



Commission for
Communications Regulation

Submissions to Consultation

Premium Rate Services – Code of Practice

Submissions received from respondents

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15 ITS-Tech

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

We do not agree with the provisions relating to promotion.

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

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

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

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

Visual Display Requirements

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

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

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

Spoken Requirements

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

Use of the Term "FREE"

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

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

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

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

Promotion of Subscription services

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

We do not agree with comregs proposal on subscription services.

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

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

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

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

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

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

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

16 Magnet Networks Ltd. ("Magnet")

Magnet Networks

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

Magnet Networks agree with the proposed provisions as outlined in Section of the draft Code.

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

Magnet Networks agree with the proposed provision relating to the promotion of the PRS.

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

Overall Magnet Networks agree with the abbreviations except 'TXT' in SMS which should be included as it is a well known and commonplace abbreviation.

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

Magnet Networks agree with the provisions to inform the end user in relation to the pricing of PRS.

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

Magnet Networks agree that alerting PRS end users to their expenditure once it reaches a certain limit is a good idea.

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

Magnet Networks agree with the levels of expenditure at which the PRS End user is alerted to their current spend.

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

No, Magnet Networks don't believe there should be a limit to how much an end user spends on entering PRS competitions. The reason is that once the other proposals i.e. expenditure alerts, double opt in etc, the axiom 'caveat emptor' comes into play and at that stage the end user is aware of what they are doing and thus, no further protection should be applied. It also may be seen as an undue interference with a customer's

Magnet Networks

right to enter the competition an unlimited number of times prior to the competition closing date.

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

Again as per question 7 Magnet Networks do not believe a persons right to enter competitions and other ‘facilities’ via a PRS service.

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

As per questions 7 and 8 Magnet Networks believe that limits should not be enforced on an individual.

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

Magnet Networks believe that the introduction of such purchase confirmation is a positive step forward.

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

Magnet Networks believe the introduction of a double opt in gives the customer the assurance that if they enter without realising the price or what they are entering they have the option to ignore. Also it would hopefully prevent others acquiring and utilising another individuals phone to enter such competitions or facilities.

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

Magnet Networks agree that the sign up fee should be off set against any subsequent subscription charge within the first billing period.

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

Magnet Networks feel that requiring the end user to positively reconfirm their desire to continue with their Subscription Service, protects them for overspend and others utilising that persons phone to subscribe.

Magnet Networks

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

Overall Magnet Networks agree with the provisions outlined in the Draft Code that restrict the number of attempts.

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

Overall, Magnet Networks agree with the proposals to unsubscribe someone from services that utilise the same short codes

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

As per the legislation outlined by ComReg in this consultation being a subscription based service (without an element of skill) might contravene the Gaming and Lotteries Act, (as amended) 1956. Thus, Magnet Networks believe that Competition based services should not be subscription based but nothing should preclude the individual from entering on numerous occasions.

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

Magnet Networks agree with the provisions of the draft Code.

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

Magnet Networks agree with the provisions in the draft Code.

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

Magnet Networks agree with the provisions in respect of Customer Service.

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

Magnet Networks agree that the amount refunded should be the full amount that the customer paid for the service.

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

Magnet Networks

Magnet Networks agree with this statement based on the fact that it is a punitive measure and ensures compliance with the Code. However, Magnet Networks suggest suspension of the PRS services licence would be more appropriate and those who complained be refunded, as refunding all customers for the time of the misleading maybe administratively extraordinarily difficult due to the transient nature of mobile and telephone subscribers i.e. might have moved providers since the period complained of.

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

Magnet Networks believe that refunding the credit onto their phone bill is the most appropriate and the easiest done administratively.

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

Magnet Networks do not believe alternative methods of refunds should be utilised at it would be very difficult to administer.

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

Magnet Networks agree with ComReg's position in relating to withholding payment to ensure that services that all PRS services are legitimate.

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

If it is within 30 days then the network operator otherwise the PRS provider.

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

Only if such provider is holding the end users fees on trust.

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

Magnet Networks are not wholly familiar with PRS services to give a cohesive answer to this question.

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

Magnet Networks

This is a laudable proposal however, in relation to mobile phones and home phones generally it would be very difficult to enforce and to ensure that the person calling is they age they say.

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

Magnet Networks believe this is a difficult one to police as there may be legitimate users of this service who do not merit being blocked. Overall, Magnet Networks don't believe in blocking these numbers however, guidelines in relation to their monitoring are welcomed.

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

Again, is it an onerous burden to place on a PRS provider.

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

Again, this may be onerous on the industry and guidelines would need to be issued in relation to this.

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

Magnet Networks agree with this potential designation of shortcodes.

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

No particular view on what range should be used.

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

Once the organised is a registered charity then no restrictions should be put in place.

17 Masvoz

From: Davide Perollo - MasVoz
Sent: 07 February 2011 12:42
To: retailconsult
Cc: Maire Mullarkey
Subject: Reference: Submission re ComReg 10/92

Good Morning Michelle,

as spanish Telecommunication Operator PRS contractor in Eire, we have read information sheet of Premium Rate Services, and we confirm you that we agree to the ComReg's recent proposed regulations.

Please confirm the reception of this mail, thanks.

Kind Regards,

Davide Perollo

18 mBlox Ltd.

Commission for Communications Regulation

Scope of Premium Rate Services regulation

Consultation Paper

Submission by mBlox

1. Introduction

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

2. mBlox

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

3. General comments

In addition to responding to the specific questions asked by ComReg in this Consultation, we believe that there are some areas missing from the draft Code that could benefit from further clarification. There is nothing in the Code that discusses the process and procedures for deciding that a service has breached the Code.

We would suggest that the evidence test for the opt-in of services or consents must be transparent and must not impose a greater burden on a service provider than in other forms of media. The burden rests with ComReg to demonstrate based on the evidence that on the balance of probability opt-ins/consents were not obtained. To this end objective measures should be transparently applied to the facts. Such measures should include but should not be limited to:

- the successful use of service (consumer uptake);
- service ratios of complaints to users;
- the transparency of the service (customer services information, promoter details i.e. routes to complaint resolution/refunds).

Throughout the Code, there are references to and obligations placed on PRS Providers. The definition of a PRS provider is sufficiently wide as to encompass many parties on the value chain. It is not clear which obligations apply to which party, and yet it is neither reasonable nor proportionate to place all obligations on all parties. Rather, the obligations that surround the promotion and operation of a service (including the primary responsibility for customer service and refunds) must sit with the party that maintains operational control for the service. It will be an important regulatory responsibility for ComReg to determine where blame lies in the service chain in the event of a circumstance involving an infringement of the Code and to apportion blame to responsible parties in a fair, proportionate and transparent manner.

4. Consultation Questions

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

- 3.1 of Code, should there be a consultation on guidance notes as will be the case in the UK?
- 3.4 of Code could be fleshed out a bit more as to who is responsible for what
- Section on legality, is this not regulatory creep? Any specific concerns that relate to prs should have their own provision, anything else should be covered by the law.
- 3.19(a) (and in general), there should be a 'reasonableness' test for these provisions taking into account the audience for which the message / content is aimed at.
- Due diligence section needs to outline responsibilities throughout the value chain as per comments on 3.5 above e.g. 4.26 rendition of data, who has this obligation?

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

- In general we agree with the principals that ComReg list.
- 4.4(c)(ii) of Code, we oppose on a point of principle inclusion of a statement that data charges may apply. This is an issue between mobile networks and their customers and conflating the issues of network charges and premium content places an unfair burden on the PRS industry. This comment applies to each instance where this is mentioned in the draft Code. On a pragmatic basis, however, we are content for this information to appear where space allows, or on the landing page where not possible in the promotion itself, as we acknowledge that it helps consumers avoid bill shock.
- 4.7 – 4.8 is this not too prescriptive, given the general principles outlines together with the concept in 4.5(b) of '*clear and prominent, taking account of the advertising medium and the intended audience*' this should give sufficient clarity as to what is required.
- 4.8 of the Code On the requirement that pricing information be prominent and proximate, we stress the need for a balanced approach between the two criteria. In our view, general prominence is more important and effective than narrow proximity. There are also contexts where absolute proximity of pricing information to PRS numbers would be absurd, e.g. ***every box on a double-page spread of dating ads, which would amount to hundreds of renditions of the same information that is better and more clearly imparted as a single prominent flash***. Similarly, it would be clumsy to have to present pricing information against all twelve PRS numbers in a single astronomy column. Rigid enforcement of the letter of the new Code provision would produce a flood of alleged breaches where there is no consumer harm and no indication that pricing is not perfectly clear. The test should be whether a reasonable consumer would be expected to appreciate the cost of participation from the information presented. Would it come to his or her attention by being noticed, read and understood?
- 4.3(d) If consumers have already been told the length of the free trial period there should be no need to re-send for further opt-in request. This simply follows the practice with other consumer products, e.g. LOVEFilm and subscriptions to magazines such as Which? We note, however, that under Mobile Best Practice a confirmatory text of details is sent at the outset which the consumer may retain as a record or reminder should they require. There should certainly be no requirement for an additional opt-in.
- 4.16 The over-arching requirement is that consumers should be given a clear way of contacting the relevant promoter, and this should not be clouded by extraneous information. Where SMS marketing is used we would argue that some of the information required should be allowed to be abbreviated where limitations on the number of characters make it impractical to render in full. It would then be logical to allow this in promotions in other media to achieve consistency, particularly in the case of small ads.) On points of detail, we recognise that brand names and abbreviated names used as above would have to be entered on the number checker for customer care purposes as well as returning results in the first page of an online search e.g. google.

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

We would welcome evidence of consumer research carried out by ComReg to suggest that some of these abbreviations are not recognisable by consumers, particularly noting the intended audience of such promotions. A few specific comments below.

- / min is equally recognisable as per min and should be allowed in sms messages given space limitations.
- Msg should be allowed as per 4.15 of the draft Code which would suggest that it is recognisable by consumers,
- Txt and promo are also equally recognisable.

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

- We agree with these provisions but question the requirement for pricing information to be spoken on a website where there is no other audio content.

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

- 2.7.2 of the Consultation, this should not be defined by regulation, as long as there is clarity in terms of cost and what the product is, a consumer should be allowed to make informed decisions.
- We note ComReg's vision as per page 5 of the draft Code that '*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.*' This principal is particularly relevant with regards to expenditure reminders. We question why the suggested reminder level for services accessed or charged by a premium rate number are set higher than for other services and suggest that they should all be set at the same level.

Recurring charges merit a reminder message, not one off charges.

Why should subscription need re opt-in, if the promotion / call to action is clear and there are spend reminders with clear instructions as to how to end the subscription that should be sufficient.

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

- Please refer to the comments on the previous question. Additionally, ComReg should consider removing spend levels from the body of the Code itself to allow future flexibility for amending levels without having to undergo a full Code consultation.

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

- It is not clear why entering a PRS competition should be singled out for separate treatment as distinct from PRS in general. As per above we note ComReg's vision as per page 5 of the draft Code that '*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.*' The focus must be on ensuring that consumers are empowered to make informed decisions, by giving them all the relevant information in advance of making the decision.

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

- We do not believe that limits of this kind should be subject to specific regulatory control. As outlined in the Consultation, this is something that may be in the interests of MNOs in order to help prevent bill shock and perhaps manage bad debt. From a regulatory perspective, if the promotion and call to action is clear, a consumer will be in the position to make a fully informed decision therefore specific limits will not be necessary.

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

- We are disappointed that the opportunity has not been taken to remove arbitrary rules around expenditure limits which require a consumer to reconnect in order to continue to enjoy a service. It should be enough to advise consumers what they have spent the specified amount thus empowering them to choose whether to continue or discontinue the service, (they do, of course, have the option to disconnect at any point). This would bring PRS in line with other payment methods that have a recurring charge.

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

- In line with earlier comments about empowering consumers with sufficient information and bringing PRS in line with other payment types, we believe that this would be a welcome development with tangible benefit to consumers. It would also help deal with the 'bill shock' issue mentioned earlier, since the consumer would be able to keep track of what their purchases via PRS.

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

- As mentioned in our response to the ComReg Scope of Premium Services Regulation Consultation, we believe that the example of experience in the UK with regards to double opt-in is slightly misleading. In the UK, double opt-in is only required for subscription services costing more than £4.50 per week and there have also been additional factors leading to the reduction in complaints.
- We do not agree with this proposal. At the end of para 2.9.2 ComReg state that '*as 40% of the people who contact ComReg's Helpline deny that they subscribed to a Subscription Service, such a large percentage suggests that end-users either do not receive, do not read and/or do not understand the terms and conditions of the service that they engage with.*' If this is the basis for regulatory action it seems at odds with ComReg's vision as per page 5 of the draft Code that '*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.*' Given the requirements for clear information to be presented prior to a consumer making a decision to enter into a service, in terms of promotional information and pricing clarity etc, it seems strange to create additional steps purely because a large proportion of consumer do not read or understand the information that they have been given. It also creates an unfair competitive disadvantage for services competing with other payment methods that do not have these additional requirements.
- We also believe that the Code should be a forward looking one and that obligations should be technologically neutral. This means that the requirement should be for the mode of opt-in to be auditable to a required standard and capable of verification, the standard must not limit an opt-in to an MO from a handset as this will hamper future developments that would still provide ample consumer protection – an example of this would be the PayForIt scheme in the UK.

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

- Yes, we agree with this proposal.

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

- No, we do not agree with this proposal as this would in effect be the end of subscription services, services which are fully legitimate pricing models used in all sectors. As mentioned in our response to question 9 we are disappointed that the opportunity has not been taken to remove arbitrary rules around expenditure limits which require a consumer to reconnect in order to continue to enjoy a service. Rather than bringing subscription services in line with voice-PRS, we feel that ComReg should take the opportunity to re-examine this issue.
- ComReg's problem statement at para 2.9.6 is that '*the reminder messages sent to end-users by some PRS Providers are indistinguishable from subscription —welcome// messages or promotional messages, with the result that end-users are unsure, as to whether the message is free, billed, and who is responsible for sending the message*'. No mention is made that any research has been carried out that would suggest that this cannot be resolved by advising consumers that they have spent €20, thus empowering them to choose whether to continue the service. This would bring PRS in line with other payment methods that have a recurring charge. We also question why the proposal would allow €30 for voice-PRS whilst requiring re-opt-in after €20 for other services, this discrepancy highlights the arbitrariness of these rules.
- We do however agree with the format of the expenditure reminder message and feel that it is this mechanism, (together with earlier provision around promotions and pricing clarity), that provide consumer protection as they keep consumers fully informed. 6.6(b)(vii) should state 'in the case of Subscription Services, provide details of how to exit the service.'

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

- We agree with these provisions in principle, but believe that a fair balance needs to be struck between protecting consumers and ensuring that they pay for services that have been consumed already. Providers should not be left at a disadvantage purely because the payment mechanism is PRS, this is particularly so in the case of 'pay for product'.

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

- Before turning to the specifics of question 15, we suggest that 6.25 of the draft Code is should be deleted. Computers cannot be expected to interpret variations by consumers. Given that consumers will have been informed as to how to exit from the service in the promotional information, in the subscription confirmation message as well as the expenditure reminder message, there is no reason why a consumer should be unaware of what is required. Where customers have tried and failed to cancel a service for any reason it is a normal pragmatic business practice to make refunds.
- Turning to multiple subscriptions, we do not agree with the proposals. Since the subscription confirmation message and the expenditure reminder message are both required to mention the name of the service, a consumer should be aware if which services they are currently subscribed to. This being the case, it would be clearer if the STOP were taken to refer to the last service that transacted via that shortcode, as this is most likely what has prompted the STOP message. STOPALL should be used to end all services on a shortcode. This system has been in place in the UK for a long time and works extremely well.

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

- Yes, we believe that all of the issues that have been raised in para 2.10 can be resolved by ensuring compliance with other provisions of the draft Code e.g. the requirements for promotional material and pricing transparency. To prohibit this entirely would be too restrictive.

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

- Given the requirements for on-screen pricing information, we would suggest that the requirements for audible information at intervals of no more than every 10 minutes is over-kill.

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

- In general we agree with these provisions. We suggest that 6.68 is amended to reflect that providers must take all reasonable steps to ensure that no one under the age of 18 is allowed to use the service. The way the provision is drafted now implies an absolute obligation, it is not possible for a provider to fulfil this in every circumstance.

