



Commission for
Communications Regulation

Submissions to Consultation

Premium Rate Services – Code of Practice

Submissions received from respondents

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**Consultation submission to Comreg on
Consultation: Premium Rate Services
Code of Practice (Comreg 10/92a)**

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As such, we do not agree that any sign-up fees should be considered the subscription charges for the first billing period. 54

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Q13. 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. 55

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Phonepaid is of the view that unfortunately the issues and impacts arising from this measure are complex. We believe we understand the issues ComReg are trying to address but have concerns, particularly in an aggregation environment as to how this can be technically implemented. 62

Given that typically an aggregator has no access to the subscription databases of its down-stream Service Providers it would be significantly challenging to implement a system allowing the aggregator to make the necessary decisions as to have to manage incoming STOP messages for its multiple Service Providers. 62

We also note that this measure could easily lead to a scenario best described by example: 62

Take a consumer who is subscribed to a charity service, donating €2 each week to their chosen charity, and a subscription dating service on the same short-code. The consumer, having met someone on the dating platform, decides to STOP from the service. Where the consumer fails to correctly navigate the message flow to ensure they only STOP from the dating service then the consumer will end up unsubscribed from both services. In this case the consumer is harmed as they have been unsubscribed from a service they don't wish to be unsubscribed from and the charity has lost a donator without having done anything wrong, thereby impacting an 'innocent' 3rd party. 62

Finally, we note that in considering this issue ComReg should consider the cost of shortcodes and the current Network Operator discounting schemes which promote the use of multiple services (to increase traffic and thus discounts) on a single shortcode. 62

We would ask that Comreg would defer further consideration of this matter pending further consultation, which we believe would facilitate the development of suitable alternative technical measures that would impact less disproportionately on Aggregators and End-Users. 62

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Executive Summary

The Irish Phone Paid Services Association, and its members, welcome the opportunity to participate in this consultation.

The consultation is particularly disappointing as it sets a particularly poor standard in terms of regulatory best practice. In particular the policy objectives have not been clearly defined, little or no objective justification has been provided for the proposed measures, the potential impact of the measures proposed has not been considered, no alternative measures have been proposed that might have a lesser impact and there are general and unsupported assumptions and assertions throughout.

The overall lack of objective basis and transparency has prejudiced our ability to respond to the consultation effectively.

We believe that Comreg, incongruously given the high profile positions Commissioners and senior Comreg management occupy in EU organisations, is acting unconstitutionally, and in a manner incompatible with the obligations imposed on Irish State Emanations arising out of Ireland's membership of the EU.

Comreg must take into account the fact that, as accepted by countries such as the UK, Belgium, the Netherlands amongst others, Premium Rate Services are Information Society Services as defined by 98/48/EC. As such, Comreg has failed to act in accordance with its obligations under 2000/31/EC, 98/48/EC and 2005/29/EC in publishing and enforcing SI 338/2010 and 339/2010, in enforcing the Code of Practice contained in section 15.7 of the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010 (No. 2 of 2010), and in the seeking to propose and implement the Code of Practice outlined in 10/92b.

Moreover, Comreg in seeking to bring into force the Code of Practice 10/92b, is acting without due care to the interests of those affected by the proposals, and without following the course of a fair process which is the legitimate expectation of the industries service providers.

Comreg has failed to follow best regulatory practice, as it is required to do under Ministerial Policy Direction, and the requirements imposed on it to act in a transparent, non-discriminatory and proportionate manner and to only impose conditions on licensees that are objectively justified.

The requirement to follow due process requires Comreg to act appropriately in making decisions, relative to the potential impact of those measures on those who will be affected by them. It is bizarre and unprecedented that Comreg, in proposing such radical and potentially devastating measures, has failed to follow even its own internal processes, as outlined in 03/31 and 07/56a, and has failed to identify the full Legal Basis (including those Directives outlined above) under which their powers to regulate (and to provide for Codes of Practice) are exercised.

The requirements of acting proportionately require Comreg to;

1. To follow a process that is proportionate to the measure proposed. In this case the use of a RIA should clearly have been obliged.
2. To follow a process that is legal and considers the application of the entire relevant legal basis.
3. To outline clearly the basis for the global policy objectives which are sought, as well as the specific policy objective which grounds each individual proposed measure.

4. To provide recent and statistically sound statistics to support each measure individually and specifically.
5. To provide an analysis of how each of the proposed measures, based on the policy objective, the statistics and the list of all alternate possible measures, is the least intrusive possibility to achieve the policy objective.

Moreover, we believe that Comreg must act in an unbiased manner and we are concerned that Comreg, in the preparation of this consultation and possibly during the intended analysis of it, has involved a member of staff, whose previous behaviour has been, we fear, biased.

We believe that a fair minded and reasonable observer, having considered the apparent cover up by Comreg, who failed to report to the DPP an incident where the staff member apparently vindictively released information regarding one of our members to the press, in breach of The Data Protection Act, The Official Secrets Act, and Section 24 of the Communications Regulation Act would consider that there would be a real possibility that the involvement of that staff member would indicate a real bias on the part of Comreg.

Additionally, there is a real question, given the limited direction given to it by the Oireachtas as to the extent to which Comreg, through implementing a Code of Practice, can create Secondary law. Our concerns are based on the clearly principle based scope of powers provided to Comreg in the Act which are clearly inspirational, principle-based and imprecise and do not specifically devolve to Comreg powers exercisable by the Oireachtas to create new law.

However, and fundamentally, we believe that Comreg in failing to carry out a full RIA has left itself in a position where it does not understand the potential impact of the measures it is proposing, and instead is proceeding along in a reckless manner, that will effectively eliminate the industry it is proposing to regulate. This failure to conduct a cost/benefit, impact analysis exposes a flawed procedure that undermines the whole regulatory process of PRS by Comreg.

Having undertaken our own internal impact analysis the members of the association are very much concerned that the implementation of the draft code of practice, even in part, will cause the majority of firms involved to cease trading, with the inevitable loss of jobs etc.

We fear for the continued existence of our industry.

We request that Comreg;

1. Act in compliance with all the obligations, including those European obligations outlined above, that effect the regulation of Information Society Services and Business to Consumer services with the EU.
2. Establish an Industry Working Group to collaboratively engage to address the shared concerns of industry and Comreg to maximise the positive experiences of consumers using PRS and to minimise any potential for harm.

IPPSA has structured this response to the consultation in a manner that positively address what we understand are the underlying issues that are raised in the document.

Introduction to IPPSA

The Irish Phone Paid Service Association was founded in 2008 with the goal of supporting the members of the association, who are active in the Premium Rate Services industry in Ireland, to engage pro-actively with the industry's stakeholders in collaborative manner.

The core aims of the association are:

Philosophy:	Promote an environment where fully informed consumers enjoy the freedom of choice.
Products & Services:	Support best practice by members and encourage innovation and investment.
Consumers:	Promote professional and fair business practices between members and towards customers to facilitate a responsible, co-operative and professional culture within our industry.
Regulatory & Compliance:	Encourage a proportionate, fair and accountable self-regulatory environment.
Stakeholders:	Promote a professional image and awareness of the industry to all stakeholders.
Membership:	Provide value for money benefits to members.
Communication:	Promote effective communications and engagement to achieve an environment within which members' businesses can flourish.

The members of the association include industry leading firms such as:



Together the members of IPPSA represent the majority of the industry in terms of revenue.

Legal Basis

The Association believes that Comreg has misinformed itself about the extent of the legal foundation of regulations impacting on the Premium Rate Services Sector.

Apart from the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010, Phonepaid believes that there are other EU and Irish Legislation that have a remit in the area of PRS arising from the fact that PRS are both Information Society Services, as defined under 98/48/EC, and the provision, promotion and content of which are 'business-to-consumer commercial practices' under 2005/29/EC.

Information society services are defined in Directive 98/48/EC as:

any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services.

For the purposes of this definition:

- 'at a distance': means that the service is provided without the parties being simultaneously present,
- 'by electronic means': means that the service is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means and by other electromagnetic means,
- 'at the individual request of a recipient of services': means that the service is provided through the transmission of data on individual request.

Annex V of the directive provides an indicative list of services that are not considered as information society services and this list includes services provided via voice telephony or fax. It is explained that such services are not provided via electronic processing/inventory systems.

Premium rate services can be considered as information society services when they fulfil all of the elements of the definition laid down in Directive 98/48/EC.

It is clear that PRS are services provided for remuneration, at a distance and on individual demand. Whether PRS are information society services will therefore depend on whether they are supplied 'by electronic means' within the meaning of the Directive.

According to the definition in the Directive, providing a service by 'electronic means' requires processing and storage of data. The definition does not specify whether the processing/storage of data needs to take place at both ends of the communication or if it is sufficient that it takes place at either the customer's or service provider's end.

In an answer on behalf of the European Commission to a written question from the European Parliament, Commissioner Bolkestein said that services provided by premium rate numbers may constitute an information society service.

It is the view of leading consultants Cullen-International that there is indeed an overlap between information society services and premium rate services and that in particular PRS that:

- include storage and processing at both ends are information society services. For example, downloading of ring tones to a mobile telephone includes processing and storage at both ends. Such services may also be ordered via a fixed telephone subscription and a normal handset even if the ring tone is delivered to a mobile handset.
- include storage and processing only at the platform provider level should be considered as information society services. The reason for this position taken by the authors is that the main criteria for an information society service should be the fully automated production and delivery of a service over a network. The means of reception of the service has less relevance and would constitute an unnecessary and technology dependent

criterion. In most cases, information society services are intended to be consumed by human beings, whether the medium is voice, text or image.

Examples of services with storage and processing at the platform provider would include all services that are delivered from audiotex platforms, which allows users to access information recorded on a server by using keypads of touchtone telephones.

- provide live speech (without any additional processing function) are not information society services;

Arising from the nature of PRS as Information Society Services, Comreg is obliged to apply the applicable EU legislation, even in cases where there may be an apparent conflict with national legislation.

Phonopaid believes that Comreg must consider whether the legislation upon which they have staked their 'Legal Basis' for regulating the PRS sector is constitutional. Phonopaid believes it is not.

Moreover, Comreg in implementing the statutory instruments 338/2010 and 339/2010 and in enforcing the Code of Practice contained in section 15.7 of the 2010 is acting in a manner inconsistent with its EU obligations and unconstitutionally as a result.

Phonopaid believes that Comreg are obliged to consider the directives 2000/31/EC, 98/48/EC in light of PRS being Information Society Services. Additionally Comreg must also consider that it has an obligation, in national law, consistent with SI 68/2003 to comply with section 6 amongst other relevant elements.

Phonopaid also believes that the obligations it is proposing in the draft code of practice are inconsistent with the obligations of 2005/29/EC which was designed to achieve what is called "maximum harmonisation" of business-to-consumer fair trading law. The idea of "maximum harmonisation" is that as well as requiring member states of the European Union to apply the standards set out in European legislation, the European legislation means that the member states are not allowed to apply higher standards. In other words, the Directive tells European countries to give consumers the protection set out in the Directive, but nothing better than that. In light of this directive Phonopaid believes that Comreg must disapply those provisions of the current code of practice as outlined in section 15.7 of the 2010 Act which are not in accordance with the directive, and must ensure that the proposed draft code of practice is withdrawn.

In the light of these directives forming part of the Legal Basis upon which the regulation of PRS is governed in Ireland. Phonopaid believes that Comreg can not, and must not proceed, to introduce a new draft code of practice in the form of 10/92b, and in the manner in which it has been proposed.

Basis for the Measures Proposed

Comreg has been given the specific objective in Section 16(b) of the 2010 Act; “to protect the interests of end users of premium rate services” which must be read in light of Section 12.3 of the Communications Regulation Act 2002, which states that ‘ In carrying out its functions, the Commission shall seek to ensure that measures taken by it are proportionate having regard to the objectives set out in this section’.

Apart from that specific object, the 2010 Act required Comreg to;

1. Establish a mechanism of prior authorisation under Sections 6-12
2. Ensure that PRS service providers do not overcharge or charge for services not supplied
3. Prepare and Publish a Code of Practice under Section 15, compliance with which is a condition of any license issued under section 7
 - a. The scope of the code of practice is limited to issues concerning the provision, content and promotion of specified PRS
 - b. Any condition, as outlined in Section 7.1.b, (which the Code of Practice is, pursuant to Section 15.6) is required pursuant to Section 7.2, to ‘be objectively justified in relation to the premium rate service concerned and shall be non-discriminatory, proportionate and transparent’.

As such we believe it is necessary to understand what the interests of end user of Premium Rate Services are.

We would propose that the interests of end-users are protected when:

1. End-Users are protected against unfair commercial practices, and
2. End-Users are facilitated to enjoy the benefits of PRS to the extent that they wish

Phonopaid believes that Comreg has not attempted to balance the protection of the interests of the user to consume and be exposed to new and innovative services, with the protection of the interests of the user against unfair commercial practice.

It is clear that Comreg attempts to articulate a basic policy objective in Section 1.2 of the Consultation:

1.2 ComReg’s Vision

ComReg’s vision is that end-users of PRS will be as confident and safe in using PRS as in engaging with best practice retail services. ComReg considers that, with enduser confidence in place, industry will benefit, as new and innovative services are developed and made available.

ComReg also aims to provide an efficient and impartial redress mechanism that ensures that end-users do not necessarily have to take any legal steps to secure redress. ComReg holds the view that end-users are entitled to have their grievances dealt with as fairly and effectively as possible. It is also recognised that, irrespective of any provisions that ComReg may impose on the PRS industry, end-users must bear a level of responsibility for their own actions and that, to a certain extent, they hold the key to their own protection

However, we are concerned that Comreg does not seem to have substantiated the language in this vision or linked it to the objective and requirements of Section 12 of the Communication Regulation Act.

1. Comreg has invented a phrase of ‘best practice retail service’ without giving any explanation as to what this means. There is no legal definition of this phrase and it does not purport to give a reference point from which to judge any of the measure proposed.
 - a. This means that Comreg cannot ‘objectively justify’ any of the measures proposed in it’s draft code, or provide a basis upon which we can input rationally into the consultation.
2. The second sentence of the vision does not make any sense. It is industries opinion that the majority of the measures proposed in the consultation will cause most of the participants in the industry to go

to the wall. It means that there will be no service providers to develop and make available new and innovative services.

3. Furthermore, given the amount of transactions, and the amount of end-users who actively, use PRS on a daily basis, Phonepaid believes that there is no clearly established basis from which to argue that end-user confidence is not in place already. Phonepaid believe the statistical basis outlined in the consultation document is fantastic and has not been considered in the light of the experiences of industry, and has not been subject to a rigorous methodological review to date.
4. Finally, Comreg does not seem to understand that people choose to purchase PRS, they are not forced. PRS offer unique, interesting and desirable services that are worth paying for. End-Users do not need Comreg's help to make or control their own purchasing decisions. Comreg seems to imply, in the final sentence, that PRS End-Users are like small children, and need a paternalistic regulator to keep them from some unfathomable 'consumption choice'.

The basic issue that we find hard to untangle from this consultation is the notion that Comreg do not attempt to regulate, or in this case propose regulation, in any Proportionate manner, that is a requirement not only of the Communications Regulation Act 2002, as amended, but also of the attachment of conditions to PRS licenses, in this case the Code of Practice.

Ultimately, with the basis for the measures proposed as outlined in Section1.2 of Consultation. Comreg has failed to balance the protection of the interests of the consumer to consume as against their interest not to be subjected to unfair commercial practices. This is apparent globally with the consultation as it is individually with each of the unbalanced measures being proposed.

Requirement to understand the basis of regulatory purpose

In determining how to protect the interests of end users of premium rate services Comreg must consider who the end users are. A survey conducted by Amarach on behalf of the IPPSA in April 2010 (c.f. Annex) highlights the very different end user groups that use PRS. As with any retail business, service providers target their specific product offerings towards particular demographics. Comreg should have conducted a detailed analysis of the end users of premium rate services and identified vulnerable groups of consumers that upon further analysis may need additional specific protections. Service Providers targeting products towards these groups could then ensure these protections are in place, while Service Providers not targeting products towards these groups would not need to put the additional measures in place.

The most basic and necessary form of consumer protection is information. With information consumers can make informed decisions, whereas if a consumer is misled they cannot make an informed decision. Comreg must determine if the average consumer or a particular group of consumers are being misled by the information currently provided by service providers. The European Court of Justice has made significant rulings on how this should be determined.

The ECJ stated that in determining the misleading character of information given by a trader, the national court should take into account the presumed expectations which the statement evokes in an average consumer, who is reasonably well informed and reasonably observant and circumspect (ECJ 16-07-1998, case C-210/96, ECR 1998, p. I-4657, par. 31). In subsequent case law the ECJ somewhat refined the notion of the average consumer, by stating that cultural, social and linguistic factors should be taken into account when employing the standard (ECJ 16-09-1999, case C-220/98, ECR 2000, p. I-117, Estée Lauder). Furthermore, the Unfair Commercial Practices Directive has incorporated this definition and added that apart from social, cultural and linguistic factors one should also consider the group the product is aimed at and take into account the expectations of particular vulnerable groups of consumers.

It is not correct for Comreg to determine that consumers are being misled purely on the basis of the number calls to their contact centre. While it is attractive to assume that if customers are calling Comreg then they must have been misled, it is a wholly incorrect assumption. There are many reasons that consumers call

Comreg, including; Lack of a Complaints handling process, Comreg extensive advertising campaign inviting them to call, Mobile network customer care agents forwarding callers to Comreg instead of SPs.

In order to determine if the average consumer or a particular group of consumers is being misled Comreg needs to review the information given to consumers by service providers in the context of the ECJ judgements.

These Judgements put an onus on Comreg to consider any measure within the proposed Code of Practice in the context of the average consumer, who is reasonably well informed and reasonably observant and circumspect. Any measure that places additional burden on consumers or service providers must be restricted to products targeted at specific distinct end user groups and must be limited to addressing the identified additional requirements of this particular end user group.

Proportionality

The question of Proportionality under Article 3.4.iii of the 2000/31/EC, Section 12 of the Communications Regulation Act 2002, and Section 7 of the Communications Regulation Act 2010.

The general test of proportionality is subdivided in three different tests or requirements. To meet the requirement of proportionality, a measure or decision must constitute an effective means to realise the aims pursued by the measure or decision (test of effectiveness). Further, the measure or decision must be necessary to achieve the relevant aims, which means in particular that no alternative and less intrusive measures are available (test of necessity and subsidiarity). Finally, even if it is clear that a certain act or measure is an effective and necessary means to further legitimate government interests, an act, decision or measure can still be disproportionate if no reasonable or fair balance is struck between the aims pursued and the interests harmed (test of proportionality in the strict sense or proportionality *stricto sensu*).

Additionally there is clear case law in the EU on the use of Public Policy grounds in the area of consumer protection, and the limitations of invoking it, ECJ 177/83:

“WHATEVER INTERPRETATION IS TO BE GIVEN TO THE TERM ‘ ‘ PUBLIC POLICY ‘ ‘ IN ARTICLE 36 OF THE EEC TREATY , IT CANNOT BE EXTENDED SO AS TO INCLUDE CONSIDERATIONS OF CONSUMER PROTECTION . SUCH CONSIDERATIONS MAY IN CERTAIN CIRCUMSTANCES BE TAKEN INTO ACCOUNT IN ESTABLISHING WHETHER NATIONAL MEASURES APPLICABLE WITHOUT DISTINCTION TO DOMESTIC AND IMPORTED PRODUCTS ARE CAUGHT BY THE PROHIBITIONS LAID DOWN IN ARTICLE 30 ; THEY CANNOT , HOWEVER , SERVE TO JUSTIFY RESTRICTIONS ON IMPORTS UNDER ARTICLE 36 .”

In this case, the restrictions imposed under the draft Code of Practice clearly contravene the applicable legislation. Moreover, because the measures in the Code of Practice Act do not distinguish between those services provided by domestic established service providers as opposed to service providers established in other member states the ECJ judgement ECJ/177/83, and it’s consequent restrictions on the use of ‘consumer protection public policy’ measures, are clearly applicable.

Proportionality in the context of the draft code of practice 10/92b

The decision as to whether the measure can be seen as proportionate to achieving a 'necessary' public policy goal depends on the stated public policy goal.

In this case, Comreg has been given the specific objective in Section 16(b) of the 2010 Act; "to protect the interests of end users of premium rate services" which must be read in light of Section 12.3 of the Communications Regulation Act 2002, which states that 'In carrying out its functions, the Commission shall seek to ensure that measures taken by it are proportionate having regard to the objectives set out in this section'.

Apart from that specific object, the 2010 Act required Comreg to;

4. Establish a mechanism of prior authorisation under Sections 6-12
5. Ensure that PRS service providers do not overcharge or charge for services not supplied
6. Prepare and Publish a Code of Practice under Section 15, compliance with which is a condition of any license issued under section 7
 - a. The scope of the code of practice is limited to issues concerning the provision, content and promotion of specified PRS
 - b. Any condition, as outlined in Section 7.1.b, (which the Code of Practice is, pursuant to Section 15.6) is required pursuant to Section 7.2, to 'be objectively justified in relation to the premium rate service concerned and shall be non-discriminatory, **proportionate** and transparent'.

As such we believe it is necessary for Comreg to clearly annunciate what the "interests of end user of Premium Rate Services are".

Having reviewed above, Section 1.2 of the Consultation Document, we do not believe that this stated policy goal, or any other implied or imputed policy goal related to a purported goal of consumer protection, fulfils the requirements of the tests for proportionality of a national measure to be clear, unambiguous, ground on recent and scientifically provable data etc.

Effectiveness or suitability

When applying the general principle of proportionality, the ECJ frequently states that the principle requires an act or measure to be “suitable” to achieve the aims pursued, or it rather concludes that a decision is disproportionate because it is “manifestly inappropriate in terms of the objective which the competent institution is seeking to pursue”.

In the case of the draft Code of Practice 10/92b, it is clear from our discussions that the majority of the participants in the Premium Rate Services Industry would have preferred for Comreg to have followed it’s own processes and conduct a Regulatory Impact Assessment prior to advancing the consultation documents. In fact it is clear that, as a result of failing to carry out a Regulatory Impact Assessment that Comreg are not in a position to follow the Better Regulation practices that it is required to follow under 2003 Ministerial Direction.

