



Commission for
Communications Regulation

Submissions to Consultation 11/51

Submissions received from Respondents

Submissions to Consultation

Reference: ComReg 12/28s1

Version: Final

Date: 14/05/2012

An Coimisiún um Rialáil Cumarsáide

Commission for Communications Regulation

Abbey Court Irish Life Centre Lower Abbey Street Dublin 1 Ireland

Telephone +353 1 804 9600 Fax +353 1 804 9680 Email info@comreg.ie Web www.comreg.ie

Submissions Received from Respondents

Document No:	12/28s1
Date:	14 May, 2012

Consultation:	11/51
Response to Consultation:	12/28

Content

Section

- 1: Association for Interactive Media and Entertainment (“AIME”)
- 2: Community Alliance Sligo
- 3: Dialogue Communications Ltd.
- 4: Eircom Group (“Eircom” & “Meteor”)
- 5: Ericsson IPX AB
- 6: FDX Ltd.
- 7: Irish Phone Paid Service Association (“IPPSA”)
- 8: Irish Tarot
- 9: Magnum Billing.....
- 10: Modeva.....
- 11: Office of the Data Protection Commissioner (“ODPC”).....
- 12: Rathula
- 13: Realm Communications Ltd.
- 14: RTÉ
- 15: Spirits Connect.....
- 16: Telecommunications and Internet Federation (“TIF”) - Mobile Payments Forum.....
- 17: Telefonica Ireland Ltd. (“O2”).....
- 18: Terry Hurrell
- 19: Vodafone Ireland Ltd.....
- 20: Zamano

1. Association for Interactive Media and Entertainment (“AIME”)

Appendix 1 – IPPSA Response

Submission re ComReg 11/51

We welcome this further consultation, 11/51, from ComReg on the revised Draft Code of Practice.

We would ask that ComReg establish, in the shortest possible time frame, an Industry Working Group to discuss matters impacting on the industry, possible proposed future Code of Practice changes etc. The lack of such a working group is probably one of the main reasons why the process to-date with regards to a new Code of Practice had been so difficult.

We have sought to outline our responses to the consultation below in the format prescribed by the consultation.

Q. 1. Do you agree with the draft provisions applicable to all PRS as set out in Section 3 of the revised draft Code? Please provide reasons to support your position.

We agree with ComReg's general objectives with regards to this section. However, we feel that there are certain aspects which could be better addressed in a more general manner, as opposed to the prescriptive proposals outlined.

Additionally, given the statutory nature of the Code, we are concerned that provisions contained within the headers in section 3 are generally *ultra vires* the powers of ComReg due to restrictions contained within Article 4 and Article 5 of the Unfair Commercial Practices Directive.

Furthermore, it is unclear as to whether those provisions are aspirational or mandatory given their vague nature. We would generally argue that such provisions could not form the basis for a breach of the code, as they are vague and lack legal certainty, and therefore should not be contained within a Section 15 Code.

3.3 As a service provider operating in a competitive market, it is essential that the competitive playing pitch is flat and fair. *ComReg must publish all special/cosy agreements, including any out of court settlements, they reach with individual service providers, such that the market operates in a transparent and non-discriminatory manner.* Additionally, if a particular arrangement is allowed to proceed in a manner, that would otherwise necessitate a change to the code of practice, that permission must equally apply across all service providers. Moreover, where such practices are being discussed by ComReg, it may be more appropriate for them to be handled through an Industry Working Group as opposed to on a private one-to-one basis.

3.9 ComReg, and the wording of the Code, should acknowledge that Service Providers have a primary obligation with regards to Data Protection to those provisions contained within the Data Protection Acts. It should be made clear that where the Code of Practice or requirements of ComReg conflict with requirements under the Data Protection Acts, that the Data Protection Act requirements are superior. We believe that only such data that is necessary for the investigation of a specific breach, and only with the specific approval of the Data Subject, shall be liable to be passed to ComReg. Additionally, it may be that ComReg as part of an Industry Working Group, and together with the Data Protection Commissioner, should seek to develop an industry standard Data Handling Process.

3.17 Given that most services sold in Ireland are targeted at the market in general, and by their nature targeted at over 18s. We believe that the prescriptive sentence in this section should be replaced with something along the lines of 'Where services are targeted at a specific market, then it should be made clear in promotion for that service, the market that is being targeted.'

3.18 We would ask that the term 'silence' and 'error message' be defined in Section 1. Additionally it should be made clear that this section applies to where services have been designed to mimic silence and network tones this part should apply as opposed to when those matters result from genuine network related issues.

3.19-22 This section in its entirety places a set of burdens on service providers which is unfair. ComReg should be the enforcer of the code, and so long as a clear database is available on the web, with appropriate notifications, the only requirement on Service Providers should be that they make reasonable attempts to ensure that they only trade, with regards to PRS, with those other service providers who are licensed. Furthermore, ComReg should notify all Service Providers when a new Service Provider is added to, or removed from, the list of licensed service providers in a proactive way - by email, in a special section on the website, by letter etc.

Q. 2. Do you agree with the draft provisions relating to the promotion of PRS as set out in Section 4 of the draft Code? Please provide reasons to support your position.

We welcome the principle of ensuring that all promotion is compliant with the Consumer Protection Act 2007 and European Directive 2005/29/EC as outlined in section 4.1 to 4.5.

Directive 2005/29/EC ensures maximum harmonisation of consumer protection across Europe.

Sections 4.6 to 4.35.

We do not agree with the additional measures proposed in sections 4.6 to 4.35 as they undermine this harmonisation and would require Service Providers to introduce specific measures for the Irish market that are not required in other European markets. Indeed, ComReg are explicitly prevented from introducing such market distorting restrictions by Directive 2005/29/EC. If ComReg were to proceed with sections 4. to 4.35 Irish Service Providers would be at a significant competitive disadvantage as EU registered service providers, whose services are information society services, would not be required to implement many of these additional restrictions when operating in the Irish Market.

Apart from the fact, in law, that ComReg must comply with Directive 2005/29/EC the proposed restrictions seem excessive given the existing requirements to fully inform consumers of all material facts that would influence their decision to purchase a promoted service.

4.10, 4.14, 4.15, 4.22 We would disagree with these sections.

Many of the measures being proposed, specifically 4.10, 4.14 require significant additional promotional space and place a significant cost burden on service providers. The requirements in 4.15 and 4.22 to provide spoken information as well as clearly displayed written Information on TV promotions is excessive and adds very significant cost. This cost will either be passed on to the consumer or render the service not viable.

This will put service providers operating within Ireland at a significant commercial disadvantage to those operating from other European countries. It may also prevent smaller services from being able to operate at all.

It is reasonable that services marketed to children and other vulnerable consumers may require additional measures. In order to ensure such measures are effective they should be targeted towards a particular identified and quantified concern.

Q. 3. Do you agree with the draft provisions applicable to the operation of Subscription Services as set out in Section 5 of the draft Code? Please provide reasons to support your position.

We generally support ComReg's objectives with regards to the promotion of the interests of the end user.

Additionally, given the statutory nature of the Code, we are concerned that provisions contained with the headers in section 5 are generally beyond the scope of ComReg due to restrictions contained within Article 4 and Article 5 of the Unfair Commercial Practices Directive.

We believe that practically ComReg might better adopt a less prescriptive approach.

However, with regards to some of the detailed provisions

5.13-18 We disagree with the measures proposed. We believe that a general and broad sweeping double opt-in does not address the objective of protecting the interests of end-users. End User interests are best protected by encouraging competition and service innovation amongst service providers, and a broad-sweeping double opt-in does not facilitate that. It may be that further research could be undertaken to understand the nature of the subscription market in Ireland in terms of providing a factual basis for bringing forward such a proposal. In any event, we believe that ComReg would be in a better position to understand the implications of this upon investigating further the merits of the proposal in a more scientific and thoughtful manner.