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

- We agree with these provisions in principle. We would also suggest that in order to facilitate good customer service, a facility to allow consumers to check who is responsible for any given service together with contact information for them should be created – similar to the number checker used in the UK. This would allow consumers to take control of contacting the provider to resolve a query. It should be noted that not all contacts are complaints, in many instances consumers are looking for an explanation as to what a charge is for but have no issue once it is explained to them. ComReg should also offer a consumer the choice of giving them the contact details so that they can make the call at a time that is convenient for them or a call back from the provider.

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

- Yes, we agree.

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

- In certain limited cases we agree. However, we feel that there needs to be strict guidance as to how these conclusions are to be reached as well as objective tests that need to be satisfied. The fact that a potentially small percentage of end users who use a service did not understand a promotion for example should not be taken to mean that there was an attempt to mislead. The test should be along the lines of whether, in the likely interpretation and expectation of the reasonable consumer where that consumer is the anticipated or intended recipient of or audience for that service, it would be misleading. Earlier comments of ComReg about consumers not reading messages or information are particularly pertinent in this regard.

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

- We believe that all of the methods outlined by ComReg are appropriate. In terms of the requirements on providers, it is reasonable that a provider must offer more than one method of refund e.g. cheque and another method. It would be unreasonable to require providers to offer all methods of refund.

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

- We do not agree that this is necessarily the case. The overriding need here is that consumers should be able to obtain their refund in the most simple way, ComReg should however be mindful of practice in other comparable areas that impact on consumers. If providers are faced with additional burdens, it could act as a disincentive to enter the PRS market which is not something that regulation should achieve.

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

- We suggest that it should not be for ComReg to regulate on commercial terms. It should be left to a company's commercial judgment if it wants to help finance the growth of a partner's business in this way and hence carry the risk of meeting the cost of any fine or refunds if they take the decision to make payments in advance of 30 days.

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

- This is a fundamental question that raises what we believe to be a gap in the draft Code. Throughout the Code, there are references to and obligations placed on PRS Providers, however the definition of a PRS provider is sufficiently wide as to encompass many parties on the value chain. It is not clear which obligations apply to which party, and yet it is neither reasonable nor proportionate to place all obligations on all parties. Rather, the obligations that surround the promotion and operation of a service (including the primary responsibility for customer service and refunds) must sit with the party that maintains operational control for the service. It will be an important regulatory responsibility for ComReg to determine where blame lies in the service chain in the event of a circumstance involving an infringement of the Code and to apportion blame to responsible parties in a fair, proportionate and transparent manner.
- The due diligence obligations in the draft Code would suggest that those higher up the value chain have an obligation to satisfy themselves that the entity with which they are contracting is both licensed and also they have a process in place to take reasonable steps to ensure that services routing through them are compliant with the Code. This is a far cry from placing full responsibility for the actions of a party further down the value chain on another party. It would not be proportionate or reasonable for a party to be forced to pay for actions over which it was not responsible and where its own conduct has not been found to be in breach.
- If there is a requirement to withhold money for 30 days, how is a provider to apportion or ration this where the retained revenue is insufficient to meet required refunds?

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

- We do not believe that it is, please see response to previous question.
- In addition to the above, given that ComReg will be aware of the value chain for any given service because of licensing, should ComReg suspect that a provider is likely to default, ComReg could instruct the providers higher up the value chain to withhold payments, this could then be used for refunds in the event of a default.

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

- Providers would face similar issues to those faced by ComReg in trying to pursue a non compliant provider. Despite the fact that there would be the additional comfort of a contractual relationship,

the reality is that a provider who wishes to default could structure their legal entity in a way that would provide little real protection to their contractual party.

- It is for this reason above that we urge ComReg to consider a database to facilitate the due diligence requirements placed on providers. This should contain details of breaches associated with a provider and the names of those directors associated with the provider, in this way it would prevent a defaulter from re-entering the market under another corporate identity. The threat of such sanctions would create an incentive for all providers to follow the Code.

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

- We would welcome this and suggest that a programme similar to that in place in the UK would provide benefit to both consumers and providers.

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

- As per above, we believe that this would be a positive move providing protection and comfort for both consumers and providers. There should of course be a facility for the owner of the phone to take steps to age-verify a phone with the network, thus allowing it to access adult services. This process would give additional comfort to a provider that they were taking all reasonable steps to ensure that adult services were only consumed by those that wished to. The consumer is always a customer of the network and is using their equipment to gain access to other services, the primary control must be at the level of the MSISDN / customer.

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

- We agree that the PRS provider has an important part to play in controlling access to Adult services. However, the reality is that without an effective system in place by the network operators, is extremely hard for a PRS provider to develop an effective system. Any measures that could be put in place by a PRS provider could be overcome in the absence of an effective process at network level.

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

- If the measures referred to above are implemented this will not be necessary as the consumer will have the ability to prevent any access to adult services. Even if not implemented, 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. We note that consumers may be charged without their consent through unauthorised use, theft or misdialling, none of which are the fault of providers, thus it is for an end user to protect and secure access to their own equipment, the fact that the unauthorised use is for an adult service does not warrant compensation any more than any other type of unauthorised use.

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

- Yes, we feel there is benefit in designating a shortcode range for charitable use. This could then be publicised so that end-users would have clear understanding of what they were doing when making a donation. It would also allow for different handling of the revenue share payments which would be of benefit to the charity.

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

- We have no view on what range is used as long as use is restricted to bona fide charities.

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

- Please see above.

4. Conclusion

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

We urge ComReg to create a framework to ensure consumers are able to consume services and content of their choice at a value that they deem appropriate. This can best be achieved by ensuring that they have accurate information about services, a simple and effective method of discontinuing a service and a clear and timely complaints handling process together with effective enforcement against those that breach the framework. This will allow the sector to grow with market demands whilst ensuring that the reputation of the industry is not tarnished by the action of a few. We would also urge that ComReg learn from the experience of PhonepayPlus in the UK and focus regulatory responsibility on the appropriate areas of the value chain.

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

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

5. Contacts

mBlox Ltd
Martin Romer
07906 625 276
martin.romer@mblox.com

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

We do not agree with the provisions relating to promotion.

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

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

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

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

Visual Display Requirements

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

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

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

Spoken Requirements

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

Use of the Term "FREE"

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

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

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

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

Promotion of Subscription services

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

We do not agree with comregs proposal on subscription services.

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

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

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

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

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

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

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

20 Modeva

MODEVA

Interactive Media & Entertainment Services

Response to Consultation Document (ComReg 10/92a)

Premium Rate Services – Code of Practice

2nd February, 2011

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Introduction

Modeva welcomes this opportunity to respond to ComReg's Consultation document (10/92a) on "Premium Rate Services – Code of Practice".

This response is made on behalf of the Modeva Group ("Modeva") which comprises a number of licensed companies, namely:

- Modeva Networks
- Modeva Interactive
- Modeva Social Networks
- InkRed

Modeva is a significant player in the PRS industry in Ireland and as such we have taken part in the joint industry submission being made to ComReg by Irish Phone Paid Services Association (IPPSA) in response to the consultation. We support that submission and all of its contents.

The Introduction Section of this document is structured using the headings outlined below and summarizes our general concerns regarding the approach that ComReg has taken in devising a new Code of Practice (CoP) for our industry.

- Legal Basis;
- Basis for Measures Proposed;
- Regulatory Impact Assessment;
- Statistical Analysis Presented;
- Previous Consultation Response.

We have then taken each of the individual sections of the draft CoP and the consultation document as appropriate and have outlined our views on the items that are of specific interest to Modeva. At the end of each of these sections we address any specific question put forward by ComReg in the consultation with reference to all the views/discussion presented on that topic in advance of the question. Where appropriate we have summarised our views in a tabular format using the principles of a Regulatory Impact Assessment.

Legal Basis

Modeva 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, Modeva believes that there is other EU and Irish legislation of relevance 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.

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.

Modeva believes that ComReg must consider whether the legislation upon which they have staked their 'Legal Basis' for regulating the PRS sector is constitutional. Modeva 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.

Modeva 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.

Modeva also believes that the obligations it is proposing in the draft CoP 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 Modeva believes that ComReg must remove 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 Modeva believes that ComReg cannot, 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 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

Modeva 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 end-user 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 measures proposed.
 - a. This means that ComReg cannot 'objectively justify' any of the measures proposed in its 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 our view that the majority of the measures proposed in the consultation will cause the business of most of the participants in the industry to become unviable. 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, Modeva believes that there is no clearly established basis from which to argue that end-user confidence is not in place already. Modeva 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.

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 CoP.

Ultimately, with the basis for the measures proposed as outlined in Section 1.2 of the 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 within the consultation as it is individually with each of the unbalanced measures being proposed.

Regulatory Impact Assessment

It is clear to us that ComReg have failed to complete a Regulatory Impact Assessment in arriving at the proposals made in the Consultation document and, as a result, 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 CoP which are clearly overly burdensome on industry participants and have not quantified any subsequent benefit to the consumer.

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

It is also clear that ComReg did not adequately address and distinguish through a Regulatory Impact Assessment between the variety of options that might be available to them in addressing any perceived issue and instead moved directly to the most severe regulatory measures available in most cases.

Specifically in relation to the basis of this draft CoP and any future measures Modeva is strongly of the view that the introduction of a **mandatory Industry Complaint Handling Process** with associated obligations to provide standard statistics in relation to consumer queries, complaints and issues is the first step that must be taken.

Statistical Analysis Presented

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 Service Providers choose to offer and consumers elect to choose and purchase with most frequency and in which the majority of the message by volume and by value are part of a subscription service.

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.

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.

Indeed, Modeva notes that 84% of adults in Ireland saw a ComReg 'STOP' advert on Television in Oct/Nov 2010 on average 4.8 times at an advertising spend in excess of €110,000.

From a broader perspective ComReg have made no attempt to quantify the levels of contacts with the overall size of the PRS industry. In any consumer facing business a certain level of consumer contact is to be expected. The lack of an industry wide method of capturing and cataloguing consumer queries/complaints leaves our industry in a position whereby we cannot benchmark our performance in terms of consumer satisfaction in the way that other industries can. On this basis Modeva strongly recommends the introduction of a **mandatory Industry Complaint Handling Process** to facilitate the harvesting of the necessary high quality data.

We also note from the previous consultation response the observations made in relation to statistics on consumer complaints from RegTel. Particularly 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."

Indeed, there is no basis as such, to rely on any supposition drawn from the call center statistics. 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 also made reference to issues around Data Protection and indeed stated 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 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.

Previous Consultation Response

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

In the foreword 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.

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

On the 9th July 2010, ComReg published its 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 take on board the points made by Modeva, IPPSA and others in the industry in drafting the recently issued draft CoP.

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.

Comments in Relation to Section 2 of the draft Code of Practice

While there are no specific questions posed in the Consultation document in relation to Section 2 of the draft CoP Modeva would like to comment on two definitions presented in this section.

Definition of 'Chatline Service'

Live Chatline Services and Virtual Chatline Services are very distinct service types. Bearing this in mind and based on the treatment of these services in the draft CoP Modeva is of the view that it would enhance the clarity of the draft CoP if these service types were defined separately.

This approach would make use of the code easier and allow ComReg to treat these services differently with ease within the draft CoP. Particularly Section 6 of the draft CoP could be simplified where there are currently sub-sections dealing with Live Services, Chatline Services, TextChat and Virtual Chatline Services. A reader 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.

Definition of 'Promotion'.

Please refer to our response in relation to the Promotion of Premium Rate Services below.

Provisions Applicable to all PRS

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.

In general, Modeva agrees with the proposed provisions, applicable to all specified PRS as set out in Section 3 of the draft CoP.

Promotion of Premium Rate Services

Definition of a “Promotion”

Section 2 of the draft CoP 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...”*. Section 4 of the draft CoP then goes on to outline the requirements that Service Providers must meet in relation to their promotions.

This definition, when not clarified or put into context, is flawed as references to “indirect” activity essentially requires that ALL advertising that may at some point lead to an invitation to participate in a PRS must meet the requirements of the draft CoP. 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 CoP. Given the definition of “Promotion” as per the draft CoP Modeva 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 CoP 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 CoP 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.

Modeva requests that ComReg review their definition of “Promotion” in light of the information above.

Objectives of PRS Promotion measures proposed in the draft CoP

In sections 1.3 and 2.5 ComReg state the objectives they wish to achieve by the measures proposed in Section 4 of the draft CoP relating to the promotion of PRS.

These objectives are:

- Ensuring that the public are clearly informed of the costs of a PRS and the frequency of costs before they are incurred;
- That promotion of PRS should not mislead, or require close scrutiny, and should be clear, legible and audible, if spoken, and it should not mask any important conditions.

These principles are best summed up by a statement within the current draft UK Code of Practice: “That consumers of premium rate services are fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made.”

Modeva fully agrees with these principles both philosophically and also as it is in-line with the principles outlined in the codes of the advertising authorities of Ireland namely the ASAI and BAI codes.

Modeva, however, has difficulty with the overly prescriptive and disproportionate nature of the provisions in Section 4 of the CoP that are intended to address these objectives.

Section 4.1 of draft CoP

Modeva is somewhat uncomfortable with section 4.1 of the draft CoP. Except where there is a clear breach of the CoP, directions issued in relation to promotional material will inevitably be subjective and it is unclear from this section of the draft CoP what options will be available to Service Providers to argue their case. Also, there is no detail within this section as to how these directions will be applied to all other Service Providers to ensure non-discriminatory regulation.

Visual Display Requirements

In section 2.5.1 of the Consultation ComReg states that pricing information must be prominently displayed in the body of any promotion and, therefore, not be obscured among terms and conditions displayed in the body of the promotion.

Modeva in general agrees with this principle as it separates key terms that will influence a consumer's decision to purchase from the most general term and conditions (i.e. "the small print" that exists for every product and service).

However, the draft CoP goes far beyond this principle by mandating minimum text sizes for pricing information that are dependent on the size of the call to action and placement within the advertising media.

Specifically the draft CoP requires that for online promotion all of the required regulatory information must be viewable, without scrolling, at a resolution of 1024 x 768. In essence limiting the size of online advertisements. In addition, the level at which the page size is limited (i.e. 1024 x 768) has no stated basis within the consultation. Indeed, on the basis of our own company's experience and global trends this screen size is already becoming obsolete and hence the draft CoP lacks any future proofing. In Q4 of 2010 only 22% of consumers that viewed our webpages were using a screen resolution of 1024 x 768 or less. Combined with our own information, industry trends also show that this screen resolution will be obsolete by about Jan 2012.

Date	Higher	1024x768	800x600	640x480	Unknown
Jan-10	76%	20%	1%	0%	3%
Jan-09	57%	36%	4%	0%	3%
Jan-08	38%	48%	8%	0%	6%
Jan-07	26%	54%	14%	0%	6%
Jan-06	17%	57%	20%	0%	6%
Jan-05	12%	53%	30%	0%	5%

Ref: http://www.w3schools.com/browsers/browsers_display.asp - this survey was among 'savvy' internet users. Combined with Modeva's figures we estimate the general population to be ~ 1 year behind the stats presented above

ComReg's requirement that all regulatory information be provided at the top landing pages for all mobile internet promotions is again introduced without stated basis and is, in our view, completely disproportionate particularly when presenting the sheer amount of information required by Section 4.4 of the draft CoP will completely fill the screen of many mobile devices if placed at the top of the screen. This will cause us significant commercial harm and is inconsistent with common retail practice.

Modeva is of the view, that the most important information required by customers to make a purchase decision should be displayed at the top of the landing pages for mobile devices, specifically the pricing. All other regulatory information should be provided for elsewhere on the page. Indeed, given that consumer expectation is that the detailed terms and conditions of a service are generally located at the bottom of the screen Modeva would suggest that this is a suitable location. This is consistent with general retail advertising practices (e.g. the major mobile phone operators, financial institutions etc) and complies with the ASAI and BAI codes.

Section 4.8 of the draft CoP requires that pricing information (as defined in section 5 of the draft CoP) must be “in close proximity, by being placed immediately beside or underneath the call to action, of a size that is at least 75% of the call to action”.

Modeva agrees with the element of the provision requiring the pricing to be “in close proximity” to the call to action but questions the requirement to specify a minimum size of this information that is dependent on the size of the call to action.

Modeva is of the view that this requirement goes beyond the requirement to ensure that the pricing information is clear, prominent and does not require close scrutiny and furthermore directly impacts on our right and ability to advertise our products in a wholly disproportionate manner. The inclusion of the required pricing information as per Section 5 of the draft CoP dramatically reduces the space available within the media we purchase to actually advertise our products and offerings and will require us to limit the size of our call to action.