Furthermore, Comreg have not been in a position to advance any position relating to the suitability or effectiveness of any of the measures proposed beyond that which, by sheer force of writing it on paper, they believe it carries any weight at all.

Additionally, in terms of effectiveness Comreg chose to propose various solutions in the draft code which are clearly overly burdensome on industry participants and did not take account of the additional measures that had been implemented through Community Law and National Law which had emerged since the introduction in 1995 of the initial instrument grounding Regtel. Those measure include the Unfair Commercial Practices Directive, the Distant Selling Directive as well as the Directives on Data Protection and the national establishment of the ASAI and the BAI.

The jurisdictional overlap between these regulatory bodies charged in parallel with addressing issues within the same domain meant that an effective solution did not require the implementation of significant aspects of the draft code of practice where there exists measures already which address the issues under examination.

Necessity

The requirements of necessity and subsidiarity constitute the core of the ECJ's proportionality review. They are mentioned in almost all cases in which the principle of proportionality is applied. The necessity test concerns the need to choose a certain act, measure or decision as a means or instrument to realise a certain goal, it is far from clear what exactly "necessary" means.

In practice, the standards the ECJ uses in assessing necessity appear to depend strongly on the circumstances of the case and the relevant area of Community law. As regards the freedom to provide services, for example, the Court has developed special standards to test the need for specific quality requirements for providers of services based in other member states. The Court has also established an elaborate line of case-law with respect to the principle of precaution that is sometimes invoked in justification of trade barriers, such as measures limiting the import of foodstuffs containing artificial additives such as vitamins. In these cases the Court requires the authorities of the member states to demonstrate on basis of recent and convincing scientific data that the perceived risks of certain goods to public health or to the environment are actual, concrete and real. Only if these risks are sufficiently evaluated and demonstrated on the national level, the ECJ will consider restrictive measures to meet the requirement of necessity.

In the cast of the draft Code of Practice, with the clear absence of Regulatory Impact Assessment grounding it, It is clear that it is not adequate to say that the measure was introduced to rectify a perceived of an existing measure (the Code of Practice established by Regtel). Rather, It is clear that there is an obligation on Comreg to justify *de novo*, and on the basis of recent and convincing statistics, that the risks to consumers were sufficiently evaluated and demonstrated on the national level to meet the requirement of necessity.

This requirement applies to each and every one of the measures proposed, and is not satisfied by simply stating that there were many end-user contacts.

Comreg, in failing to carrying out a Regulatory Impact Assessment, did not attempt to justify in any way the imposition of the myriad of measure proposed in the draft Code of Practice based on recent and convincing statistics and as such breached the requirements of the principle of proportionality.

Additionally, it is clear that in the intervening time between the grounding of Regtel under SI 194/1995 and the present time, that the reach and scope of measures established in the Community Field impacting on Information Society Services and specifically premium rate services has expanded significantly such that their was no necessity to propose most of the measures contained in the draft Code of Practice.

The Community Measures that have come into force in the years following 1995 include:

The **Unfair Commercial Practices directive** which is a maximisation directive that impacts on business to consumer service providers, and in this case premium rate service providers, and imposes the entirety of the consumer protection measure that are allowed under EU law to be put in place at a national level. In Ireland, the Consumer Protection Act 2007 implemented this directive and the Irish National Consumer Authority was given the implementation responsibility. As a result, and given the maximisation effect of the UCP Directive, it is clear that the creation of an additional regulator whose responsibilities are to regulate 'the provision, content and promotion' was unnecessary. most likely in breach of the UCP Directive, and certainly disproportionate.

The **Data Protection Directive (as amended)** which deals with issues pertaining to Premium Rate Service and Unsolicited Commercial Communications. The data protection commissioner already prior to the 2010 had powers to criminalise PRS providers who breach the directives within it's purview, and has already successfully prosecuted PRS providers for breaches, it has powers to force PRS providers to facilitate OPT-OUT from PRS services, it can also give further guidance on the use of text messaging in the commercial context. As a result, it is clear that the double jeopardy of measure contained in the draft Code of Practice which cross where the DPC already exercises powers, arising from Community Law, is unnecessary and certainly disproportionate. Additionally, there are bodies already established nationally including the Advertising Standards Authority of Ireland and the Broadcast Authority of Ireland who exercise powers in the area of standards in advertising practice, and have dealt with and made decisions relating to advertising by PRS. . As a result, it is clear that the

measures contained in the draft Code of Practice to regulate the area where these bodies already exercise powers, arising from National Law and Irish Practice, is unnecessary and certainly disproportionate.

It is also clear that Comreg did not adequately address and distinguish through a Regulatory Impact Assessment between imposing obligations on those service providers established within the state and those established in other member countries, who are already subject to law in the Community Field as well as national obligations in their own country. It is clearly unnecessary, and no statistics have been shown to indicate that, services providers established in states other than Ireland, have posed such difficulties to Irish Consumers that the harsh measure contained in the draft Code of Practice are necessary or proportionate to them.

Subsidiarity

The test of subsidiarity can be regarded as a subspecies of the requirement of necessity. It means that the principle of proportionality is infringed when drastic means were chosen whilst less intrusive instruments were available that would have had similar effect. When applying a marginal test, the Court mostly demands that the applicant party show that less intrusive (but equally effective) measures were available, which has the advantage that it does not have to search for suitable alternatives. In other cases the ECJ itself has suggested possible alternatives, for example basing itself on solutions that it has found in national or Community law or on suggestions that have been made by the Advocate-General. In these cases a well-reasoned assessment of the effectiveness of such alternative suggestions is mostly omitted.

In the case of the draft Code of Practice, it is clear that there are other instruments / options available to achieve the same effective output and we have outlined some of them in our response.

The failure of Comreg to address this issue of subsidiarity, and the failure to outline its logic as to why certain measure were chosen while others, less intrusive were ignore, in its draft Code of Practice highlights the flaws that arise following the failure to follow a fair and thorough process of regulatory intervention.

Proportionality stricto sensu

The ECJ almost always determines the interests that are being served by the contested measure or decision and it often evaluates whether the measure or decision impairs the interests protected by the EC Treaty. In this respect, the Court also demands that the relevant national or Community bodies have established the presence of such interests in the decision-making process: the authorities should “... take into account all the protected interests involved”.

It is clear in the instance of the draft Code of Practice that Comreg, in failing to carry out a Regulatory Impact Assessment, did not consider :

- Whether any EU law applied to the services at issue
- Whether any EU law impinged on their power to create the draft Code of Practice, including all its constituent parts.
- Whether the failure to distinguish between service providers established in the state, and those established in other member countries compromised its decision
- The potential impact on intra-EU trade in Information society services

As such, in so far as it concerns the issue of proportionality strict sensu, it is clear that Comreg did not evaluate whether the measure or decision impairs the interests protected by the EC Treaty, or indeed even establish the presence of such interests in their decision-making process, and as such the draft Code of Practice fails on the basis of not being proportionate.

Transparency

Flawed Statistical Analysis

Subscription Services continue to be the principal source of end-users complaints to ComReg. Since 12 July 2010, an average of 250 end-users of PRS contact ComReg each week, with Subscription Services accounting for 84% of these queries and complaints, as illustrated in the pie-chart 3 below.

In addition to this, ComReg notes that RegTel reported in their 2009 Annual Report that 91% of end-user contact and complaints related to subscription, thereby indicating that these services continue to be the primary source of consumer dissatisfaction in the industry.

The current PRS industry market place is one where subscription services are the services that consumers elect to choose and purchase with most frequency and in which the majority of the message by volume and by value are transmitted by industry.

According to the consultation published in April 2009 the market for PRS SMS is €62 million. As part of this consultation the IPPSA engaged KPMG to survey members and to get a breakdown of these revenues by billing type and service type.

	Market Analysis	2009 (Rev)	% of Rev
A	PRSMS Revenues of IPPSA Members*	€36.2 million	
B	PRSMS MT-Billed Revenues (A-B)	€35.8 million	98.8%
C	MT Subscription Revenues of IPPSA Members	€35.0 million	96.7%
D	Subscription 'entertainment-type' services*	€28.9 million	79.8%

Figure 9.1 Based on figures compiled by KMPG from IPPSA members in May 2010.

*Low estimate as not all members returned a figure by the deadline.

Based on these figures it is not unreasonable to assume that the level of calls to the Comreg call center should include a level of queries in relation to subscription services proportionate to their activity in the market.

As such, the assertion which is made about *RegTel reporting in their 2009 Annual Report that 91% of end-user contact and complaints related to subscription, thereby indicating that these services continue to be the primary source of consumer dissatisfaction in the industry* having been made being a problem in itself, is inconsistent with the admission made in the 2009 Annual Report which states that "While RegTel's investigations demonstrated that, in the majority of cases, a valid subscription had been effected, it is unclear why so many consumers failed to understand what they were entering."

In fact, the admission explicitly states that Comreg has not the information to hand to make any determination as to what are the root causes of the issues facing the relatively, to the amount of satisfied subscription service users, small amount of subscribers who encounter difficulties.

Indeed, there is no basis as such, to rely on any supposition drawn from the call center statistics. Indeed a report (Appendix 2) commissioned by Regtel's board in 2008 highlights the fact that "In the opinion of one [Regtel] staff member the dividing line between queries and complaints is difficult to draw with any certainty".

The April 2009 consultation makes reference to issues around Data Protection and indeed states that "In addition, the Office of the Data Protection Commissioner (ODPC) considered it necessary to prosecute several Aggregators and Content Providers". What is not pointed out, and is again typical of the biased nature of this section of the consultation, is that the ODPC has seen a marked reduction in the number of complaints in this area over the last 3 years.

In fact in the ODPC's most recent annual report states that "Regarding unsolicited marketing text messages, my Office opened 50 fewer complaints in 2009 than in 2008, and almost 250 fewer complaints than in 2007."

Given that the ODPC received only 262 complains in this area in 2009 it suggests a reduction of circa 16% on 2008 figures and almost a 50% reduction on 2007 figures. IPPSA members have also seen a similar drop in consumer complaints over the past 2 years, with Q1 2010 figures suggesting that further falls in complaint numbers are likely this year.

Moreover, and inferring from the data provided by Comreg, in relation to customer contact, in this most recent consultation. Taking the stated run-rate for contacts to the ComReg call-centre, this equates to ~13,000 contacts per annum from PRS customers.

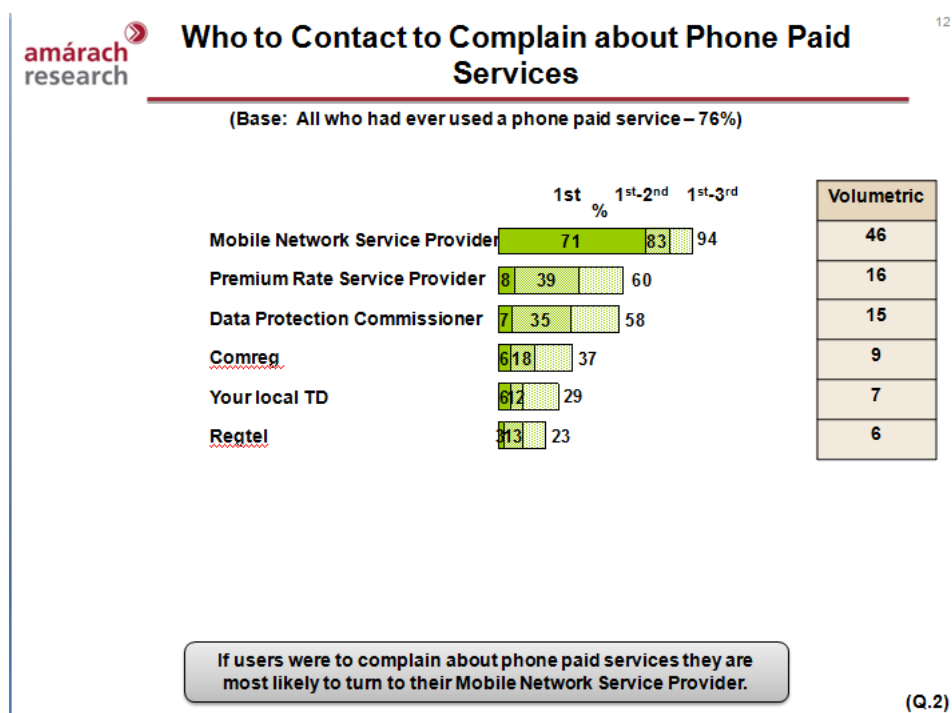
On an overall basis, taking RegTel's published customer contact figures, the PRS industry has seen reductions in customer contacts to its regulatory authority from 30,000 contacts in 2008 to 28,600 in 2009 and to ~13,000 contacts for the 12 months from July 2010 (forecasting on the basis of ComReg published run-rate).

This represents a hugely significant reduction in customer contacts since the introduction of ComReg's licensing regime and despite an active campaign of advertising by ComReg to draw customer contacts directly to themselves rather than to MNOs or indeed PRS Service Providers.

It should be further noted that these figures relate to contacts rather than complaints. No breakdown of the ratio of complaints to contacts has been provided and it should be further noted that, contrary to ComReg's own complaint handling procedure, many of these contacts represent 'first-line' customer service contacts, which should be directed to Service Providers, as opposed to 'real' escalated customer complaints, particularly given ComReg's recent advertising campaign relating to PRS services.

ComReg however attempts to extrapolate from a recent survey it commissioned to suggest that the number of contacts it receives is dwarfed by the real number of customer issues in relation to PRS by suggesting that 82% of people do not know who to contact in relation to PRS problems. This assertion is based on the results of a questionnaire that was conducted by ComReg on 18th Sept 2010. Importantly, this questionnaire has not been shared as part of the consultation process and as such the industry has had no opportunity to examine the options given to respondents and as such to assess how balanced the survey was. Indeed, the specific question asked, on which ComReg makes its case, was double-barrelled, asking the respondent: who regulates the PRS industry and whom can they complain to if they have a problem relating to PRS.

Phonepaid conducted a similar questionnaire as part of its response to the previous Consultation (ComReg 10/27) and recorded significantly different results to ComReg. Our survey found that **86% of people who had used a phone-paid service knew to contact a relevant body** (MNO, PRS SP, DP Commissioner or ComReg) if that had a complaint to make relating to a PRS.



Furthermore, Phonepaid questions ComReg’s ability to compile and analyse consumer contact/complaint statistics in this sector given recent experience in relation to a specific investigation into a members PRS service.

In the course of a recent investigation ComReg asserted that it was performing the investigation following “receipt of a large number of queries and complaints relating to this service”. The Service Provider concerned requested details of these queries and complaints and ComReg supplied a list of 67 complaints dating back to July 2010. Following an analysis of the information provided by ComReg the Service Provider found the following:

- 4 of the complaints were duplicates and 4 did not include the customer’s MSISDN and therefore could not be analysed – leaving a usable total of 59 contacts;
- Of the 59 contacts only 80% of these actually related to the service in question
- In one instance the contact didn’t relate to any of the Service Provider’s services;
- Ultimately, the Service Provider was able to identify only 8 contacts, where an extensive investigation led to the discovery of a technical fault in the spend notification system.

In any event, the service provider has a clear internal policy of providing refunds, as statistically proven, the cost of issuing blanket refunds is cheaper than the process costs of challenging a contact / complaint even if unfounded.

The Service Provider believes that Comreg mistakenly assumes that the giving of a refund implicitly admits of culpability and is concerned that their refund policy may have to change to combat

Comreg's classification system, where a voluntary, refund, admitting of no liability, may be classed as a breach in Comreg's records. This again goes to show that Comreg has not adequately involved industry in developing common, and transparent, industry wide complaint handling processes.

This analysis clearly demonstrated ComReg's inability to compile even the most simple customer contact details relating to the PRS sector.

The key issue raised by the inability of Comreg to produce clear, accurate, relevant and appropriate statistics is that Comreg uses the, bland assertion with regards to an allegedly 'significant', quantity of contacts that its call center receives as the rationale for the disproportionate measures it proposes to enforce in its draft Code of Practice.

Consideration of Previous Code of Practice Consultation Response

On the 1st of April 2010 Comreg published a document 10/27 on the 'Scope of Premium Rate Services Regulation'.

In the forward of that document Mike Byrne, Commissioner stated;

ComReg also considers matters relating to the provision and operation of mobile subscription services, which are currently the predominant source of consumer harm.

The responses to the questions on this key issue will provide a valuable contribution as ComReg commences framing a new mandatory Code of Practice for PRS providers.

ComReg now invites responses to this consultation from consumers, industry, statutory bodies and other interested parties as the decisions arising from the responses received will inform decisions on the scope of regulation of PRS and how, specifically, ComReg will regulate mobile subscription services.

In light of responses to this consultation, ComReg will issue a Response to Consultation, outlining its decisions on the class, or type, of PRS to be licensed and will, subsequently, publish Regulations and a Code of Practice that will formalise these decisions.

Phonepaid, and many Industry Service Providers, invested in preparing extensive and thorough responses to those sections of the consultation that referred not only the sections 1-8 of the consultation, but specifically section 9, where many of the issues that are now being addressed were first raised.

It is clear from the final sentence of the April Consultation that Commissioner Byrne was consulting on a future 'Code of Practice that will formalise these decisions'.

The Commissioner had this power under Section 15.3 of the 2010 Act, and presumably he was obliged to exercise under Section 15.2.b a consideration of the responses received.

However, on the 9th July 2010, Comreg published it's Response to the April Consultation, and stated in Section 5.4 of that Response:

In accordance with the provisions of section 15 of the Act, ComReg will, as soon as practicable after the appointed day, consult on a new Code of Practice and will use the information received in responses to Questions 17 to 23, inclusive, to inform the contents of that Consultation.

Despite, the investment made in responding to the first consultation, and the explicit statement in section 5.4 of the Response to the Consultation document, it is clear that Comreg did not comply with it's obligation under section 15.2.b to consider the responses to the questions it raised in connection with the Code of Practice, in drafting the recently issued draft Code of Practice.

If it had Comreg would have been aware of the issues that faced the industry and would have been aware that there were other methods to address the issues/objectives it was raising, and should have been aware of the gravity of the measures it was proposing, and most certainly should have been aware of the now informed need to conduct a Regulatory Impact Assessment based on its own best practice requirements, including an impact assessment of proposed measures as well as a cost benefit analysis.

The lack of consideration of those responses to the initial Code of Practice consultation, and the unwavering and patently aggressive insistence on re-proposing the most stringent measures available unremittingly leads Phonepaid to a basic conclusion that participating in a consultation with Comreg on PRS is likely a fruitless and a pointless exercise. Indeed, it appears that Comreg has proven itself to be insistent on proposing measures in a manner that taints the process itself with the apparent bias of predeterminism.

Section 2 Issues

Definitional Concerns

Phonepaid would like to request that Comreg would review two of the definitions presented in section 2 of the draft code of practice:

Definition of 'Chatline Service'

Although there is a distinction in the definition of 'Chatline Services' between Live Chatline Services and Virtual Chatline Services, they are very distinct service types.

Phonepaid would ask that Comreg would consider enhancing the clarity of the draft Code of Practice by defining these service types separately and referencing them distinctly through the draft code.

We would propose definitions, in line with, the following suggestion:

"Live Chatline Services - A Premium Rate Services which enables more than two persons to simultaneously conduct a telephone conversation with one another without either:

- (i) each of them having agreed with the other to do so, or
- (ii) each of them having agreed in advance the respective identities of the other intended participants or the telephone numbers on which they may be called.

Virtual Chatline Services – A Premium Rate Services which enables more than two persons to exchange separate recorded messages while connected to the service. For the avoidance of doubt this includes both voice, text and image messages, and can include Group Chatline Services."

This approach would make use of the code easier and allow service providers to more easily appreciate the distinction between the way the services are treated differently.

In particular Section 6 of the draft Code of Practice could benefit from this clarification where there are currently sub-sections dealing with Live Services, Chatline Services, Text Chat and Virtual Chatline Services.

A reader of the code may be confused into thinking that there are no provisions for Live Chatline Services or indeed that all provisions relating to Virtual Chatline Services are dealt with in the Chatline Services section.

Additionally, it is unclear, what the doubt is, and why there is a further definition, of Group Chatline Services.

Definition of 'Promotion'.

Section 2 of the draft Code of Practice defines a "Promotion" as "any act or activity where the intent or effect is, either directly or indirectly, to advertise and draw attention to a Premium Rate Service to encourage its use...".

This definition, when not clarified or put in context, is flawed as references to "indirect" activity essentially requires ALL advertising that may at some point lead to an invitation to participate in a PRS must meet the requirements of the draft Code of Practice.

As an example, a newspaper website whose primary business is the delivery of news content to the public decides to partner with a PRS SP to provide dating services that are charged by premium rate. The newspaper

establishes a subsection within their website that DIRECTLY markets the dating service and complies with all requirements of the Code of Practice.

Given the definition of "Promotion" as per the draft Code of Practice Phonepaid understands that any advertisement or reference to that newspapers general news website, for any purpose, will require the advertisement to meet the requirements of the draft Code of Practice by virtue of the fact that the advertisement indirectly advertises the PRS as it is related to and contained within the general website.

On this basis we consider the current definition, without clarification, flawed.

In the UK, PhonepayPlus have adopted a similar definition for PRS in their draft Code of Practice but most importantly have provided clarification of their meaning within the draft Guidance Notes relating to Promotion. They have identified that there are a variety of different types of promotional material for PRS, ranging from promotions that are self-contained, to promotions that have a number of components which lead the consumer towards a purchase. This clarifies the "indirect" element of the definition and the Guidance Notes go on to say that in this latter case the SP has a number of opportunities to ensure the consumer is aware of all the necessary information. That being understood to mean that not all information needs to be on all steps of a multi-step process provided that at the point of purchase the consumer has been presented in a clear and unambiguous way all the information required.

