.

Question 4:

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

We believe that, at the moment written information only is sufficient, and the need for spoken information can be reviewed at a later date. Also a situation could arise where media owners could lose revenue if Service Providers (SP) are required to purchase airtime that is mostly used to voice these regulatory requirements and have onscreen messages that are at a minimum 75% of the size of the advertisement. It is unlikely that SP will purchase airtime if their promotional message cannot be sufficiently communicated and as a result, the public will be unaware of these services and will be unable to avail of them. Spoken is appropriate to audio media only.

Question 5:

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

We believe that the existing procedures in place are adequate.

Question 6:

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

There is a wide variance as to the cost of calls and so we believe it would not be practical to set levels. Obviously there should be a limit, at which time it might be appropriate to send a reminder to the caller and this might be around the €30 mark.

Question 7:

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

We would ask that the regulator behave in a consistent manner and take cognisance of other industries such as gambling where there is no limit.

Question 8:

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

We have no view on this other than we believe that adults should be treated as such.

Question 9:

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

Again we are not experts in this area but believe that adults should be free to make their own choices.

Question 10:

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

The cost of entering competitions is well flagged and so the user knows in advance of how much it costs. However if the user is buying goods or services then it would be normal and usual to have a receipt of purchase.

Question 11:

Do you agree with ComReg's proposal to introduce a "double opt-in" requirement for Subscription Services? If not, please provide reasons to support your view?

We believe that 'double opt-in' could confuse the user into believing that they will be charged twice.

Question 12:

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

We advocate clarity and so believe that any sign-up fees should be considered to be the subscription charges for the first billing period.

Question 13:

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

We agree that end-users may be required to provide positive confirmation of their desire to continue with a subscription service after a certain expenditure level.

Question 14:

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

We have no view other than the fact that texts should be delivered in a timely and relevant manner

Question 15:

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

We believe that it should be easy for users to unsubscribe.

Question 17:

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

IAPI believes that indigenous media should not be unduly 'punished'. It should be noted that there are a number of Quiz TV shows from other jurisdictions that are aired in the Republic. We believe that there should be consistency with the OfCom rules. Finally this is not a 'nanny state' and adults must take some personal responsibility.

Question 18:

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

As stated at the outset IAPI believes in transparency and think that there might be some confusion over the definitions given in respect some services such as Chatline and Contact and Dating Services. We also believe that terms should be easily understood.

Question 32:

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

IAPI thinks that the use of designated shortcodes will serve a useful purpose for charitable & fundraising organisations.

Question 34:

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

There exists the Charities Register and we believe that only registered charities are able to apply for the short-code.