Based on a trial implementation of the new draft CoP we estimate that the percentage of advertising space lost to regulatory information, which we must bear the cost of, has increased from approximately 10% based on the existing CoP to between 25% (for an SMS product) to 47% (for a voice product) under the draft CoP. This combined with the reduced area available to actually market the benefits of our products and services will cause Modeva significant commercial harm by disproportionately impacting on our ability to sell our products and discriminating against the PRS industry in markets where we must compete against broad ranges and mixes of consumer products and services not regulated by the draft CoP. See Appendix 2 for sample advertising .

In contrast to the approach proposed in the draft CoP in relation to the size and presentation of pricing information the UK regulator has simply required, among other related requirements, that the pricing information is “presented in a font size that would not require close examination by a reader with average eyesight”.

Modeva is of the view, in the broadest terms, that pricing information and any other information that would affect the consumers decision to purchase, such as the fact that a service is a subscription service, should be in close proximity to the call to action and should be of a size that does not require close examination by a reader with average eyesight. We believe that this measure would proportionately address the objectives outlined by ComReg.

Other options also exist, for example, the establishment of a set of icons representing the price of services. These icons could form part of a consumer education strategy and would then be used in a consistent manner by SPs beside the promotions call to action ensuring customers are clear on pricing in advance of incurring a charge.

Spoken Requirement

In section 2.5.2 of the Consultation ComReg proposes that all of the mandatory regulatory information required to be displayed in any promotion should also be spoken as part of a TV, Radio or Audio/Visual promotion. This measure is proposed on the basis that it represents best practice across all retail services.

Firstly, Modeva argues that a requirement to speak detailed service terms and conditions in all audio/visual promotions does not represent best practice across all retail services and indeed invites ComReg to provide documentary evidence in support of this claim. Modeva acknowledges that within radio advertisement there is certainly a case for speaking significantly more detail than that for an audio/visual promotion whereby the consumer does not have an opportunity to read on-screen information.

Additionally, this measure would cause Modeva significant commercial harm by significantly diluting our marketing investments by significantly reducing the advertising time available to promote the product or service. In a trial voice-over for one of our current advertisements adopting the new CoP resulted in the following impacts:

- Unable to meet requirements within a standard 10 second advertising slot
- Requires ~70% of the advertising time for a standard 20 second advertising slot
- Requires ~50% of the advertising time for a standard 30 second advertising slot

Obviously the amount of time required for delivering the mandatory spoken regulatory information significantly reduces the time available for us to promote our products and services. As shown in our VO trial the measures proposed in the draft CoP will essentially render audio/visual promotion unviable given the limited time to promote our products despite incurring the full costs for the advertisement. This measure will cause our company significant commercial harm if implemented.

Modeva is of the view that the proposed measures relating to 'Spoken Requirements' are without basis and massively damaging to industry from a commercial perspective.

In-line with the principles that we are attempting to strive towards in relation to the promotion of PRS Modeva suggests a more proportionate measure in relation spoken requirements as follows. Where the price of a service is such that consumer harm may become an issue (e.g. within the UK a threshold of generally £3.83 excl VAT exists) Modeva suggests that the pricing information should be spoken in as part of any audio/visual advertisement.

Use of the Term 'Free'

In section 2.5.3 of the Consultation ComReg propose enhancing the provisions of the existing CoP by incorporating the provisions of RegTel's Industry Notice published in November 2009. Sections 4.11, 4.12 and 4.13 of the draft CoP treat the Use of the Term 'Free'.

Modeva notes that the only basis provided in the Consultation for the new measures proposed in this section of the draft CoP is to address misleading promotions and the fact that the original Industry Notice was in response to RegTel receiving "a large volume of complaints arising from confusing and/or misleading usage of the word "Free". These complaints would have been recorded in 2009. We further note, that none of the contact statistics provided by ComReg in this consultation are categorised in a category relating to 'misleading advertising' and so question whether a consumer issue exists now.

However, Modeva strongly agrees that customers should not be subject to charge for any product or service promoted as "Free" and should, at the point of purchase, be fully aware of the relevant terms and conditions relating to any "Free" trial or entry etc. Modeva is of the view that provisions set out above in relation to the requirement to display relevant terms and conditions including details relating to any free entry or free trial period should be sufficient to ensure that the customer is clear on the terms on which they are entering a service. On this basis Modeva largely supports the following proposed measures: 4.11, 4.12 and 4.13(a), (b) and (c).

Section 4.13(d) of the draft CoP proposes that PRS provider should send a message to every user at the end of their free trial period detailing the terms of the service in addition to the details already provided in the promotional material as required by 4.13 (b) and (c). We consider that where the

period of time between when the user originally signs up to the service (at which point they will have seen the terms and conditions in the promotional material and received the service 'Welcome' message) and being charged for the first time is short then the requirement to send an additional message as per 4.13 (d) is disproportionate, onerous on the Service Provider and potentially an annoyance to the consumer. Where the period of time between the completion of a free trial period and the first charge is long enough that the user will have forgotten the association between the trial and the billed service then a measure as suggested in 4.13 (d), without the inclusion of a Double Opt-In may be appropriate. Such a period might be greater than or equal to one month.

In any case Modeva is strongly opposed to the proposal to include a Double Opt-In mechanism in the measure details in section 4.13(d) of the draft CoP. This is a significant and strong regulatory measure which is over and above the proposals of the RegTel Industry Notice and is presented without any basis in the Consultation document. Where a user has already been made aware of the terms of a service within a promotion, by a 'Welcome' message, potentially in a 'Trial end' reminder message and in ongoing 'Spend Reminder' messages there is no justification for an additional Double Opt-In between a trial period and the normal service conditions. Again this represents a disproportionate and unsupported regulatory measure that will have significant commercial impact on Service Providers. No options or impact analysis have been presented and as such it is unreasonable for ComReg to pursue this measure.

Modeva suggests, as originally proposed in the RegTel Industry Notice, that information relating to how to STOP from the service be included in the place of a Double Opt-In where ComReg propose implementing the message detailed in section 4.13(d) of the draft CoP.

Promotion of Subscription Services

In general Modeva supports the measures proposed in section 4.18 of the draft CoP.

Modeva agrees that consumers should be fully aware of the terms of the service into which they are entering, particularly subscription services, but notes that the measures mandated by ComReg must be balanced with the commercial reality of selling products and services.

On this basis Modeva supports the idea of including the term "Subscription" or "Subscription Service" in any promotion as it is a key term of the service which the customer should be aware of. However, mandating the size of the font by making it dependent on the size of the call to action is disproportionate and will cause significant commercial harm to Modeva. As discussed above we believe that this important information should be presented in such a way that it is not obscured, is clear, is easily found and is of a font size that is easily visible to a person of average eyesight. Anything more than this is putting an unreasonable burden on the service provider in terms of lost media space for advertising and constraints in terms of the display of any call to action.

Section 4.21: TextChat, Chatline and Contact and Dating Services

In relation to section 4.21(b) of the draft CoP Modeva disagrees with the inclusion of the term "sexually suggestive" in the proposed measure on the basis that this term will form a point of ambiguity for Advertisers, Service Providers and Regulators alike.

Statement of Apparent Policy Objective		
	That consumers of premium rate services are fully and clearly informed of all relevant information relating to the service prior to incurring any cost	
Identification and Description of Options		
	No Change	<p>There is limited basis or justification presented in the Consultation for extending the provisions of the existing CoP to those proposed in the draft CoP.</p> <p>The measures detailed in the existing CoP in relation to the promotion of services should be broadly maintained pending the establishment of a basis for any change.</p> <p>A detailed analysis of the impact on consumers and industry must be conducted for a range of options in relation to any regulatory measure to ensure a balanced and proportionate response to any validated issues</p>
	Limited Change	<p>Industry Complaint Handling Process</p> <p>Before any change is considered a complaint handling process should be put in place so a detailed analysis of the issues consumers are experiencing can be completed.</p> <p>Prominence of Pricing Information</p> <p>Modeva suggests that a proportionate measure in relation to ensuring consumers are fully aware of the key terms of services prior to incurring costs would be to separate the pricing information from the general service terms and conditions.</p> <p>Pricing information should be proximate to the service call to action, should be easy to find and should be easily visible to a person with average eyesight.</p> <p>Furthermore, as detailed in the section relating to Pricing Information Modeva is of the view that ComReg consider splitting the definition of Pricing Information into two categories to promote clarity for the consumer. The categories being (1) the primary pricing information of €X per call / per messages etc and (2) the secondary pricing information of 'Calls from mobiles may cost more' etc.</p> <p>Spoken Requirements</p> <p>Modeva suggests that the pricing information should be spoken as part of any audio/visual advertisement where the price of a service is such that consumer harm may become an issue (e.g. within the UK a threshold of generally £3.83 excl VAT).</p> <p>Modeva agrees that radio promotions should be obliged to speak the key service terms and conditions.</p>

		<p>Use of the term ‘Free’</p> <p>Modeva suggests sections 4.11, 4.12, 4.13(a), 4.13(b) and 4.13(d) in the draft CoP be implemented. Section 4.13(d) should only be implemented where the period between the start of a trial period and the commencement of billing is greater than one month and in any case should not include a Opt-In requirement for users to continue using the service</p> <p>Subscription Services</p> <p>Modeva suggests that a proportionate measure in relation to ensuring consumers are fully aware of the key terms of a subscription service prior to incurring costs would be to separate the term “Subscription” or “Subscription Service” from the general service terms and conditions.</p> <p>The term “Subscription” or “Subscription Service” should be at the top of the screen, should be easy to find and should be easily visible to a person with average eyesight.</p>
	<p>Full Acceptance of proposal relating to Promotions</p>	<p>Any measures beyond those outlined above under ‘Limited Change’ must form part of a regulatory impact assessment where various options are publically considered and the benefits and costs carefully analysed.</p> <p>Visible Display Requirements</p> <p>Modeva strongly rejects 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.</p> <p>Additionally, Modeva rejects 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.</p> <p>Spoken Requirements</p> <p>Modeva strongly rejects 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 practice across retail services and will cause significant commercial harm to the industry</p> <p>Use of the term ‘Free’</p> <p>Modeva strongly rejects 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</p>

		<p>instrument that is being proposed without basis and without any consideration of the massively detrimental impact on the industry.</p> <p>Subscription Services</p> <p>Modeva strongly rejects 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.</p> <p>Impact Assessment</p> <p>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.</p>
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Analysis of Costs, Benefits and Other Inputs

	<p>The impacts and costs of the proposed promotional measures on Modeva are in the areas of:</p> <ul style="list-style-type: none"> - Significantly reduced advertising space per advertising spend resulting from increased regulatory requirements; - Increased cost per customer acquired resulting from less effective advertising and increased cost of advertising; - Cost of implementing required changes on a huge catalogue of marketing inventory; - Opportunity cost of deploying significant marketing resources to updating material on the basis of the draft CoP – there will be significant impacts on our ability to maintain existing revenues and grow new revenue streams on the basis of lost revenues due to other measures proposed in the draft CoP <p>Advertising media impacts:</p> <p>As summarised above, on the basis of a simple trial conducted by Modeva of implementing the proposed measures in the draft code we have estimated that the advertising space taken up by regulatory material will change as follows:</p> <ul style="list-style-type: none"> - Mobile Subscription Service: from ~10% of advertising space to ~25% under the draft CoP; - Voice Service: from ~10% of advertising space to ~47% under the draft CoP <p>Appendix A provides a visual representation of these impacts. The overall result of the proposed measures are:</p> <ul style="list-style-type: none"> - To reduce the area available for promotion of our product and services in proportion to the increased space now required for mandated regulatory information; - As Appendix A shows, we will be required to greatly reduce the size of our call to action to keep the size of regulatory text such that we can advertise within the available space while retaining some promotional space – this will have the
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	<p>impact of making the advertising less effective and thus increasing the cost of acquiring customers.</p> <p>A simple trial in relation to the Spoken Requirements of the draft CoP also yielded very significant results. In general TV advertising space can be purchased in slots of 10secs, 20secs or 30secs.</p> <p>Using a typical script for one of our products we included the spoken requirements as outlined in the draft CoP with the following results:</p> <ul style="list-style-type: none"> - Unable to meet mandatory regulatory requirements within a standard 10 second advertising slot - Mandatory regulatory requirements require ~70% of the advertising time for a standard 20 second advertising slot - Mandatory regulatory requirements require ~50% of the advertising time for a standard 30 second advertising slot <p>The result of this being that TV advertising will become unviable for Modeva given the limited time within which Modeva will have an opportunity to promote the benefits of our products and services. Regardless of our view that TV will become an unviable channel we have assessed the cost of implementing the required changes below. We estimate increased CPAs of ~60 – 100% for TV.</p> <p>Cost of Implementing changes (Online):</p> <p>Modeva has a huge volume of advertising collateral in the market at any given time across most media (TV, Press and Online).</p> <p>Modeva advertise on numerous online landing pages, all of which would need to be substantially redesigned under the new draft CoP. Graphical alterations would take a minimum of 525 man hours to complete at an estimated cost to our business of €24,500. A further 225 man hours would be required to update banner advertising at a cost of €11,900. This require the allocating a full-time resources for an extended period of time. During this time, these resources will be unavailable to us for their normal role of generating new sales and revenues.</p> <p>We estimate that the new visual requirements as outlined in the draft CoP will reduce the area of our online advertisements on average 30% and make selling our services considerably more difficult. We would expect to see our CPA's (cost per acquisition) to rise by 50% which would render much of our online advertising unviable.</p> <p>Modeva have significant amounts of TV advertising collateral developed all of which will require update on the basis of the proposed measures in the draft CoP. This is discussed further in the following section taking Spoken Requirements into consideration.</p> <p>Cost of Implementing changes (Offline):</p> <p>Modeva have a significant TV catalogue and will in general have up to 20 pieces of TV advertising copy in active circulation at any given time. On the basis of the draft CoP we will be required to re-work all of our advertising in circulation on the basis of the visual and spoken requirements.</p> <p>We estimate a cost of ~€20,000 to update any 20 pieces of media and estimate a cost of up to €500,000 to update our entire back-catalogue of media which we regularly call upon for active circulation.</p> <p>Given the limited time available due to the new proposed spoken requirements we estimate the that CPA for customer from the new updated media will significantly</p>
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	<p>increase (~60 – 100%) rendering the TV channel unviable.</p> <p>As we produce all of our TV copy in-house an additional cost to those outlined above will be our inability to produce new copy while in the process of updating the existing copy to meet the new requirements.</p> <p>Modeva also have a print advert catalogue of 200 ads and templates. We estimate that updating this catalogue will cost in the region of €10,000 - €20,000. Again, the creative resources required to complete this task full-time will be unavailable for normal duties.</p>
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Q2. Do you agree with the proposed provisions relating to the promotion of PRS? If not, please provide reasons to support your view.

Modeva do not agree with the proposed provisions relating to the promotion of a PRS on the basis of the arguments presented above.

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

Modeva disagrees with the concept of developing a table of accepted abbreviations for a number of reasons:

1. The table will require constant updating which will put an undue administrative burden on ComReg and will require SPs to constantly check the table for updates
2. A process will be required to facilitate SPs recommending new abbreviations for inclusion in the list of accepted abbreviations
3. A transparent process will be required for the evaluation of proposed abbreviations
4. At the moment the list is 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

Modeva is of the view that abbreviations should generally only be used where the communications medium is limited in terms of the number of available characters or space. Where abbreviations are required then only commonly used or commonly constructed abbreviations should be used. A list such as that proposed in the Consultation will add considerable administrative overhead for little benefit to anyone – a practical approach as suggested above is appropriate in this case.

Price Information

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.

Modeva agrees with the principles of pricing transparency and as such with many of the provisions of Section 5 of the draft CoP with some exceptions.

Section 5.1(a) requires that end-users are fully informed in a transparent and clear manner of the cost of using a PRS prior to incurring any charge. This principle is dealt with adequately by Section 4 of the draft CoP relation to promotion of PRS. Modeva is of the view that the text “and have the ability to exit from the PRS at that point without incurring any charges” is not required in this section as the consumer will not yet have engaged with the service and thus this text may introduce some confusion for the reader.

Section 5.3 requires that promotions transmitted on Television, on websites, or in other audio/visual formats have the pricing information spoken as well as visually displayed. As discussed above 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. As this requirement is significantly above and beyond the requirements of the National advertising bodies and best practice in all retail sectors Modeva objects to its inclusion in the absence of a detailed basis and cost/benefit analysis.