The confusion may be that the intention was to cover promotions which could be defined differently under the concept of both 'overt and surreptitious' rather than 'direct and indirect'. The BAI, as an example, define:

Surreptitious Commercial Communications

Commercial communications that contain the representation in words or pictures of products, services, the name, the trade mark or the activities of a producer of products or a provider of services in programmes when such representation is intended by the broadcaster to serve as a commercial communication and might mislead the public as to its nature. Such representation shall, in particular, be considered as intentional if it is done in return for payment or for similar consideration.

Sexual Entertainment Services

Phonepaid is concerned that the non-definition of 'Sexually Suggestive' and 'Explicit', as contained within the definition of 'Sexual Entertainment Services' is too subjective to be interpreted consistently and fairly.

Phonepaid would question whether Comreg should be straying, in any event, into making decisions on areas in which more competent specialist bodies, have a key role.

Phonepaid would recommend a review of the promotional aspects to more fully reflect that Service Providers should make best efforts to ensure that promotions must be appropriate for the end-user being targeted, as well as for the end-user likely to view the promotion) and in so doing be in compliance with the relevant codes, statutory and non statutory, of the BAI (in the case of broadcast promotions,) and ASAI (in the case of all other promotions).

Responses to Consultation Questions

Q1. 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 do not agree with the proposed provisions for the following reasons:

We do not believe that Comreg has invested sufficient resources, engaged in sufficient industry consultation or undertaken an adequate RIA to propose this band-aid version of a dysfunctional Regtel Code.

Sections 3.1-3.12

Some examples of these issues, although an incomplete and cursory list, include:

Reference to issues outside of Comreg's PRS role

Comreg should consider, where there is a more, legally sound footing, for the regulation of an issue, or an already legally established basis for addressing a policy objective, that it is not appropriate for the Code of Practice to provide for such a measure, as the Code of Practice itself does not supply the legal grounds for a Service Provider to be subject to the measure concerned.

For example:

Numbering Convention

Comreg's powers vis-a-vis numbering stem from the Access, Framework and Authorisation Regulations.

As such, its powers to regulate the 'efficient use' of numbers stems from Regulations 13 and 14 of the Authorisation Directive.

In so far as Comreg has issued numbers, it is clear that those to whom the numbers have been issued, should have been required to obtain an ECS Authorisation, and it is under the powers that Comreg has to regulate ECS providers, that those Service Providers who have had PRS numbers or short codes issued to them can be statutorily regulated.

The Code of Practice is not the correct place, and in any event, given its status as Soft Law, and the fact that the Oireachtas did not allow for the regulation of numbering to be a component of the code of practice, there is no legal basis for raising this issue here.

Data Protection

Comreg has no powers vis-a-vis Data Protection.

The DPC is statutorily gifted with powers, including and amongst others, to require Data Controllers to register and act in compliance with the Data Protection Laws.

Comreg's role in Data Protection neither augments nor should attempt to usurp the Data Protection Commissioners Role and as such the referencing of Data Protection matters in the code of practice is inappropriate.

Furthermore, the Data Protection Commissioner, while perhaps engaging with Comreg, as a matter of friendly co-operation is not obliged to take any direction or involve Comreg in any way in matters pertaining to its statutory role.

Specifically, Section 3.8, purports to require Service Providers to operate in a manner that, in some circumstances, may itself breach superior legislation including the Data Protection Acts, the European Convention on Human Right, The Contractual right of privity of contract etc.

We would recommend that Comreg would consider rephrasing Section 3.8 in line with

‘Subject to the rights of an End User as a data subject under Data Protection Law, and in light of the natural rights of an individual to privacy, their rights under the European Convention on Human Rights, and the common law right as to privity of contract no PRS Provider must give any undertaking which could preclude any relevant information being given to ComReg that is essential to the investigation of a specific matter raised at the specific and verifiable request of the relevant end user/data subject’

It is our understanding that Comreg cannot impose the wording as outlined in the draft Code of Practice in so far as it may place service providers in an invidious position of refusing on the basis of illegality, and therefore, unjustly, perhaps being subject to Comreg breach proceedings.

Construction / Interpretation

Comreg propose in 3.2 that the Code of Practice will be interpreted in a manner xyz.

We would note that Comreg are subject to the “Interpretation Act” 2005 which defines and limits Comreg’s capacity as to interpretation.

As such, this point 3.2, is patently absurd and illegal.

Information/ Guidance Notes

Comreg cannot create an obligation with a similar force to that of the code of practice without undertaking the processes outlined in Section 15 of the 2010 Act.

Comreg’s statement in Section 3.1, perhaps due to vagueness, alludes to producing views as to interpretation. Apart, again, from the issue of the ‘Interpretation Act 2005’ which is clearly applicable, it is not clear whether Comreg believes that writing into the code something like this purports to allow them to create variations of the code on an ad-hoc basis, without following the requirements of Section 15.

Redundancy, and / or Irrelevancy

Section 3.4 is redundant and irrelevant. This section of the code purports to make the code binding, or through assertion imply that the code is binding because it says it is.

This is irrelevant. The code is binding to the extent that it is legal and constitutional.

Overbearing and / or disproportionate

Section 3.5 is an ill considered directive statement, which does not take account of the simple reality of life. Technology is a powerful tool which like all engineering has a potential to be better implemented, better engineered etc. However, it is not possible to ensure that technology will work flawlessly. As such the wording, would more fairly be constructed so as to seek that ‘Service Providers shall endeavour to ensure...’.

Alternative Means

Section 3.6 is a potentially useful mechanism of flexibility and regulatory sensibility if sensibly implemented.

Phonepaid would seek to ensure that any 'alternative means' are transparently implemented on a non-discriminatory basis. As such, Phonepaid would seek that Comreg would publish any alternative arrangements with individual service providers, so that all possible alternative are available to all possible service providers.

Additionally, Phonepaid would ask that, Comreg would establish a working group of Industry to consider any final draft proposals arising from discussions under this section in anticipation of those proposals proceeding.

Phonepaid insist that Comreg do not issue side letters, special deals permissions, individual dispensations etc. Without such arrangements being published and made available to all Service Providers on a non-discriminatory basis.

Furthermore, we would note, that Comreg, should consider whether this mechanism is feasible under statute without Comreg exercising it's powers under Section 15 of the 2010 Act to vary the Code of Practice.

Sections 3.14-3.16

Comreg through the code does not give any legal footing to any other piece of applicable law.

Comreg has no basis to assume legal responsibility for the actions of a service provider.

It is unclear as to whether Comreg believes that it can authorise, or grant immunity with regards to the legality of xyz based on a legal opinion.

Furthermore, it is unclear how Comreg believes it can require 'approval' from an appropriate regulatory body when many 'regulatory' bodies, depending on the issue, may be prosecuting authorities, such as the DPP, and do not grant prior 'approvals'.

Comreg does not have the power to refuse to license any PRS, under the 2010 Act, except on those grounds outlined in Section 6.4 of the Act, and those grounds alone. This is without prejudice to the associations belief that even those grounds may be illegal under EU and Constitutional law.

Comreg has been granted a specific remit under the 2010 Act, in so far as it is constitutional, and that remit does not extend into becoming a judge on the legalities of other law.

Sections 3.17-3.25

Phonepaid would like to see the basis for the individual proposed restrictions outlined, together with statistics to show that the restrictions already imposed by the Consumer Protection Act 2007, and administered by the National Consumer Agency have proven insufficient.

Phonepaid believe, at a minimum that there is an unnecessary duplication of restrictions and an ungrounded imposition of additional measures. We would warn Comreg that they should make themselves aware of the EU directive on Unfair Commercial Practices 2005/29/EC and in particular section 4.

Section 3.26-3.29

Phonepaid warn Comreg to consider the Ecommerce Directive 2000/31/EC.

Premium Rate Services are Information Society Services as defined under the Ecommerce directive with reference to 98/48/ec.

As such service providers such as Mobile Network Operators, and Aggregators are entitled to benefit from the 'Mere Conduit' liability exclusion.

Similarly, under Article 3.2, Comreg is not entitled, except following a clear procedure, to restrict the capacity for service providers established in other member states from providing services within the jurisdiction. As such, they are not obliged to follow the code of practice.

Taken together, these two issues, mean that Comreg 'Due Diligence' section is effectively unenforceable and needs to be reconsidered.

Conclusion and Response to Question 1

We do not agree with the proposed provisions, applicable to all specified PRS, as set out in Section 3 of the draft Code. We have supplied reasons to support that view above.

Comreg should reconsider *ab initio* the Code of Practice.

Comreg should withdraw the current consultation and engage with Industry to develop an effective draft Code that is proportionate, transparent and non-discriminatory and that is legally compliant with the complex law is applicable including EU directives 98/48/ec, 2000/31/EC and 2005/29/ec.

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 Comreg's proposals for the following reasons:

Stated Policy Objective:

Comreg states two policy objectives within this question.

Firstly, it is Comreg's intention is to consolidate the provisions within the code in to a single section so that there is no longer a requirement to refer to several sections.

Secondly, Comreg considers that a basic requirement of PRS promotion is that it should not mislead or require close scrutiny and should be clear legible and audible, if spoken. Additionally, it should not mask any important conditions.

Substantive Outline of Measure In Contention:

There are a number of issues that Comreg is proposing that not only duplicate requirements in other codes and regulations that services providers must comply with but sets out particular technical standards that go far beyond what is necessary to achieve the stated objectives.

First Objective

We would note that Comreg failed in their first stated objective by creating a separate section on 'Price Information' that must be referred to when reading the section on promotion. The requirements outlined as price information go far beyond price information and should be restricted to only price. In particular Section 5.3 sets out a key promotional requirement that pricing information must be spoken in all media, including on websites, which is absurd and in most cases technically impossible.

In addition, an additional appendix of abbreviations (appendix A) has been added, but not referenced within the draft code, which further complicates the code in direct contradiction of the stated objective.

This highlights a general lack of attention when constructing the objectives. Furthermore, Comreg have failed to objectively justify what reasonable and proportional amendments to the Code of Practice may be required to meet those objectives, if any.

Second Objective

Comreg is mandated to protect end users of PRS. In the context of promotion Comreg seems to be unclear as to how end users should be protected in terms of promotion or whether they are sufficiently protected by other existing codes and regulations.

Rather than setting down the universally accepted protection, that consumers are not "mislead", Comreg attempted to introduce additional subjective and unclear definitions around the concept of 'misleading'. This confuses the objective, beyond the scope of normal European best practice, and no objective justification is provided as to why additional, undefined, standards, and rules on services are needed.

"close scrutiny" objective and requirement for "prominence"

It is unclear what Comreg means when they use the term "require close scrutiny". The term is not used within other codes that pertain to promotion such as the BAI General Commercial Communications Code, the ASA General Rules or indeed within the Unfair Commercial Practices Directive 2005/29EC (UCP Directive). The term "close scrutiny" is referenced in Section 4.3 and 4.8 of the draft code and creates a requirement that is subjective, undefined and goes beyond what is reasonably required to protect end users. Many of the measures being proposed by Comreg seem to be designed to meet this 'close scrutiny' objective in particular requirements around prominence within promotions.

The UCP Directive sets down the maximum levels of consumer protection that member states may implement.

It sets a high standard in terms of consumer protection and is the basis on which all promotional guidance should be provided. Indeed the very existence of the directive provides end users of premium rate services with the protections required.

Within the draft code there is requirement for 'prominence' in Sections 4.4, 4.5, 4.8, 4.19, 5.1, 6.47 and 6.69. However the level of prominence required goes far beyond what is required in order to adequately inform the consumer, and thus ensure they are protected from being misled.

Section 7(2) of the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010 requires that any attachment of conditions shall be objectively justified in relation to the premium rate service concerned and shall be non-discriminatory, proportionate and transparent.

No objective justification has been provided as to why the currently accepted definition of misleading promotion is not sufficient for the protection of end users or for why additional prominence is required for any given aspect of promotion.

The absence of this objective justification, within the consultation document, means that we cannot adequately respond. This lack of transparency is directly in contravention of Section 7(2) of the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010.

Definition of Promotion

The definition of promotion includes reference to direct and indirect promotion. While the definition appears to be lifted from another European Directive (EC 2010/13/EU) it has been our experience that the interpretation of 'indirect' has in practice not been applied in consistency with the guidance and best practice that is observed in relation to that directive across the member states.

Indeed in the UK they provide a specific guidance note specifying that service providers are not required to comply with promotion requirements in every indirect promotion but rather may communicate promotional requirements over a number of stages.

The primary requirement is that consumers are informed in advance of incurring cost in a way that does not mislead.

Visual Requirements

The visual requirements outlined in the draft code go far beyond what is required within other codes that are designed to protect end users such as the ASAI, BAI and UCP codes and regulations. Comreg have failed to objectively justify the visual requirements. This lack of transparency is directly in contravention of Section 7(2) of the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010.

The levels of prominence outlined within the code exceed what would be reasonably required to protect end users. Comreg needs to review each measure proposed and objectively justify it in the context of ensuring consumers are not misled.

We strongly reject the proposals in relation to specifying minimum font size for pricing and subscription information terms that are dependent on the call to action and are completely disproportionate when compared to the commercial impact of such measures and specification.

These proposals are largely without basis, go far beyond the requirements of the advertising authorities of Ireland and will result in significant commercial harm to the industry.

Additionally, we reject the proposal to require all service regulatory terms and conditions at the top of mobile internet landing pages. This objection is on the basis of its disproportionality as outlined in the paragraphs above this table.

Spoken Requirements

We strongly reject the proposed requirement for all service regulatory terms and conditions to be spoken in all

audio/visual promotions. As outlined in the paragraphs above this measure is without basis, is far from being aligned with best practise across retail services and will cause significant commercial harm to the industry

Use of the term ‘Free’

We strongly reject the proposed inclusion of a Double Opt-In in any message sent to the user at the end of a free period. This is a hugely significant regulatory instrument that is being proposed without basis and without any consideration of the massively detrimental impact on the industry.

Subscription Services

We strongly reject the proposals in relation to specifying minimum font size for “Subscription Service” are dependent on the call to action and are completely disproportionate when compared to the commercial impact of such measures and specification. These proposals are largely without basis, go far beyond the requirements of the advertising authorities of Ireland and will result in significant commercial harm to the industry.

Impact Assessment

Prior to introducing any measures beyond those outlined in the Limited Change’ section of this table requires a full and detailed impact analysis, considering multiple options and carefully assessing the benefits and impacts.

Proportionality Tests	<p>Suitability: Many of the measures being proposed are unsuitable, manifestly inappropriate and therefore disproportionate.</p> <p>Examples include the requirement that pricing be spoken on websites, that all required information must be provided at the top of mobile internet promotions.</p>
	<p>Necessity (Objective Justification): Comreg have failed to objectively justify the proposed promotional requirements. No account seems to have been taken of the myriad of codes and regulations that already exist to protect consumers.</p> <p>In particular all promotions broadcast must comply with the BAI General Commercial Communications Code. In addition all promotional material, broadcast and non-broadcast must comply with the ASAI General Rules or indeed within the Unfair Commercial Practices Directive 2005/29EC (UCP Directive).</p> <p>These codes provide total protection to the consumer against any misleading promotion.</p> <p>If Comreg is contending that existing codes and regulations around misleading promotion are insufficient then each proposed measure needs to be objectively justified and this objective justification shared transparently so it can be scrutinised by stakeholders. Comreg have totally failed to consider any detailed justification for each of the proposed measures.</p> <p>No recent or convincing scientific data has been provided to support any of the proposed measures. It is totally unacceptable that measures are being considered without having been shown to be necessary.</p> <p>It is not sufficient for Comreg to suggest, simply on the basis of call centre contact volumes or anecdotal indications that a general problem exists that these specific measures are necessary.</p>
	<p>Subsidiarity: There are a number of less intrusive measures that Comreg could introduce around promotion that would meet the stated objectives;</p> <ul style="list-style-type: none"> - Require spoken pricing and key terms where visual pricing cannot be provided - Require that pricing be highlighted if displayed within other terms. - Require that a reference to phonesmart.ie be made where possible on advertising.
	<p>Stricto Senso:</p>

	<p>Service Providers must already comply with a number of other codes and regulations including the BAI General Commercial Communications Code, the ASAI General Rules or indeed within the Unfair Commercial Practices Directive 2005/29EC (UCP Directive).</p> <p>There are specific measures within these codes that already meet Comregs objectives. No analysis seems to have been done by Comreg of the existing codes and regulations that already apply to Service Providers.</p>
<p>Obligation for measure to be Non-Discriminatory:</p>	
<p>Obligation for Transparency</p> <p>Comreg is proposing a Code of Practice that will dramatically impact the industry and has provided almost no basis for the proposed measures.</p> <p>In preparing the consultation we understand Comreg has met with a number of parties including overseas regulators and others, but has failed to meet with those that it impacts most, the PRS industry.</p> <p>There has also been a total failure to share any detailed objective justification that may have been used in considering each of the specific proposed measures. This lack of transparency has severely compromised our ability to respond constructively to the consultation.</p> <p>No cost analysis in terms of time, money or impact on industry revenues has been shared. No quantification of the potential benefits has been shared. Overall there has been a total lack of transparency at every level.</p>	
<p>Impact Assessment:</p> <p>No impact assessment seems to have been conducted by Comreg or if it has, it was not transparently shared as part of the consultation.</p> <p>At an industry level we have conducted an initial assessment that the cost of making the suggested changes to existing material may exceed €500,000 for a single large service provider. When considered across the whole industry this is likely to exceed €2.5 million and take several months to complete.</p> <p>In addition, the measures themselves will entail a significant additional marketing cost of circa 50% in terms of media space. This would equate to as much as an additional cost of €10 million annually which would be imposed on Service Providers and would have to be passed onto consumers. Such an outcome is not in the interests of end users.</p> <p>Given the likely impacts of the proposed measures it is inconceivable that Comreg has not conducted a full RIA in compliance of their own procedures.</p>	

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

We do not agree with Comreg’s proposals for the following reasons:

Stated Policy Objective: Abbreviations commonly used by industry are often misunderstood and/or overlooked	
Substantive Outline of Measure In Contention: Non-Comprehensive Table of Permitted and Unpermitted <u>[sic]</u> Abbreviations	
Proportionality Tests	<p>Suitability:</p> <p>Phonepaid believes the concept of developing a non-comprehensive table of accepted abbreviations is not a suitable measure to achieve the purposes of the stated policy objective for a number of reasons:</p> <ol style="list-style-type: none"> 1. The table will require constant updating which will put an undue administrative burden on ComReg and can only be modified as part of a Section 15 process which is very inefficient. 2. New abbreviations, which are not outlined in the list for inclusion, are by definition, accepted abbreviations. 3. The proposed abbreviations in the list are entirely subjective and indeed the list of unacceptable abbreviations already includes widely used abbreviations such as “Txt” and “\ min” which in fact is included in ComReg’s own consumer information website: callcosts.ie
	<p>Necessity:</p> <p>Comreg is required to demonstrate on basis of recent and convincing scientific data that the perceived risks outlined in the stated policy objectives are actual, concrete and real.</p> <p>Comreg has not done so. Additionally Comreg has subverted its own argument by recognising the application of certain abbreviations on its own best practice consumer website while listing their use as not permitted.</p> <p>As such, if it is not necessary for Comreg itself to comply with the abbreviation table, it is clearly disproportionate that other ought to. i.e. Do what I say, not what I do.</p> <p>Additionally, Comreg may not be aware that the issue of abbreviations is already addressed in Section 3.19.d of the draft Code.</p>
	<p>Subsidiarity:</p> <p>Phonepaid would propose that a more suitable measure would be:</p> <p>That Comreg in Section 4 would propose a new section, similar to:</p> <p>“Abbreviations should generally only be used where the communications medium is limited in terms of number of available characters or space.</p> <p>Where abbreviations are required then only commonly used or commonly constructed abbreviations should be used.”</p>
	<p>Stricto Senso:</p> <p>Other Measures which already exist and address this area of concern include the directives 2005/29/ec and 2000/31/EC and their national transposition measures.</p>
Obligation for measure to be Non-Discriminatory:	

Obligation for Transparency:

Comreg has not transparently and objectively justified their rationale for proposing this measure together with the supporting data upon which they based their decision to propose the measure.

Comreg have not been able to put together an analysis as to how the measure, the specified abbreviations will result in any tangible benefit, and have not proposed any possible assessment of the tangible benefits that they believe will arise in terms of the impact on the interests of end users.

There has been no RIA, not even a Soft or Contracted RIA implemented to support the measure in this proposal.

Impact Assesment:

The cost impact of this measure accrues from the changes that service providers will be required to make to ensure that the appropriate technical changes to enable new system and services messages to be integrated into the technical platforms.

An additional cost impact of this measure accrues from the changes that service providers will be required to make to ensure that the relevant promotional material is changed to comply. This includes Broadcast Advertisement which are very expensive, along with re-designed advertising copy for print media.

The measures require to implement the above will also require time to practically implement, to integrate into the service delivery and management platforms of service providers, to redesign and re-produce the broadcast advertisements and to re-design the promotional print literature.

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.