5.20 We believe that the mandating of standard SMS as the mechanism for informing the client is inappropriate. The client should be informed, however they should be informed using technology that is most appropriate for the service which the customer is using. Additionally, it is unclear why ComReg is proposing an additional Monthly Update message on top of the threshold message, and we disagree with the proposal for the monthly update message as being superfluous and possible leading to a situation where customer begin to ignore the more important threshold message.

5.22 We believe that the Subscription Update Message needs to be reworded in so far as it currently appears to suggest that the consumer has subscribed de-novo, instead of being an update with reference to an existing service that the customer has.

5.26 We believe that this measure is Technically impossible and would suggest ComReg convene a meeting of an Industry Working Group to address it in a further code review. We would welcome a solution which would not burden service provider with unnecessary costs when other less invasive possibilities exist.

5.30 We believe that this measure is Technically impossible and would suggest ComReg convene a meeting of an Industry Working Group to address it in a further code review. We would welcome a solution which would not burden service provider with unnecessary costs when other less invasive possibilities exist.

Q. 4. Do you agree with the draft provisions applicable to the operation of other categories of PRS, also set out in Section 5 of the draft Code? Please provide reasons to support your position.

We generally support ComReg's objective to promoting the interest of the end user.

Additionally, given the statutory nature of the Code, we are concerned that provisions contained with the headers in section 5 are generally beyond the scope of ComReg due to restrictions contained within Article 4 and Article 5 of the Unfair Commercial Practices Directive.

We believe that practically ComReg might better adopt a less prescriptive approach.

However, with regards to some of the detailed provisions

5.43 We are keen to ensure that end user rights to privacy and data protection are prioritised. The Duration of storage of live services goes beyond what is required for purposes of remedying breaches, where the matter concerned can be remedied with a refund. As such, only such information that would relate to billing ought to be stored. In any event, we would ask that ComReg, as part of an Industry Working Group, together with the data protection commissioner might better reach a consensus, and that the prescriptive element contained within this code is inappropriate.

5.44 We believe that this is an Excessive Notification Requirement. It could add between 10-15% to the cost of voice service annually. This is probably more than all the damage outlined in the RIA being done by the industry every year.

5.55 In the case of a service not being provided by a professional qualified, then this makes sense, however if the service is being provided by a registered professional, than it make no sense.

5.59-62 We believe that the distinction between Chatline and Contact/Dating might better be eliminated and the full set of rules merged, to simplify the code.

5.63 We believe this section is overly prescriptive.

5.64 We believe that this measure should distinguish between operator chat services (which might be so restricted), and not peer to peer chat services which ought not be restricted in such a manner.

5.65 We note the higher value levels applied to voice services and would ask that these be harmonised at the voice level threshold for technical and promotional simplicity especially as services become ever more converged.

Q. 5. Do you agree with the draft provisions relating to Customer Service as set out in Section 6 of the draft Code? Please provide reasons to support your position.

We are supportive of this section.

Q. 6. Do you have any comments on the provisions on the revised draft Code?

We specifically agree with ComReg that the legal environment for the regulation of PRS goes beyond the 2010 Act and encompasses EU measures such as the Technical Standards Directive, the E-Commerce directive and the Unfair Commercial Practices Directive.

We are concerned that it appears that the legal footing of those measures within the code at sections 1.6 and 1.7 are deliberately vague, and do not provide an adequate basis upon which we can base our interpretation as to how the code will operate.

Articles 4 and 5 of the Unfair Commercial Practices Directive are clear in so far as they do not allow ComReg to bring forward further measure than are provided for in the UCPD itself, when a service is targeted at the average consumer.

Furthermore, although it appears clear from reading the definition of ISS that all subscription services are ISS, the code does not make clear which parts of itself won't apply vis-a-vis section 1.6.

Q. 7. Do you have any views on the Regulatory Impact Assessment with regard to the revised draft Code of Practice? Please provide reasons to support your position.

We believe that ComReg's RIA is insufficient to justify that the regulations outlined in the Code are necessary for the protection of the average consumer, in general.

Specifically, we believe that the RIA does not adequately provide a scientifically verifiable basis for the imposition of each of the measures proposed in the code. Instead, it appears to generically attempt to justify a broad sweeping set of measures with generic and weak argument.

Finally, as a member of the Irish Phone Paid Services Association, we concur broadly with their consultation response and would ask that you would take on board their specific positions with regards to individual provisions as if they were our position as well.

2. Community Alliance Sligo

Community Alliance-Sligo

Response and comment to Document ComReg 11/51

Draft Code of Practice

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

Honesty PRS and promotional material must not:

3.1-3.3

In general these provisions are both necessary and correct. We particularly strongly agree with the setting of the test at “likely” to mislead. The following provisions, in of themselves, are capable of controlling much of the abuse providing monitoring is strict.

a) seek to take unfair advantage of any characteristic, or circumstance, which may make, or is likely to make, consumers vulnerable or otherwise encourage consumers, or be likely to encourage consumers, to make calls or incur costs which, in quantum or duration, may be considered to be unreasonable or excessive,

(b) be of a kind which is likely to mislead by inaccuracy, ambiguity, exaggeration, omission or otherwise, or which obscures or conceals the real nature and cost of the service to the end-user,

(c) use abbreviations unnecessarily where the communications medium would permit otherwise, or

(d) use symbols, numbers or characters in a manner that would be likely to mislead consumers.

With regard to the misleading of children and others into “subscription services”, promotion via advertising is the prime method therefore rules with regard to promotion can never be strong enough. Strong rules regarding promotion and advertising should not impinge in any way on those Operators who are honest and only intent on providing genuine services to the public. This provision should serve this purpose however will require rigorous monitoring.

PRS Promotions

4.00-4.23

All such promotions must have as the main and most prominent fact that the advertisements purpose is to attract phone owners to “join” a club which carries ongoing and automatic charges instead of the present practice whereby the ads are dominated with details of a “prize” that may be won by answering a simple question.

4.21

Included with the description of the “service” must also contain a description of what a “subscription service” is as follows:

“You have replied to our ad for..... This is what is known as a “subscription service” which means that should you agree to join the service a charge of €x will be automatically taken from your call credit every x days and this will continue until you text stop to xxxxx. There is no obligation on the operator to provide anything in return for money taken. Text “agree” to xxxx if you wish to proceed”

4.22 (a) we propose that the above explanation be spoken in the voice over of advertisements on radio or television.

4.22 (a)(i) the display must be black lettering on a white background block with no intrusion on the space allocated for this “warning”.

4.22 (a)(ii) It is of crucial importance that this size requirement, a font at least 33% of the size of the call to action, be strictly monitored and adhered.

4.22 (a)(iii) All relevant information must be included in the voice over

Competition Services

4.26/7/8/9

Prior to its dissolution RegTel posted a Draft Code of Practise which they proposed would exclude “competitions” from using the “subscription service/reverse billing” devices. This was later deleted clearly following pressure from Operators. We again propose that competitions be excluded and only allowed to be run on once-off basis cost per entry with no ongoing charges.

Children’s Services

4 .34.

The use of mobile phone texting in delivering “services” for children is problematic simply because of the difficulty in monitoring transactions. As we have pointed pout repeatedly, once a child responds to an ad, thereafter the inaction is between a child and professionals adults. The potential for exploitation is enormous and accordingly we propose that it be made illegal for any adult to engage with a child in this way. All such interaction should be confined to parents or guardians. We again point out that children and young people, particularly young girls, are by far the largest group being currently exploited by “subscription services”

Services for the Benefit of Charitable Organisations

4.35

We have received complaints associated with a scheme run by "2willdo" which is a "subscription service" which takes a set amount each week/month directly from call credit. This is wide open to exploitation and will attract those minded to exploit others if it is not regulated now. We propose that each charity must organise their own fund raising and should they wish to use a PRS number they should apply for a licence to do so. A special dedicated number should be put in place specifically for this purpose with each charity being designated a code to place before the dedicated PRS number and that there must be no element of ongoing payment. All contacts must be confined to once off donations on each occasion that the phone owner wishes to make a donation

Provision of Premium Rate Services.