Finally, Modeva is of the view that ComReg consider splitting the definition of Pricing Information into two categories to promote greater clarity for the consumer. The categories being:

1. the primary pricing information of €X per call / per messages etc and;
2. the secondary pricing information of ‘Calls from mobiles may cost more’ etc.

We believe that within the provisions of the CoP relating to Promotion there will be practical advantages for the consumer and the Service Providers in having this distinction. We believe that the requirement to present all the pricing information together in promotions as per the proposed definition of pricing information will lead to the consumer missing the primary pricing information, as such, the secondary information obscuring the primary information.

Expenditure Reminders and Limits

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.

Modeva is of the view that the provision of expenditure reminders enhances price transparency for consumers and as such agrees with this basic requirement with significant exceptions in relation to ComReg's proposed implementation as follows.

As detailed below in relation to Subscription Expenditure Updates, and separately in this section of the draft CoP for Voice services Modeva strongly objects to ComReg's proposed requirement for an active response from customers to indicate they wish to continue with their chosen service.

In relation to subscription expenditure reminders please see below for our detailed response. In summary, the 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 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.

In relation to voice services, ComReg proposes that the consumer be required to actively confirm they wish to continue the call after receiving their €30 spend reminder. There is no detailed basis for this proposal and in many ways the proposal is bizarre as the customer in all cases with a voice service is in control and can simply hang-up if they don't wish to continue the call. Modeva objects to this proposal on this basis.

Finally, in relation to section 6.20 of the draft CoP, Modeva does not agree with the proposal by ComReg in the specific message wording suggested that Service Providers must keep a running total of all costs incurred in the past by consumers. We believe this to be disproportionate to the issues raised and an undue burden on the Service Providers particularly given that some consumers remain subscribed to services for long periods of time. The issue here is to inform the customer of the costs that they ARE incurring in order to allow them to make informed choices as to whether to continue with their PRS or to "STOP". On this basis Modeva is of the view that the 'Double Opt-In' in this message should be replaced by consumer information on how to STOP from the service in question.

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

Modeva considers that the levels at which the proposed expenditure reminder are set are appropriate.

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.

In principle we believe that consumers should not be limited in their expenditure by regulation but should be kept adequately informed by the service to facilitate the consumer making informed decisions regarding their spend.

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.

In principle we believe that consumers should not be limited in their expenditure by regulation but should be kept adequately informed by the service to facilitate the consumer making informed decisions regarding their spend

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.

Modeva does not agree with ComReg's proposal for overall expenditure limits for individual PRS for a number of reasons. Firstly it is unclear from the Consultation document what policy objective ComReg is attempting to meet with this proposal.

On one hand, ComReg has expressed concern for users using landlines, engaging in services and incurring levels of debt that have become an issue for the Network Operator. Modeva is of the view that this is an issue of credit control between the Network Operator and the user in this case. Where PRS providers have adhered to all measures in the CoP in relation to promotion, price and spend transparency then the onus must fall on the consumer to spend within their means.

On the other hand, 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".

Modeva is of the view that Service Providers must provide clear pricing and spend information to consumers, adhering to all provisions of the CoP 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.

Finally, 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 services once they've reached any proposed spend limit.

Purchase Confirmation Messages

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

Modeva does not have a strong view on this point however we would point out that it is unclear from the information presented as to how this measure might be operated without negatively impacting the consumer's experience.

Subscription Services – Double Opt-In

In addition to the information and arguments provided in the following, Modeva requests, as indicated in ComReg 10/50, that ComReg re-considers IPPSA's submission to that consultation in consideration of the proposed measures relating to Double Opt-In as the views expressed in that submission do not appear to have informed the proposals made in this Consultation.

In this section of the consultation ComReg contends that the provision of Subscription Services under the existing CoP is causing significant consumer harm and as a result ComReg proposes introducing a requirement for Double Opt-In for all subscription services under the new CoP. It is noted that ComReg does not provide any other options in relation to addressing the issues outlined in the Consultation as a basis for this most stringent measure.

Presented Statistical Data:

According to the data provided in the consultation document, ComReg are currently addressing an average of 250 end-user contacts per week from PRS customers. Of these contacts, 84% of the contacts relate to Subscription Services. As noted in the introduction of this response, this level of contacts is proportionate to the share that subscription services have in the PRS market.

Firstly, to summarise the limited data provided by ComReg in relation to customer contact. Taking the stated run-rate for contacts to the ComReg call-centre, this equates to ~13,000 contacts per annum from PRS customers. 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.

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.

ComReg further suggests 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. Firstly, 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 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.

The PRS industry body (IPPSA) 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. See Appendix 1.

Furthermore Modeva 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 our PrizeClub.ie 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”. Modeva 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 we have found the following:

1. 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;
2. Of the 59 contact only 80% of these actually related to the service in question (i.e. PrizeClub);
3. In one case the complaint provided didn’t relate to a customer of Modeva’s

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

Requirement for a Mandatory Industry Complaint Handling Procedure

Modeva is of the view that the above highlights that, as an industry, there is a significant deficiency in relation to the quantity and quality of data relating to consumer contacts and complaints and as **such the introduction of significant regulatory measures based on the current data is unacceptable.**

Modeva requests again, as originally requested in response to ComReg 10/27, that ComReg and the PRS industry immediately proceed to introduce a mandatory industry wide complaint handling procedure that will facilitate the harvesting of useful and accurate data in relation to consumer issues which will allow us to collectively address these issues in a proportionate manner.

Furthermore Modeva believes the number of contacts requiring escalation to ComReg will significantly drop, if not almost disappear, where customers know who to contact in relation to their complaints and how those complaints will be addressed on the basis of this procedure.

Ensuring customers are fully informed of service Terms & Conditions prior to purchase

Modeva fully agrees with the principle of ensuring that customers are fully informed of the relevant terms and conditions for any service prior to purchase. We believe, however, that the measures proposed are not proportionate to the underlying issues.

ComReg states in the consultation that 40% of contacts for Subscription PRS relate to ‘Denial of Subscription’ and therefore draws the conclusion in relation to the service ‘Welcome’ messages that end-users either:

1. Do not receive;
2. Do not read and/or;
3. Do not understand the terms and conditions

Modeva is of the view that any regulatory measures should address these individual issues in a proportionate manner. As such we suggest the following as possible options:

1. **Do not receive:** 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;
2. **Do not read:** By complying with the requirements set down in the CoP in relation to promotions and successful delivery of the ‘Welcome’ message Modeva is of the view 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;

3. **Do not understand:** Modeva is of the view that a proportionate response to this point is adopting measures in relation to the clear wording of promotional material and 'Welcome' messages, conducting consumer education initiatives and customising information for the targeted audience.

An additional category also needs to be considered here and that is the category of consumers who having consumed the content they requested complain to Service Providers and ComReg, citing 'Denial of Subscription' in the knowledge that a likely outcome is a goodwill refund of all charges despite compelling evidence of subscription.

In supporting the above proposals there will be a requirement for industry to provide information substantiating the provision of information to the customer prior to the customer being charged for the services that they have requested. This requirement in some cases can be facilitated by independent 3rd parties providing audit trails but an underlying principle is one of trust between ComReg and the industry. Indeed, the governing legislation requires that any information provided is "true and accurate".

UK experience with Double Opt-In

During the course of drafting this consultation paper ComReg states that it consulted with regulatory bodies in other jurisdictions and notes that Double Opt-In has been effective where it has been introduced. Particularly, ComReg refer to the success of Double Opt-In in the UK as a basis for the introduction of Double 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.**

Statement of Apparent Policy Objective		
	No clear policy objectives have been articulated in this section of the consultation. A number of potential concerns have been highlighted but no detailed analysis has been provided as to the impact or scale of any of the issues mentioned.	
	The basic objective appears to be to ensure that end-users can confidently subscribe to a PRS, having first been made aware of the cost and of all the relevant terms and conditions.	
Identification and Description of Options		
	No Change	A basis for urgent change has not been established by the information presented in the consultation. The measures detailed in the existing CoP in relation to subscription services should be broadly maintained pending the establishment of a basis for any change. Furthermore, the introduction of ComReg's licensing scheme has already made a significant impact on the number of contacts being made from consumers in

		<p>relation to PRS.</p> <p>A detailed analysis of the impact on consumers and industry must be conducted for a range of options in relation to any regulatory measure to ensure a balanced and proportionate response to any validated issues</p>
	<p>Limited Change</p>	<p>Complaint Handling Process</p> <p>Before any change is considered a mandatory industry complaint handling process should be put in place so a detailed analysis of the issues consumers are experiencing can be completed.</p> <p>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.</p> <p>Consumer Awareness</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 consumer focussed web-site that is promoted to the public. Modeva notes the recent launch of PhoneSmart.ie but considers that this initiative would have been enhanced with some engagement with the Industry. <p>Industry working group</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>Specific proportionate measures:</p> <p>Modeva would support the introduction of proportionate measures as outlined above to ensure that consumers are informed of all relevant terms of any service prior to being charged for the service. Specifically:</p> <ol style="list-style-type: none"> 1. Do not receive: 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;

		<p>2. Do not read: By complying with the requirements set down in the CoP in relation to promotions and successful delivery of the 'Welcome' message Modeva is of the view 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>3. Do not understand: Modeva is of the view that a proportionate response to this point is adopting measures in relation to the clear wording of promotional material and 'Welcome' messages, conducting consumer education initiatives and customising information for the targeted audience.</p> <p>Regulatory Impact Assessment</p> <p>Conduct a RIA for all options considered in relation to proposed regulatory measures and publish this for comment from the industry. Ill-considered measures who's impact has not been considered will result in the decimation of the industry in Ireland and consumers being denied access to these information services.</p>
	<p>Full Acceptance of proposal for 'Double Opt-In'</p>	<p>Where a full analysis based on a mandatory Industry Complaint Handling Process highlighted that there were still significant consumer issues following the introduction of the more proportionate measures outlined above then Modeva would propose the introduction of a UK-style Double Opt-In model whereby the measure only applies to services charging over a threshold cost per week.</p> <p>This reflects the reality that lower priced services and particularly those that don't have high joining fees cause less harm.</p> <p>Consumer Confusion:</p> <p>Double Opt-In is 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</p>

		<p>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>Technology Specific</p> <p>The Double Opt-In model and indeed many other provisions within the draft CoP are 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 or the 540,546 mobile broadband users in Ireland – Q3'10) 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>Regulatory Impact Assessment</p> <p>Conduct a RIA for all options considered in relation to proposed regulatory measures and publish this for comment from the industry. Ill-considered measures who's impact has not been considered will result in the decimation of the industry in Ireland and consumers being denied access to these information services.</p>
<p>Analysis of Costs, Benefits and Other Inputs</p>		
	<p>The impact on Modeva resulting from this proposed measure is devastating. The following are the key areas of impact:</p> <ul style="list-style-type: none"> - 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; - As Modeva completes all software development and marketing activity in-house there is a significant opportunity cost in re-designing, implementing and optimising all of the relevant products and services to comply with the Double Opt-In requirements. <p>In our treatment of the impact and cost to our business of implementing the proposed measures above we have considered 'Double Opt-In' and 'Recurring Opt-In' (i.e. for expenditure messages) together.</p> <p>Cost of Redevelopment</p> <p>For Modeva to incorporate the proposed measures in relation to double and recurring opt-in involves the redevelopment of no less than five 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</p>	

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 Modeva.

On this basis we estimate a three month development cycle followed by a similar optimisation cycle to fully and successfully incorporate the new regulatory measures into our products.

We estimate the cost of each update project to be ~€231,000 and for five affected products, total cost is estimated at ~€1,155,000.

See further details in Confidential Appendix 3.

Impact of Proposed Measures on Revenues

To estimate the probable impact of Double Opt-In and Recurring Opt-In (i.e. for expenditure messages) Modeva performed a trial comparing the effects of the new proposed measures with a control sample based on the existing regulation. This trial was independently verified and reported on by KPMG.

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 below by showing the impact to a hypothetical subscription service on the basis of the results from our trials.

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

Specifically in relation to the proposed requirement that consumers must Double Opt-In it was found that the number of subscriptions that were successfully completed fell from 68% under existing rules to 2% under the new proposed measures.

Overall (for Double Opt-In and Recurring Opt-In) the estimated impact on a service's average revenue per customer that initially responds to advertising is a reduction of **99.4%** over a period of six months.

It is our view that the impact of Double Opt-In is that it causes significant customer confusion. 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>Additionally, the medium of SMS works well for receiving content and information. However, many consumers will be slower to interact with it for a number of reasons:</p> <ul style="list-style-type: none"> - particularly in response to a service that they expect to receive content from rather than interact with - given the limitation of the small keyboards on some devices - the time taken to complete the transaction - many phones don't have a full qwerty keyboard 		
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%	

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.

On the basis of the information provided above Modeva does not agree with ComReg’s proposal to introduce a “Double Opt-In” requirement for subscription services. In summary Modeva believes ComReg should take the following steps in ensuring a proportionate response to their stated policy objectives:

1. Establish a mandatory industry wide Complaint Handling Procedure to facilitate the harvesting of consumer data;
4. The establishment of an industry working group that can actively address any concerns as they arise and deal with the issues that ongoing technological development presents
2. Consider the measures outlined above to address the issue of customers being informed of service conditions prior to being charged;
3. In tandem with industry to develop a consumer web-site to promote consumer awareness in relation to PRS and the promotion of this to consumers

5. In advance of any actions that may negatively impact consumers or industry there should be a clear analysis of the underlying cause and then only reasonable and proportionate remedies should be introduced.

Subscription Services – Sign-up Fees

Q12. Do you agree that any sign-up fees should be considered the subscription charges for the first billing period? If not why not?

While Modeva does not have a strong opinion on this point we are of the view that Service Providers who provide transparency of terms and pricing to consumers in line with the CoP 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.

Subscription Services – Expenditure Update Messages

In sections 2.7.1 and 2.9.6 of the consultation document ComReg note the following points in relation to PRS:

- 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 cost 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 as to the cost of the message and who is responsible for delivering the message.

Modeva 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.

In addition Modeva 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 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, Modeva 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 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. This is simply baseless and outrageous.

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.