We do not agree with Comreg’s proposals for the following reasons:

<p>Stated Policy Objective: Transparent pricing information is essential for end-users to make informed decisions and is inextricably linked to how PRS are promoted.</p>	
<p>Substantive Outline of Measure In Contention: The Core Measure of Concern to Phonepaid are the requirements outlined in:</p> <p>Section 5.1.a</p> <p style="padding-left: 40px;"><i>“and have the ability to exit from the PRS at that point without incurring any charges”, and</i></p> <p>Section 5.3</p> <p style="padding-left: 40px;"><i>“In the case of promotions transmitted on television, on websites, or in other audio-visual-format, the pricing information must be spoken as well as visually displayed.”</i></p> <p>This proposed measure is additional, and analogous, to that which is addressed in Section 4 of the draft Code, which we also believe to be contrary to the 2010 Act.</p>	
<p>Proportionality Tests</p>	<p>Suitability:</p> <p>With regards to the contentious element of the measure in Section 5.1.a above:</p> <p>The proposed addendum to the measure is inappropriate to achieving the stated policy objective. It does not address the concern of the stated policy objective in any way.</p> <p>The consumer receives transparent pricing information arising from the requirements of the code in Section 4 already.</p> <p>Additionally the client will not have interacted with the service at this stage.</p> <p>With regards to the contentious elements of the measure in Section 5.3 above:</p> <p>As discussed in our response to Question 4, in relation to the Promotion of PRS, ComReg mandating inclusion of spoken terms and conditions relating to a PRS, including pricing information, in all audio/visual promotions carries a significant cost to the industry in terms of diluted marketing investment and competitiveness.</p>
	<p>Necessity:</p> <p>Comreg is required to demonstrate on basis of recent and convincing scientific data that the perceived risks outlined in the stated policy objectives are actual, concrete and real.</p> <p>In this case Comreg has not demonstrated that such a measure will achieve any proportionate impact.</p> <p>Additionally while an audible announcement is appropriate in certain circumstances where there is no visual representation of the pricing, such as on radio, there is no objectively justified basis upon which to mandate that the spoken requirement is necessary in the case of television, websites, and</p>

	<p>in other audio-visual media formats.</p>
	<p>Subsidiarity: Other measures which achieve the same Policy Objective with less burden on Industry:</p> <p>Status Quo: There is no indication that the current rules as carried over from the Regtel Code of Practice require to be changed or are in any way insufficient to address the policy objective.</p>
	<p>Stricto Senso: The Consumer Protection Act 2007, Section 57 The Consumer Protection Act BAI Codes ASAI Codes Codes made pursuant to the Audio Visual Media Services Directive, Article 3 (7)</p>
<p>Obligation for measure to be Non-Discriminatory:</p>	
<p>Obligation for Transparency: Statistical Basis for proposing the measure</p> <p>Comreg has failed to present any statistical basis for the creation/imposition of this measure and as such cannot objectively justify the contentious measures.</p> <p>Quantification of potential benefit.</p> <p>Comreg has not outlined the potential benefits, in a measurable and transparent manner, such that a justification can be made on objective grounds that the measure is necessary.</p> <p>Analysis (Has RIA been followed?) and Inference Logic</p> <p>The level of potential harm and the possibility of the collapse of the industry as a result of the measure being proposed should have, if Comreg had followed it's own internal processes, led to at least a condensed RIA being conducted. This type of limited analysis would have been the least expected level of analysis that Comreg ought to have undertaken, and failed to.</p>	
<p>Impact Assesment:</p> <p>Cost (Time/Money/Impact on Revenue) to implement.</p> <p>The costs that will be incurred in adhering to this measure will be heavy in terms of: More Expensive Advertising Production Costs, More Expensive Advertising Purchase Costs. These costs will ultimately be passed on to the consumer.</p> <p>Additionally given the amount of creative material already in the market place which would require changing the costs of implementing those changes is unquantifiable but significant.</p>	

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 with Comreg’s proposal for the following reasons:

	<p>Stated Policy Objective: ComReg considers that end-users should be in control of the amount that they spend on PRS. The nature of some PRS, particularly where the end-user regularly interacts with a service or where its delivery is spread over a relatively prolonged period of time, can result in the end-user being unaware of the cost that he/she is incurring. In addition, there is a risk that reverse-billed PRS might remove a large element of control from the end-user and transfer it to the PRS Provider.</p>
	<p>Substantive Outline of Measure In Contention: The Core Measure of Concern to Phonepaid are the requirements for Repeat-Re-Opt-In.</p> <p>This appears to be referenced in 6.5, <i>“and be required to actively confirm that they wish to continue the call”</i></p> <p>This appears to be referenced in 6.6 <i>“the end-user is required to positively confirm that they wish to continue subscribing to the service”</i></p> <p>This appears to be referenced in 6.20 <i>Expenditure Updates for Subscription Services</i></p> <p>This proposed measure is additional, and analogous, to that which is addressed in question 11, which we also believe to be contrary to the 2010 Act.</p>
<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Proportionality Tests</p>	<p>Suitability: The measure as outlined in the Question vis-a-vis the provision of end-users of PRS with expenditure reminders is suitable to achieve the stated policy objective.</p> <p>However, the specific measures as outlined above in the draft Code of Practice, in sections 6.5 and 6.6, are not a logical or objectively justified extension to the provision of expenditure reminders in pursuit of the stated policy objectives.</p> <p>In the relation to 6.5, there is no reverse billing of PRS in the case of calls to premium rate services numbers.</p> <p>Secondly, the assertion that end-users may be unaware of the cost they are incurring is not addressed by the measure proposed. They are not better informed by being forced to actively or positively confirm a wish to continue using the service.</p> <p>Furthermore, the contentious measures are likely to increase consumer confusion:</p> <p>Repeat-Re-Opt-In and Double Opt-In are likely to cause significant consumer confusion as was noted by respondents when PhonepayPlus originally consulted on this issue in the UK.</p> <p>Given that PRS consumers in Ireland will be very accustomed with the current Single Opt-In model, users will be confused by the additional requirement for Double Opt-In and, indeed, will be subject to additional charges.</p> <p>Some may fear that this may represent a second individual Opt-In and hence may carry an extra charge – all leading to a situation where the user is confused and therefore fails to respond and is thus denied access to the services they requested.</p>

	<p>Moreover, the Repeat-Re-Opt-In measure is based on the requirement for devices to be able to send and receive SMS messages.</p> <p>This approach lacks technology neutrality but more importantly will not be future-proofed even in the short term. Already there are many devices (e.g. Apple iPad) that gain access to data networks using SIM based mobile technology which can facilitate micro payments over premium rate but will be unable to display or send SMS messages</p>
	<p>Necessity: Comreg is required to demonstrate, and objectively justify, on the basis of recent and convincing scientific data that the perceived risks outlined in the stated policy objectives are actual, concrete and real.</p> <p>Comreg has failed to present any data at all in relation to a justification for the Repeat-Re-Opt-in Measure.</p>
	<p>Subsidiarity: Phonepaid believes that the following list of alternate and less intrusive measures would achieve the same, and or greater, impact on achieving the stated policy objective, than the measures we have outlined above as being contentious:</p> <p><u>Scientific Analysis and Impact Assessment of Notification Messages</u></p> <p>Phonepaid believes that the draft Code will lead to message clutter on the end-users telephones.</p> <p>As a result, the messages sent with regards to spend notifications would benefit from scientific analysis as to their fitness to fulfil the concerns outlined in the stated policy objective in the best possible way.</p> <p>We believe the outcome of such analysis will result in suggestions as to the language and content of notification messages such that they will most effectively address the concerns outlined in the stated policy objectives.</p> <p><u>Welcome Messages</u></p> <p>In an attempt to address the ‘Do not receive’ issues highlighted in the consultation document. Comreg could create a requirement for SPs to record successful delivery of ‘Welcome’ messages and to not charge the customer until the ‘Welcome’ message has been successfully delivered to the customers’ phone. By complying with the requirements set down in the Code of Practice in relation to promotions and successful delivery of the ‘Welcome’ message Phonepaid believes that the customer will have had ample opportunity to make themselves aware of the service terms and conditions. There will inevitably be a portion of the population who choose to not read this information and the introduction of double opt-in will not help this portion as they will equally ignore the Subscription Request message and will simply be denied access to the service they have requested. There must be some onus on the consumer to educate themselves when presented with clear information and the industry should not be caused disproportionate harm where customers fail to read clear information.</p> <p><u>Consumer Awareness Building</u></p> <p>In addition, consumer awareness must be enhanced through:</p> <ul style="list-style-type: none"> - Clear promotion and communication by the industry to consumers; - A series of end-user focussed micro web-sites that are promoted to the specific needs of those consumers who would be more likely to be impacted by the concerns raised in the Stated Policy Objective. Such micro sites could include ones targeted at school

	<p>children, and at foreign nationals etc.</p> <ul style="list-style-type: none"> - Modeva notes the recent launch of PhoneSmart.ie but considers that this initiative can still be hugely enhanced through engagement with the Industry. In addition we note that, at the time of writing, this site is virtually impossible to find for the average consumer various reasons. Including by not being linked from ComReg’s home page nor appearing in the first page of a Google search for ‘Premium rate advice Ireland’. - A requirement that www.phonesmart.ie is mentioned and linked to on the landing pages of all PRS services would really make a big differences in increasing awareness of the site. <p><u>Complaint Handling Process</u></p> <p>An industry wide, mandated complaints handling process should be put in place.</p> <p>The availability of this mechanism would ensure that customers have speedy access that they need to the information can help inform their consumption choice. Moreover, this process will ensure a consistent and speedy resolution of customer issues and would reduce the instances of ComReg providing first-line support to PRS users. It would provide the additional benefit of facilitating a more detailed analysis of the issues consumers are experiencing across the value chain.</p> <p><u>Industry working group</u></p> <p>Mobile content and technologies are developing quickly and any effective regulatory regime will need a strong level of active industry participation.</p> <p>Understanding the root causes of issues and the development of reasonable and proportionate responses requires active and timely engagement with those that operate within the industry.</p> <p>We would strongly support the creation of an industry working group that could work with ComReg in developing draft proposals for code or practice changes in advance of formal consultation.</p>
	<p>Stricto Senso: Other Measures Already Addressing the Stated Policy Objective</p>
<p>Obligation for measure to be Non-Discriminatory: Service Type, SP Type, End-User Type/Sensibility etc.</p>	
<p>Obligation for Transparency:</p> <p>Comreg has not presented any rationale or any objective material or research outlining the expected benefit to arise as a result of the contentious measures being proposed. They have failed to present their expectations as to the impact of the measure and have failed to contextualise that with an impact analysis contrasting that with the potential cost to industry.</p> <p>Comreg failed in its obligation to be transparent in proposing this measure. Comreg specifically attempted to justify the double-opt-in, repeat-re-opt-in measure on the basis of and international, and specifically UK experience. This analogy appears to have been inadvertently misleading</p> <p>ComReg refer to the success of Double Opt-In in the UK as a basis for the introduction of Double Opt-In (and by implication Repeat-Re-Opt-In) in the Irish market. However, ComReg has failed to note that the UK’s implementation of Double Opt-In relates specifically to services that cost more than STG€4.50 per week and NOT to subscription services that cost less. Furthermore, PhonepayPlus in their recent consultations have not proposed to change this threshold relating to Double Opt-In and as such suggest that they are happy with the measure in its current form.</p>	

ComReg, on this basis, are NOT comparing like with like when considering the positive impact on consumers or indeed the negative impact on industry when they compare the UK implementation of Double Opt-In with the proposed measure for the Irish market.

The level of potential harm and the possibility of the collapse of the industry as a result of the measure being proposed should have, if Comreg had followed it's own internal processes, led to at least a condensed RIA being conducted. This type of limited analysis would have been the least expected level of analysis that Comreg ought to have undertaken, and failed to.

Impact Assessment:

The impact on the industry resulting from this proposed measure is devastating.

The following are the key areas of impact:

- Requirement to re-design, re-develop and re-optimize products to implement the required changes;
- Significantly reduced revenues as a result of increased cost of acquiring customers;
- Significant resource requirement to optimise product and sales processes in order to re-build any possible revenues given the significant usability change for the consumer from single to double opt-in;
- Industry Participant will incur the opportunity cost that the additional software development and marketing activity will inflict as a result of the re-designing, implementing and optimising of all the relevant products and services to comply with the Repeat-Re-Opt-In requirements, especially in so far as product innovation and market development activities.

Cost of Redevelopment:

Financial Burden on Industry

For the entire Industry to incorporate the proposed measures in relation to repeat-re-opt-in involves the redevelopment of hundred of unique services. The software for each service has been written and developed over a period of several years and has been optimised from a sales perspective on the basis of numerous years of experience within the existing regulatory framework. Therefore these applications cannot simply be modified to incorporate the required changes. As a result of the significant nature of these changes in terms of impact on our ability to recruit and retain customers these services will need to be re-designed, re-engineered, developed, tested and optimised. This is a significant undertaking for the Industry and one that may lead to its collapse.

Industry Participants have estimated, based on a three month development cycle followed by a similar optimisation cycle to fully and successfully incorporate the new regulatory measures into all the products on the market, an accurate, but approximate cost of each update project to be circa €231,000 and for 100 affected products across the industry, a total cost is estimated at circa €23,000,000.

Industry believes that Comreg in proposing to introduce these measures is acting contrary to EU and Irish Constitutional Law and exposes itself and the state to significant damages claims if it chooses to proceed.

Impact of Proposed Measures on Revenues

To estimate the probable impact of Double Opt-In and Recurring Opt-In ((i.e. for expenditure messages) on Industry, Phonepaid commissioned KPMG to undertake an independent analysis, using a member of the Association (Modeva) as the test subject, to get an understanding of the impact of the proposed regulations, comparing the effects of the new proposed measures with a control sample based on the existing regulation.

The trial was conducted on the following basis:

- Modeva promoted a subscription service to consumers on TV during a prime time show in line with

the existing regulations over two periods of time. The first a control whereby the current regulations in relation to subscription were applied for customers subscribing, the second where consumers were required to Double-Opt In in order to join the service.

- On two separate occasions Modeva sent out '€20 spend reminders' to its PrizeClub customers as appropriate. The first occasion based on the existing regulations, the second based on the proposed 'Recurring Opt-In' measure whereby the customer must respond with a keyword to maintain their subscription.
- Modeva compiled the responses from the trials above and determined the impact on the numbers of consumers subscribing to the service and the number of customers being retained in the service as a result of the introduction of the proposed measures suggested by ComReg.
- The results are presented in the KPMG study, as summarised below, by showing the impact to a hypothetical subscription service on the basis of the results from our trials.

Demonstrating the impact of the measures using live test data (source: KPMG report)	Existing Process	Proposed Process
Assuming 100 Consumers send a subscription request to a service provider for a service that costs €20 per month	100	100
% of Consumers who successfully completed their subscription within one hour of making the request. (Source: KPMG Report)	68%	2%
% of Consumers who remained subscribed to the service. (Source : KPMG Report)	93%	0%
Month 1 - Revenue	€ 1,360.00	€ 40.00
Month 2 - Revenue	€ 1,264.80	€ -
Month 3 - Revenue	€ 1,176.26	€ -
Month 4 - Revenue	€ 1,093.93	€ -
Month 5 - Revenue	€ 1,017.35	€ -
Month 6 - Revenue	€ 946.14	€ -
Total Revenue after 6 months	€ 6,858.48	€ 40.00
Average revenue per customer	€ 68.58	€ 0.40
% Decrease in average revenue per customer	99.42%	

The trials outlined above were independently verified and reported on by KPMG.

The detailed analysis of the study, is attached, and demonstrates that the PRS Industry in Ireland will be effectively wiped out within one month of the imposition of the draft Code measures.

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 agree with Comreg’s proposals in this question for the following reasons:

Phonepaid believes that so long as a customer is not misled as to the pricing, and that the service provider complies with all relevant Code sections vis-a-vis promotion that spend limits in general are restricting the rights of consumers to make their own choices.

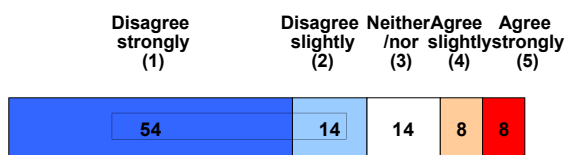
Additionally, our research would indicate that consumers would prefer Government/Comreg not to get in the way of the consumption choices.



“I Think the Government Should Decide What Service you are Permitted to Access on your Phone”.

14

(Base: Adults 16+ - 850)



Negative feelings towards the Government being the ones to decide what services you are permitted to access on your phone.

(Q.6)

Specifically, we disagree that there should be any restriction on the amount that an end user can spend on entering a PRS competition.

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 agree with Comreg's proposals in this question for the following reasons:

Phonepaid believes that Comreg should not set a limit on the expenditure of an individual transaction through the use of a 'facility'.

There is no substantiated basis for alleging that consumers will experience bill shock. Comreg have not offered any basis to justify objectively a limit of €12

Phonepaid believes that a consumer that is well informed, in line with the Consumer Protection Act 2007, already is fully protected, in so far as purchasing of goods and services is concerned. Furthermore, the 2007 Act ensures that firms are subject to stringent oversight in offering goods and services to consumers.

Additionally, the onus and burden to control 'bad debt' is not on Comreg. The MNOs in co-operation with their commercial partners are the ones that will suffer the bad debt alluded to, and as such are the ones who must undertake their own risk mitigation strategies. As an Industry association, Phonepaid's members believe that they can look after their own commercial interests in this matter, without the area being cluttered by additional and unnecessary rules on services.

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.

Phonepaid does not agree with ComReg's proposal for overall expenditure limits for individual PRS for a number of reasons.

Firstly, ComReg has expressed concern for users using landlines, engaging in services and incurring levels of debt that have become an issue for the Network Operators.

Phonepaid believes that this issue is already addressed through:

1. The Settlement/Termination Rates that are set via the Reference Interconnection Offer of SMP Operators.
2. Phonepaid is of the view that this is an issue of credit control between the Network Operator and the user.
3. There are already mechanisms in place for co-operation between network operators/aggregators to control their own commercial arrangements, that were successfully seen to work in the case of Live TV quiz shows.
4. The sophisticated fraud detection systems which are deployed across all modern network operators networks such that unusual patterns of traffic can be reported on and investigated.

Network Operators have a responsibility at the network level to mitigate issues themselves in such a way as consumer choice, or consumption decisions are not adversely affected or impacted upon.

Furthermore, Phonepaid believes, that where PRS providers have adhered to all measures in the Code of Practice in relation to promotion, price and spend transparency then the decision of consumers to continue to consume is an informed one, and that it would not be in the interests of protecting end-users to stop them from making informed consumption decisions.

Secondly, ComReg is suggesting weekly or monthly limits as opposed to daily limits in order to facilitate block votes by end-users, "particularly those under 18 years of age".

Phonepaid is of the view that Service Providers must provide clear pricing and spend information to consumers, adhering to all provisions of the Code of Practice and the consumer must then make informed choices in how they choose to spend. This measure would be completely disproportionate to any other retail industry in the country.

Moreover, as pointed out by ComReg, the introduction of such a measure will not really protect the consumer at all as they will be free to continue spending with another similar service once they've reached an proposed spend limit.

Finally, Phonepaid agrees that Intermediate Service Providers, such as MNOs and Aggregators, should not be subject to measure with a Code of Practice where they would be entitled to benefit from the reliefs available under the 'Mere Conduit' protection available under the Ecommerce Directive

Q10. Do you agree with ComReg’s preliminary view on the introduction of purchase confirmation receipts in respect of some onceoff PRS transactions? If not, please provide reasons to support your view.

We do not agree with Comreg’s proposals in this question for the following reasons:

In the context, and with the benefit of the clarification, outlined in the consultation document;

While ComReg understands that this provision cannot be provided to fixed-line end users, or to end-users of certain mobile services, such as interactive text chat entertainment services, nevertheless, such Confirmation Messages would be suitable and applicable for one-off content downloads or transactions such as competition entries.

Phone believes that the introduction of purchase confirmation receipts deserves further consideration.

However, the information outlined in the consultation document, including such statements as ‘in respect of some onceoff PRS transactions’, is insufficient to allow us to consider the matter adequately, and as such, we believe the matter should be reserved for a future code review.

Finally, we don’t believe that there is an statistically valid basis for introducing this measure at the moment, and upon which Comreg could base an objectively justified rationale for doing so.

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 ComReg’s proposal for the following reasons:

Stated Policy Objective:
 Firstly, Comreg is concerned by the number of complaints surrounding subscription services but is unsure why these complaints arise. Comreg suspects end users may not be receiving, reading or possibly understanding the information being provided by service providers.

 Secondly, Comreg is particularly focussed on services where end-users subscribe through a WAP promotion due to the lack of suitable log file verification.

Substantive Outline of Measure In Contention:
 The Core Measure of Concern to Phonepaid are the requirements for Double Opt-In.

 This appears to be referenced in 6.14,

 “When an end-user requests to subscribe to a Subscription Service, and prior to an end-user incurring any charges, the PRS provider must send a standard, dedicated, SMS Subscription Request Message, as set out in Section 6.16 below, to the nominated mobile phone number, at no charge to the end-user.”

 This proposed goes beyond what is required to address the policy objectives and is in contravention of the 2010 Act. No Objective Justification has been provided to understand the root cause of the complaints being handled by Comreg. Indeed Comreg highlights a number of possible causes, each of which could be addressed more proportionally if analysed and addressed individually.

Proportionality Tests	<p>Suitability: It is clear the rather than understanding the root cause of the issues that end-users may be experiencing with Subscription Services Comreg is proposing to deploy the ‘sledge-hammer’ approach of double opt-in. The proposed measure does little to improve clarity for consumers, rather it is more likely to confuse them and as a result prevent them from using subscription services. Consumers are likely to be confused, thinking that they will be billed additional charges than those the understood applied on the promotional material. Consumers are likely to be confused, thinking the message they receive is a confirmation message as currently provided and does not need to be responded to. Consumers who regularly use subscription services may not open or read the subscription request message as they will assume it is a informational message containing information they already know. KPMG on behalf of IPPSA have conducted significant analysis in on the impact of double-opt in and the results suggest that it will effectively eliminate the existence of subscription services. In Appendix 2 KPMG found that there was a 97.8% decrease in the number of people who successfully subscribed to a service where double opt-in was implemented as proposed. It is clear that this is not a suitable measure to achieve the stated policy objectives.</p>
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	<p>There are also technological reasons that this is not a suitable measure. In particular with the explosion of mobile broadband devices it is now possible that devices such as iPads will pay for content through their mobile broadband account. These devices do not support the capability to respond to such a double opt-in process as proposed.</p> <p>The primary objective is to enhance the transparency, this can be achieved by ensuring that promotional material is suitably clear.</p>
	<p>Necessity: Comreg is required to demonstrate, and objectively justify, on the basis of recent and convincing scientific data that the perceived risks outlined in the stated policy objectives are actual, concrete and real.</p> <p>Comreg has failed to present any data at all in relation to a justification for the Double-Opt-in Measure.</p>
	<p>Subsidiarity: Phonepaid believes that the following list of alternate and less intrusive measures would achieve the same, and or greater, impact on achieving the stated policy objective, than the measures we have outlined above as being contentious:</p> <p><u>Scientific Analysis and Impact Assessment of Notification Messages</u></p> <p>Phonepaid believes that the draft Code will lead to message clutter on the end-users telephones.</p> <p>As a result, the messages sent with regards to initial signup confirmation messages would benefit from scientific analysis as to their fitness to fulfil the concerns outlined in the stated policy objective in the best possible way.</p> <p>We believe the outcome of such analysis will result in suggestions as to the language and content of signup confirmation messages such that they will most effectively address the concerns outlined in the stated policy objectives.</p> <p><u>Welcome Messages</u></p> <p>In an attempt to address the 'Do not receive' issues highlighted in the consultation document. Comreg could create a requirement for SPs to record successful delivery of 'Welcome' messages and to not charge the customer until the 'Welcome' message has been successfully delivered to the customers' phone. By complying with the requirements set down in the Code of Practice in relation to promotions and successful delivery of the 'Welcome' message Phonepaid believes that the customer will have had ample opportunity to make themselves aware of the service terms and conditions. There will inevitably be a portion of the population who choose to not read this information and the introduction of double opt-in will not help this portion as they will equally ignore the Subscription Request message and will simply be denied access to the service they have requested. There must be some onus on the consumer to educate themselves when presented with clear information and the industry should not be caused disproportionate harm where customers fail to read clear information.</p> <p><u>Consumer Awareness Building</u></p> <p>In addition, consumer awareness must be enhanced through:</p> <ul style="list-style-type: none"> - Clear promotion and communication by the industry to consumers; - A series of end-user focussed micro web-sites that are promoted to the specific needs of those consumers who would be more likely to be impacted by the concerns raised in the Stated Policy Objective. Such micro sites could include ones targeted at school children, and at foreign nationals etc.