5.3

The measures to protect children from accessing PRS services must be clearly defined otherwise this provision will be ignored. At present all that is required is for the Operator to place 18+ on an ad to comply with this provision. This is totally inadequate and failing accordingly. The onus must be fully with the Operator to do whatever is necessary to ENSURE that children do not get involved in these services.

In addition all advertising for such services should be confined to publications for over 18s and radio and television ads confined to a 9.30pm watershed.

5.4

We strongly disagree with this provision that allows Operators to remove up to €30 before some effort is made to alert an unwitting phone owner that his/her call credit is being rifled. In our view no money should be taken without the specific permission of the phone owner on each occasion. This can be done by way of a "prompt text" which would require a positive reply before money is taken.

5.9

"A premium rate charge may only be raised when the Subscription Service itself has been requested by, confirmed and delivered to an end-user."

This must be expanded to include the placing of an obligation on the Operator to provide something of like value for money taken. In all cases of exploitation the Operators are taking money in return for nothing and it is totally unacceptable that that situation should be allowed to continue. Operators at present can legally charge for "membership" alone and this must be outlawed

A Subscription Request Message

5.14/15

We agree with the intention here to create more transparency into these transactions however we are of the view that the "message" should be clearer and include our clear explanation as to what a "subscription service" is and what it entails.

"You have replied to our ad for..... This is what is known as a "subscription service" which means that should you agree to join the service a charge of €x will be automatically

taken from your call credit every x days and this will continue until you text stop to xxxxx. There is no obligation on the Operator to provide anything in return for money taken. Text "agree" to xxxx if you wish to proceed"

Subscription Confirmation Messages

5.18

Agree with the need for such a message. On the wording, we suggest that examples be tested using children so as to ascertain the best combination of words that children in particular will understand. This could be done with the assistance of a local school where wordings can be given to children across a number of grades, from 8yrs to 14yrs, and each child can then write down what information they have gleaned from these messages.

5.20

We disagree with any suggestion, as this clause implies, that an Operator can legally take money for which nothing of like value is given in return. All the Operators currently exploiting the system target short term access and usually most phone owners can escape after a period of 3 to 4 weeks. In the first instance Operators must not be allowed to take money for nothing and only do so when a phone owner specifically places an order for a service or goods. "Membership" should carry no charge.

Regulatory Update Messages.

5.22

We agree with all proposals that help to create informative communications with phone owners, however we are concerned that the information conveyed is as clear as possible. To that end we suggest that the proposed wording be changed from:

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

to:

You have joined (name of service) for which we are taking €x from your call credit every (frequency) To stop your money being taken you must text STOP to 5xxxx. Helpline

Unsubscribing

5.25-5.29

We have received numerous complaints over the years from person who have texted "stop" and still money was continued to be taken. To counter this we propose the following;
A dedicated unique number be raised by ComReg for the purposes of allowing any phone owner to text the word "stop" to that number and this will trigger "unsubscription" for all PRS numbers licensed by ComReg. This service would be free of charge and phone owners can use it routinely

to ensure that their phone is “clean” ComReg should promote the use of the number. Any costs involved should be covered by a charge attached to each licence issued.

Unsubscribe Clarification Messages

5.32

Fully agree with additional safeguard which is very badly needed.

Competition Services

5.34-5.40

Competitions are used to facilitate most of the exploitation that is currently ongoing and again we draw your attention to our proposal, which RegTel previously accepted, to ban the use of the “subscription service/reverse billing” devices to run them.

Children’s Services

5.50-5.34

From our experience there is no format that will protect children from exploitation given the nature of such “services”. There is no visual contact and the entire transactions take place between children and professional adults. The potential for exploitation is enormous. We urge that no “services” specifically for children be allowed using texting interaction only.

We had intended proposing that such services must be conducted via a parent but feel strongly that the opportunities to exploit are too great and the capacity of a few operators, whose operations are clearly all about exploitation only, are such that we hold the firm view that any such arrangements would be exploited.

Sexual Entertainment Services

5.57(a)

Sexual Entertainment Services are being accessed by children and this is mainly because advertisements are carried in daily newspapers. We propose that all such ads be confined to over 18s publications only.

PRS Accessed via Internet Dialler Software

5.66

We propose that there should be no distinction as to how such services are regulated regardless of how they are accessed.

Customer Service

6.1-6.6

All Operators must give full contact details on all advertising, this to include a full postal address, rather than the present practise of a PO Box number only. Very few letters sent to PO Box numbers receive a reply and it should be open to persons to visit Operators at their place of business.

Various contributions, which contributed to final submission, and contain valuable opinions and suggestions.

The protection contained in 5.3 (a) (b) appear adequate however, how will this provision be monitored? At present all that is required is to place 18+ on an ad and this is being ruthlessly exploited. We propose that any breach of this provision should result in a significant fine and immediate withdrawal of licence to operate a “subscription service” In addition we propose the addition protection of requiring that all ads for “subscription services” should be confined to over 18 publications (explicitly banned from newspapers) and not allowed before a watershed on 9.30pm on either TV or radio.

We are opposed to the proposed €30 threshold set in 5.4 before the phone owner must be “actively informed” It is our view that this should occur much earlier and as low as €5 and be required to actively confirm that they wish to continue the call, with intermittent warnings at each €2.50 spend thereafter. We further propose that a call must be terminated after the end-user has incurred €30 on a call. End-users may then call a service back at this point, should they wish to continue using it.

Provisions at 5.6 appear satisfactory although again we raise the concerns regarding monitoring.

Promotions of PRS

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

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

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

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

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

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

Subscription Services

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

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

Substantiated Subscription Confirmation

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

Proposed Remedy

The suggestion that the introduction of a “double opt-in” may be a remedy is not correct. In fact ComReg also notes that in the UK the introduction of this measure only resulted in a reduction of 50% average. Our investigations indicate that the main reason for the fall off in complaints was due to a corresponding reduction in advertising and Operators running these “services” Over the past year here in Ireland the volume of advertising for all “fun” items has dropped significantly, mainly due the announcements by Minister Ryan that he was unhappy with the prevailing situation, and this led to a significant drop in complaints. However these

events by themselves did not solve the problem and it remains wide open for abuse as we witnessed with the surge in activity in the closing part of 2010 which led directly to a high increase in complaints. A massive problem still exists and quite clearly tinkering with the problem, as opposed to the eradication of it, will result in opportunistic surges from time to time. The evidence of the capacity of some in the business to circumvent the best efforts of regulatory agencies is compelling and strongly suggests that banning is the only real option available that will afford the public the protection they deserve.

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

Acceptable Abbreviations.

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

Price information.

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

Expenditure Reminders.

ComReg are correct in their view that the end-users should remain in control of the amount that they spend on premium “services” and this really goes to the heart of the matter. In the current arrangement end-users are being misled and once that occurs the present arrangements see them lose that control. It is our view that should “subscription services/reverse billing” be allowed to continue, payments should be made by the phone owner sending a response text “OK” to a clear, plain English request for payment. That arrangement would go a long way to cut out the numbers suffering loss and Operators, who say that these “services” generally have a legitimate demand, should have no problems with this arrangement where control is given totally to the phone owner. In addition, where there is an ongoing interaction between a phone owner and Operator, then a monthly statement via post should be required.

Entry charge.

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

Individual transaction limit.

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

Spending limits.

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

Receipts.

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

Sign-up Fees.

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

Expenditure Update Messages

. The proposal here is again tantamount to rewarding some Operators for entrapping members of the public in these "services" Surely the best solution here is for the phone owner to be asked on each occasion that the Operator feels that he/she is due a payment and if the phone owner does not wish to pay, he/she simply ignores that text. We are back again to extending to an Operator the extraordinary power to remove money from call credit without specific permission and this must require a extraordinarily good reason to be allowed to continue. Why should the Operator be allowed to take and keep €20 for which nothing has been given of like value in return? We have asked many times for an answer to this point and to date have not received one from any quarter.

Unsubscribing from Multiple Subscription Services.