Statement of Apparent Policy Objective		
	To ensure that customers of PRS are aware of the cost they are incurring while consuming the service that they have requested.	
Identification and Description of Options		
	No Change	<p>With the exception of ‘some’ PRS providers, as noted by ComReg, Modeva is of the view that the measures in the existing CoP fully address the issue of informing the customer of the costs they are incurring at regular intervals.</p> <p>Under the current CoP ‘Spend Reminder’ messages include information informing the user of how to STOP from the service so the customer is fully empowered to cease their subscription at that point.</p> <p>No further measures should be considered in the absence of a particular new requirement or the appropriate impact analysis.</p>
	Limited Change	<p>Modeva supports the approach of reviewing the format and content of the existing ‘Spend Reminder’ messages as per the existing CoP to ensure that there is no ambiguity for the customer in terms of the cost of the message, the content of the message and the source of the message.</p> <p>We also suggest the current requirement of informing the user of how to STOP from the service is retained so the customer is fully empowered to cease their subscription at that point.</p> <p>We believe this approach to be a proportionate to the issues raised by ComReg.</p> <p>Modeva does not, however, agree with the proposal by ComReg in the specific message wording suggested in the Consultation that Service Providers must keep a running total of all costs incurred in the past by consumers. We believe this to be disproportionate to the issues raised and an undue burden on the Service Providers particularly given that some consumers remain subscribed to services for long periods of time. The issue here is to inform the customer of the costs that they ARE incurring in order to allow them to make informed choices as to whether to continue with their PRS or to “STOP”.</p>
	Full Acceptance of proposal for ‘Recurring Opt-In’	<p>As described above Modeva is absolutely opposed to ComReg’s proposal to introduce a ‘Recurring Opt-In’ for Subscription Services.</p> <p>ComReg has provided absolutely no basis for this measure and have clearly conducted no impact analysis as, based on the principles outlined in ComReg 07/56a, this option would never have even been considered where an analysis of the impact on the industry was conducted.</p>

		<p>In addition Modeva does not agree with the proposal by ComReg in the specific message wording suggested in the Consultation that Service Providers must keep a running total of all costs incurred in the past by consumers. We believe this to be disproportionate to the issues raised and an undue burden on the Service Providers particularly given that some consumers remain subscribed to services for long periods of time. The issue here is to inform the customer of the costs that they ARE incurring in order to allow them to make informed choices as to whether to continue with their PRS or to “STOP”.</p>
<p>Analysis of Costs, Benefits and Other Inputs</p>		
	<p>The impact on Modeva resulting from this proposed measure is devastating. The following are the key areas of impact:</p> <ul style="list-style-type: none"> - Requirement to re-design, re-develop and re-optimize products to implement the required changes; - Significantly reduced revenues as a result of increased automatic and involuntary churn of our subscription base; - Significant resource requirement to optimise product and sales and retention processes in order to retain ANY customers beyond their first ‘€20 Spend Reminder’ message; - As Modeva completes all software development and marketing activity in-house there is a significant opportunity cost in re-designing, implementing and optimising all of the relevant products and services to comply with the Recurring Opt-In requirements. <p>In our treatment of the impact and cost to our business of implementing the proposed measures above we have considered ‘Double Opt-In’ and ‘Recurring Opt-In’ (i.e. for expenditure messages) together.</p> <p>Cost of Redevelopment</p> <p>For Modeva to incorporate the proposed measures in relation to double and recurring opt-in involves the redevelopment of no less than five 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 Modeva.</p> <p>On this basis we estimate a three month development cycle followed by a similar optimisation cycle to fully and successfully incorporate the new regulatory measures into our products.</p> <p>We estimate the cost of each update project to be ~€231,000 and for five affected products, total cost is estimated at ~€1,155,000.</p> <p>See further details in Confidential Appendix 3.</p> <p>Impact of Proposed Measures on Revenues</p> <p>To estimate the probable impact of Double Opt-In and Recurring Opt-In ((i.e. for expenditure messages) Modeva performed a trial comparing the effects of the new</p>	

	<p>proposed measures with a control sample based on the existing regulation. This trial was independently verified by KPMG.</p> <p>The trial was conducted on the following basis:</p> <ul style="list-style-type: none"> - 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 below by showing the impact to a hypothetical subscription service on the basis of the results from our trials. <p>The trials outlined above were independently verified and reported on by KPMG (See Appendix 4)</p> <p>Specifically in relation to the proposed requirement that consumers must respond with a keyword to the €20 Spend Reminder message it was found that the number of subscriptions that successfully continued fell from 93% under existing rules to 0% under the new proposed measures.</p> <p>Overall (for Double Opt-In and Recurring Opt-In) the estimated impact on a service's average revenue per customer that initially responds to advertising is a reduction of 99.4% over a period of six months.</p> <p>It is our view that the impact of the proposed Recurring Opt-In is that it causes significant customer confusion. Given that PRS consumers in Ireland will be very accustomed with the current Spend Reminder messages, 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>Additionally, the medium of SMS works well for receiving content and information. However, many consumers will be slower to interact with it for a number of reasons:</p> <ul style="list-style-type: none"> - particularly in response to a service that they expect to receive content from rather than interact with - given the limitation of the small keyboards on some devices - the time taken to complete the transaction - many phones don't have a full qwerty keyboard
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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%	

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.

On the basis of the information provided above Modeva is absolutely opposed to the proposal to require end-users to provide positive confirmation of their desire to continue a service after a certain expenditure level. This is an utterly disproportionate measure without foundation.

Subscription Services – Failed Delivery Messages

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.

In the interest of ensuring the consumer enjoys a good experience when interacting with PRS Modeva 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.

Modeva agrees with ComReg that “failed messages” should not be charged for.

On the basis of the above Modeva believes that Service Providers should be permitted to attempt to deliver services to a subscribed consumer once per day for each day of the specific 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 ensures 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 greater than one billing period.

Subscription Services – Unsubscribing from Multiple Subscription Services

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.

Modeva 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 how 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.

Competition Services

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

Modeva 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.

Modeva 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 Modeva 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 CoP.

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 deriving 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. Modeva, 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. Modeva 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.

Q17. Do you agree with the provisions in the draft Code relating to Quiz TV Services? If not, please provide reasons to support your view.

Modeva do not have a strong view on this point.

Additional Sub-Sections of Section 6 of the Draft Code

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.

In addition to the points raised in the previous sections of the response Modeva would like to comment on the following points.

Unsubscribing from Services

Modeva 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, when having agreed with the service terms and conditions a subscription is initiated and the customer soft opts-in for marketing. In this case, and as per section 6.23 of the draft CoP, the Service Provider must include details within the promotion 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".

Modeva 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

Modeva 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 where the winner agrees.

However, Modeva 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. Modeva 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 in the publicity.

Customer Care

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

ComReg agrees with the provisions in respect of Customer Service and additionally requests that ComReg immediately engage with industry to introduce a mandatory Industry Complaint Handling Process as detailed in previous sections above.

Refunds – Requirement for Refunds

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.

Modeva does not believe that such a requirement should be entered into the new CoP.

In general Modeva provides refunds to customers for the full charge imposed on them, inclusive of VAT, despite the fact that the refund is greater than the revenue earned by Modeva from the customer. Modeva intends to continue this practice in the interest of a speedy resolution to any issues affecting our customers.

However, given that in most cases there are revenue share or other contractual agreements between all the parties in the value chain, Modeva 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.

On this basis we recommend that ComReg do not enter this requirement into a mandatory CoP.

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.

Modeva, is of the view that this issue needs to be dealt with very carefully.

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

- As it is currently drafted, this measure would lead to scenarios whereby subjective decisions in relation to breaches of the CoP 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 CoP 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 CoP.

Notwithstanding the risks outlined above Modeva 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.

Refunds – How should End-Users be refunded

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

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.

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.

See response to Q22.

Refunds – Default by a Party responsible for issuing refunds

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?

Modeva 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 may 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 Modeva believes 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?

Modeva 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.

Referring to our response to Q24 Modeva 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.

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.

It is NOT reasonable, and proportionate, to require the non-compliant PRS Provider’s contractual partners to issue refunds in such circumstances.

See our response to Q25.

Modeva 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, Modeva is of the view that compliant PRS Providers should not have to bear the burden of issuing refunds on behalf of a non-compliant Providers and hence, should not need to recoup any costs in this regard.

Control of Access to Adult (including Sexual) Entertainment Services

Q28. What are your views on the establishment of an Age Verification Framework for ensuring appropriate access to Adult (including Sexual) Entertainment Services?

Modeva has no strong view on this point

Q29. What are your views on requiring Network Operators to bar access to the number ranges set aside for Adult (including Sexual) Entertainment Services in the numbering conventions?

Modeva has no strong view on this point

Q30. What are your views on placing the responsibility for controlling access to Adult (including Sexual) Entertainment Services with the PRS Provider?

Modeva has no strong view on this point

Q31. What are your views on establishing a Live Service Providers Compensation Scheme to provide for refunds to end-users whose telephones have been the subject of unauthorised use to call Adult(including Sexual) Entertainment Services?

Modeva has no strong view on this point

Numbering – Fundraising for Charitable Organisations

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?

Modeva has no strong view on this point.

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.

Modeva has no strong view on this point but would imagine that only registered charities should be permitted to make use of the shortcodes within this range. In addition, any Service Provider should have access to these ranges in order to provide services to registered charities.

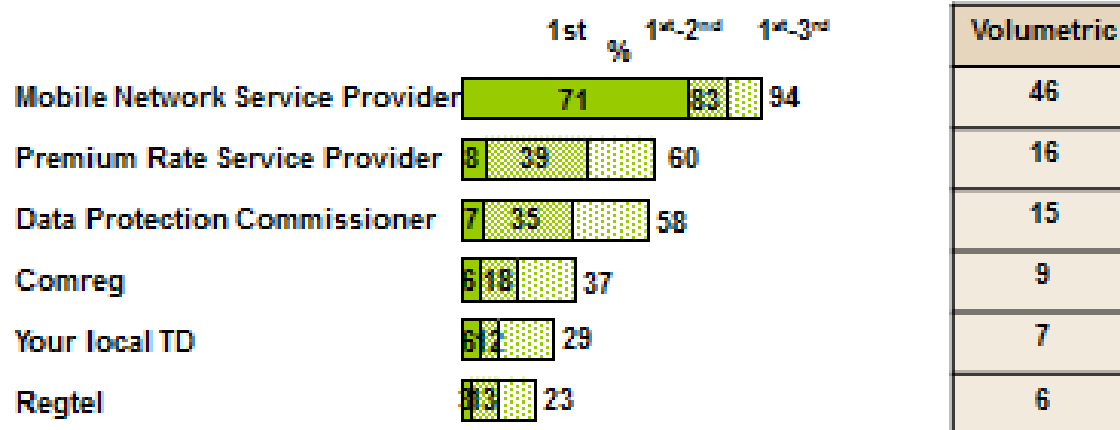
Appendix 1 – Amarach Survey Results



Who Contact to Complain about Phone Paid Services

12

(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.

(Q.2)

Appendix 2 – Sample Advertisement incorporating proposed measures

Sample Advertisement for a Voice service under current CoP requirements

Car Giveaway

Chance to WIN a VOLKSWAGEN Car



Tired of your boring old car?

Well now you can drive away in a brand new Volkswagen!
This is your chance to win a brand new car worth €25,000!

Question:

The first generation Volkswagen
Polo was introduced in:

a) 1975 b) 1985 b) 1995

To enter the competition call:

1580 12 34 56

The closing date for this offer is June 9th 2011.

Calls cost €2.40 per minute and the total cost of entry will cost at least €4.80. Calls from networks other than eircom may vary and calls from mobiles normally cost more. 18s+.SP InkRed 01 4888 999. There is one prize available and the winner will be chosen from all correct entries received. The winner will be contacted by phone on June 10th 2011.

Sample Advertisement for a Voice service under draft CoP requirements, maintaining original Call to Action size

Car Giveaway

Chance to WIN a VOLKSWAGEN Car



Tired of your boring old car?

Well now you can drive away in a brand new Volkswagen!
This is your chance to win a brand new car worth €25,000!

Question:

The first generation Volkswagen Polo was introduced in:

a) 1975 b) 1985 c) 1995

To enter the competition call:

1580 12 34 56

Calls Cost €2.40 per min. Entry takes 2 minutes to complete.

The total cost of entry will be at least €4.80. Calls from networks other than eircom may vary and calls from mobiles normally cost more.

18s+.SP InkRed 01 4888 999. There is one prize available and the winner will be chosen from all correct entries received. The winner will be contacted by phone on June 11, 2011.

Sample Advertisement for a Voice service under draft CoP requirements, Call to Action adjusted to fit draft CoP requirements

Car Giveaway

Chance to WIN a VOLKSWAGEN Car



Tired of your boring old car?
Well now you can drive away in a brand new Volkswagen!
This is your chance to win a brand new car worth €25,000!

Question:
The first generation Volkswagen
Polo was introduced in:
a) 1975 b) 1985 b) 1995

CALL: 1580 12 34 56
Calls Cost €2.40 per min.
Entry takes 2 minutes to complete. The total cost of entry will be at least €4.80.
Calls from networks other than eircom may vary and calls from mobiles normally cost more.

The closing date for this offer is June 9th 2011.

18s+ .SP InkRed 01 4888 999. There is one prize available and the winner will be chosen from all correct entries received. The winner will be contacted by phone on June 10th 2011.

Sample Advertisement for a mobile subscription service under current CoP requirements

Car Giveaway

Chance to WIN a VOLKSWAGEN Car



Tired of your boring old car?
Well now you can drive away in a brand new Volkswagen!
This is your chance to win a brand new car worth €25,000!

This is a subscription service

Question:
The first generation Volkswagen Polo was introduced in:
a) 1975 b) 1985 b) 1995

To enter the competition text:
CAR to 57150

The closing date for this offer is June 9th 2011.

Subscription service €4 per week. You will receive 2 messages per week. 18s+. SP InkRed 01 4888 999. To unsubscribe send stop to 50150. You may receive promotional messages, to opt out text stop to 57052. WAP required & data charges may apply. Closes June 10th 2011. One winner every month. Winner chooses from all prizes advertised.

Sample Advertisement for a mobile subscription service under draft CoP requirements, maintaining original Call to Action size

Car Giveaway

Chance to WIN a VOLKSWAGEN Car



Tired of your boring old car?
Well now you can drive away in a brand new Volkswagen!
This is your chance to win a brand new car worth €25,000!

This is a subscription service

Question:
The first generation Volkswagen
Polo was introduced in:
a) 1975 b) 1985 b) 1995

To enter the competition text:
CAR to 57150
Subscription
service. €4 per
week. You will
receive 2
messages per
week.

This closing date on this offer is June 9th 2011.

18s+. SP InkRed 01 4888 999. To unsubscribe send stop to 50150. You may receive promotional messages, to opt out text stop to 57052. WAP required & data charges may apply. Closes June 10th 2011. One winner selected. Winner chooses from all prizes advertised.

Sample Advertisement for a mobile subscription service under draft CoP requirements, Call to Action adjusted to fit draft CoP requirements

Car Giveaway

Chance to WIN a VOLKSWAGEN Car



Tired of your boring old car?
Well now you can drive away in a brand new Volkswagen!
This is your chance to win a brand new car worth €25,000!

Question:
The first generation Volkswagen
Polo was introduced in:
a) 1975 b) 1985 b) 1995

This is a subscription service

Text CAR to 57150

Subscription service.
€4 per week. You will
receive 2 messages
per week.

The closing date for this offer is June 9th 2011.

18s+. SP InkRed 01 4888 999. To unsubscribe send stop to 50150. You may receive promotional messages, to opt out text stop to 57052. WAP required & data charges may apply. Closes June 10th 2011. One winner every month. Winner chooses from all prizes advertised.

Appendix 4 – KPMG Report on Revenue Impact of Double Opt-In and Recurring Opt-In measures

21 National Consumer Agency (“NCA”)

ComReg- Consultation Paper

The National Consumer Agency welcomes this opportunity to submit its views as part of the Consultation on Premium Rate Services Code of Practice. The format of our response will be to address each of the questions posed in the document in tandem with some general observations. Some of the issues are relevant to our concerns whilst others are more appropriate for ComReg and the service providers. The areas which are of particular interest to us are dealt with separately whilst we are pleased to offer our opinion and observations on all aspects in the latter part of our response.

The thrust of the NCA's approach to the regulation of consumer transactions is focussed on the twin concepts of good faith and fair dealing. To this end, even though we are concerned with individual contractual terms, we devote a lot of resources to considering the overall effect of a transaction, which may contain many contractual terms. The presence of a code of practice is crucial to the overall regulation of the transaction. The proposals as set out in the draft code achieve a necessary balance between the voluntary nature of the consumer engaging with the PRS and the consumer consent required for the payment of fees. We welcome ComReg's approach in aiding clarity and transparency and also the strengthening of the 'informed consent' approach that is evident throughout the document.

2.5 Promotion of PRS

The NCA considers that there are general unavoidable obligations with respect to the provision of information. The technical developments in the PRS market would lead to the presumption that the average consumer will face increased challenges in understanding the nature of the product being promoted and the implications of availing of the service. As a general rule the NCA considers that the 'consumer expectation', and meeting that expectation, should be to the fore of the service provider's thoughts in any contemplated promotion. Consequently, promotions that do not satisfy that expectation and which may result in avoidable and unnecessary disappointment for consumers should be avoided.

At a minimum the NCA would suggest that the promotion should state clearly all the charges for accessing the service and crucially a simple explanation as to how the consumer can exit the service. The NCA notes that the proposed code addresses the provision of misleading information. We would also welcome an addition to the code which would deal with the issue of a misleading omission or concealment of material information which the average consumer would need in order to make an informed transactional decision.

Concerning the clarity of the information supplied to consumers, the Agency would suggest that the requirements under Art 10(1) of the E-Commerce Directive that information be provided ‘clearly, comprehensively and unambiguously’ is a good benchmark for comparative purposes.

2.5.3

The use of the term ‘free’ in an unqualified sense means that there can be no charges whatsoever. An offer should not be described as ‘free’ if there is any cost to the consumer. Making a representation that a service is ‘free’, ‘without charge’ or anything similar if a consumer has to pay anything other than a necessary and reasonable cost of responding to the representation and having a service delivered, is a prohibited commercial practice for the purposes of the Unfair Commercial Practices Directive.

2.5.4

The Agency has concerns relating to the overprovision of information. If a consumer is exposed to an information deluge then the exact opposite effect of what was sought may result. The NCA view would be that the consumer receives information in a timely and appropriate manner in order that the consumer may make, and give effect, to an informed transactional decision. We agree entirely with ComReg’s proposal in this regard.

With respect to the information requirements, is it the position that they are an integral part of the contract? The NCA would assume that it is and therefore there

may be consequences for the service provider if it fails to inform the consumer of the essential information requirements.