	<ul style="list-style-type: none"> - IPPSA notes the recent launch of PhoneSmart.ie but considers that this initiative can still be hugely enhanced through engagement with the Industry. In addition we note that, at the time of writing, this site is virtually impossible to find for the average consumer various reasons. Including by not being linked from ComReg’s home page nor appearing in the first page of a Google search for ‘Premium rate advice Ireland’. - A requirement that www.phonesmart.ie is mentioned and linked to on the landing pages of all PRS services would really make a big differences in increasing awareness of the site. <p><u>Complaint Handling Process</u></p> <p>An industry wide, mandated complaints handling process should be put in place.</p> <p>The availability of this mechanism would ensure that customers have speedy access to the information needed to inform their consumption choice. Moreover, this process will ensure a consistent and speedy resolution of customer issues and would reduce the instances of ComReg providing first-line support to PRS users. It would provide the additional benefit of facilitating a more detailed analysis of the issues consumers are experiencing across the value chain.</p> <p><u>Industry working group</u></p> <p>Mobile content and technologies are developing quickly and any effective regulatory regime will need a strong level of active industry participation. Understanding the root causes of issues and the development of reasonable and proportionate responses requires active and timely engagement with those that operate within the industry. We would strongly support the creation of an industry working group that could work with ComReg in developing draft proposals for code or practice changes in advance of formal consultation.</p> <p><u>Improved logging of WAP initiated Services</u></p> <p>Comreg, working with industry would set down an agreed log requirements for WAP initiated subscriptions that would ensure Comregs concerns in this area are addressed.</p>
	<p>Stricto Senso:</p> <p>There are already measures within the BAI, ASAI and NCA codes that require consumers to be informed in advance of being charged for services. No objective justification has been provided to suggest that PRS end-users are any less able to read or understand the information provided than any other retail consumer.</p> <p>There are significant requirements already in place within the Code of Practice itself to ensure that consumers are</p>
	<p>Obligation for measure to be Non-Discriminatory: <i>Service Type, SP Type, End-User Type/Sensibility etc.</i></p>
	<p>Obligation for Transparency:</p> <p>Comreg has not presented any rationale or any objective material or research outlining the expected benefit to arise as a result of the contentious measures being proposed. They have failed to present their expectations as to the impact of the measure and have failed to contextualise that with an impact analysis contrasting that with the potential cost to industry.</p> <p>Comreg failed in its obligation to be transparent in proposing this measure. Comreg specifically attempted to justify the double-opt-in measure on the basis of and international, and specifically UK experience. This</p>

analogy appears to have been inadvertently misleading

ComReg refer to the success of Double Opt-In in the UK as a basis for the introduction of Double Opt-In (and by implication Repeat-Re-Opt-In) in the Irish market. However, ComReg has failed to note that the UK's implementation of Double Opt-In relates specifically to services that cost more than STG€4.50 per week and NOT to subscription services that cost less. Furthermore, PhonepayPlus in their recent consultations have not proposed to change this threshold relating to Double Opt-In and as such suggest that they are happy with the measure in its current form.

ComReg, on this basis, are NOT comparing like with like when considering the positive impact on consumers or indeed the negative impact on industry when they compare the UK implementation of Double Opt-In with the proposed measure for the Irish market.

The level of potential harm and the possibility of the collapse of the industry as a result of the measure being proposed should have, if Comreg had followed it's own internal processes, led to at least a condensed RIA being conducted. This type of limited analysis would have been the least expected level of analysis that Comreg ought to have undertaken, and failed to.

Impact Assesment:

The impact on the industry resulting from this proposed measure is devastating.

The following are the key areas of impact:

- Requirement to re-design, re-develop and re-optimize products to implement the required changes;
- Significantly reduced revenues as a result of increased cost of acquiring customers;
- Significant resource requirement to optimise product and sales processes in order to re-build any possible revenues given the significant usability change for the consumer from single to double opt-in;
- Industry participants will incur the opportunity cost that the additional software development and marketing activity will inflict as a result of the re-designing, implementing and optimising of all the relevant products and services to comply with the Double-Opt-In requirements, especially in so far as product innovation and market development activities.

Cost of Redevelopment:

Financial Burden on Industry

For the entire Industry to incorporate the proposed measures in relation to Double-opt-in involves the redevelopment of hundreds of unique services. The software for each service has been written and developed over a period of several years and has been optimised from a sales perspective on the basis of numerous years of experience within the existing regulatory framework. Therefore these applications cannot simply be modified to incorporate the required changes. As a result of the significant nature of these changes in terms of impact on our ability to recruit and retain customers these services will need to be re-designed, re-engineered, developed, tested and optimised. This is a significant undertaking for the Industry and one that may lead to its collapse.

Industry Participants have estimated, based on a three month development cycle followed by a similar optimisation cycle to fully and successfully incorporate the new regulatory measures into all the products on the market, an accurate, but approximate cost of each update project to be circa €231,000 and for 100 affected products across the industry, a total cost is estimated at circa €23,000,000.

Industry believes that Comreg in proposing to introduce these measures is acting contrary to EU and Irish Constitutional Law and exposes itself and the state to significant damages claims if it chooses to proceed.

Impact of Proposed Measures on Revenues

To estimate the probable impact of Double Opt-In and Recurring Opt-In ((i.e. for expenditure messages) on Industry, Phonepaid commissioned KPMG to undertake an independent analysis, using a member of the Association (Modeva) as the test subject, to get an understanding of the impact of the proposed regulations, comparing the effects of the new proposed measures with a control sample based on the existing regulation.

The trial was conducted on the following basis:

- Modeva promoted a subscription service to consumers on TV during a prime time show in line with the existing regulations over two periods of time. The first a control whereby the current regulations in relation to subscription were applied for customers subscribing, the second where consumers were required to Double-Opt In in order to join the service.
- On two separate occasions Modeva sent out '€20 spend reminders' to its PrizeClub customers as appropriate. The first occasion based on the existing regulations, the second based on the proposed 'Recurring Opt-In' measure whereby the customer must respond with a keyword to maintain their subscription.
- Modeva compiled the responses from the trials above and determined the impact on the numbers of consumers subscribing to the service and the number of customers being retained in the service as a result of the introduction of the proposed measures suggested by ComReg.
- The results are presented in the KPMG study, as summarised below, by showing the impact to a hypothetical subscription service on the basis of the results from our trials.

Demonstrating the impact of the measures using live test data (source: KPMG report)	Existing Process	Proposed Process
Assuming 100 Consumers send a subscription request to a service provider for a service that costs €20 per month	100	100
% of Consumers who successfully completed their subscription within one hour of making the request. (Source: KPMG Report)	68%	1.5%
% of Consumers who remained subscribed to the service. (Source : KPMG Report)	93%	0%
Month 1 – Revenue	€ 1,360.00	€ 30.00
Month 2 – Revenue	€ 1,264.82	€ -
Month 3 – Revenue	€ 1,176.26	€ -
Month 4 – Revenue	€ 1,093.93	€ -
Month 5 – Revenue	€ 1,017.35	€ -
Month 6 – Revenue	€ 946.14	€ -
Total Revenue after 6 months	€ 6,858.48	€ 30.00
Average revenue per customer	€ 68.58	€ 0.30
<hr/>		
% Decrease in average revenue per customer	99%	

The trials outlined above were independently verified and reported on by KPMG.

The detailed analysis of the study, is attached (Appendix 2), and demonstrates that the PRS Industry in Ireland will be effectively wiped out within one month of the imposition of the draft Code measures.

Q12. 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 agree with Comreg's proposals in this question for the following reasons:

Phonepaid believes that Service Providers who provide transparency of terms and pricing to consumers in line with the Code of Practice should be free to structure their services in a manner that they see fit.

The key point is that the consumer be clear of the relevant terms, in this case the sign-up fee, in advance of incurring any charges.

Phonepaid believes however that the question may be better answered if there was adequate statistics to show that the interest of end users were not being protected, in allowing to make their own consumption decisions, provided they are fully informed.

Amarach Consulting's recent statistics show that, Consumers, in general, would prefer to make their own choices.

As such, we do not agree that any sign-up fees should be considered the subscription charges for the first billing period.

However, we would be open to further consultation on the matter.

Q13. 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 the proposal for the following reasons:

	<p>Stated Policy Objective: This requirement for a positive affirmation by the end-user after incurring costs of €20 in a Subscription Service is analogous to a caller to a voice-PRS on a premium rate number being required to positively confirm that they wish to continue with the call, when they have incurred costs of €30. This mechanism is also in accordance with that proposed in Section 2.7.1 above, whereby the PRS provider is required to provide an expenditure update after the end-user has spent €20 in a non-subscription service.</p>
	<p>Substantive Outline of Measure In Contention: The Core Measure of Concern to Phonepaid are the requirements for Double Opt-In (Positive Confirmation). This appears to be referenced in 6.16 (f) and (g), (f) instruct the end-user to send a plain dedicated SMS, with a KEYWORD, to a particular short code in order to subscribe, and (g) follow the format of the example provided below: SUBSCRIPTION REQUEST MESSAGE To subscribe to [name of service and optional description] for [sing-up cost] and [cost of service in €] per [billing frequency - message received/time] and confirm that you are over 18 yrs, text AGREE [or other unique keyword for the service] to</p>
<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Proportionality Tests</p>	<p>Suitability: The only explicit justification as to the suitability of this measure is the reference by analogy to section 2.7.1. As such in order to address the implied justification, we need to review the concerns we previously raised with regards to section 2.7.1. In sections 2.7.1 and 2.9.6 of the consultation document ComReg note the following points in relation to PRS:</p> <ul style="list-style-type: none"> - That it's important that end-users are periodically made aware of the costs they incur when purchasing PRS; - That end-users should be in control of the amount that they spend on PRS; - Where users interact with a service over a relatively prolonged period of time, can result in the user being unaware of the that they are incurring; - That, through active monitoring, the €20 spend reminder messages sent to end-users by some PRS providers are indistinguishable from other service and promotional messages which results in end users being unsure are to the cost of the message and who is responsible for delivering the message. <p>Phonepaid fully agrees with the principles outlined by ComReg in relation to these points and that customers should be very clearly informed at defined points as to the costs that they are incurring while consuming a PRS.</p> <p>In addition Phonepaid also notes that there is no particular measurable consumer affecting issue identified by ComReg in relation to these points beyond the observation that the format of the current €20 spend reminder messages from SOME PRS providers may be leading to some confusion</p>

for some consumers.

On the basis of the information provided in the Consultation and our own knowledge of the industry we believe the correct approach is to continue issuing €20 spend reminder messages in a format that is clear and distinct from any other message types where there is no ambiguity to the consumer regarding the cost of the message and facilitates the customer in STOPping from the service should they wish to.

However, Phonepaid is shocked and deeply concerned by ComReg's proposed measure to require all customers to respond positively to such 'Spend Reminder' messages in a recurring Opt-In manner.

This proposal is deeply flawed and has been proposed with absolutely no basis. The impact on the Industry of such a groundless measure would be absolutely and utterly devastating and represents the most disproportionate measure proposed within this consultation. To have even proposed this type of measure without presenting a detailed impact analysis and on the basis of significant consumer harm is incredible and in all honesty undermines ComReg's credibility in this sector. To require the user to Opt-In on a recurring basis in no way addresses the issues raised by ComReg.

In addition, this proposed measure is, in effect, banning subscription services by introducing a mandatory maximum subscription period on every service for every consumer.

Finally, every 'Spend Reminder' message currently complies with the requirement to inform the user of how to STOP from the service so the customer is fully empowered to cease their subscription at that point should they wish to do so.

The measure as outlined in the Question vis-a-vis the provision of end-users of PRS with expenditure reminders is suitable to achieve the stated policy objective.

However, the specific measures as outlined above in the draft Code of Practice, in the contentious sections, are not a logical or objectively justified extension to the provision of expenditure reminders in pursuit of the stated policy objectives.

Additionally the only explicit justification is the reference to the analogy to section 2.7.1.

As such in order to address the implied justification, we need to review the concerns we previously raised with regards to section 2.7.1.

In the relation to 6.5, there is no reverse billing of PRS in the case of calls to premium rate services numbers.

Secondly, the assertion that end-users may be unaware of the cost they are incurring is not addressed by the measure proposed. They are not better informed by being forced to actively or positively confirm a wish to continue using the service.

Furthermore, the contentious measures are likely to increase consumer confusion:

Repeat-Re-Opt-In and Double Opt-In are likely to cause significant consumer confusion as was noted by respondents when PhonepayPlus originally consulted on this issue in the UK.

Given that PRS consumers in Ireland will be very accustomed with the current Single Opt-In model, users will be confused by the additional requirement for Double Opt-In and, indeed, will be subject to additional charges.

Some may fear that this may represent a second individual Opt-In and hence may carry an extra charge – all leading to a situation where the user is confused and therefore fails to respond and is thus denied access to the services they requested.

	<p>Moreover, the Repeat-Re-Opt-In measure is based on the requirement for devices to be able to send and receive SMS messages.</p> <p>This approach lacks technology neutrality but more importantly will not be future-proofed even in the short term. Already there are many devices (e.g. Apple iPad) that gain access to data networks using SIM based mobile technology which can facilitate micro payments over premium rate but will be unable to display or send SMS messages</p>
	<p>Necessity: Comreg is required to demonstrate, and objectively justify, on the basis of recent and convincing scientific data that the perceived risks outlined in the stated policy objectives are actual, concrete and real.</p> <p>Comreg has failed to present any data at all in relation to a justification for the Repeat-Re-Opt-in Measure.</p>
	<p>Subsidiarity: Phonepaid believes that the following list of alternate and less intrusive measures would achieve the same, and or greater, impact on achieving the stated policy objective, than the measures we have outlined above as being contentious:</p> <p><u>Scientific Analysis and Impact Assessment of Notification Messages</u></p> <p>Phonepaid believes that the draft Code will lead to message clutter on the end-users telephones.</p> <p>As a result, the messages sent with regards to spend notifications would benefit from scientific analysis as to their fitness to fulfil the concerns outlined in the stated policy objective in the best possible way.</p> <p>We believe the outcome of such analysis will result in suggestions as to the language and content of notification messages such that they will most effectively address the concerns outlined in the stated policy objectives.</p> <p><u>Welcome Messages</u></p> <p>In an attempt to address the ‘Do not receive’ issues highlighted in the consultation document. Comreg could create a requirement for SPs to record successful delivery of ‘Welcome’ messages and to not charge the customer until the ‘Welcome’ message has been successfully delivered to the customers’ phone. By complying with the requirements set down in the Code of Practice in relation to promotions and successful delivery of the ‘Welcome’ message Phonepaid believes that the customer will have had ample opportunity to make themselves aware of the service terms and conditions. There will inevitably be a portion of the population who choose to not read this information and the introduction of double opt-in will not help this portion as they will equally ignore the Subscription Request message and will simply be denied access to the service they have requested. There must be some onus on the consumer to educate themselves when presented with clear information and the industry should not be caused disproportionate harm where customers fail to read clear information.</p> <p><u>Consumer Awareness Building</u></p> <p>In addition, consumer awareness must be enhanced through:</p> <ul style="list-style-type: none"> - Clear promotion and communication by the industry to consumers; - A series of end-user focussed micro web-sites that are promoted to the specific needs of those consumers who would be more likely to be impacted by the concerns raised in the Stated Policy Objective. Such micro sites could include ones targeted at school

	<p>children, and at foreign nationals etc.</p> <ul style="list-style-type: none"> - Modeva notes the recent launch of PhoneSmart.ie but considers that this initiative can still be hugely enhanced through engagement with the Industry. In addition we note that, at the time of writing, this site is virtually impossible to find for the average consumer various reasons. Including by not being linked from ComReg’s home page nor appearing in the first page of a Google search for ‘Premium rate advice Ireland’. - A requirement that www.phonesmart.ie is mentioned and linked to on the landing pages of all PRS services would really make a big differences in increasing awareness of the site. <p><u>Complaint Handling Process</u></p> <p>An industry wide, mandated complaints handling process should be put in place.</p> <p>The availability of this mechanism would ensure that customers have speedy access that they need to the information can help inform their consumption choice. Moreover, this process will ensure a consistent and speedy resolution of customer issues and would reduce the instances of ComReg providing first-line support to PRS users. It would provide the additional benefit of facilitating a more detailed analysis of the issues consumers are experiencing across the value chain.</p> <p><u>Industry working group</u></p> <p>Mobile content and technologies are developing quickly and any effective regulatory regime will need a strong level of active industry participation.</p> <p>Understanding the root causes of issues and the development of reasonable and proportionate responses requires active and timely engagement with those that operate within the industry.</p> <p>We would strongly support the creation of an industry working group that could work with ComReg in developing draft proposals for code or practice changes in advance of formal consultation.</p>
	<p>Stricto Senso: Other Measures Already Addressing the Stated Policy Objective</p>
<p>Obligation for measure to be Non-Discriminatory: Service Type, SP Type, End-User Type/Sensibility etc.</p>	
<p>Obligation for Transparency:</p> <p>Comreg has not presented any rationale or any objective material or research outlining the expected benefit to arise as a result of the contentious measures being proposed. They have failed to present their expectations as to the impact of the measure and have failed to contextualise that with an impact analysis contrasting that with the potential cost to industry.</p> <p>Comreg failed in its obligation to be transparent in proposing this measure. Comreg specifically attempted to justify the double-opt-in, repeat-re-opt-in measure on the basis of and international, and specifically UK experience. This analogy appears to have been inadvertently misleading</p> <p>ComReg refer to the success of Double Opt-In in the UK as a basis for the introduction of Double Opt-In (and by implication Repeat-Re-Opt-In) in the Irish market. However, ComReg has failed to note that the UK’s implementation of Double Opt-In relates specifically to services that cost more than STG€4.50 per week and NOT to subscription services that cost less. Furthermore, PhonepayPlus in their recent consultations have not proposed to change this threshold relating to Double Opt-In and as such suggest that they are happy with the measure in its current form.</p>	

ComReg, on this basis, are NOT comparing like with like when considering the positive impact on consumers or indeed the negative impact on industry when they compare the UK implementation of Double Opt-In with the proposed measure for the Irish market.

The level of potential harm and the possibility of the collapse of the industry as a result of the measure being proposed should have, if Comreg had followed it's own internal processes, led to at least a condensed RIA being conducted. This type of limited analysis would have been the least expected level of analysis that Comreg ought to have undertaken, and failed to.

Impact Assesment:

The impact on the industry resulting from this proposed measure is devastating.

The following are the key areas of impact:

- Requirement to re-design, re-develop and re-optmise products to implement the required changes;
- Significantly reduced revenues as a result of increased cost of acquiring customers;
- Significant resource requirement to optimise product and sales processes in order to re-build any possible revenues given the significant usability change for the consumer from single to double opt-in;
- Industry Participant will incur the opportunity cost that the additional software development and marketing activity will inflict as a result of the re-designing, implementing and optimising of all the relevant products and services to comply with the Repeat-Re-Opt-In requirements, especially in so far as product innovation and market development activities.

Cost of Redevelopment:

Financial Burden on Industry

For the entire Industry to incorporate the proposed measures in relation to repeat-re-opt-in involves the redevelopment of hundred of unique services. The software for each service has been written and developed over a period of several years and has been optimised from a sales perspective on the basis of numerous years of experience within the existing regulatory framework. Therefore these applications cannot simply be modified to incorporate the required changes. As a result of the significant nature of these changes in terms of impact on our ability to recruit and retain customers these services will need to be re-designed, re-engineered, developed, tested and optimised. This is a significant undertaking for the Indsutry and one that may lead to its collapse.

Industry Participants have estimated, based on a three month development cycle followed by a similar optimisation cycle to fully and successfully incorporate the new regulatory measures into all the products on the market, an accurate, but approximate cost of each update project to be circa €231,000 and for 100 affected products across the industry, a total cost is estimated at circa €23,000,000.

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Impact of Proposed Measures on Revenues

To estimate the probable impact of Double Opt-In and Recurring Opt-In ((i.e. for expenditure messages) on Industry, Phonepaid commissioned KPMG to undertake an independent analysis, using a member of the Association (Modeva) as the test subject, to get an understanding of the impact of the proposed regulations, comparing the effects of the new proposed measures with a control sample based on the existing regulation.

The trial was conducted on the following basis:

- Modeva promoted a subscription service to consumers on TV during a prime time show in line with

the existing regulations over two periods of time. The first a control whereby the current regulations in relation to subscription were applied for customers subscribing, the second where consumers were required to Double-Opt In in order to join the service.