The solution here is for ComReg to initiate a special short code number to which any phone owner text "Stop" can and this will automatically release the owner from any "services" he/she is caught up in. In all cases that we have dealt with the victim, not realising he/she was "joining" a "service", had no recollection of what numbers were involved. In addition, phone owners can text "stop" to this special number weekly or monthly as a cleaning operation to remove any membership of a "service" This would be of great benefit to parents wishing to protect their children and would go a long way to assisting in the rehabilitation of the reputation of mobile phone services in general. This can be run again by a levy imposed on those Operators running "subscription service/reverse billing" services.

Competition Services.

These "services" constitute the greatest number of complaints received by us. (Followed by "IQ tests" on the internet and Tarot Cards etc.) These must be excluded for the simple reason that there is no good reason why the running of "competitions" needs to use this device and some running these competitions have demonstrated beyond doubt they care little for their "customers" and many hold the view that they deliberately set out to entrap children and the

unwitting in these schemes. Any person who is willing to pay each week for an enhanced chance to win a prize will do so without handing over control of their call credit to the Operator. However, entrapping those that enter thinking that there is only a one-off charge must be very lucrative and so long as “competitions” are allowed to be run using the “subscription service/ reverse billing” devices problems will persist. All advertising for these “competitions” is misleading for reasons that we have outlined previously, the main one being the predominance given to the “prize” as opposed to the “joining” of a “service/club” which carries ongoing charges.

Customer care.

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

Refunds.

It is of critical importance that when a problem is detected by a number of complaints received about a specific “service” that the Operator be immediately instructed to cease the “service”, to immediately release all callers to that “service” and to issue full and immediate refunds to all such callers. Aside from this ensuring that no Operator can gain by engaging in activity that will mislead, it will also act as a deterrent if the consequence is immediate and full refunds to all in the “service” concerned. The simple rule of thumb that must apply here is that if callers are being misled then the advertising/promotion for the “service” is misleading. Re-credit of telephone accounts/call credit is regarded as sufficient and reasonable. How the refund is undertaken is not considered a major factor only that the refund is prompt and complete. The deterrent effect is the important point.

Default.

Our experience indicates that all stakeholders in the provision of these “services” may be culpable to some degree. We are aware that pressure to lightly regulate these “services” has come from many stakeholders in the past and a survey of responses to this consultation may well bear that out. It will do the business no harm at all if deterrence is in place for all connected with the delivery of these “services” when it is found that callers and end-users are being misled. Again it is important to state that Operators initiate, in all cases, these “services”. The phone owner bears no culpability for any exploitation. No sane rational person would respond to an ad full in the knowledge that he/she was agreeing to pay on an

ongoing basis for which little or nothing is given in return. "Membership" in itself has no value and cannot be regarded as value in kind for money taken. What ComReg might consider is to seek an upfront bond prior to the issuing of a licence to operate a "subscription service/reverse billing" service. It may also be prudent for those involved in the delivery of these "services" to do likewise or to insure against payouts.

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

Age verification (adult entertainment).

This really is a must in order to protect children. We have dealt with cases where youngsters, caught up in an adult "subscription service", were reluctant to seek help from parents because of the material that he had accessed. The onus must fall entirely onto the Operator to ensure that those accessing these "services" are over 18 years, regardless of how cumbersome such verification may prove to be.. Agree that all numbers which are not verified as in the ownership of an adult must be barred from either receiving or accessing adult "entertainment numbers. Responsibility for controlling access must always rest entirely with the Provider and those operating and profiting from the "service" It is they who initiate the process through either advertising or commercial messaging.

Compensation Scheme.

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

. Charitable fundraising.

We have recently had contact from members of the public concerned with the arrival into the market of an entity, not directly attached to a specific charitable cause, who is organising the raising of funds via the "subscription serviced/reverse billing" model. This is a very worrying development and the consensus among our group is that allowing the use of the "subscription service/reverse billing" facility for this purpose will leave it open to wide open to abuse. We propose that a separate and special number be made available to all charities for the purposes of raising funds. The number should be distinct and easily recognisable by members of the public such as 88888. Each charity should apply to use the number and should ComReg decide it appropriate to allow its use, then that charity will receive an agreed code for members of the public to place before the number when sending their donation. Example; the

Samaritans would be issued the code SAM. Members of the public simply send SAM 88888 indicating the amount they wish to donate. It is recommended that there be fixed amounts to avoid any serious errors and these should be set at €2 or €5 only. Under no circumstances should the “subscription service/reverse billing” device be allowed. Each donation must require the specific and deliberate intention and action of the donor to be delivered. The facility should be open to known individual charities only. The recent intervention into this activity by a third party not attached to any specific charity should not be allowed. It is our view that that model of fund raising is seriously flawed, will impact negatively on those charities excluded and on the margins and is wide open to abuse.

Steering Committee: Clive Gallagher, Carney-John Foley, Easkey-Jim O’Sullivan, Rathedmond-George Kelly, Avondale- Ed Gillespie, Rathbraughan.Bob Shannon, Cartron. Noreen Cawley, U.P.R. Phillip Mahon, GRSW-Gerry Farrell, Maugherboy-Jean Dunbar, Cranmore

Meeting proposed and agreed that this Overview should be attached to this submission as it represents substantially the position of many members

Overview of our recommendations in order of preference.

1) **Outright Ban.**

The banning of the use of the “subscription service/reverse billing” device outright as the only realistic way to protect citizens from exploitation and loss. The history of this matter proves conclusively that any loophole will be exploited and there are those who have no compunction about taking money that was not intended to be given. Given the extent of the problems caused, and the repeated failure of some Operators to adhere, both in the letter and the spirit to previous Codes of Practise, any decision that allows the use of the device requires a full and complete explanation from the authority making that decision and a set of regulations to make it very difficult to exploit the exploitable and where exploitation occurs, having sufficient powers to issue sanctions that will exclude the culprits from further activity in this area of business. In addition the public are entitled to know who will take direct responsibility for future episodes of exploitation that WILL undoubtedly occur in the absence of a ban and this is particularly the case in the area of “fun” items.

2) **“Fun” items ban only**

All “fun” items to be banned from using the device and all such activity must be run on a one-off payment per item basis. For “non-fun” items, Operators must apply specifically for permission to use the device and ComReg will determine what constitutes a “fun” item.

3) **Continue to allow under strict regulation.**

- a) Operators wishing to use “subscription service/reverse billing” device to apply annually for a specific licence to do so. ComReg will retain the power to withdraw such licences on foot of any complaint.
- b) A condition of the licence shall clearly state that the Operator is fully responsible for ensuring that all participants are fully agreeable and fully understand the costs involved
- c) All “subscription service/reverse billing” schemes to be open only to persons over 18 years of age. The onus for ensuring that participants are over 18 shall rest solely with the Operator.
- d) All advertising to carry as the prime message within the body of the ad that the objective of the ad is to entice phone owners to “join” a “service/club” with clear information regarding how the “service/club” works and with particular emphasis on charges and the fact that charges are AUTOMATICALLY taken from the phone owners call credit. This information must dominate the ad and not be swamped with descriptions of “prizes” or “services” on offer. Font size must be uniform with no significant information being confined to footer. Advertising broadcast on radio or TV

to carry the costs involved with a description of how the “service” works regarding the ongoing cost element in the voice over with similar emphasis on becoming a “member” of a “club” rather than any benefits that might accrue by being a member. All advertising to be vetted and passed by ComReg prior to publication or airing. All advertising to be carried only in age restricted publications and must observe a strict 9.30pm watershed on TV and radio. **The placing of ads in daily newspapers to be strictly forbidden.**

To further enhance the protection of children and minors, we propose that each licence issued should attract a levy to be used as follows;

ComReg to run an advisory ad on TV and in the media once per month, on an ongoing basis, advising people of the consequences of responding to a “subscription service” ad. with information on how to escape etc.