2.6

In the NCA view, pricing is a contract related obligation as opposed to the general information obligations required elsewhere. The providers and consumers alike should be alerted to its particular status as the consequence of inadequate pricing or negligent misstatements affect the core of the contract. The Agency welcomes the comprehensive way in which price information requirements are dealt with. We would suggest that if there is a price promotion or a price advantage (such as the case in introductory offers) then this must be communicated clearly and the duration of the offer and the rate to which the introductory offer will increase should also be clearly communicated.

2.7

Expenditure reminders and limits are crucial safeguards for consumers in the PRS arena. The Agency does not agree with the proposed levels at which the proposed expenditure reminders are set. Since 01 January 2011 the NCA has taken over the role from the Financial Regulator of providing financial information to the general consumer body. Our message in this regard relates to awareness and control. In the current economic climate those two facets of financial planning were never more apparent or relevant. We are concerned that a consumer would only get a notification after having spent €30 and then termination at €60. Is there a technical reason why a consumer couldn't get indications at €10 and €20 and then the proactive requirement at €30 with further indications at €40 and €50 and termination at €60?

In considering whether there should be a limit on the amount of money a consumer would be allowed spend on entering competitions, we believe there is an onus on regulatory bodies to consider the consequences of a vulnerable consumer engaging with that service. The primary considerations here are assessing the needs and requirements of a diverse consumer body and the merits of setting a threshold or benchmark, which would protect those consumers who are insensitive to information.

It is difficult to suggest an arbitrary figure, however we would have concerns about financially challenged consumers spending anymore than €12 a week on competitions.

2.8

Within the general body of consumer law, the subjects of 'receipts' is less than ideally catered for. Whilst some provision is provided by the Sale of Goods Act 1893 where sales in excess of €12 must be evidenced in writing, the lower value purchases have escaped this provision. Under the Distance Contracts Directive there is a requirement that particular information must be provided in a durable medium. It is presumed that the electronic media, which this code relates to, suffices for that requirement. Of significance however is the fact that the information requirements do not relate to contracts for services, which are purchased on a 'once-off' basis. In that regard ComReg's proposal plugs an obvious gap and is very welcome.

2.9

The NCA share ComReg's concerns relating to the current methods of subscribing to a Subscription Service. Such a large percentage (40%) of end users denying that they had subscribed indicates that there is a serious issue to be addressed. The consultation paper has provided a compelling argument for the introduction of such a 'double-opt in' requirement and it is one that the Agency would support.

2.9.5

The Agency is wary of so called 'joining-up' fees, which are not fully refundable if the consumer decides to unsubscribe. The question arises as to what this joining-up fee represents in the first place? If it were a business cost then the Agency would presume that as it represents the cost of doing business it should therefore be included in the tariff to the end user. The Agency would not be in favour of an 'unbundled' approach to pricing as this takes from the transparency of the price and leads to additional unintended costs for the consumer.

2.9.6

The Agency's previous observation relating to interval reminders refers. Such reminders must be clear and unambiguous and the Agency is in full agreement that such a format should be prescribed by ComReg.

The National Consumer Agency has considered each question posited in the consultation document. Please find responses for questions 1 to 24 below.

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

A.1 The NCA welcomes the proposed provisions applicable to all specified PRS, and particularly notes and welcomes the provision, which states that, where dispute arises over the meaning and/or interpretation of any provision of the Code of Practice, the interpretation that will most protect consumers is the interpretation that will be used.

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

A.2 One of the major areas of concern for the NCA about PRS has been the advertising of PRS and the use of the term 'free'. The NCA broadly welcomes the provisions of the Code in this respect, and welcomes the now required clarifications in all marketing material and media. By setting standards along these lines, the NCA believes ComReg will assist traders in avoiding practices that generate Consumer dissatisfaction.

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

A.3 The NCA welcomes the idea of standardising the abbreviations used across the industry, where the abbreviations used can vary widely from one trader to another. The list attached to the Code of Practice contains some of the most important terms necessary for a consumer to be fully informed before entering a contract for a PRS service and, as such, the NCA can see no reason to object to these abbreviations.

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

A.4 It is important that pricing information is made available to consumers in advance of making a purchase in order to allow them to make an informed choice and form a valid contract. The NCA therefore welcomes the provisions relating to the price information that should be made available to consumers. The obligations set out in the draft Code will assist traders to meet their legal requirements while ensuring that Consumers are afforded every opportunity to be fully aware of the cost of a PRS before entering into a contract.

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

A. 5 The nature of PRS means that it is possible for consumers to unwittingly accrue significant costs while using the PRS. Providing the consumer with expenditure reminders will allow the consumer the option of continuing with a service with full knowledge of the costs incurred. In the case of a Consumer that has managed to sign up for a PRS without fully realising what this means, their potential risk and financial exposure engaging with a PRS will be greatly reduced. In short, this move will help increase pricing transparency for the consumer.

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

A.6 The NCA has some concern over the specified limits, especially for vulnerable consumers in the current economic environment. The Agency would be interested to know if there is any basis for the figures selected in the consultation document.

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

A.7 The NCA agrees with the policy of limiting the financial exposure of Consumers engaged in using PRS and setting expenditure limits in relation to entering PRS competitions is one way of doing this. The total cost of €12 per entry seems quite generous to the provider.

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

A. 8 The NCA is aware that m-Commerce – mobile-commerce – is becoming more widely used across Europe as a means of interaction between the consumer and a trader. The NCA welcomes the consideration of this in the context of the new PRS Code of Practice. The NCA, however, has no views on limits on expenditure in relation to such a facility.

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

A. 9. The NCA welcomes this move in theory as a way of limiting a consumer’s financial exposure to spending on a PRS. However, the mechanics of how this would operate (e.g. enforced by Network Operator or by content provider, limit set on a daily/weekly/monthly basis, limit set totally by PRS provider or set by consumer) is something that we would need more information on before commenting.

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

A. 10 The Sale of Goods and Supply of Service Act 1980, the Distance Selling Regulations (SI 207/2001) and the E-Commerce Regulations (SI 68/2003) all support the idea of a consumer getting a proof of purchase or order acknowledgement of some sort. This provides the consumer with an extra degree of clarity regarding the cost of a PRS and may influence the decision to make further transactional decisions. Such a move will also address one of the major concerns this Agency has in the relation to the lack of access consumers have to their call history on pre-pay/pay-as-you-go phones. In keeping with this, the NCA broadly welcomes the idea of a purchase confirmation/receipt in the case of one-off PRS transactions.

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

A. 11 The National Consumer Agency has identified problems with PRS subscriptions as one of the main features of complaints to the Agency about PRS. For reasons of certainty for the consumer and the reduction in the number of instances where consumers have unknowingly subscribed to PRS subscription services, the NCA welcomes the ‘double opt-in’. Consumers will be protected from accidentally entering into a subscription service and will be afforded an opportunity to rethink any such subscription before committing. In this regard, this ‘double opt-in’ will have the effect of being an effective ‘cooling-off’ period for consumers. The Agency welcomes this development very much and such cooling-off periods currently operate effectively in other industries.

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

A. 12 The NCA welcomes the restatement in section 6.22 (b) of the draft Code of Practice that minimum subscription periods are not allowed in relation to PRS. The NCA also recognises that viewing ‘sign-up fees’ as being the ‘subscription charge’ for the first billing period is a positive move for consumers, both by setting natural limits

to the sign-up fee and by tying the consumer's initial payment to a provider to services over a specific period. Consumers will have a clear right to receive those services for that period, while the trader gains certainty over their obligations with regards to this charge.

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

Q. 13 In 2008 the NCA conducted a review of certain premium rate services, which included a mystery-shopping element. One of the most consumer-friendly elements encountered during this exercise was where a PRS subscription automatically unsubscribed once a set expenditure limit had been reached. The NCA welcomes this suggestion as it reminds the consumer how much they have spent on a particular PRS and it requires the consumer to once again confirm that they realise they are subscribed to a PRS and wish to continue with same.

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

A. 14 Yes. During our 2008 review of the sector, the NCA tested out the effect of leaving a phone subscribed to a PRS turned off for several weeks then turning it back on. The backlog of message built up on that phone represented a significant potential consumer detriment. The proposal as outlined in the draft Code should help prevent consumers falling victim to any such 'gluts' of messages.

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

A 15. Yes. The procedure for unsubscribing from a PRS subscription is an important feature of any PRS subscription contract. As such, the proposal in relation to unsubscribing from multiple subscriptions – which effectively standardises how such a unsubscription should take place – will result in additional clarity for the Consumer in how to unsubscribe from a service

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

A 16 The NCA has no objection to particular services being offered through the medium of PRS. However, the full cost of these services needs to be advised to consumers before they are tied into a subscription. Consumer legislation, including the Consumer Protection Act 2007 and the E-Commerce Regulations (SI 68/2003) are both directly applicable in this case.

The NCA particularly welcomes provision 6.42 of the draft Code, which clarifies that a Competition Service has to have a prize, which has a real value greater than the cost of entering the competition.

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

A. 17 In the past year, the NCA has become aware of significant issues surrounding Quiz TV Services and the presentation of important information, such as pricing, countdown clocks and so on. The NCA welcomes the provisions in the draft Code and believes that the regular on-screen reminders about key information, as well as the inclusion of pricing information at the start of any call to such a service brings these services more in line with the provisions of the Consumer Protection Act 2007.

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

A.18 Whilst the NCA has no comment to make in relation to these specific provisions , we broadly welcome the general content and nature of the section.

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

A 19 Alternative dispute resolution, where the consumer is empowered to seek out redress without the need to resort to regulatory or external agencies is something the NCA welcomes. By putting in place a structure where a consumer can effectively follow-up an issue without having to engage in multiple telephone calls or learning the intricacies of the provision of PRS is a very welcome development. Also welcome are the provisions requiring a PRS provider, when contacted by ComReg, to take particular action that removes some of the stress for the consumer of following up a complaint.

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

A. 20 If a consumer is due a refund, the NCA believes that it should be the total amount paid. If a problem arises that is not the fault of the consumer, every effort should be made to make the consumer 'whole' – i.e. to ensure a consumer doesn't incur a loss due to the actions of a trader. It would not be in keeping with this to start subdividing which part of a charge paid by a consumer is apportioned to which particular actor in the PRS chain and then deciding whether or not this actor has performed their task, nor would it be appropriate to try a one-size-fits-all refund ignoring the sometimes significant differences possible in cost incurred by consumers (e.g. different cost due to network charges).

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

The NCA believe that this tool should be available to ComReg to use at their discretion.

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

The NCA believes that the most important aspect of refunding the consumer is that the consumer is actually in a position to receive and use that refund. We would welcome a situation, therefore, where refunds were made available through more than one method of payment. For example, if the offer of a refund via a bank transfer was made to a consumer and the consumer then indicated that s/he did not have a bank account and so could not accept such a refund, the PRS provider could arrange a refund via another method, such as phone credit.

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

The NCA acknowledges that, depending on the scale of an issue and the amount of refunds generated, some methods of refunds will be more appropriate than other methods in a given situation.

Q. 24 to Q. 34

The NCA has no comment to make in relation to these various questions.

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

- Q. 25. In the event that a non-compliant PRS Provider defaults on a requirement to provide refunds, who should be responsible for refunding end-users?**
- Q. 26. Is it reasonable, and proportionate, to require the non-compliant PRS Provider's contractual partners to issue refunds in such circumstances? If not, please provide reasons to support your view.**
- Q. 27. How would compliant PRS Providers recoup the cost of administering refunds on behalf of a non-compliant PRS Provider?**
- Q. 28. What are your views on the establishment of an Age Verification Framework for ensuring appropriate access to Adult (including Sexual) Entertainment Services?**
- Q. 29. What are your views on requiring Network Operators to bar access to the number ranges set aside for Adult (including Sexual) Entertainment Services in the numbering conventions?**
- Q. 30. What are your views on placing the responsibility for controlling access to Adult (including Sexual) Entertainment Services with the PRS Provider?**
- Q. 31. What are your views on establishing a Live Service Providers Compensation Scheme to provide for refunds to end-users whose telephones have been the subject of unauthorised use to call Adult (including Sexual) Entertainment Services?**
- Q. 32. Do you consider that a designated shortcode range should be made available for the purpose of fundraising for charitable organisations through mobile PRS?**
- Q. 33. If so, do you have a view on what range should be used?**
- Q. 34. If a shortcode range is set aside for fundraising through mobile PRS, do you consider that there should be any restriction on the types of organisations that could apply for a shortcode within this range? If so, please state what these restrictions should be.**

22 National Disability Authority (“NDA”)



Submission

to

ComReg Consultation 10/92

on

Premium Rate Services

Draft Code of Practice

21 January 2011

Introductory Remarks

The National Disability Authority (NDA) welcomes the opportunity to make a submission to ComReg on its consultation document regarding the draft Code of Practice for Premium Rate Services. The NDA is making this submission as the statutory advisory body on disability issues and universal design.

Premium Rate Services currently play an important role in providing people with access to a host of services from entertainment to weather forecasts and sports results as well as delivering a range of public information services. Such services have the potential to enhance the quality of life for people with disabilities, for example, Census 2006 showed about 120,000 persons having difficulty leaving their homes alone. Premium Rate Services are also an emerging sector, where new services and new ways of delivering these services are constantly emerging. For people, who are confined to their homes, having access to certain services through telecommunications, may be of benefit to them, providing that such services are appropriately regulated.

The NDA welcomes the redraft of the Code of Practice for the Premium Rate Services sector operating in Ireland. In particular, the NDA welcomes the inclusion of the following measures, as they provide additional protection to consumers, especially to some consumers with disabilities. These are :

- that essential information on TV promoting Premium Rate Services is both spoken and visual, and must be clear
- that pricing information is provided and notification to end users of current expenditure. It is critical that all charges pertaining to such services are available "up front" in a clear and transparent way, so that people know and can understand the charges that are applying to any Premium Rate Service. In this way, people with disabilities and older people can make informed choices about using such services
- that in the provision of Premium Rate Services there are proposed safeguards that reduce the risk of consumers' vulnerability being exploited. NDA sees the provision of adequate safeguards as critical for potential vulnerable consumers across the age spectrum from children to older people but also in terms of people's capacity to understand and comprehend information and/or how a particular Premium Rate Service operates
- that there are proposals relating to people confirming and requesting such services - the double "opt in" as well as "opt out" facilities. Some people because of the nature of their disability, for example, a person with an intellectual disability or an acquired brain injury or a person with a mental health difficulty who could be particularly vulnerable to compulsive behaviours, should be protected through regulations that reasonably provide for "opt in" and "opt out" facilities in relation to such services

- that a framework will be created for refund mechanisms, including instances where Premium Rate Services provider, which is responsible for non-compliance, is outside the jurisdiction

However, the NDA is of the view that the proposals are inadequate with regard to the provision by Premium Rate Service Providers of information in formats that are accessible to all users. The NDA would recommend that Premium Rate Service Providers are required to make all information pertaining to such services available in accessible formats, and that related media, such as websites, should all be compliant with international best practice. The current recommended international standard regarding web accessibility is WCAG 2.0. (See guidance on this and related media from NDA's Centre for Excellence in Universal Design www.universaldesign.ie). For printed information, consider the Clear Print guidelines from the National Council for the Blind of Ireland. For example, those guidelines recommend using a minimum font size of 12 points. (http://www.ncbi.ie/files/Make_It_Clear_NCBI.doc). Furthermore, information should be provided, on request, in alternative formats, for example large print, to customers with disabilities.

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

Consultation Questions

Q. 1. Do you agree with the proposed provisions, applicable to all specified Premium Rate Services, as set out in Section 3 of the draft Code?

The NDA broadly agrees with the proposed provisions specified in the Draft Code covering

- General provisions
- Data protection
- Legality
- Decency
- Avoidance of harm
- Due diligence

In relation to the latter, the NDA welcomes the extension of adherence to the Code to any contractual partners that Premium Rate Services may have in relation to these services.

Q. 2. Do you agree with the proposed provisions relating to the promotion of Premium Rate Services?

The NDA would be supportive of the broad principles stated in the draft Code regarding the promotion of Premium Rate Services and that information should be "clear, legible and audible if spoken". The NDA welcomes the proposal that essential items of information are both visual and spoken on TV and/or other audiovisual promotions, and that important conditions attaching to any of the services are not masked.