- On two separate occasions Modeva sent out '€20 spend reminders' to its PrizeClub customers as appropriate. The first occasion based on the existing regulations, the second based on the proposed 'Recurring Opt-In' measure whereby the customer must respond with a keyword to maintain their subscription.
- Modeva compiled the responses from the trials above and determined the impact on the numbers of consumers subscribing to the service and the number of customers being retained in the service as a result of the introduction of the proposed measures suggested by ComReg.
- The results are presented in the KPMG study, as summarised below, by showing the impact to a hypothetical subscription service on the basis of the results from our trials.

Demonstrating the impact of the measures using live test data (source: KPMG report)	Existing Process	Proposed Process
Assuming 100 Consumers send a subscription request to a service provider for a service that costs €20 per month	100	100
% of Consumers who successfully completed their subscription within one hour of making the request. (Source: KPMG Report)	68%	2%
% of Consumers who remained subscribed to the service. (Source : KPMG Report)	93%	0%
Month 1 - Revenue	€ 1,360.00	€ 40.00
Month 2 - Revenue	€ 1,264.80	€ -
Month 3 - Revenue	€ 1,176.26	€ -
Month 4 - Revenue	€ 1,093.93	€ -
Month 5 - Revenue	€ 1,017.35	€ -
Month 6 - Revenue	€ 946.14	€ -
Total Revenue after 6 months	€ 6,858.48	€ 40.00
Average revenue per customer	€ 68.58	€ 0.40
% Decrease in average revenue per customer	99.42%	

The trials outlined above were independently verified and reported on by KPMG.

The detailed analysis of the study, is attached, and demonstrates that the PRS Industry in Ireland will be effectively wiped out within one month of the imposition of the draft Code measures.

Q14. 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 do not agree with Comreg's proposals in this question for the following reasons:

In the interest of ensuring the consumer enjoys a good experience when interacting with PRS Phonepaid is of the view that subscription services should not store up messages for delivery for an unreasonable length of time.

However, this must be balanced with the reasonable expectation of the provider to deliver a service that the consumer has signed up to receive and to charge accordingly.

Phonepaid agrees with ComReg that "failed messages" should not be charged for.

On the basis of the above Phonepaid believes that Service Providers should be permitted to attempt to deliver services to a subscribed consumer once per day for each day of the billing period.

Once the next billing period has commenced the Service Provider may not attempt to deliver content relating to the previous billing period.

This measure would ensure that Service Providers have a reasonable opportunity to deliver services and that the consumer will be protected from being flooded with messages where their phone is out of service/credit for a period of time.

As such, we disagree with Comregs proposal and ask that they would consider our proposal in the alternative.

Q15. 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 do not agree with Comreg's proposal.

Phonepaid is of the view that unfortunately the issues and impacts arising from this measure are complex. We believe we understand the issues ComReg are trying to address but have concerns, particularly in an aggregation environment as to how this can be technically implemented.

Given that typically an aggregator has no access to the subscription databases of its down-stream Service Providers it would be significantly challenging to implement a system allowing the aggregator to make the necessary decisions as to have to manage incoming STOP messages for its multiple Service Providers.

We also note that this measure could easily lead to a scenario best described by example:

Take a consumer who is subscribed to a charity service, donating €2 each week to their chosen charity, and a subscription dating service on the same short-code. The consumer, having met someone on the dating platform, decides to STOP from the service. Where the consumer fails to correctly navigate the message flow to ensure they only STOP from the dating service then the consumer will end up unsubscribed from both services. In this case the consumer is harmed as they have been unsubscribed from a service they don't wish to be unsubscribed from and the charity has lost a donator without having done anything wrong, thereby impacting an 'innocent' 3rd party.

Finally, we note that in considering this issue ComReg should consider the cost of shortcodes and the current Network Operator discounting schemes which promote the use of multiple services (to increase traffic and thus discounts) on a single shortcode.

We would ask that Comreg would defer further consideration of this matter pending further consultation, which we believe would facilitate the development of suitable alternative technical measures that would impact less disproportionately on Aggregators and End-Users.

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

We do not agree with Comreg's proposals in this question for the following reasons:

Phonepaid strongly believes competition services should be permitted on a subscription basis and is of the view that ComReg have no basis for suggesting the banning of subscription competition services.

In section 2.10.1 of the Consultation document ComReg outline their basis for proposing to ban a specific service type i.e. subscription competitions services. The basis presented in the Consultation document is summarised as follows:

- That subscription competition services raise a significant number of complaints from end-users;
- That while many end-users are happy to enter competitions which carry a premium rate charge, many end-users are unaware that they are subscribed to a service in which they incur a recurring charge;
- That end-users who choose not to interact with the service derive no benefit from the service;
- That end-users who DO choose to interact with the service and enter a competition in response to a subscription message are required to pay an additional charge in respect of entering the competition;
- That end-users who are automatically entered into a competition as a result of subscribing to a service would be participating in a lottery rather than a competition.

Phonepaid believes that there are absolutely no grounds based on the information in the Consultation, summarised above, for such a drastic proposed measure as banning a particular service type. Indeed Phonepaid have previously conducted market research in this area highlighting competitions as among the most popular type of service that consumers wish to partake in.

ComReg has provided no details relating to the 'significant' number of complaints from end-users and as such this statement alone cannot form the basis for the proposed banning of subscription competition services. So on this basis the proposal is completely disproportionate.

We agree that all consumers should be fully informed of the terms of a service prior to incurring any charges and we have already made our suggestions in relation to this point in the section above relating to the promotion of PRS. However, the point raised here by ComReg as a basis for banning subscription competition services is really an issue of pricing and terms transparency which is already being addressed in relation to the promotion of services and the required regulatory information which must be provided to consumers. As such this point cannot form the basis for banning subscription competition services as it will be addressed in other sections of the Code of Practice.

End-users that don't interact with a service will, of course, derive no benefit from the service. We fail to see the basis for banning a service type in this point. Our intention is that fully informed consumers subscribe to services and interact with them, thus depriving them of the benefits that they originally signed up to the service to receive. However, no service provider, of any service in any industry, can force their customer to "derive benefit" from a service that the consumer chooses not to.

ComReg also assert that end-users who do interact with their subscription by choosing to enter a competition as part of the subscription are then subjected to an additional charge for that entry. Phonepaid, as one of Ireland's leading providers of premium rate competition services, can categorically state that this point is factually incorrect. Any customer of ours who correctly answers a question in response to a subscription message is entered into the relevant competition at no extra charge. We would suggest that if ComReg are aware of a Service Provider in the market double-charging consumers for their subscription that ComReg would take enforcement action against that Service Provider. Again, this factually incorrect statement cannot form the basis for proposing to ban a service type.

Finally, ComReg have stated their concern that end-users who are automatically entered into a competition without completing a skill-test as a result of subscribing to a competition service would be participating in a lottery rather than a competition. Phonepaid agrees with this observation but is unaware of any competition service in the market that operates in this manner and does not understand how this forms the basis for proposing to ban subscription competition services, in so far as it is not Comreg's purvue to prosecute under other legislation than which it is itself based on.

Q18. 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.

Phonepaid does not agree with many of the provisions referred to in the draft Code.

Our reasons are highlighted previously in this document specifically in those sections:

- Legal Basis
- Basis for the Measures Proposed
- Proportionality/Transparency
- Flawed Statistical Analysis
- Consideration of Previous Code of Practice Consultation Response

More specifically:

Unsubscribing from Services

Phonepaid fully agrees with providing a simple and clear method for subscribers to unsubscribe from services by texting 'STOP' to the appropriate short-code.

However, a significant difficulty arises for a Service Provider when promoting a service to a customer whereafter, should that customer agree with the service terms and conditions, the customer subscribes to the service and soft opts-in for marketing. In this case, and as per section 6.23 of the draft Code of Practice, the Service Provider the promotion must include details for the customer on how to unsubscribe from the service and opt-out of future marketing messages by texting STOP to the shortcode contained in the messages sent as part of the service.

There are three distinct options for the customer:

1. Unsubscribe from the service or;
2. Opt-out of marketing messages or;
3. Unsubscribe from the service AND opt-out of marketing messages

This is impossible to achieve in a consumer friendly and reasonable way using only one keyword (STOP) and one shortcode. It is analogous to offering somebody three options (e.g. tea, coffee or water) and only allowing them to respond "Yes".

Phonepaid requests that ComReg review these provisions and consider the use of specific keywords in relation to unsubscribing from a service and opting out of marketing messages. We believe, in the same way that the consumer is adopting the 'STOP' concept, they could easily adopt a concept whereby texting 'OUT' would always opt them out of future marketing messages. We firmly believe that this will lead ultimately to a better consumer experience in relation to PRS services.

Section 6.44 of the draft CoP

Phonepaid questions the requirement included here for removing post-competition publicity from circulation within six months of the award of a prize. This measure has been proposed with no supporting basis and is disproportionate when considered against the advertising benefit that can be achieved with this publicity. Where a Service Provider makes a significant investment in a prize (e.g. a car) they should be entitled to extract the publicity benefit of that investment.

However, Phonepaid acknowledges that there is a risk that an unscrupulous provider may attempt mislead consumers by suggesting a prize was won more recently or more frequently than is the case in reality. Phonepaid believes that a more proportionate approach to this issue is to not limit the time within which this publicity may be in circulation (subject to the agreement of the individual) but require Service Providers using post-competition publicity to include the date and year that the prize was won.

Q19. Do you agree with the provisions in respect of Customer Service? If not, please provide reasons to support your view.

We fully support this provision.

We would also propose that Comreg would engage in an Industry Working Group discussion to propose a mandatory Industry Complaint Handling Process.

Q20. 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 do not agree with Comreg's proposals in this question for the following reasons:

Phonepaid does not believe that such a requirement should be entered into the new Code of Practice.

Given that in most cases there are revenue share or other contractual agreements between all the parties in the value chain, Phonepaid is of the view that mandating the requirement for any individual member of the value chain to pay out a refund that is greater than the revenue they have received is equivalent, in our opinion, to ComReg imposing a fine on the Service Provider to the value of the difference.

Phonepaid believe that the effect of requiring a service provider to pay more than they received, is to impose a fine.

Comreg has no legal basis to levy fines directly itself.

On this basis we recommend that ComReg do not enter requirement into a mandatory Code of Practice.

Q21. 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.

Phonepaid does not agree with this proposal and is of the view that this issue needs to be dealt with very carefully and needs to be further investigated further prior to implementation.

We see that there are significant risks around entering such a measure into the Code of Practice as follows:

- As it is currently drafted, this measure would lead to scenarios whereby subjective decisions in relation to breaches of the Code of Practice would result in refunds being required to be paid to all customers of a service. In addition, we question how ComReg will be able to identify the impact on customers in relation to a subjective interpretation of the Code of Practice and thus require a refund to all customers;
- Such a measure may lead to discriminatory action. ComReg have not outlined any measures in relation to this measure to ensure a non-discriminatory approach.

Again, our concern here is the potentially subjective nature of a decision re. a breach of the Code of Practice.

In any event Comreg have not been given the power to fine, and the exercise of this scenario, must be limited to those revenue which the company concerned can refund, as opposed to the monies that the end user was levied.

Notwithstanding the risks outlined above Phonepaid do, however, see circumstances where such an approach would be appropriate. For example, a technical anomaly in a Service Providers system accidentally charges all subscribers in a database a €2 charge. In such a clear-cut circumstance a refund to all affected customers would be appropriate.

Any such measure in this area will require very clear-cut rules to ensure objectivity and non-discrimination.

Q22. What do you consider to be an appropriate means for end-users to receive refunds?

Q23. 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.

Refunds, depending on the circumstances, should be paid in the simplest way for the consumer and Service Provider alike. We are of the view that a range of methods of payment should be provided for as the circumstance and scale of a refund may require a different payment method. The most important point being that the customer receives their refund in a reasonable timeframe.

Q24. 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?

Phonepaid do not 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 for the following reasons:

- No supporting information has been provided in relation to the scale of the issue that this measure is attempting to address;
- The proposal interferes with the negotiated commercial agreements between Service Providers and Network Operators;
- The proposal will have significant impact on Service Providers working capital
- .

In its response to ComReg's previous consultation (ComReg 10/27) IPPSA proposed the concept of a Service Provider Bond which Phonepaid believe may be a more proportionate measure if there is a significant risk of default by a party responsible for issuing refunds. This bond would be required to be paid or guaranteed by Service Providers as part of the licensing process and would be available in the event of a default by a Service Provider.

Q25. In the event that a non-compliant PRS Provider defaults on a requirement to provide refunds, who should be responsible for refunding end-users?

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

We do not agree with Comreg's proposals in these questions for the following reasons:

Phonepaid is of the view that only a Service Provider at fault should be responsible for refunding end-users where all other parties in the value chain have exercised due care and diligence when dealing with the party at fault. We believe another Service Provider in the value chain should only have to assume some level of responsibility for refunding end-users where they can be shown to be complicit in the events resulting in the requirement to issue refunds.

In any event Comreg have not been given the power to fine, and the exercise of this scenario, must be limited to those revenue which the company concerned can refund, as opposed to the monies that the end user was levied.

Additionally, an Intermediate Service Provider should be entitled to benefit from the relief available in the Ecommerce Directive vis-a-vis 'Mere Conduit' in applicable cases.

Referring to our response to Q24 Phonepaid is of the view that a bond mechanism could be established as part of the licensing process to provide a fund to manage refunds in the case of a default by a Service Provider responsible for refunding end-users.

Q27. How would compliant PRS Providers recoup the cost of administering refunds on behalf of a non-compliant PRS Provider?

Referring to Q24, 25 and 26 above, Phonepaid is of the view that compliant PRS Providers should not have to bear the burden of issuing refunds on behalf of a non-compliant Service Provider and hence, should not need to recoup any costs in this regard.

Q32. Do you consider that a designated shortcode range should be made available for the purpose of fundraising for charitable organisations through mobile PRS?

Yes

Q33. If so, do you have a view on what range should be used?

No

Q34. 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.

The use of the short codes should be restricted to Charities registered with a CHY number, and Political Parties registered with the register of Political Parties.

Appendices

- Appendix 1 Figures compiled by KPMG regarding industry revenues and impact
- Appendix 2 Figures compiled by KPMG regarding Double-Opt-In and Repeat-Opt-In Impact Analysis
- Appendix 3 Survey on consumer usage of PRS services - Amarach Research
- Appendix 4 Previous Consultation Response of Phonepaid addressing Code of Practice Issues



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Irish Phone Paid Services Association
Attention: Mr. Tadhg O'Toole
168 Walkinstown Road
Dublin 12
Ireland

14 May 2010

Dear Sir/Madam,

In accordance with the terms of our engagement letter dated 20 April 2010 we attach selected aggregated industry metrics based on submissions from certain industry participants. We have used the template provided to participants.

The results set out indicate that PRSMS MT Subscriptions make up the vast bulk (approximately 99%) of the services operated by members while MO-Billed revenues account for only 1.2% of revenues.

The average expected impact of using MO instead of MT was an 88% reduction in revenues, while of introduction on double opt-in was anticipated to result in a reduction of 60%.

We draw your attention to the limitations of scope set out in our engagement letter. In particular we highlight that our work was limited to compilation procedures and that no verification work has been undertaken. Accordingly, our work does not constitute an audit or review under generally accepted audited standards.

Yours faithfully,

KPMG

Terence O'Rourke • Marie Armstrong • Darina Barrett • Alan Boyne • John Bradley • Gary Britton • Keith Browne • Sharon Burke
Niall Campbell • Patricia Carroll • Brian Clavin • Jim Clery • Colm Clifford • Kevin Cohen • Mark Collins • Ivor Conlon • Michele Connolly
Adrian Crawford • Hubert Crehan • Pat Cullinan • Brian Daly • Jon D'Arcy • Michael Daughton • Paul Dobey • Eamonn Donaghy
Robert Dowley • Michael Farrell • Michael Flaherty • Gerard Flood • Caroline Flynn • Michael Gaffney • Andrew Gallagher • Laura Gallagher
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Sean Mooney • Cliona Mullen • Shaun Murphy • Arthur O'Brien • Colin O'Brien • Conor O'Brien • Pat O'Brien • Barrie O'Connell
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Eoghan Quigley • Vincent Reilly • Colm Rogers • Eamonn Russell • Anna Scally • Seamus Taaffe • Paul Toner • Eric Wallace
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Offices: Dublin, Belfast, Cork and Galway

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KPMG is authorised by The Institute of Chartered Accountants in Ireland to carry on Investment Business.

Revenues 2009	Retail Value €	
Retail value of Premium Rate SMS Revenues	36,212,344	
Retail value of Premium Rate SMS MO Revenues	431,758	
Retail value of Premium Rate SMS MT Subscription Revenues	34,999,468	
Retail value of PRSMS Subscription entertainment-type Services (Ringtones, Competitions, Games, Chat/Dating, etc.)	28,891,371	*
Retail value of PRSMS Subscription Information-type services (Goal Alerts, Weather Alerts, etc)	0	*
Impact of suggested measures	%	
% of PRSMS revenue you would anticipate loosing if forced to use MO as an alternative to subscription	88%	*
% of PRSMS revenue you would anticipate loosing if forced to use MO as an alternative to MT	88%	*
% of PRSMS revenue you would anticipate loosing if forced to use double opt-in	60%	*
* Incomplete submission		



TRANSACTION SERVICES

Irish Phone Paid Services Association

Agreed upon procedures

31 January 2011

ADVISORY



KPMG Transaction Services
Russell Court Tel: +353 1 4101000
St. Stephen's Green Fax: +353 1 4101122
Dublin 2

Attention: Mr Tadhg O'Toole
Chairman
Irish Phone Paid Services Association
168 Walkinstown Road
Dublin 12
Ireland

31 January 2011

Dear Sirs

Project Phone

In accordance with our engagement letter and its attachments dated 26 January 2011 (our Engagement Letter'), we enclose our final report. As stated in our Engagement Letter, you have agreed that this final written report supersedes all previous oral, draft or interim advice, reports and presentations, and that no reliance will be placed by you on any such oral, draft or interim advice, reports or presentations other than at your own risk. The scope of work set out in our Engagement Letter is attached as Appendix 1 to the report. This details the agreed scope of our enquiries, directed at those issues which you determined to be critical. The Important notice on page 2 should be read in conjunction with this letter.

Our report is for the benefit and information of the addressees only and should not be copied, referred to or disclosed, in whole or in part, without our prior written consent, except as specifically permitted in our Engagement Letter. The scope of work for this report included as Appendix 1 has been agreed by the addressees and to the fullest extent permitted by law we will not accept responsibility or liability to any other party (including the addressees' legal and other professional advisers) in respect of our work or the report.

Yours faithfully



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is the Irish member firm of KPMG International,
a Swiss cooperative.

Important notice

Our work commenced on 27 January 2011 and our fieldwork was completed on 28 January 2011. We have not undertaken to update our report for events or circumstances arising after that date. Our principal sources of information were as follows:

- Log files containing details of all SMS messages received by Modeva Interactive in relation to new subscriptions to the 'PrizeClub' competition on 14 January 2011 and 27 January 2011 between 20.30 and 21.30 on the dates mentioned above
- Log files containing details of all SMS messages received by Modeva Interactive in response to expenditure update messages relating to the 'PrizeClub' competition between 12.00pm on 25 January 2011 and 12.00pm on 26 January 2011 and 12.00pm on 27 January 2011 and 12.00pm on 28 January 2011
- The results of a data aggregation and variance analysis, conducted by Modeva Interactive staff on behalf of Irish Phone Paid Services Association management, between the number of successful subscriptions for new subscriptions to the PrizeClub service on the above dates
- The results of a variance analysis, conducted by Modeva Interactive staff on behalf of Irish Phone Paid Services Association management, between the number of successfully continued subscriptions to the PrizeClub service on the above dates
- Discussions with Tadhg O'Toole (Chairman, Irish Phone Paid Services Association) and Rachel Nolan (Head of Development - Modeva)

We do not accept responsibility for such information which remains the responsibility of management. We have not sought to establish the reliability, integrity, completeness or accuracy of the sources by reference to other evidence. This engagement is not an assurance engagement conducted in accordance with any generally accepted standards and consequently no assurance opinion is expressed. The procedures we have undertaken were based solely on the data generated on the dates referred to above by Modeva (on behalf of Irish Phone Services Association).

Attention is drawn to the limitations in the scope of our work set out therein. In particular, we did not review, verify or validate the completeness of the 'log files' provided to us by Modeva. In addition, we provide no opinion on the reliability, integrity, accuracy or completeness of the data provided to us.