ComReg to prepare an information pack explaining what a “subscription service/reverse billing” service is and how it works with advice to avoid engaging with any scheme that is a “subscription service” and these packs to be made available annually to all schools from 3rd year onward. The Minister for Education to be asked to instruct all schools to devote one hour per term to explain to children what these “services” are, how they work and the consequences of involvement.

NOTE: We would ask that such information packs be widely distributed, particularly to groups and organisations working with young people and those with special needs.

Any breaches of the regulations must result in the immediate withdrawal of licence to operate and all phone owners entrapped shall be immediately released and full refunds issued.

Clive Gallagher
Jim O’Sullivan
Phillip Mahon
Sub Group.

3. Dialogue Communications Ltd.

Submission re ComReg 11/51

We welcome this further consultation, 11/51, from ComReg on the revised Draft Code of Practice.

We would ask that ComReg establish, in the shortest possible time frame, an Industry Working Group to discuss matters impacting on the industry, possible proposed future Code of Practice changes etc. The lack of such a working group is probably one of the main reasons why the process to-date with regards to a new Code of Practice had been so difficult.

We have sought to outline our responses to the consultation below in the format prescribed by the consultation.

Q. 1. Do you agree with the draft provisions applicable to all PRS as set out in Section 3 of the revised draft Code? Please provide reasons to support your position.

We agree with ComReg's general objectives with regards to this section. However, we feel that there are certain aspects which could be better addressed in a more general manner, as opposed to the prescriptive proposals outlined.

Additionally, given the statutory nature of the Code, we are concerned that provisions contained within the headers in section 3 are generally *ultra vires* the powers of ComReg due to restrictions contained within Article 4 and Article 5 of the Unfair Commercial Practices Directive.

Furthermore, it is unclear as to whether those provisions are aspirational or mandatory given their vague nature. We would generally argue that such provisions could not form the basis for a breach of the code, as they are vague and lack legal certainty, and therefore should not be contained within a Section 15 Code.

3.3 As a service provider operating in a competitive market, it is essential that the competitive playing pitch is flat and fair. *ComReg must publish all special/cosy agreements, including any out of court settlements, they reach with individual service providers, such that the market operates in a transparent and non-discriminatory manner.* Additionally, if a particular arrangement is allowed to proceed in a manner, that would otherwise necessitate a change to the code of practice, that permission must equally apply across all service providers. Moreover, where such practices are being discussed by ComReg, it may be more appropriate for them to be handled through an Industry Working Group as opposed to on a private one-to-one basis.

3.9 ComReg, and the wording of the Code, should acknowledge that Service Providers have a primary obligation with regards to Data Protection to those provisions contained within the Data Protection Acts. It should be made clear that where the Code of Practice or requirements of ComReg conflict with requirements under the Data Protection Acts, that the Data Protection Act requirements are superior. We believe that only such data that is necessary for the investigation of a specific breach, and only with the specific approval of the Data Subject, shall be liable to be passed to ComReg. Additionally, it may be that ComReg as part of an Industry Working Group, and together with the Data Protection Commissioner, should seek to develop an industry standard Data Handling Process.

3.17 Given that most services sold in Ireland are targeted at the market in general, and by their nature targeted at over 18s. We believe that the prescriptive sentence in this section should be replaced with something along the lines of 'Where services are targeted at a specific market, then it should be made clear in promotion for that service, the market that is being targeted.'

3.18 We would ask that the term 'silence' and 'error message' be defined in Section 1. Additionally it should be made clear that this section applies to where services have been designed to mimic silence and network tones this part should apply as opposed to when those matters result from genuine network related issues.

3.19-22 This section in its entirety places a set of burdens on service providers which is unfair. ComReg should be the enforcer of the code, and so long as a clear database is available on the web, with appropriate notifications, the only requirement on Service Providers should be that they make reasonable attempts to ensure that they only trade, with regards to PRS, with those other service providers who are licensed. Furthermore, ComReg should notify all Service Providers when a new Service Provider is added to, or removed from, the list of licensed service providers in a proactive way - by email, in a special section on the website, by letter etc.

Q. 2. Do you agree with the draft provisions relating to the promotion of PRS as set out in Section 4 of the draft Code? Please provide reasons to support your position.

We welcome the principle of ensuring that all promotion is compliant with the Consumer Protection Act 2007 and European Directive 2005/29/EC as outlined in section 4.1 to 4.5.

Directive 2005/29/EC ensures maximum harmonisation of consumer protection across Europe.

Sections 4.6 to 4.35.

We do not agree with the additional measures proposed in sections 4.6 to 4.35 as they undermine this harmonisation and would require Service Providers to introduce specific measures for the Irish market that are not required in other European markets. Indeed, ComReg are explicitly prevented from introducing such market distorting restrictions by Directive 2005/29/EC. If ComReg were to proceed with sections 4. to 4.35 Irish Service Providers would be at a significant competitive disadvantage as EU registered service providers, whose services are information society services, would not be required to implement many of these additional restrictions when operating in the Irish Market.

Apart from the fact, in law, that ComReg must comply with Directive 2005/29/EC the proposed restrictions seem excessive given the existing requirements to fully inform consumers of all material facts that would influence their decision to purchase a promoted service.

4.10, 4.14, 4.15, 4.22 We would disagree with these sections.

Many of the measures being proposed, specifically 4.10, 4.14 require significant additional promotional space and place a significant cost burden on service providers. The requirements in 4.15 and 4.22 to provide spoken information as well as clearly displayed written information on TV promotions is excessive and adds very significant cost. This cost will either be passed on to the consumer or render the service not viable.

This will put service providers operating within Ireland at a significant commercial disadvantage to those operating from other European countries. It may also prevent smaller services from being able to operate at all.

It is reasonable that services marketed to children and other vulnerable consumers may require additional measures. In order to ensure such measures are effective they should be targeted towards a particular identified and quantified concern.

Q. 3. Do you agree with the draft provisions applicable to the operation of Subscription Services as set out in Section 5 of the draft Code? Please provide reasons to support your position.

We generally support ComReg's objectives with regards to the promotion of the interests of the end user.

Additionally, given the statutory nature of the Code, we are concerned that provisions contained within the headers in section 5 are generally beyond the scope of ComReg due to restrictions contained within Article 4 and Article 5 of the Unfair Commercial Practices Directive.

We believe that practically ComReg might better adopt a less prescriptive approach.

However, with regards to some of the detailed provisions

5.13-18 We disagree with the measures proposed. We believe that a general and broad sweeping double opt-in does not address the objective of protecting the interests of end-users. End User interests are best protected by encouraging competition and service innovation amongst service providers, and a broad-sweeping double opt-in does not facilitate that. It may be that further research could be undertaken to understand the nature of the subscription market in Ireland in terms of providing a factual basis for bringing forward such a proposal. In any event, we believe that ComReg would be in a better position to understand the implications of this upon investigating further the merits of the proposal in a more scientific and thoughtful manner.

5.20 We believe that the mandating of standard SMS as the mechanism for informing the client is inappropriate. The client should be informed, however they should be informed using technology that is most appropriate for the service which the customer is using. Additionally, it is unclear why ComReg is proposing an additional Monthly Update message on top of the threshold message, and we disagree with the proposal for the monthly update message as being superfluous and possible leading to a situation where customer begin to ignore the more important threshold message.

5.22 We believe that the Subscription Update Message needs to be reworded in so far as it currently appears to suggest that the consumer has subscribed de-novo, instead of being an update with reference to an existing service that the customer has.

5.26 We believe that this measure is Technically impossible and would suggest ComReg convene a meeting of an Industry Working Group to address it in a further code review. We would welcome a solution which would not burden service provider with unnecessary costs when other less invasive possibilities exist.

5.30 We believe that this measure is Technically impossible and would suggest ComReg convene a meeting of an Industry Working Group to address it in a further code review. We would welcome a solution which would not burden service provider with unnecessary costs when other less invasive possibilities exist.

Q. 4. Do you agree with the draft provisions applicable to the operation of other categories of PRS, also set out in Section 5 of the draft Code? Please provide reasons to support your position.