The NDA recommends that such principles need to be accompanied by a good practice standard in accessibility. In this regards, NDA advises that

- print materials should be in a minimum of 12 point, and available in larger font sizes on request
- web and other forms of electronic communications are in line with WCAG 2.0 and consideration needs to be given to such things as-
 - text size
 - font type and colour
 - contrast between foreground and background
 - amount of text on screen
 - amount of scrolling or tabbing through on screen menus required to move from page to page

Estimates drawn from the National Disability Survey would indicate the following and that as people age the prevalence of hearing and/or sight loss is more evident.

People with disabilities by disability type (National Disability Survey 2006)

	Total	% of pop.	Age 0-17	Age 18-64	Age 65+
seeing	50,600	1.19	2,700	21,300	26,600
- moderate difficulty	27,600	0.65	1,700	11,600	14,300
- a lot of difficulty	20,700	0.49	800	8,300	11,600
- cannot see	2,300	0.05	200	1,400	700
Hearing	57,600	1.36	3,300	22,900	31,400
- moderate difficulty	35,200	0.83	2,500	14,200	18,500
- a lot of difficulty	20,600	0.49	600	7,600	12,400
- cannot hear	1,800	0.04	100	1,200	500

Another factor that should be considered, in relation to the provision of audio visual information, is an issue like scrolled subtitles. Most hard of hearing people lose their hearing late on in life, generally after their mid-fifties. Many may not have used subtitles previously. Enabling people to access such subtitles depends not only on the degree of deafness, but also on people's ability to read the subtitles and people's level of literacy. In this regards, it is recommended that on TV where scrolling is used that it is 160-180 words per minute.

Q. 3. Do you agree with the proposed table of accepted abbreviations?

The NDA welcomes ComReg's proposal regarding what industry abbreviations can be used, and across what forms of promotions. The NDA would suggest that this should be reviewed on a regular basis. In addition, the NDA would advise that where more detailed terms and conditions are provided in a "jargon free" way and where any technical terms have to be used that they are explained in plain English.

Q. 4. Do you agree with the provisions relating to the price information that should be made available to end-users of Premium Rate Service?

The NDA is supportive of the provisions relating to the price information as stated in Section 5 of the draft Code. NDA advises that the word accessible be included 5.1 (a)

as follows... "end users are fully informed in a transparent, **accessible** and clear manner of the cost of using a Premium Rate Service....."

Q. 5. Do you agree with the requirement to provide end-users of Premium Rate Services with expenditure reminders?

Q. 6. Do you consider that the levels at which the proposed expenditure reminders are set are appropriate?

Q. 7. Do you consider that there should be a limit on the amount that an end-user can spend on entering a Premium Rate Service competition? If so, how much?

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

Q. 9. Do you consider that there should be a daily, weekly or monthly expenditure limit imposed in respect of individual Premium Rate Service? If so, what do you think an appropriate level would be?

The NDA welcomes the proposal, as set out in the discussion document, regarding the proposed introduction of expenditure reminders and the setting of expenditure limits and that the end user is advised of such costs at appropriate intervals.

There are some consumers who may be particularly vulnerable with such services. Some people because of the nature of their disability, for example, a person with an intellectual disability or an acquired brain injury or a person with a mental health difficulty may be particularly vulnerable to compulsive behaviours, and should be protected. In addition, there are approximately 200,000 people in receipt of disability related payments, where the standard rate of benefit is €188 per week. People on low incomes are at particular risk of accumulating bad debt. Those on low incomes who use fixed line telecommunications, where one can avail of up to two months credit prior to receiving a bill, can be at particular risk of running up bills they cannot subsequently pay. The NDA would support the introduction of an appropriate weekly expenditure limit, which would be set at a rate proportionate to social welfare rates, reflective of the potential difficulties for those on standard social welfare incomes of €188 a week.

Q. 10. Do you agree with ComReg's preliminary view on the introduction of purchase confirmation receipts in respect of some once-off Premium Rate Service transactions?

The NDA would support this development and would be particularly relevant to consumers who don't have access to bills, such as pre pay customers.

Q. 11. Do you agree with ComReg's proposal to introduce a "double opt-in" requirement for Subscription Services?

The NDA notes that 84% of queries and complaints that ComReg received related to Subscription Services, and prior to that in 2009 the RegTel Annual Report also

indicated that 91% of end user contacts and complaints related to Subscription Services. Therefore, the introduction of a "double opt in" coupled with the transparency requirements in relation to the provision of information, pertaining to Subscription Services, is critical.

Q. 12. Do you agree that any sign-up fees should be considered the subscription charges for the first billing period?

The NDA supports the preliminary view of ComReg in this regard, given the potential of signing/join-up fees being disproportionately high in relation to the periodic charges.

Q. 13. Do you agree with the proposal to require end-users to provide positive confirmation of their desire to continue in a Subscription Service after a certain expenditure level?

The NDA would support ComReg prescribing the format of the expenditure reminder message. This might address some of the current bad practice, whereby, some of these expenditure messages sent by Premium Rate Service providers to end users are indistinguishable from other messages such as promotional messages. What is important is that there is a consistency to the format of the expenditure reminder.

Q. 14. Do you agree with the provisions in the Draft Code that restrict the number of attempts that a Premium Rate Services Provider may use to send an undelivered message?

The NDA would support the proposal by ComReg of the provision in the draft Code that a Premium rate Service Provider can only, after the initial attempt, make two further attempts in a seven day period to send any undelivered messages. This should reduce risks to both children, and to vulnerable consumers who, in particular, can be at serious financial risk with this practice. A direct consequence of not having it regulated is that people can be reluctant to top up their phone because, as soon as they do, their credit can be taken. The result could leave someone who relies on that phone as a means of contact because they are confined to their home, in a more vulnerable position.

Q. 15. Do you agree with ComReg's proposal in relation to unsubscribing from multiple Subscription Services that operate on the same shortcode?

The NDA agrees with this proposal where an end-user is subscribed to multiple subscriptions on the same shortcode and having been informed by the Premium Rate Services of the options available to them, the end user has indicated to unsubscribe, without stating a preference, then all services provided on that shortcode should be unsubscribed.

Q. 16. Should competition services be permitted on a subscription basis?

Many people enjoy entering competitions that are "free" or require a "once off" specified charge. However, it is a concern that a Premium Rate Service provider running competitions would continue to send alerts or promotions or other competitions with "invisible" charges to mobile phones, where the customer has no

indication of continuing to be charged for such messages. This particular practice is one that has significant potential to cause financial harm to consumers, particularly where people are using pre-paid mobiles, leading to their credit being wiped out. The NDA is of the view that such practices should be restricted and any competition whereby a consumer has to pay to enter, should be a "once off" payment and all related costs should be "upfront", clear and transparent.

Q. 17. Do you agree with the provisions in the draft Code relating to Quiz TV Services?

The NDA would support the proposed provisions in the draft Code. It is critically important that all information relating to how costs are incurred, (such as being charged whether or not you get through), are clear, unambiguous, transparent and in accessible formats.

Q. 18. Do you agree with the provisions in the draft Code relating to the services referred to in this Section?

The NDA broadly agrees with the provisions relating to the specified services and it is helpful the additional provisions and definitions which differentiate between Live "Entertainment" Services and "Advice or Information" Services and Pay-for-Product Services.

Q. 19. Do you agree with the provisions in respect of Customer Service?

The NDA welcomes the proposed additional provisions that are intended to ensure that end-users should have to make as few calls as possible in order to obtain redress.

Q. 20. Do you agree that the amount to be refunded to end-users should be the full charge imposed on them, inclusive of VAT, by the non-compliant Premium Rate Service Provider?

Q. 21. Do you consider that ComReg should, in cases where the effect of the Premium Rate Service is that end-users have been fundamentally misled in breach of the Code, require the Premium Rate Service Provider to refund all end-users of the services?

The NDA is of the view that it should be a full cost refund, inclusive of VAT, of monies lost as a result of engaging with a non-compliant Premium Rate Service Provider.

In general, if ComReg has found that a Premium Rate Service Provider has deliberately been negligent and/or caused widespread consumer harm, then the proposal by ComReg requiring full refund to all consumers is warranted as a deterrent.

There is a related issue in relation to consumer knowledge as to how to make a complaint and the process for same. ComReg may wish to consider that it might be helpful to publish a consumer guide in relation to this for Premium Rate Services.

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

Q. 23. Having consideration for the principle of proportionality, should different methods of refunds be utilised, depending on scale of the refunds to be issued?

The NDA is of the view that refunds should be made in a timely and efficient manner and the method of refund should be determined by the original payment method or stated by the end user.

The NDA notes that provisions in relation to refunds will not be included in the Code of Practice but will be dealt with within the regulatory framework.

Q. 24. Do you agree with ComReg's position that network operators should withhold payments for at least 30 days after the use of the Premium Rate Service to which the payments relate?

Q. 25. In the event that a non-compliant Premium Rate Service 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 non-compliant Premium Rate Service Provider's contractual partners to issue refunds in such circumstances?

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

The NDA broadly welcomes the preliminary views of ComReg in this regard. It is reasonable to withhold payments for at least 30 days in order to minimise the risks associated with any scams and/or Premium Rate Service Providers operating outside of the jurisdiction etc. Again, this highlights the importance of a consumer guide to making complaints and highlighting the importance of making complaints within a specified timeframe thus enabling measures, like a 30 day withholding of payments, more effectual.

The NDA also is broadly supportive of the principle of "proportionate responsibility" across the collective chain of stakeholders involved in the provision of Premium Rate Services and how that can be applied when it comes to refunds. Aligned with proportionality is the collective responsibility for an appropriate level of due-diligence and oversight by Network Operators and other systems providers.

In relation to recouping of administrative costs, a Service Providers Compensation scheme might be an option, whereby, all service providers contribute to such a scheme.

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

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

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

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

The NDA would support the establishment of an Age Verification Process as this reduces risks to certain consumers such as minors.

NDA would also highlight the particular issue of people who have the chronological age of adults but may lack mental capacity to understand fully what the service is offering, the costs and any related notifications pertaining to such services and therefore could be subject to exploitation and/or targeting by such services. In this regards a requirement on Network Operators to barring access and/or a facility whereby people must "opt in" for such services might be helpful.

The NDA believes ComReg is best placed both in terms of regulation and also engaging with the industry to advance such a framework and thus ensuring a robust approach to applying standards for the industry in this regards.

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

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

Q. 34. If a shortcode range is set aside for fundraising through mobile Premium Rate Service, 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 NDA would generally agree with the preliminary view expressed by ComReg of the designation within the broader 5XXXX range of numbers and that such a facility is available to all organisations with official charitable status within the State.

23 Telefonica Ireland Ltd. ("O2")



O₂

Premium Rate Services
Draft Code of Practice

Response to Consultation
Document 10/92a & 10/92b

7 February 2011

(Non-Confidential version – 3/8/2011)

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1. **Executive Summary**

O2 welcomes the introduction of a revised Code of Practice for Premium Rate Services (PRS). It is important that end-users have confidence in their use of PRS services, that they are fully informed on the nature of their relationship with a PRS provider and that sharp practice from rogue PRS providers is eliminated. A leading concern around PRS relates to questionable practices around SMS/ WAP based PRS, and while there is a decline in the use of such services it is appropriate for ComReg to implement measures that inform end-users in their use of these services. The proposals in the draft Code regarding the promotion of PRS are welcome in this respect.

O2 has responded in detail to the questions put forward in the ComReg consultation paper and in Section 2 of this response O2 sets out some general comments around aspects of the draft Code that are of specific concern including - the Scope of the Code of Practice, the requirements for Due Diligence, requirements for refunds and technical considerations for ComReg.

O2 agrees with the sentiment expressed by ComReg that end-users must bear a level of responsibility for their actions, and there are concerns in relation to some overly prescriptive measures around service provision which will add technical complexity to service delivery. The proposals will also limit the ability of PRS providers to retain end-users through ongoing requirements to opt back in for a service to which the end-user has knowingly subscribed.

A matter of serious concern relates to the scope of the Code of Practice which will include on MNO 'on portal' services. As noted by ComReg (doc 10/50) there is an absence of evidence of consumer harm in respect of MNO 'on portal' services. While ComReg consider this may be due to the fact that these services were outside the remit of Regtel, it is not appropriate to implement stringent Code of Practice requirements where customer detriment is not proven. O2 consider the Code of Practice should be targeted at those PRS services that have given rise to most concern for end-users. The market for content is changing and it is important that all content providers have an opportunity to compete on a level playing field. In deciding upon the scope of services that should be subject to the requirements of the Code of Practice, and in turn any levy associated with service provision, it is critical that ComReg takes account of the competitive landscape for content services.

2. General Comments

O2 supports the objectives of this Code. The reputation for Premium Rate service delivery over PRS numbers has been affected by the sharp practices of a small number of providers and it is important that there are effective controls in place to prevent such practices. O2 has comments about some aspects of the Code as proposed and the details are summarised below.

Scope of Regulation

The application of Code of Practice requirements to MNO 'on portal' services will significantly impact O2's ability to offer content services to existing O2 customers and to non-O2 customers. (Confidential material removed). Under the proposed code the subscriber would need advice on spend limits, details on how to opt out of service and they would also be required to reconfirm that they wish to continue using the service. If daily weekly or monthly spend limits are introduced this creates further complexity.

With regard to Pay for Product services there is a general reference in the consultation to transaction limits however it is not clear how, otherwise, the Code would be applicable to Pay for Product services. There are commercial opportunities in Pay for Product services, however this market is very different to the premium rate market in relation to, inter alia, the transaction types involved, the volume of transactions and the commercial model in terms of margins and Regulatory controls for conventional PRS services are not appropriate to Pay for Product services. In addition, Pay for Product services are already fully regulated by the Financial Regulator (now referred to as the Central Bank) under legislation including the E-Money Regulations, the Payment Services Regulations and the new E-Money Directive. To introduce additional regulation for these products may cause confusion and inhibit competition. This would be particularly undesirable given that the objectives of the Payment Services Regulations and the E-Money Directive are to increase competition and open the payments market to entities such as O2 and enable them to freely offer such services in a regulated manner. O2 understands that ComReg has engaged the Financial Regulator to discuss arrangements for regulation in this area. It is hoped that any Code of Practice requirements specific to Pay for Product services would be subject to further consultation once the regulatory position is clear.

Due Diligence

The draft Code proposes that PRS providers should take reasonable steps to ensure Code provisions are complied with by their contractual partners. O2 will continue to make it a requirement of their agreements that PRS providers using the O2 network comply with regulatory requirements. If there is a ComReg finding of non-compliance against any PRS provider, and the network operator is made aware of the finding, it is reasonable that a

network operator would seek an assurance from its contracting party in the PRS value chain that issues are addressed. However, it is not practical for a Network Operator to become the compliance function for all parties in the PRS value chain as seems to be the suggestion under the Due Diligence proposals in the draft Code.

Refunds

The issue of Due Diligence is very closely linked to the proposals around refunds which ComReg has raised in the consultation document. O2 would consider it a basic principle that any end-user that has been incorrectly charged for use of PRS services should be refunded in a timely, efficient and convenient manner. There is a question of proportionality and the amount to be refunded, if required, should be decided on a case by case basis, taking into account the nature of the breach, the intention of the PRS provider and the harm to the end-user. Clearly where a PRS provider intentionally misleads end-users then the end-users impacted should be refunded. On the other hand there are requirements in the Code where an unintentional omission does not give rise to end-user harm and there should be a measured response from ComReg on such issues. Examples could include the requirements for Promotion of PRS where Code requirements are subjective (e.g. prominent/visible) or where due to an oversight the requirements are not strictly observed (e.g. text is not presented in the manner prescribed).

ComReg has also suggested that a Network Operator should be required to issue refunds where a content provider, who is found in breach of the Code, defaults on their responsibilities to the end-user. O2 does not agree that network operators should bear ultimate responsibility for the actions of rogue service providers. If ComReg has specific concerns around the potential activities of PRS providers from outside the jurisdiction or from PRS providers who refuse to co-operate with investigations, then other sanctions should be imposed which may include bonds or a restriction on further Premium Rate activities until the matter is addressed. Operators provide access to the network in good faith and require all parties to comply with regulatory requirements and guidelines. Where this is not the case an operator should not bear responsibility for the actions of the offending party. This is an important issue for network operators who are generally the first point of contact for end-users affected by PRS charging. There is no draft text proposed in respect of refund and as such, O2 would request that the draft Code requirements on refunds are subject to some further consultation with relevant parties.

Technical Constraints

O2 agrees with the core principle that end-users should have access to full information before commencing use of a particular PRS service. Section 6 of the Code sets out a number of proposals around spend limits (in € amounts and/or calendar days), confirmation requirements, double opt in and technical requirements around subscriptions. The practicality and complexity of some proposals need to be considered by ComReg.