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1. Scope of work – agreed upon procedures	9
2. Irish Phone Paid Services Association - Background	10

Headlines

Irish Phone Paid Services Association - background	<ul style="list-style-type: none"> • The Irish Phone Paid Services Association ('IPPSA') is an umbrella organisation for a number of companies in the Premium Rate Services ('PRS') industry in Ireland • Founded in June 2008, IPPSA has 11 members. Of these, Zamano plc accounts for three of the entities and Modeva also has links to three other member companies
ComReg draft Code of Practice on Premium Rate Services	<ul style="list-style-type: none"> • The Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act, 2010 led to ComReg assuming responsibility for the regulation of PRS. This responsibility was previously vested in RegTel which issued the current code of practice governing the provision of PRS • ComReg issued a Draft Code of Practice ('Draft') and Consultation Paper on 1 December 2010. Responses were sought by 21 January 2011, which has been extended to 31 January 2011 • Prior to submitting a response to the Consultation Paper, IPPSA has undertaken a series of sample tests in order to estimate the potential scale of the impact of the proposed Code of Practice on revenues in the industry. The sample tests have been performed on the software platform of Modeva, an IPPSA member company
Sample testing undertaken by Irish Phone Paid Services Association	<ul style="list-style-type: none"> • The sample testing performed was based on Modeva's 'PrizeClub' product. Modeva is significant participant in the Irish PRS market. The 'PrizeClub' product generates a significant proportion of the company's annual revenues and IPPSA management consider it a reasonable product on which to judge consumer responses to the proposed regulations • Testing performed comprised two elements: <ul style="list-style-type: none"> – Revenue Sample Test 1 – New subscriptions ('ST1') – Revenue Sample Test 2 – Subscription continuation ('ST2') • A series of sample dates in January 2011 were selected for testing by Modeva. The existing procedures in relation to the operation of the competition were followed on 14 January (ST1) and 25/26 January (ST2), with the procedures adjusted to reflect the proposed regulations for the sample on 27 January (ST1) and 27/28 January (ST2). A variance analysis was then undertaken by IPPSA management to aggregate the results and quantify the difference in the subscription completion and continuation rates using the two different sets of procedures
Findings of sample testing undertaken by Irish Phone Paid Services Association	<ul style="list-style-type: none"> • Revenue Sample Test 1: IPPSA noted that the proportion of new subscribers who successfully completed their subscription fell from 68% of those who sent an initial subscription message under the existing process on 14 January 2011 to 2% of those who sent an initial subscription message under the proposed new process on 27 January 2011 (in absolute terms) • Revenue Sample Test 2: IPPSA noted that the number of subscriptions successfully continued fell from 93% of those customers who received a subscription reminder message under the existing process on the 25/26 January 2011 to 0% of those customers who received a subscription expenditure update message under the proposed new process on 27/28 January 2011 (in absolute terms)
Agreed upon procedures undertaken by KPMG	<ul style="list-style-type: none"> • KPMG, in line with the terms of the engagement, reconciled the aggregation of the results of the two tests to the log files provided by Modeva relating to the dates included in the sample. • Attention is drawn to the limitations in the scope of our work set out in slide 2. In particular, please note that KPMG did not review, verify or validate the completeness of the 'log files' provided to us by Modeva. In addition, we have provided no opinion on the reliability, integrity, accuracy or completeness of the data provided. No work has been done to interrogate the veracity of the underlying data source/system/technology

Description

Irish Phone Paid Services Association carried out an Impact Analysis of the effect of the proposed introduction of certain aspects of the draft Code of Practice

Test 1 tested the change in the proportion of new subscribers who successfully completed their subscription to the service when the proposed new procedures were introduced

The results of this analysis were aggregated and showed that the number of successfully completed subscriptions fell from 68% of initial subscribers on 14 January 2011 to 2% of initial subscribers for the selected sample on 27 January 2011 (in absolute terms)

Sample selected for IPPSA testing¹

- Several sections of the draft Code of Practice impose additional obligations on service providers. IPPSA consider that two of these, sections 6.14 and 6.6, will have a significant impact on consumer behaviour and negative consequences on the revenue generating ability of the PRS industry in Ireland
- Accordingly, IPPSA selected a popular PRS product, the 'PrizeClub' application operated by Modeva Interactive (a member of the association), to perform a trial run of the proposed new operating procedures
- The requirements of the sections of the Draft upon which the testing was performed has been summarised by IPPSA management, as follows:
- Section 6.14: the Draft requires that after a customer has requested to subscribe to a service that the service provider must send a "Subscription Request Message" as defined in Section 6.16 to their mobile handset requiring the consumer to again confirm their request to subscribe
- Section 6.6: the Draft requires that after a consumer has spent €20 on a particular subscription service (cumulatively), and after every €20 interval thereafter, that the service provider must send a "Subscription Expenditure Update Message" to the consumer. If the consumer does not respond to this message with the word "AGREE", the service provider must discontinue the subscription

Overview of Modeva operating system¹

- All text messages, both inbound and outbound, are recorded by Modeva in their 'SMPP' system. This system is a bespoke database based on MySQL software
- All relevant details are recorded and retained, including, but not limited to, the sender, recipient, time, direction (inbound/outbound), application to which the SMS related to and SMS content
- The testing referred to in this report involved the writing of specific queries which were run against the data contained in the SMPP system to identify and isolate both the 'control data' and the 'live data'

Testing performed - New Subscription Revenue Test (Test 1)¹

- The purpose of this test was to identify the number of consumers who successfully completed their subscription to the PrizeClub service on a particular date and time using Modeva's existing procedures (the 'Control data') and to compare this to the number of consumers who successfully completed their subscription to the PrizeClub service on a particular date and time using the new procedures as proposed in the Draft (the 'Live data')
- Efforts were made to make both the Control data and Live data as comparable as possible. Both one hour time slots ran from 20.30 to 21.30, on 14 January 2011 and 27 January 2011 respectively
- The above dates were chosen as they displayed similar characteristics. There was one television advertisement for PrizeClub shown on that day during the same programme (Coronation Street) on the same television station (TV3). On other dates, multiple advertisements had been run during the showing of Coronation Street or during other TV3 programmes that evening¹
- A database query was run by management to isolate the Control and Live data, which was generated from the records for 14 January 2011 and 27 January 2011 respectively. This was then interrogated to identify the total number of respondents, the number of respondents who agreed to the subscription conditions and the number of respondents who did not complete the subscription. KPMG witnessed the extraction of this data but did not verify its reliability, integrity, accuracy or completeness
- Modeva management then compared the number of successfully completed subscriptions using both the Control data (generated on 14 January 2011) and Live data (generated on 27 January 2011)

Results (Test 1)¹

- A reduction in the percentage of respondents who successfully completed their subscription of 67% (in absolute terms) of initial subscribers was noted between the sample tested on 14 January 2011 and 27 January 2011, based on the testing performed
- A more detailed analysis of the results is included in slide 8

¹ Source: Modeva management information, not verified by KPMG

Description (continued)

Irish Phone Paid Services Association carried out an Impact Analysis of the effect of the proposed introduction of certain aspects of the draft Code of Practice

Test 2 tested the change in the proportion of recipients of expenditure update messages who chose to continue their subscription to the service when the proposed new procedures were introduced

The results of this analysis were aggregated and showed that the number of successfully continued by those who received reminders fell from 93% on 25/26 January to 0% for the selected sample on 27/28 January (in absolute terms)

Testing performed – Subscription Continuation Revenue Test (Test 2) ¹

- The Draft proposes a change to the current method by which consumers are kept informed of their cumulative spend on a particular product. Under current guidelines, a customer receives an SMS every time their spend reaches €20 or a multiple thereof. This message also provides the consumer with the option to reply with the word “STOP”, which will mean that their subscription will be cancelled
- The Draft proposes that when a customer reaches €20 of cumulative spend, they must be sent an SMS which informs them of the amount spent but which also asks them to respond to the SMS by saying “AGREE”, should they wish to continue their subscription to the service. If they do not respond to the SMS, their subscription must automatically be cancelled by the service provider
- The purpose of this test was to identify the number of consumers who remain subscribed to the service after receiving the expenditure update message using Modeva’s existing procedures (the ‘Control data’) and to compare this to the number of consumers who remain successfully subscribed to the PrizeClub service after receiving the expenditure update message using the new procedures as proposed in the Draft (the ‘Live data’)
- Efforts were made to make both the Control data and Live data as comparable as possible. Both 24 hour time slots ran from 12.00 to 12.00 on 25/26 January 2011 and 27/28 January 2011 respectively
- The above dates were chosen as they ran concurrently, and the expenditure update messages are a regularly occurring feature which are not date specific
- A database query was run by management to isolate the Control and Live data, which was then interrogated to identify the total number of first time recipients of expenditure update messages, the number of recipients who agreed to continue their subscription and the number of recipients who did not agree to continue their subscription. KPMG witnessed the extraction of this data but did not verify its reliability, integrity, accuracy or completeness
- Modeva management then compared the number of successfully continued subscriptions using both the Control and Live data

Results (Test 2) ¹

- A reduction in the percentage of respondents who successfully continued their subscription of 93% (in absolute terms) of those who received expenditure update messages was noted, based on the testing performed
- A more detailed analysis of the results is included in slide 8

¹ Source: Modeva management information, not verified by KPMG

Key findings

Sample Test 1:
The proportion of consumers who successfully completed their subscription declined by 67% (in absolute terms) from the proportion noted on 14 January 2011 when the proposed procedures were applied on 27 January 2011

Sample Test 2:
The proportion of consumers who successfully continued their subscription declined by 93% (in absolute terms) from the proportion noted on 25/26 January 2011 when the proposed procedures were applied on 27/28 January 2011

Revenue Sample Test 1: New subscriptions		
	Existing process	Proposed process
	14 January 2011: 20.30-21.30	27 January 2011: 20.30-21.30
Number of consumers who sent a Subscription Request Message	236	131
Number of consumers who sent "AGREE" in response to the subscription confirmation message	n/a	4
Number of consumers who sent "STOP" in response to the subscription confirmation message within one hour of making the request	75	2
Number of consumers who successfully completed their subscription within one hour of making the request	161	2
% of consumers who successfully completed their subscription within one hour of making the request	68.2%	1.5%
% increase/ (decrease) in number of consumers who successfully completed their subscription within one hour of making the request (relative)		-97.8%
% increase/ (decrease) in number of consumers who successfully completed their subscription within one hour of making the request (absolute)		-66.7%

Source: *double-optin20110127.xlsx and DoubleOpt In 20110114.xlsm (both models provided by Modeva Interactive management)*

Revenue Sample Test 2: Subscription continuation		
	Existing process	Proposed process
	25/26 January 2011: 12.00-12.00	27/28 January 2011: 12.00-12.00
Number of consumers who were sent a Subscription Reminder Message	168	n/a
Number of consumers who were sent a Subscription Expenditure Update Message	n/a	99
Number of consumers who sent "STOP" in response to the Subscription Reminder Message within 12 hours	11	n/a
Number of consumers who sent "AGREE" in response to the Subscription Expenditure Update Message within 12 hours	n/a	0
Number of consumers who remained subscribed to the service 12 hours after receiving a Subscription Reminder Message/ Subscription Expenditure Update Message	157	0
% of consumers who remained subscribed to the service	93%	0%
% increase/ (decrease) in number of consumers who remained subscribed to the service (relative)		-100%
% increase/ (decrease) in number of consumers who remained subscribed to the service (absolute)		-93%

Source: *spendwarnings 20110125.xlsm and spendwarnings20110127.xlsx (both models provided by Modeva Interactive management)*

Scope of work – agreed upon procedures

We have discussed and agreed with you the scope of our work. The procedures we undertook, which was based solely on analysis of data generated on the selected dates, were limited to:

Procedure 1:- New subscription revenue sample test

- Obtain the “log file” for the first date selected by IPPSA (‘Sample 1’) which will contain all SMS messages received in respect of new subscriptions to the “Prize Club” competition operated by Modeva Interactive (‘Modeva’). The Prize Club will operate using its normal procedures on this date
- Reconcile IPPSA’s aggregation of the results of all respondents contained in Sample 1 to identify the proportion of consumers who successfully completed their subscription request in line with the processes currently operated by Modeva, and the proportion of customers which did not complete their subscription
- Obtain the “log file” for the second date selected by IPPSA (‘Sample 2’) which will contain all SMS messages received in respect of new subscriptions to the “Prize Club” competition operated by Modeva. The Prize Club will operate using procedures as defined in section 6.16 of ComReg’s draft Code of Practice on Premium Rate Services, on a trial basis, on this date
- Reconcile IPPSA’s aggregation of the results of all respondents contained in Sample 2 to identify the proportion of consumers who successfully completed their subscription request in line with the processes outlined in section 6.16 of ComReg’s draft Code of Practice on Premium Rate Services, and the proportion of customers which did not complete their subscription
- Reconcile any variances arising between the proportion of subscriptions completed between Sample 1 and Sample 2. For information purposes, any variances arising were quantified in both absolute and relative terms

Procedure 2:- Subscription continuation revenue test

- Obtain the “log file” for the third date selected by IPPSA (‘Sample 3’) which will contain all SMS messages received in response to the Subscription Reminder messages sent in respect of the “Prize Club” competition operated by Modeva Interactive (‘Modeva’). The Prize Club will operate using its normal procedures on this date
- Reconcile IPPSA’s aggregation of the results of all respondents contained in Sample 3 to identify the proportion of consumers who successfully continued their subscription in line with the processes currently operated by Modeva, and the proportion of customers which cancelled their subscription
- Obtain the “log file” for the fourth date selected by IPPSA (‘Sample 4’) which will contain all SMS messages received in response to the Subscription Reminder messages sent in respect of the “Prize Club” competition operated by Modeva Interactive (‘Modeva’). The Prize Club will operate using procedures as defined in section 6.20 of ComReg’s draft Code of Practice on Premium Rate Services, on a trial basis, on this date
- Reconcile IPPSA’s aggregation of the results of all respondents contained in Sample 4 to identify the proportion of consumers who successfully continued their subscription in line with the processes outlined in section 6.20 of ComReg’s draft Code of Practice on Premium Rate Services, and the proportion of customers which cancelled their subscription
- Reconcile any variances arising between the proportion of subscriptions cancelled between Sample 3 and Sample 4. For information purposes, any variances arising were quantified in both absolute and relative terms

Irish Phone Paid Services Association - Background

Irish Phone Paid Services Association is the trade association for companies operating in the Phone Paid services sector in Ireland

In December 2010, ComReg sought responses to a Consultation Paper issued on its draft Code of Practice on Premium Rate Services

Irish Phone Paid Services Association is compiling a submission to ComReg in response to this Consultation Paper

Overview

- The Irish Phone Paid Services Association ('IPPSA' or 'the association') is the trade association for companies operating in the premium phone paid services sector in Ireland
- IPPSA was founded in 2008 and has eleven members. It is chaired by Tadhg O'Toole, the founder and current Chairman of Modeva Interactive
- The association aims to create an environment of consumer trust and confidence to enable its members businesses to expand. The association liaises with regulators and other stakeholders to facilitate communication and engagement to ensure a coordinated industry approach to excellence in Interactive Services

Sector analysis

- The Phone Paid services market in Ireland has grown in size to estimated domestic earnings of €100 million in 2008¹
- From the most recently available data (2007), approximately two thirds of this was derived from Premium Rate Services ('PRS'). PRS refers to non standard SMS services, frequently competition, information or subscription services
- This represented an increase of over 200% since 2004, due to an increase in both the quantity of messages sent and received and their average value
- The other main services in the Phone Paid Services market are Interactive Voice Response ('IVR') services which is the blanket term for automated phone systems

Regulatory environment

- The Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act, 2010 ('the Act') led to ComReg assuming responsibility for the regulation of PRS. This responsibility was previously vested in RegTel which issued the current code of practice
- ComReg issued a Draft Code of Practice ('Draft') and Consultation Paper on 1 December 2010. Responses were sought by 21 January 2011, now extended to 31 January 2011

ComReg Premium Rate Services Code of Practice

- ComReg has issued the draft Code of Practice (the 'Draft') and related Consultation Paper ('CP') in order to give PRS providers, other interested parties and other regulatory bodies the opportunity to contribute to the development of the new Code of Practice. This consultation period was mandated by the Act
- Having reviewed the proposals, IPPSA view several elements as having negative consequences for the PRS industry, if the draft is approved

Proposed submission and role of KPMG

- In preparing its submission to ComReg on the Draft, IPPSA has identified two areas of the Draft which it considers likely to be negative to revenues earned by PRS providers
- To illustrate the potential impact of these two areas, IPPSA undertook 2 sample tests, using the software platform of one of its members, Modeva Interactive
- The purpose of the tests is to display the possible impact on revenues of the proposed changes to :
 - The system by which a new subscriber subscribes for a service (ST1)
 - The system by which an existing subscriber is informed periodically of his/her spend and chooses to continue their subscription (ST2)
- KPMG has agreed to perform certain agreed upon procedures, limited to the following:
 - Obtaining the log files for the selected dates for the two services to be tested
 - Reconcile the aggregation of the data prepared by IPPSA back to the log files for the relevant dates and time periods
 - Reconcile any variances arising between the proportion of subscriptions completed between Sample 1 and Sample 2 (for the 'New Subscription' test)
 - Reconcile any variances arising between the proportion of subscriptions continued between Sample 3 and Sample 4 (for the 'Subscription Continuation' test)

Source: ¹ www.phonepaid.org

Phone Paid Services - Omnibus

A Presentation Prepared For Phonepaid



April 2010

By



**NOG
S10-158**

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- **A. Background and Research Objectives**
- **B. Research Methodology**
- **C. Profile of Sample**
- **MAIN FINDINGS**

A. Background and Research Objectives

- **Phonepaid wish to understand the profile of users of certain phone paid services within the Irish market.**
- **The key objective of the research was to assess frequency of use (of all those who ever used) and profile these individuals versus normal population demographics.**
- **Due to the small number of questions being asked an omnibus study was the ideal approach.**

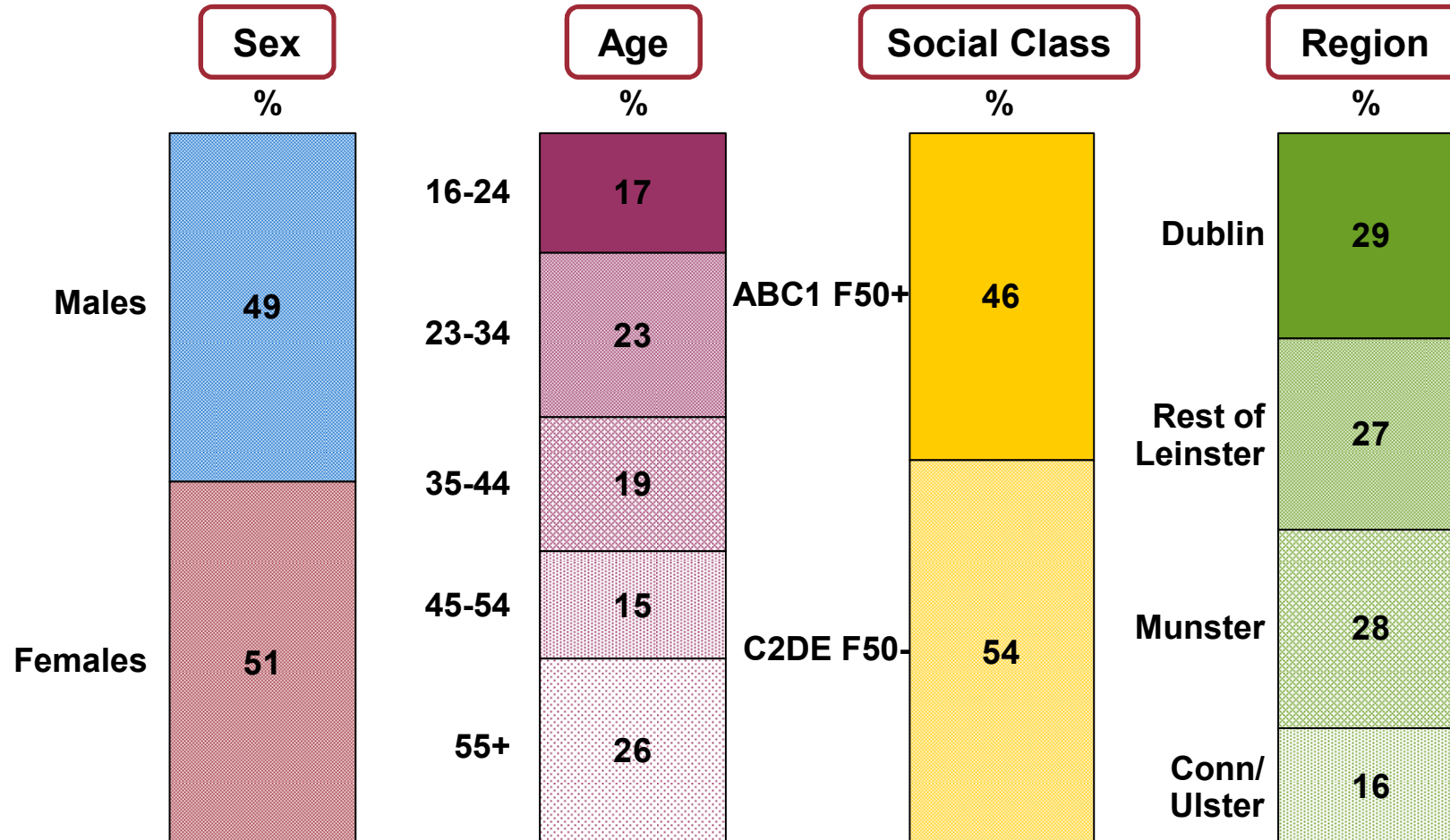
B. Research Methodology



- **A series of questions were placed on Amárach Research's on-line omnibus. The omnibus is a syndicated service whereby clients can include questions within the survey.**
- **The omnibus is a cost effective method of assessing results from a large sample of the population.**
- **On-line omnibus:**
 - **Quotas set on a representative basis of Irish adult population**
 - **Quotas set on gender, age, region and social classification.**
 - **850 interviews – robust sample (margin of error of +/- 3.4%).**
- **Interviewing was conducted between 13th – 20th April 2010.**

C. Profile of Sample

(Base: All Irish adults 16+ - 850)



Quotas were set to achieve a nationally representative sample, so as to ensure all data is reflective of the Irish population of adults aged 16+.

MAIN FINDINGS

Use of Phone Paid Services

(Base: Adults 16+ - 850)

	Monthly	Last 6 months %	Less often	Ever
Directory Enquiries	26	24	17	66
Competitions	25	13	10	49
Cheap International Call Services	21	9	10	40
Weather, News, Sport, Alerts	12	6	8	25
Gambling, Betting, Lotteries, Scratch Cards	11	2	3	17
Mobile Games	11	8	9	27
Flirt, Dating, Chat	8	1	4	13
Voting and other Forms of TV Participation	8	9	12	29
Ring Tones, Logo, Background, Wallpaper	5	7	9	22
Tarot, Horoscope and Psychic Services	5	3		10
Charity Donations	7	9	12	29

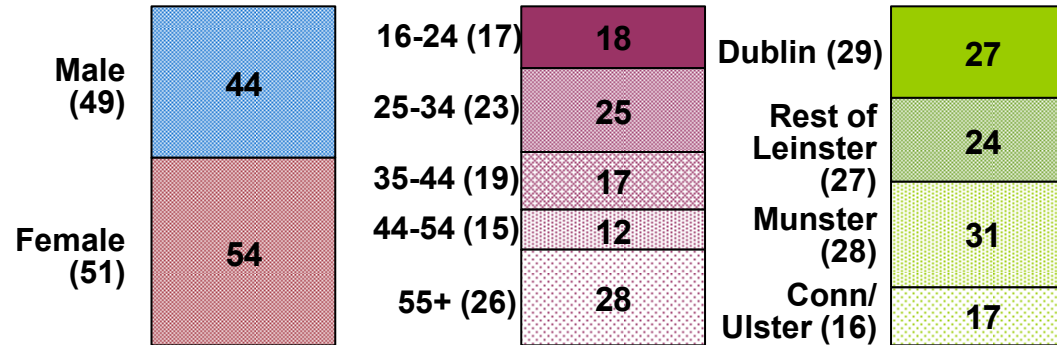
Directory Enquiries is the most commonly used phone paid service, competitions are also popular and cheap international services.