We generally support ComReg's objective to promoting the interest of the end user.

Additionally, given the statutory nature of the Code, we are concerned that provisions contained within the headers in section 5 are generally beyond the scope of ComReg due to restrictions contained within Article 4 and Article 5 of the Unfair Commercial Practices Directive.

We believe that practically ComReg might better adopt a less prescriptive approach.

However, with regards to some of the detailed provisions

5.43 We are keen to ensure that end user rights to privacy and data protection are prioritised. The Duration of storage of live services goes beyond what is required for purposes of remedying breaches, where the matter concerned can be remedied with a refund. As such, only such information that would relate to billing ought to be stored. In any event, we would ask that ComReg, as part of an Industry Working Group, together with the data protection commissioner might better reach a consensus, and that the prescriptive element contained within this code is inappropriate.

5.44 We believe that this is an Excessive Notification Requirement. It could add between 10-15% to the cost of voice service annually. This is probably more than all the damage outlined in the RIA being done by the industry every year.

5.55 In the case of a service not being provided by a professional qualified, then this makes sense, however if the service is being provided by a registered professional, then it make no sense.

5.59-62 We believe that the distinction between Chatline and Contact/Dating might better be eliminated and the full set of rules merged, to simplify the code.

5.63 We believe this section is overly prescriptive.

5.64 We believe that this measure should distinguish between operator chat services (which might be so restricted), and not peer to peer chat services which ought not be restricted in such a manner.

5.65 We note the higher value levels applied to voice services and would ask that these be harmonised at the voice level threshold for technical and promotional simplicity especially as services become ever more converged.

Q. 5. Do you agree with the draft provisions relating to Customer Service as set out in Section 6 of the draft Code? Please provide reasons to support your position.

We are supportive of this section.

Q. 6. Do you have any comments on the provisions on the revised draft Code?

We specifically agree with ComReg that the legal environment for the regulation of PRS goes beyond the 2010 Act and encompasses EU measures such as the Technical Standards Directive, the E-Commerce directive and the Unfair Commercial Practices Directive.

We are concerned that it appears that the legal footing of those measures within the code at sections 1.6 and 1.7 are deliberately vague, and do not provide an adequate basis upon which we can base our interpretation as to how the code will operate.

Articles 4 and 5 of the Unfair Commercial Practices Directive are clear in so far as they do not allow ComReg to bring forward further measure than are provided for in the UCPD itself, when a service is targeted at the average consumer.

Furthermore, although it appears clear from reading the definition of ISS that all subscription services are ISS, the code does not make clear which parts of itself won't apply vis-a-vis section 1.6.

Q. 7. Do you have any views on the Regulatory Impact Assessment with regard to the revised draft Code of Practice? Please provide reasons to support your position.

We believe that ComReg's RIA is insufficient to justify that the regulations outlined in the Code are necessary for the protection of the average consumer, in general.

Specifically, we believe that the RIA does not adequately provide a scientifically verifiable basis for the imposition of each of the measures proposed in the code. Instead, it appears to generically attempt to justify a broad sweeping set of measures with generic and weak argument.

Finally, as a member of the Irish Phone Paid Services Association, we concur broadly with their consultation response and would ask that you would take on board their specific positions with regards to individual provisions as if they were our position as well.

4. Eircom Group (“Eircom” & “Meteor”)

eircom Group

Response to ComReg Doc. 11/51

Response to Consultation Document No. 10/92a, and further consultation on the Code of Practice for Premium Rate Service Providers

16th September 2011



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

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

This document constitutes the eircom Ltd and Meteor Mobile Communications Ltd (jointly referred to as eircom) response to the ComReg Consultation Document 11/51 of 22nd of July 2011 "Response to Consultation Document No. 10/92a, and further consultation on the Code of Practice for Premium Rate Service Providers".

Introduction

eircom welcomes the opportunity to respond to this further consultation (the Consultation) on the Code of Practice for Premium Rate Service Providers. We are encouraged by the considered approach taken by ComReg in relation to certain aspects of the code such as the removal of the requirement to re-opt-in to subscription services on receipt of spend reminders, however we are disappointed that ComReg has failed to fully address other concerns raised in our response to the initial consultation.

In particular, with respect to due diligence, we highlighted that the draft Code strays from the provisions of the Act and the associated Regulations as it proposes enforcement obligations upon all parties in the value chain. While questioning ComReg's powers to impose such obligations, we also highlighted the importance of providing clarity with respect to ComReg's enforcement role. In the interest of consumers in particular, this must be clearly and consistently communicated within the Code of Practice. We strongly urge ComReg to address these concerns which go to the very foundation of the new regulatory framework for premium services.

Also of key importance to the structure of premium service regulation are the Licensing Regulations issued by ComReg. ComReg has stated in the consultation that it would be notifying the European Commission of the draft new regulations that are set to replace the Communications Regulation (Licensing of Premium Rate Service) Regulations 2010. ComReg has provided detail on its proposed amendments in relation to refunds which propose that ComReg may direct service providers to issue refunds through customer telephone accounts. As highlighted in the April 2010 survey conducted by Amárach¹, mobile operators in particular already handle a disproportionate share of premium customer service calls with 71% of complainants making mobile provides their first contact point. Therefore we urge ComReg to refrain where possible from using this means of refunding customers given the administrative cost that it would impose on operators and the costs associated with the additional calls that would be generated to mobile call centres. We also urge ComReg to consult with operators when contemplating large scale refunds to ensure that the most efficient refund method is selected and with a view to continuing with the current approach whereby operators voluntarily issue refunds directly, where warranted.

Specifically in relation to the revision to the Licensing regulations we request clarification that the proposed new text in relation to refunds is the only change being made to these regulations given that this is the only revision that has been subject to consultation.

¹ Research on behalf of the IPPSA, of those who had ever used a phone paid service - Phonepaid Services Omnibus (NOG S10-158), A Presentation Prepared for Phonepaid, April 2010

Response to Consultation Questions

Q1, Do you agree with the draft provisions applicable to all PRS as set out in Section 3 of the revised draft Code? Please provide reasons to support your position.

Enforcement

eircom welcomes the amendment that has been made in section 3.21 of the new draft Code that provides clarity in respect of the obligations not to engage in the provision of PRS of another Provider in such a way as to enable that provider to breach a sanction that has been published by ComReg. However we consider the wording “permit the involvement” to be too broad as it suggests that service providers would have to take enforcement action in relation to services in which they themselves are not engaged. We therefore recommend the following deletion:

PRS Providers shall not engage in ~~or permit the involvement in~~ the provision of PRS of another PRS Provider in respect of whom a sanction, which has been published, has been imposed by ComReg so as to enable such person to operate in breach of that sanction.

As stated in our response to the previous consultation, while we acknowledge that each service provider is fully responsible for ensuring that the services that it offers are compliant and we recognise that it is in the interest of all service providers to support the enforcement of the Code generally, the Act of 2010 clearly identifies it as ComReg’s responsibility to ensure compliance by premium rate service providers.

Sections 8 to 13 of the Act specify the range of enforcement powers that have been granted to ComReg including powers to take immediate action where necessary to protect end users and the authority to investigate and decide upon remedies. The proposal in the draft Code to require Service Providers to assume such authority would lead to confusion and inconsistencies in the application of remedies if it were feasible. As the primary legislation has granted these powers solely to ComReg eircom believes that it is neither lawful nor feasible to require service providers to determine breaches.

In the interest of efficiency and to avoid confusion for service providers and end users it is vital that ComReg retains full responsibility for enforcement. We therefore urge ComReg to amend section 3.19 as outlined in our response to the initial consultation:

3.19 PRS Providers must take all reasonable steps, in the context of their roles, to ~~assist ComReg in~~ ensuring that the provisions of the Code are complied with by all PRS providers to whom these provisions apply in respect of any PRS with which they are concerned.