Firstly, there is a reliance on SMS messaging between the provider and the customer to request services, to confirm the request for activation, to follow up with confirmation and to unsubscribe from the service. This is not practical in respect of many of the services which ComReg propose should be within the Scope of the Code. O2 services, such as Broadband, will not rely on SMS messaging to communicate with the end-user. (Confidential material removed).

In addition, certain requirements, such as the Spend Limits and requirements to reconfirm a request for access to a service have the potential to add significant complexity in the network, with associated costs, particularly if MNO on portal services are required to implement the technical measures. The proposals may limit the ability of the Mobile Network Operator to host content. For example, an MNO App Store will include content from content providers all over the world. Other App Stores such as Apple, Android and Nokia host the same or similar content and they have a retail presence offering online services to Irish mobile customers. This content is developed to industry standards. If the Code sets requirements that impact on the App then the network operators may be required to request a redesign of the App. In the majority of cases the MNO will be forced to retire an App which will mean some content will only be available in Ireland where the App Store is not hosted by an MNO.

3. Provisions Applicable to all PRS (Draft Code Section 3)

Section 3 of the draft Code contains 29 provisions, covering data protection, legality, decency honesty, avoidance of harm and due diligence. ComReg has sought views on the proposed provisions.

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

O2 is in general agreement with the principles as set out in Section 3 of the draft Code. There is some crossover between Section 3 and Section 4 of the Code with regard to promotional marketing practices and comments are provided in the feedback on Section 4.

The key issue of concern for O2 are the due diligence requirements contained in Sections 3.26 to 3.29 of the draft Code. It is reasonable that a PRS provider would seek assurances in their contracts that the practices of its contracting partner are compliant with the Code. However, there are specific concerns around the draft provision 3.29 which requires that '*All PRS providers should take action to ensure that their contractual partners quickly address any issues that are identified and breach the provisions of the Code*'. As stated above, O2 considers that responsibility for requiring action and monitoring compliance resides with ComReg as the statutory body. It is not practical to expect a network operator or any other PRS provider in the PRS value chain to require actions by another PRS provider to address ComReg breach findings, to assess the compliance of such actions and to monitor the practices of the non-compliant PRS provider. This places an excessive burden on compliant PRS providers and duplicates the requirements that ComReg would require as part of its enforcement role. O2 proposes the removal of Section 3.29 of the Code.

4. Promotion of PRS (Draft Code Section 4)

Section 4 of the draft Code sets out the proposed provisions governing the promotion of PRS services and ComReg has sought views on a range of proposals around advertisements, the use of the word free and promotions using SMS, MMS and WAP.

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

It is recognised that the detail that is set out in Section 4 of the Code (i.e. Sections 4.4, Section 4.9 and 4.16) is designed to address specific concerns in the delivery of legacy PRS services. O2 agrees that PRS advertising should fully comply with accepted Advertising standards. However, it is equally important that the level of detail provided in an advertisement through visual display and or through spoken words should not confuse. O2 has a concern that the level of detail being proposed is too prescriptive.

With regard to the scope of services that may be covered by the Code of Practice O2 has a serious concern that we will be restricted from advertising value added services. For example, mobile handset functionality is increasingly broad and network operators may wish to highlight Apps and other services that utilise handset functions. However, if O2 are to advertise a handset at a particular price (dependent on price plan which needs to be qualified) then we may need to avoid promoting additional complementary services due to level of detail sought by the code and the timing and space available.

O2 is also concerned that much of the information required is duplicated throughout the sales process. For example if a PRS provider presents a TV advert stating a PRS is available then

- Section 4.4(c)(ii) requires the advertiser to visually present pricing details;
- Section 4.8(b) requires that the pricing information should be 75% of the font size of the call to action;
- Section 4.9(b)(iv) requires that the pricing information that has been visually presented is also spoken.

Then if the customer goes on to avail of the advertised service

- Section 6.16 requires that a Subscription request message is sent which includes the pricing information, and lastly;
- Section 6.18 requires that on receipt of the Subscription request message the customer receives the pricing detail again in a Subscription confirmation message.

The aim of advertising is to generate awareness, customer interest and ultimately drive the commercial success of a product or service. O2 agree that any advertising claim should be qualified, that advertising should not mislead, that key terms should be highlighted and any customer who responds to a call to action should receive full details as outlined in the Code.

However, in considering the detail that needs to be provided ComReg should view the sales process in its entirety and should avoid confusing advertisements with a level of detail that is provided elsewhere.

O2 agrees with the general requirements around the use of the word free however we do not agree with section 4.13(d)(iii) in respect of MNO on portal services. This relates to the requirement for end-users to agree to continued use of a service on a paid for basis once a free introductory period has ended. To ensure the commercial success of certain services operators can decide to offer a free period to encourage adoption of the service. There is commercial risk factored into this decision as some end-users will choose not to avail of services when the free period ends. This commercial risk is greatly increased if, as proposed, the MNO must obtain agreement to continued use of services on a paid for basis. If the required information is provided to the customer as part of the sales process then this requirement is excessive for established operators offering MNO on portal services and O2 would propose removal from the Code.

In relation to Section 4.16(g) PRS providers will be required to ensure that end-users can opt out of promotions by texting STOP to a Short Code. O2 agrees with this requirement in respect of legacy PRS services however this is not practical in relation to MNO on portal services. An operator will market a range of services to their customers in addition to PRS services and there is a system in place for capturing any opt out of future marketing. O2 use a free phone customer service number. It is more efficient, cost effective and reliable to manage marketing opt outs through one channel and O2 does not consider it necessary to impose this measure for MNO on portal services when customer detriment is not proven.

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

O2 has no comment on the table as proposed.

5. PRS Price Information (Draft Code Section 5)

ComReg is seeking views on Section of the Code which sets out contains provisions for presentation of Pricing Information.

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

O2 is in general agreement with the requirements of Section 5 of the draft Code.

6. PRS Service Provision (Draft Code Section 6)

Section 6 of the Draft code sets out proposed requirements around service provision and includes proposals for spend limits, messaging requirements, subscription services and special for specific categories of service.

6.1. Spend Limits

ComReg is proposing Spend limits to ensure that end-users should be in control of the amount they spend on PRS.

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

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

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

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

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

The merits of this proposal are understood, however, a number of technical complexities arise which are most notable in respect of MNO on portal services. The rating of services is not always carried out in real time and therefore spend alerts would be very unpredictable, inaccurate and misleading. This is an important consideration for operators in meeting legal obligations in the Communications Act around charges for services delivered. Alternatively spend limits may be required by calendar month or by bill cycle. If calendar month is used then users may be charged in excess of the Spend limits on a single bill. Where bill cycle is applied then an operator who runs multiple billing cycles each week would find it an extreme technical challenge due to the large number of permutations. Furthermore the broad scope of ComRegs proposals would mean a broad range of MNO systems would require spend alert logic to be developed. This would require significant investment from MNOs and would place them at a disadvantage when competing with other telecoms and content service providers who are not subject to the same level of regulation.

There are further issues to be considered in respect of MNO on portal services. For example O2 offer the O2 Click service which allows customers to sign up for monthly DVD rental for between €7.99 and €31.99 per month. The requirement for spend limits and continuous opt

in on this type of service where it is made clear to the customer what they are signing up to from the outset, and where the customer can track their bills online, is not practical and not warranted.

Notwithstanding the technical complexity outlined above O2 consider that if spend thresholds are implemented on traditional PRS services then the notification in itself is sufficient to inform end-users, and that a general requirement for confirmation that the end-user wishes to continue the service before charging recommences is overly prescriptive. It may be appropriate for specific categories of services however, in general, ComReg should take into account the level of detail which has been provided to the end-user throughout each step in the sales process.

ComReg has also indicated in the consultation document that proposals on Spend Limits would apply to Pay for Product services. As stated above O2 do not consider it appropriate that the Code is generally transferable to Pay for Product services. O2 understands that ComReg are engaging with financial regulatory bodies to clarify regulatory requirements in the Pay for Product space and O2 would request that any Code requirements in this key growth area are subject to further consultation.

Section 6.11 of the draft Code deals with Services that are charged per image or per Video viewed. It is worth noting in the Code that time restrictions and restrictions on the number of viewings will apply and content will be chargeable again once the applicable time period or viewing count has expired.

6.2. Purchase Confirmation

The Code Proposes that end-users should receive a receipt for any purchase of a one off PRS.

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

O2 agrees with the requirement for Purchase confirmation.

6.3. Subscription services

O2 are mindful that sharp practices by some service providers for subscription services delivered over 5XXXX short codes are the key driver for stronger regulatory controls.

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

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

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

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

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

O2 agrees that the implementation of a double opt in may be appropriate for certain services when customer detriment has been identified. O2 does not consider it appropriate in all cases. It has been acknowledged that there is no evidence of consumer harm in relation to MNO on Portal services and the requirement for double opt in should not apply given the broad range of services, the platforms that would be impacted and competitive constraints that arise with this requirement. It should also be recognised that repeated messages may cause irritation or confusion for end-users (i.e. an initial marketing message, response to sign up, a text back requesting keyword, response to sign up again and then message confirming purchase) and some customers may be under the impression that they have been charged multiple times for services requested.

In relation to the requirement for positive confirmation at specific spend levels O2 would advise against this requirement. As outlined above this would add significant technical complexity and may not be necessary taking into account the information that has been provided to the customer throughout the sales process.

In relation to opt-out of Subscription services (Section 6.28) and opt out of promotional marketing messages (Section 4.16(g)), O2 suggest that ComReg should clarify in the Code that the requirements being proposed are consistent with data protection obligations.

6.4. PRS Special Categories

The specific detail around promotions of special categories is set out in Sections 6.37 to 6.69 of the code.

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

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

Question 18: Do you agree with the provisions in the draft Code relating to the

services referred to in this Section? If not, please provide reasons to support your view.

ComReg has outlined valid concerns in respect of competition and quiz services and O2 consider that further controls, as proposed, are appropriate.

7. Customer Service (Draft Code Section 7)

Section 6 of the Draft code sets out proposed requirements around service provision and includes proposals for spend limits, messaging requirements, subscription services and special for specific categories of service

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

O2 is in general agreement with the proposals for customer service. In relation to section 7.5 it is our view that PRS providers should align with standard ComReg procedures for management of operator complaints.

8. Refunds

As indicated above it is a basic principle that any end-user that has been incorrectly charged for use of PRS services should be refunded in a timely, efficient and convenient manner. The draft Code under consultation does not include proposed text around refunds and O2 consider that draft text when available should be subject to consultation with relevant parties.

8.1. Full Refunds

ComReg's preliminary view is that an end-user should be entitled to a refund of the full cost that was lost as a result of engaging with a non-compliant PRS service.

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

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

If, on investigation, ComReg concludes that an end-user has been misled by a service provider then the end-users should be refunded full costs by the PRS provider that is found in breach. In determining the amount to be refunded and whether a general refund is required the degree to which a PRS provider has misled will be an important consideration. As stated above there should be a measured response to issues if technical breaches occur that do not give rise to widespread consumer harm.

8.2. Refund Mechanism

ComReg has sought views on how refunds should be provided.

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

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

End-users should be refunded in a timely, efficient and convenient manner by the PRS provider directly. As a result of any investigation we would suggest that ComReg would decide on the timeframe for refund and the general method to be applied. The PRS provider, who has caused the breach, should also be liable for costs associated with administration and delivery of refunds.

8.3. Possibility of Default

ComReg has raised concerns about non-compliant PRS providers refusing to comply with investigations or being unreachable or out of the jurisdiction.

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

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

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

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

O2 agree with the 30 day period for withholding payment. As stated above, when ComReg has specific concerns around the potential activities of PRS providers from outside the jurisdiction or from PRS providers who refuse to co-operate with investigations then other sanctions should be imposed which may include bonds or prohibitions on further Premium Rate activities until the matter is addressed. Network operators are generally the first point of contact for charging issues in respect of PRS and are acutely aware of the issues that arise. In providing network access all contracting parties are required to comply with regulatory requirements and guidance. The network operator has no control over the activities of non-compliant service providers and it is not reasonable to expect to turn to a network operator where enforcement is not possible against a non-compliant party.

9. Access to Adult Entertainment

There is no draft text in the draft code governing access to Adult entertainment PRS services. ComReg has requested views on the following questions

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

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

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

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

O2 welcomes the proposal to establish an Age Verification and content classification Framework. In relation to the proposal to bar access to number ranges set aside for Adult services this would not be required where the service has been subject to the Age verification framework that is established. It is important that the PRS provider providing access to content should have strict Age verification controls in place.

10. Numbering – Fundraising for charitable Organisations

It is proposed that there should be a designated short code range for charitable services.

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

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

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

O2 note the proposals and has no comment at this stage.

24 Office of the Data Protection Commissioner ("ODPC")

Premium Rate Services Draft Code of Practice - ComReg 10/92a"

Submission from the Office of the Data Protection Commissioner - January 2011

The Office of the Data Protection Commissioner (ODPC) welcomes the Consultation Paper (10/92a), the Draft Code of Practice (10/92b) and the opportunity given by ComReg to make submissions.

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

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

The ODPC has concerns about the practical implementation of the provisions of Section 4.2(a) of the draft Code of Practice: “...*All applicable limitations and major conditions must be brought to the attention of end-users, within the Promotional Material, and must include where applicable, the fact that the PRS Provider will link end-user consent to the use of personal data for marketing purposes with the end-user’s use of the PRS and how to opt-out of receiving future Promotional Material and the underlying database...*” These are critically important elements in the overall concept of informed consent. However, they are not included in the ‘Visual Display Requirements’ or the ‘Spoken Requirements’ sections of the draft Code of Practice. The ODPC submits that both of those Sections be amended accordingly to take account of these critical elements. It is the view of the ODPC that, as they currently stand, advertisements on certain media do not afford consumers who respond to them an adequate opportunity to either understand or consider the terms and conditions which apply to the further use (should that be the case) of their personal data (i.e. how and in what circumstances their phone number may be used in the future).

Question 11: Do you agree with ComReg’s proposal to introduce a “double opt-in” requirement for Subscription Services?

The ODPC fully supports the proposal from ComReg that it should consider the introduction of a "double opt-in" requirement for entry into subscription services. Over the past number of years the ODPC has been inundated with complaints from the public concerning the entry of their mobile phone numbers into mobile subscription services apparently without their knowledge or consent. The introduction of a "double opt-in" requirement would assist in eliminating this problem for consumers. In particular, this requirement is essential where mobile phone numbers are entered into a mobile subscription service on the basis of an application made via WAP links, on a website or on the basis of contact details collected by means of cards handed out to individuals at promotional events, festivals, etc. The collection of mobile phone numbers by these means, or similar, is prone both to error and to the giving of false information on an intentional basis.

Furthermore, it would appear essential that a service provider abide by the principle of positive end-user consent in order to be able to defend themselves in any proceedings

which may arise for an offence under Regulation 13 of S.I. 535 of 2003 (as amended). In that regard, it should be noted that Regulation 13(9C) of S.I. 535 of 2003 (as amended) places the onus on the defendant of establishing that a subscriber consented to the receipt of an unsolicited communication or call. The double opt-in requirements for Subscription Services would be of considerable value to a service provider who found themselves in the position of having to defend themselves in such proceedings.

Office of the Data Protection Commissioner

26 January, 2011

25 Phonovation Ltd.

26 Prism Fax Services Ltd.

From: Mark Richardson
Sent: 07 February 2011 14:49
To: retailconsult
Subject: Premium Rate Code of Practice Consultation

Ms Michelle O'Donnell
Commission for Communications Regulation

Dear Michelle

I would like to take this opportunity to respond to the request for submissions issued by Comreg with regard to your proposed Premium Rate Code of Practice.

I feel that I must express my deep concern that the implementation of the draft code of practice result in my company having will cause the majority of firms involved to cease trading, with the loss of jobs and considerable loss to the economy.

To this end I am in support of the response to the consultation submitted today by the Irish Phone Paid Services Association.

Best regards

Mark

Mark Richardson | Prism Fax Services Ltd. |

27 Pure Energy Technology Ltd.

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

We do not agree with the provisions relating to promotion.

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

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

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

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

Visual Display Requirements

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

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

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

Spoken Requirements

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

Use of the Term "FREE"

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

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

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

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

Promotion of Subscription services

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

We do not agree with comregs proposal on subscription services.

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

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

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

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

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

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

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