(Q.1)

Profile of Users

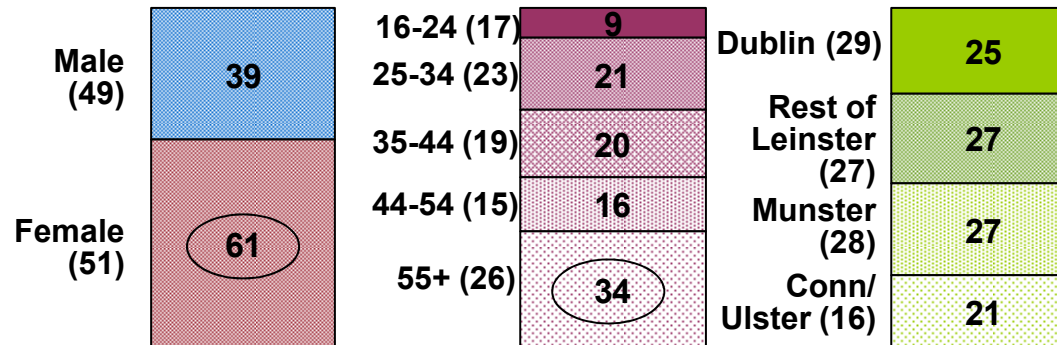
(Base: All who use service monthly)

Directory Enquiries
(26%)
[220]



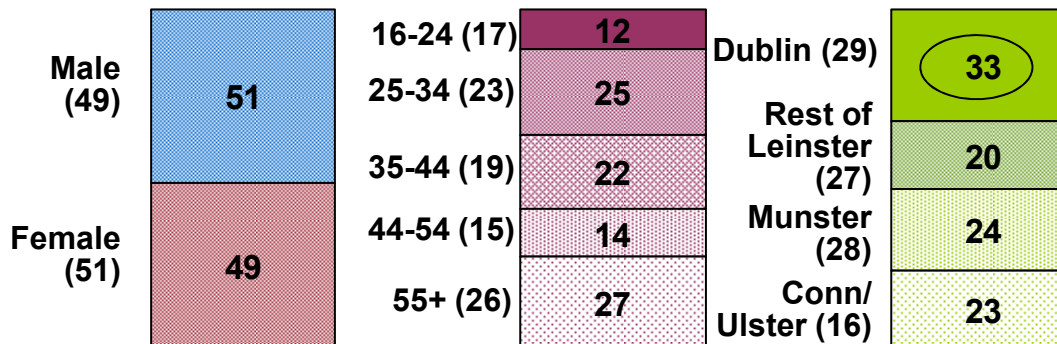
Wide spread appeal across demographics.

Competitors
(25%)
[215]



Female and older bias evident.

Cheap International Call service (21%)
[177]



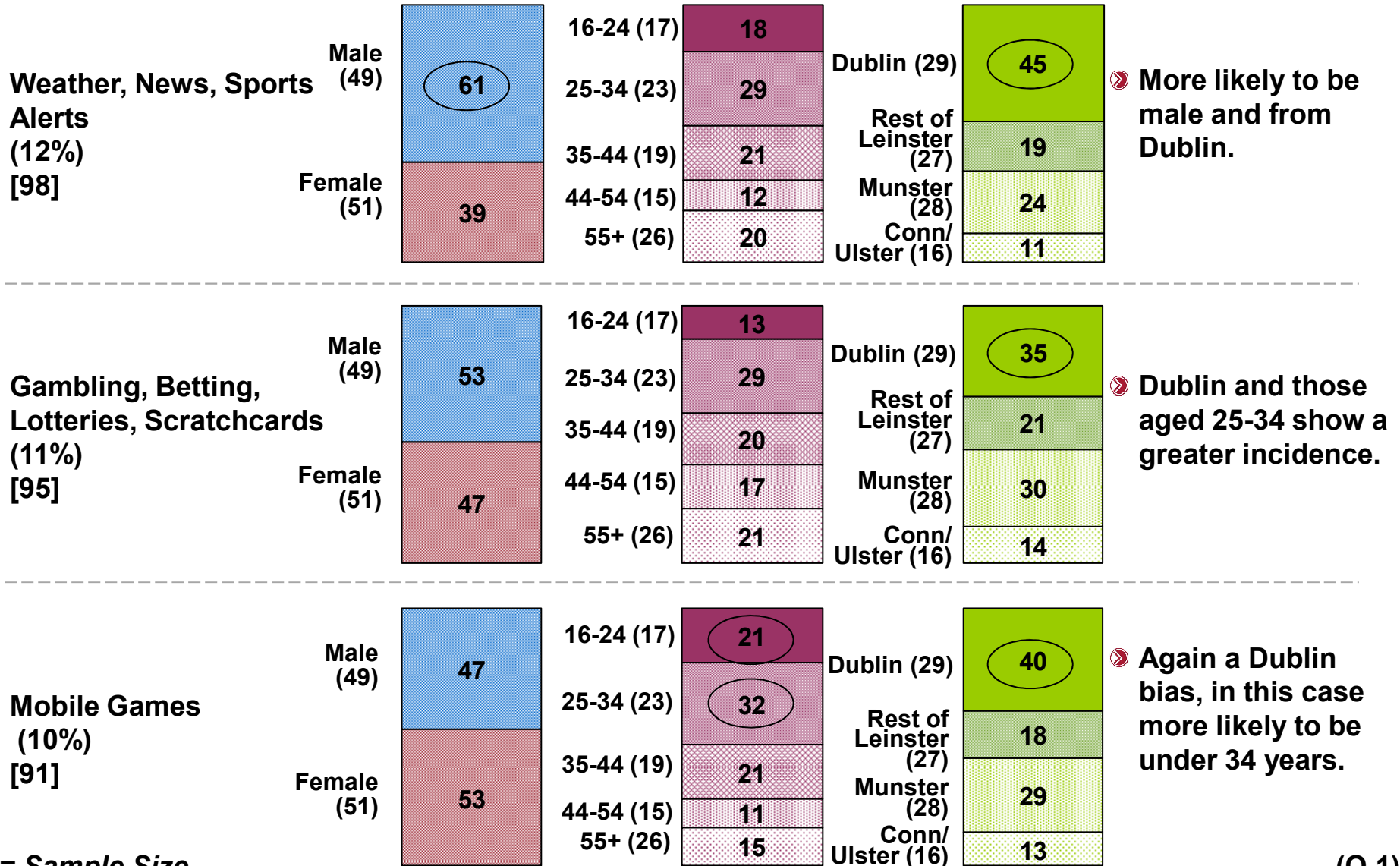
Dublin's bias evident.

[] = Sample Size

(Q.1)

Profile of Users

(Base: All who use service monthly)



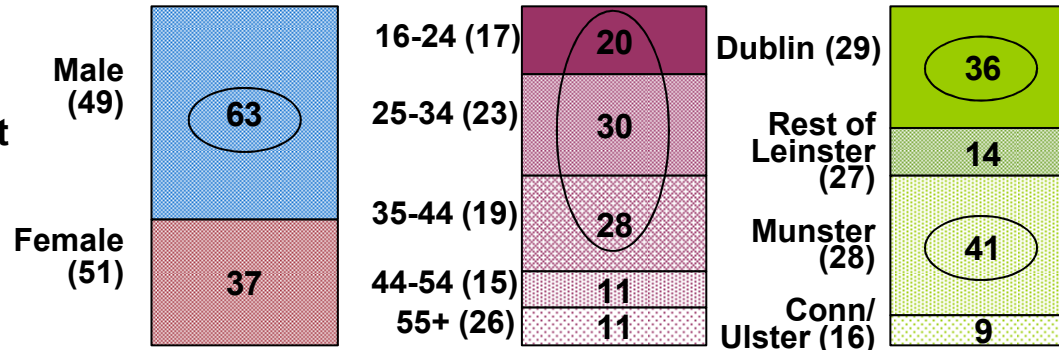
[] = Sample Size

(Q.1)

Profile of Users

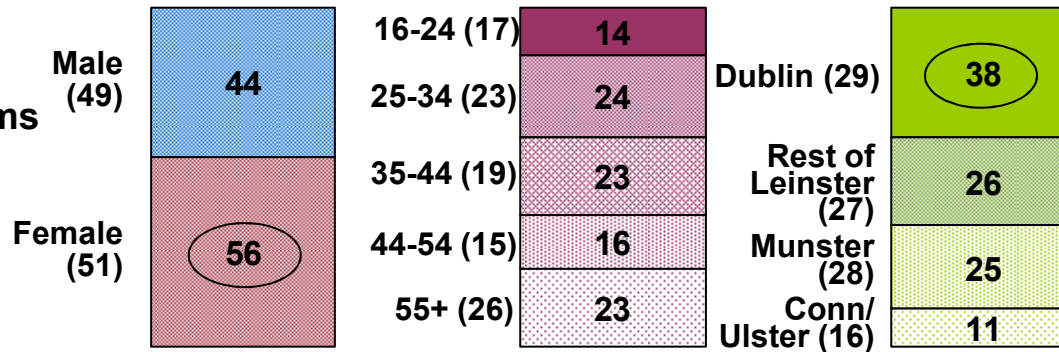
(Base: All who use service monthly)

Flirt, Dating and Chat
(8%)
[70]



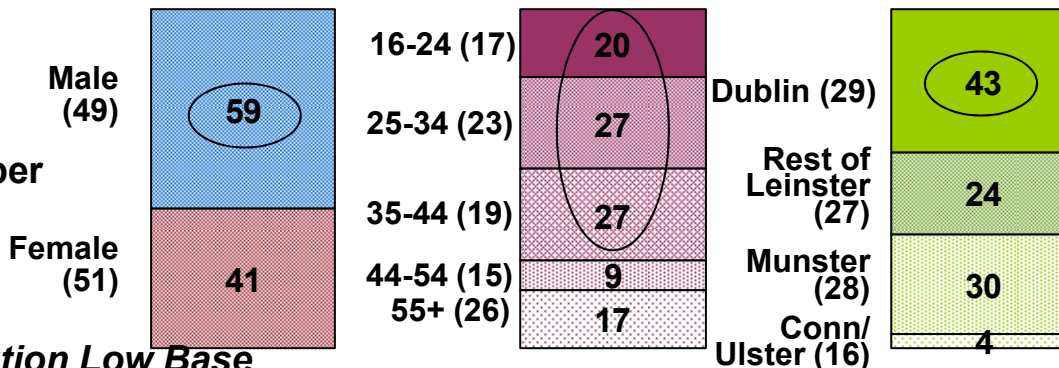
➤ Munster, Dublin – regional bias. More male and those under 44 years.

Voting and other forms of TV participation
(8%)
[70]



➤ More likely to be female and from Dublin.

Ringtone, logo, Background, wallpaper
(6%)
[46]*



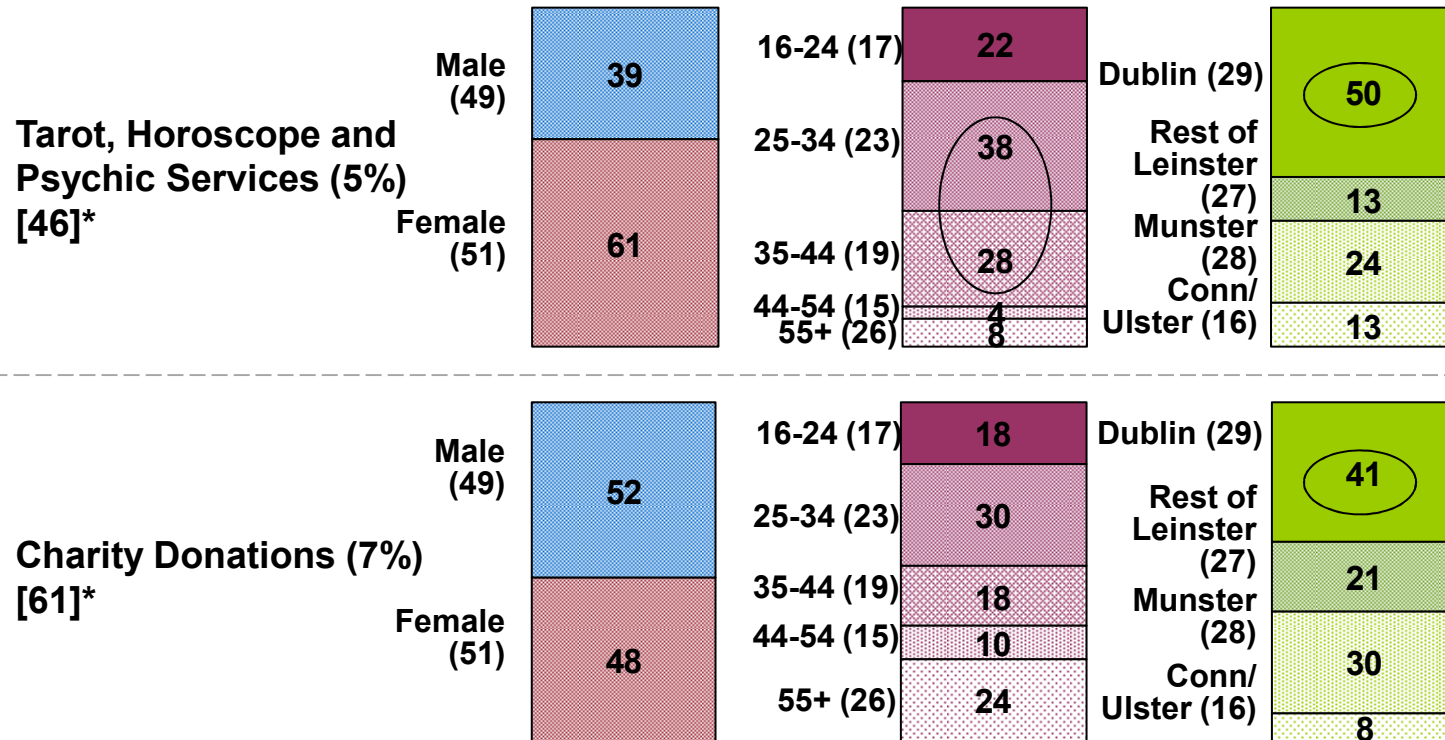
➤ Younger, male and Dublin bias.

[] = Sample Size *Caution Low Base

(Q.1)

Profile of Users

(Base: All who use service monthly)



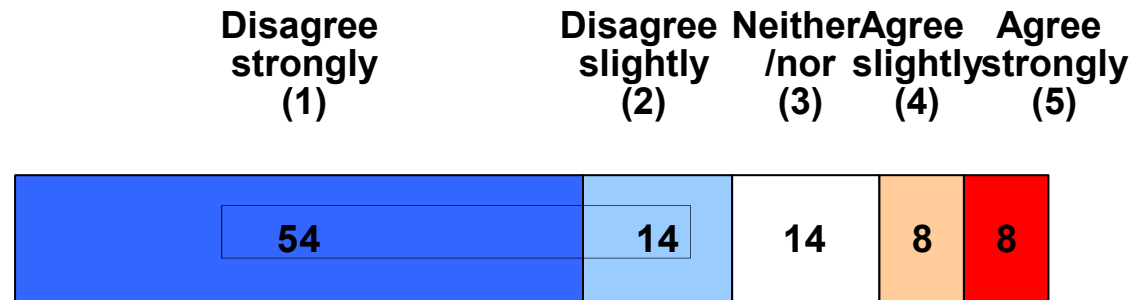
* Caution Low Base

[] = Sample Size

(Q.1)

“I Think the Government Should Decide What Service you are Permitted to Access on your Phone”.

(Base: Adults 16+ - 850)

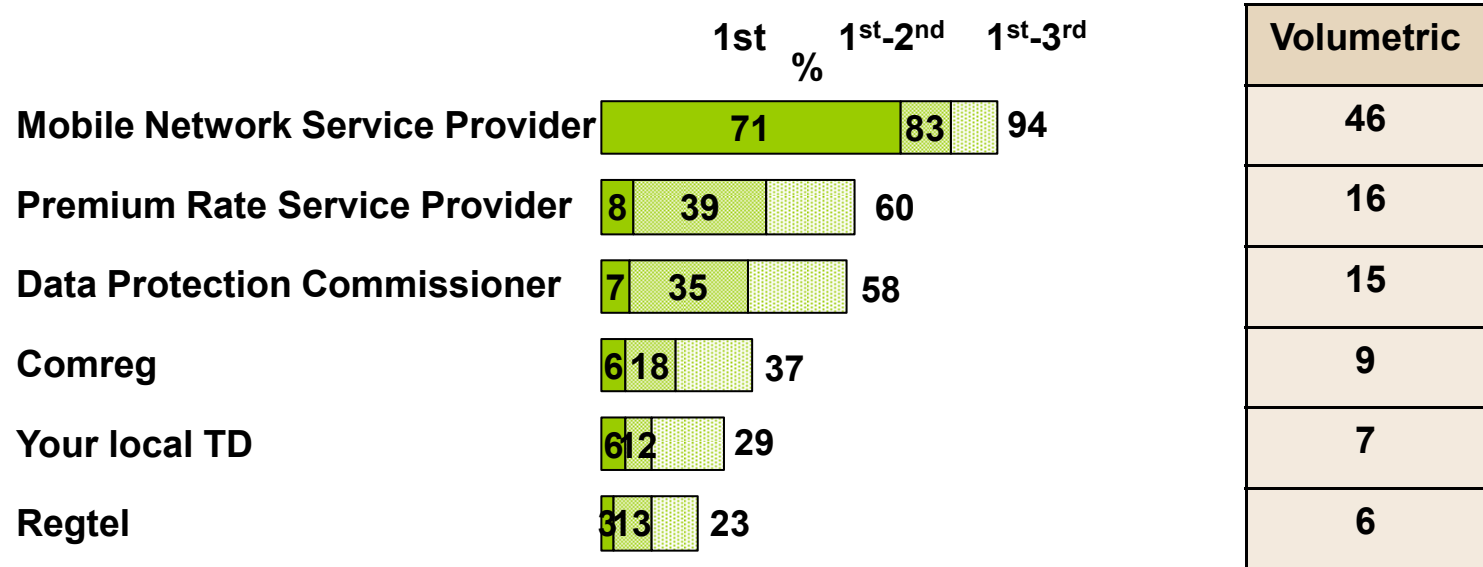


Negative feelings towards the Government being the ones to decide what services you are permitted to access on your phone.

(Q.2)

Who Contact to Complain about Phone Paid Services

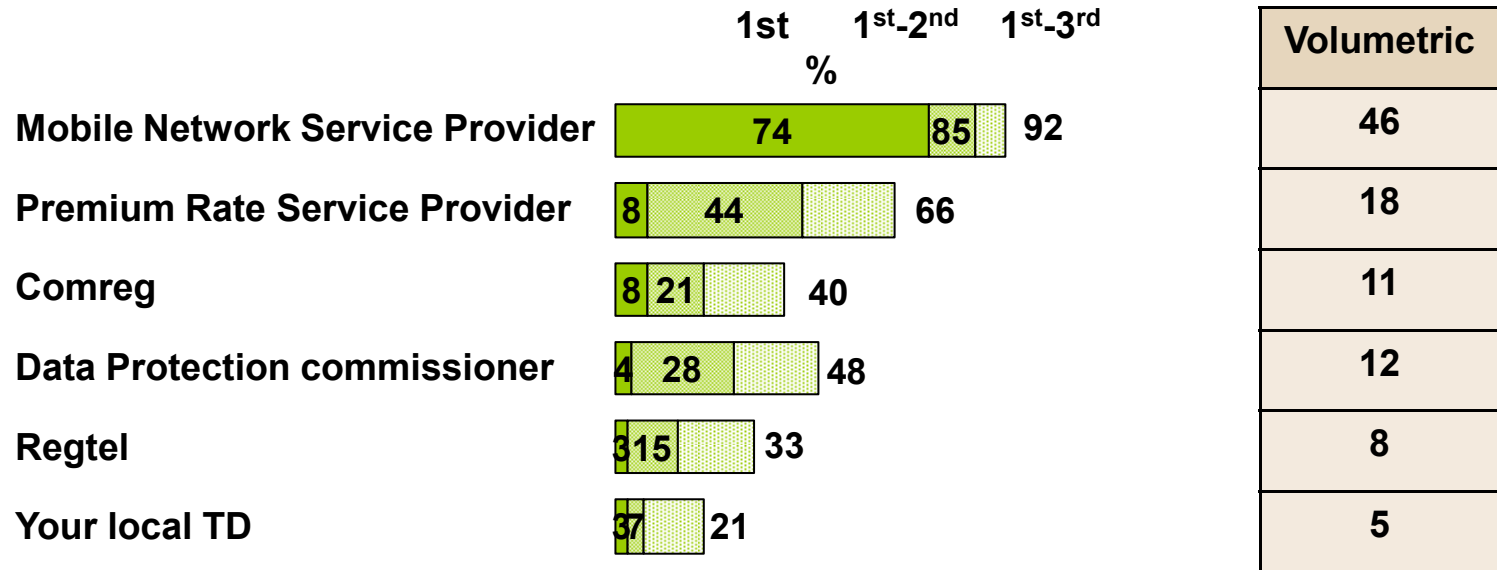
(Base: All who had ever used a phone paid service – 76%)



If users were to complain about phone paid services they are most likely to turn to their Mobile Network Service Provider.

Who Contact to Complain about Cost or Charges

(Base: All who had ever used a phone paid service – 76%)



Similarly if there are issues in respect of cost or charges users would contact their network provider.