Remedies

Similarly section 3.22 of the draft code overlooks the fact that ComReg is the party empowered to determine if a breach has occurred and to decide on remedies where a breach has been identified. Service Providers are not empowered to decide on remedies under the primary legislation. Providers would have to rely on commercial contacts with other Service Providers which can result in conflicts of interest and situations where one operator could decide that no breach has occurred while other operators might apply differing remedies, resulting in confusion for both the service provider found in breach and the affected end users. We therefore recommend the deletion of section 3.22.

Q. 2. Do you agree with the draft provisions relating to the promotion of PRS as set out in Section 4 of the draft Code? Please provide reasons to support your position.

VAT

Section 4.8a states that prices must be communicated inclusive of VAT. Provision needs to be made here for VAT exempt premium services such as charity donations and business services.

Short Code Pricing Communications

Section 4.8 (b) (iv) needs to be qualified if it is intended to apply only to Premium SMS based services as follows:

4.8 (b) (iv) where the service is charged using a Short Code, the price per message and the number of messages required to complete the transaction

Q. 3. Do you agree with the draft provisions applicable to the operation of Subscription Services as set out in Section 5 of the draft Code? Please provide reasons to support your position.

Purchase Confirmation Receipts

eircom acknowledges that the Act imposes statutory responsibilities on ComReg to regulate premium services that operate as a facility for making a payment for goods or services. We also appreciate that the Code of Practice when applied to these services can deliver consumer protection in certain cases; in particular promotion, the use of premium numbers and short codes and the application of remedies for large scale breaches. However we consider the requirement for purchase confirmation receipts is unnecessary in the code.

ComReg has expressed the view in section 2.22 of the response to consultation, that "any consumer harm that may occur is likely to be related to the goods or services purchased and so fall(s) outside the broad telecommunications area." We consider the same logic to apply to receipts. The requirement for purchase confirmation is already catered for in the Distance Selling Regulations and lies outside of premium service regulation. The proposed sections 5.7 and 5.8 of the draft Code overlap with Regulation 5 of the Distance Selling Regulations which establishes the requirement for receipts to be provided in a durable form in addition to specifying in detail the information that must be provided to end users. Sections 5.7 and 5.8 are therefore not required and could undermine consumer protection and frustrate enforcement efforts as it confuses the regulatory landscape.

Also, such a move could distort the market for payment services. For instance, in the case of mobile payments, Mobile Operators are not the only entities with an interest in the Mobile Payments market. Handset manufacturers (e.g. Apple, Google, Nokia etc), web payment providers (e.g. PayPal, Google Checkout etc), and financial institutions (e.g. Banks, Visa, MasterCard etc) are all poised to expand into this area. Therefore there is a particular onus on ComReg to ensure that the code of Practice does not introduce unnecessary distortions. In light of the above we urge ComReg to remove sections 5.7 and 5.8.

Multiple Subscriptions to the Same Service

Section 5.11 of the current draft requires that service providers do not subscribe End Users to the same service more than once at the same time. Under the 2010 Act, End User is "a person to whom a premium rate service is supplied or who has requested the supply of such a service, otherwise than for the purpose of resupply". Taking the example of Premium SMS services, it would not be possible for a service provider to determine if an End User were availing of the same service on two different mobile numbers. Therefore we propose the following amendment.

5.11 PRS Providers must take reasonable measures to ensure that End-users must are not ~~be~~-subscribed to the same PRS more than once at the same time ~~and PRS Providers must ensure that this cannot happen.~~ For example they must ensure that end-users cannot subscribe a single mobile number to the same PRS via a different entry mechanism if they have already subscribed to that service on that number.

Association of Short Codes with their Premium Charge

Sections 5.14 and 5.17 and 5.21 (e) (i) and 5.22 require the Subscription Request Message to state charges for each message sent and received. In our previous response we recommended the direct association of short codes with the premium charge that is incurred, in particular when receiving SMS from a reverse-billed short code. ComReg has highlighted through the Ipsos MRBI Quantitative Research² that approximately

²] Ipsos MRBI Premium Rate Services Research- Commissioned by ComReg- Presentation of Findings of Quantitative Phase October 2010 (ComReg Doc 11/51a)



39% of end-users are unaware that they may be charged for receiving a premium rate SMS. This provides further justification for advising end users not only of the charge but also the code associated, so as to assist end users in detecting issues such as the receipt of excessive messages from these short codes. We therefore propose the following amendments:

5.14 (f), 5.17 (f) (i) and 5.21 (e) (i): ~~the charges~~ for each message received ~~and the short code associated with the charge.~~

5.22 Regulatory Update Messages must follow the format of the example provided below:

SUBSCRIPTION REGULATORY UPDATE MESSAGE

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

Spend Reminder Messages

Sections 5.20, require that an update for subscription services is sent each time €20 is spent on the service and once a month if this level of spend has not been reached within a month. This requirement unduly impacts lower value services that have not been shown to be the cause of consumer harm. Also, it would introduce unnecessary complication to the mechanism that service providers have already put in place to facilitate reminder messages. Therefore we consider the requirement to send a reminder message once a month for services that give rise to less than €20 per month not to be objectively justified or proportionate. The €20 threshold ensures a proportionate outcome as higher value services will result in reminders at a higher frequency while very low value services will get lower frequency reminders and this is likely to correlate with the frequency at which the service itself is received/billed. We therefore propose the following amendments

5.20 For Subscription Services, ~~once a month, or~~ every time an end-user has spent a total of €20 on the Subscription Service, ~~if that occurs less than once a month,~~ a Regulatory Update Message, containing the information set out in Sections 5.21 and 5.22 must be sent via a free standard SMS to the end-user.

Association of the Stop Command with the Premium Charge

Section 5.26 which relates to the “STOP” command fails to make specific reference to the short code upon which the service is billed. eircom’s understanding of the operation of the “STOP” command is that service providers should take action to unsubscribe an end user from a service if a “STOP” command is sent to the short code that operates to bill for the subscription. We therefore propose the following amendment:

5.26 PRS Providers must provide the end-user with the opportunity and information on how to unsubscribe from the service by texting the word “STOP” to the short code ~~that operates to bill for the~~ ~~contained in the~~ ~~messages sent as part of a~~ Subscription Service.

Q. 4. Do you agree with the draft provisions applicable to the operation of other categories of PRS, also set out in Section 5 of the draft Code? Please provide reasons to support your position.

Communications of Premium SMS Pricing for TV Quiz Services

Section 5.42 (d) (ii) of the draft code requires that premium pricing information must be sent to viewers participating via premium SMS. It is not at all clear what is required here. Typically premium SMS participation in TV quiz entries involves a single SMS transaction in which case the only means of communicating pricing information is on screen. We therefore recommend the deletion of 5.42 (d) (ii).

Termination of Chat Services

Section 5.65 (ii) of the draft code requires that virtual chat services must be terminated if no further messages are received after the €20 or monthly reminder message is sent by the Service Provider. This appears to be redundant, given that end-user protection is provided already under section 5.64. If the end

user does not respond, no further charges should apply in any case. Section 5.65(ii) should therefore be deleted.

Q. 5. Do you agree with the draft provisions relating to Customer Service as set out in Section 6 of the draft Code? Please provide reasons to support your position.

Recording Facility for Customer Care Calls Outside Call Centre Hours

Section 6.2 of the draft code proposes that "for any periods outside normal working hours where live operator helpline service is not provided, calls must be recorded and processed the next working day". This requirement is inconsistent with contemporary calls centre practices whereby customer care is provided through self care systems and live agent interaction. Out of hour recording would prove inefficient as it would divert resources from dealing with live calls while also leaving customers in doubt about the status of their queries while they await a response to their recorded message. It is also likely that the provision of a recording facility would attract recordings about queries and issues relating to other non-premium service which would compound the problem of resources being diverted from answering live calls.

The extended scope of premium service regulation draws in services that would not previously have been subject to the code of practice. For instance, on-portal services that are provided by operators could now come under the definition of Specified Services and thereby become subject to the out of hours recording requirement. Many telecoms operators provide support for ancillary services along with their core voice and data service support and it would not be practical to partition the customer care centres in order to provide out of hours recording solely for services that fall under the Specified Service definition.

Out of hours recording can also undermine attempts at maintaining a comprehensive record of customer interactions against each customer account as it is often not possible to identify recorded calls against existing customer records.

For these reasons we strongly urge ComReg to remove the requirement to record calls. This could be replaced with a requirement to provide the call centre operating hours in a recording that is played outside of normal working hours.

Informing Complainants in Writing of the ComReg Escalation Route

In section 6.5 of the draft code ComReg is proposing that customers be informed by service providers, "in writing", that they can lodge a complaint with ComReg if they are not satisfied with the handling of their complaint. While eircom does not object to the requirement to inform end users of their right to escalate a complaint to ComReg we consider the requirement to inform them in writing to be disproportionate as the bulk of customer interactions are by phone. This would introduce significant additional cost for handling complaints while most complainants would have moved on to air their complaint with ComReg long before receiving such notification in writing. ComReg has not provided any objective justification for such an inefficient requirement. Therefore the following deletion is necessary:

Where an end-user has made a complaint to a PRS Provider which has not been resolved to the end-user's satisfaction within the manner set out in the complaints policy operated by the PRS Provider, the PRS Provider shall inform the end-user ~~in writing~~ that the end-user may lodge a complaint with the Commission.

Q. 6. Do you have any comments on the provisions on the revised draft Code?

Definitions

The "Premium Rate Charge" definition is overly restrictive as premium services are defined more broadly under the Premium Rate Services and Electronic Communications Infrastructure Act, 2010, extending to services that may not be offered over a Premium Rate Number or a Shortcode. We therefore propose the following amendment:

2.28 **“Premium Rate Charge”** means a charge for a Premium Rate Service offered ~~over either a Premium Rate Number or a Shortcode.~~

Under definitions, the same reference, sub-section 2.28 appears twice against two definitions; “Opt-Out” and “Premium Rate Charge”.

Refunds

In paragraph 3.257 of the Consultation, ComReg sets out the proposed text for the new regulations which would allow ComReg to direct Service Providers to issue refunds either directly or through a credit to the affected party’s telephone account.

As stated in our response to the initial consultation, in order to ensure that refunds are provided promptly and to minimise the administrative effort involved we recommend that the service provider responsible for the service should provide any refund directly to the customer in question. Refunds through telephone accounts impose a significant cost and administration burden on network operators which can not be justified in the case of refunds to a small number of subscribers. We urge ComReg to exercise its significant powers of oversight and enforcement which should help to ensure that refunds, whether small or large scale, are applied comprehensively and promptly by the party responsible for the service.

Operators have demonstrated their willingness to voluntarily facilitate occasional larger scale refunds in the past however we expect the incidence of large scale refunds in particular to decline as a result of improved customer protection. In cases where ComReg is contemplating a direction to operators to issue refunds directly to telephone accounts we would urge ComReg to consult in advance with operators with a view to ensuring that this facility is used only where absolutely necessary and ideally through the voluntary cooperation of operators, as in the past.

Q. 7. Do you have any views on the Regulatory Impact Assessment with regard to the revised draft Code of Practice? Please provide reasons to support your position.

Paragraph 1.26 of the RIA deals with the proposed requirement in relation to purchase confirmation receipts. While highlighting the merits of purchase confirmation receipts, this misses the point in relation to the duplication issues highlighted above in response to question 3. As a result there has been no assessment of the impact of partially duplicating the extensive obligations that apply under the Distance Selling Regulations.

5. Ericsson IPX AB

Date	Reference
Sept 16 2011	10/27

List of Questions

Q. 1. Do you agree with the draft provisions applicable to all PRS as set out in Section 3 of the revised draft Code? Please provide reasons to support your position.

IPX considers Section 3 to be broadly reasonable but hopes Comreg can endeavor to ensure flexibility as necessary for the combined practical benefits of end-users and industry providers.

As mentioned in earlier submissions by Ericsson IPX however (please refer to these) we are concerned about the lack of definition in the Irish context of what is Adult content and therefore what is “Decency”. We believe this could be easily addressed more specifically by Comreg with reference as necessary to the IMCB in the UK. This applies also to section 4.24 of the Draft Code.

Q. 2. Do you agree with the draft provisions relating to the promotion of PRS as set out in Section 4 of the draft Code? Please provide reasons to support your position.

Section 4.4 is quite ambiguous. The use of “affect”, “only” and “average” should be clarified.

Section 4.7 (a) is specific about informing end-users about their use of data. It is open to interpretation and unclear to what extent Service Providers need to be specific about this. In a dynamic industry with a huge variety of data sizes (depending on file sizes), this may be impossible if it is strictly interpreted by Comreg. Flexibility and further clarification by Comreg is required here. This applies again to section 4.8 (iii). In a dynamic environment (e.g. user-generated content) it may be impossible for Service Providers to be more specific than “*data charges may apply, please check your subscription or with your operator data bundle*”. Various compression applications may impact the precise data load. We feel this really needs to be clarified further by Comreg.

Q. 3. Do you agree with the draft provisions applicable to the operation of Subscription Services as set out in Section 5 of the draft Code? Please provide reasons to support your position.

We do not agree with this proposal. If a service is sufficiently well advertised then an additional “subscription request message” is not necessary or useful.

A simple MO (mobile originated) SMS followed by an MT (mobile terminated SMS) is more than sufficient where a user sees a service that is clearly advertised in Print or other media. This scenario provides a verifiable MO and has not been sufficiently explored by Comreg prior to publication of its Code of Practice.

Date	Reference
Sept 16 2011	10/27

A properly advertised service (including Service Provider phone number) which is WAP- (mobile-web) or Web- initiated is also sufficient. The suggestion of exiting the mobile web / web to check and send SMS's is likely to ruin the end-user mobile web experience and flow and destroy innovation within the sector. Such a properly-advertised service should not require double opt-in. Once again, Comreg assumes non-compliance here and the non-existence of already very clear legislation in relation to Sale of Goods and Supply of Services.

Comreg has not considered the decline in non-compliant services that has taken place since the introduction of its new licensing regime and it appears to be determined to add additional technical barriers to consumers' use of services. This ignores the technical innovations and benefits available via the seamless integration of web and mobile services and assumes all Service Providers are non-compliant which is a very negative approach.

If a service is initiated via the internet then simple entry of the user's mobile phone number (MSISDN) on the relevant website followed by receipt of an SMS (with a unique code) to the phone and re-entry of that code on the website is in effect double opt-in and works well for end-users. If further requirements were needed beyond this flow then it would undoubtedly do further damage to the sector and may destroy it.

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

Further, section 3.132 of Comreg's latest response refers positively to the UK Payforit framework, highlights that such a framework is not in place in Ireland and uses this as an argument for needing double opt-in (including user MO). At the same time Comreg (section 3.136) chooses to contradict the approach in the UK (where handshaking via MO for subscriptions is only required if they cost more than £4.50 per week). This approach of selective reference to the UK while conservatively requiring blanket double opt-in at all price points is an ultra-conservative approach that risks further technical marginalisation of the Irish mobile payments sector.

While the UK is referred to again in section 3.138 as having "widely implemented" double opt-in, this is in fact not the case (as far as double opt-in is defined by Comreg itself). Single MO (without the need of an additional Subscription Request Message) is sufficient in the UK when a service is clearly promoted and cost less than £4.50 per week. This in our view invalidates Comreg's comment in relation to the UK in section 3.138, since the majority of subscriptions are below £4.50 per week.

Subscription services already require specific authorisation from Comreg so unreasonable deviation from services that are authorised can already be checked. Would Comreg stop requiring specific Service Authorisation if it pressed ahead with the wording of the proposed Code? This should also be clarified in detail by Comreg.

Date	Reference
Sept 16 2011	10/27

Again, in summary:

1. Single MO in the context of clearly advertised subscription services (wherever that advertising is) should certainly be sufficient. It meets the Comreg intention of having verifiable MO data. Requiring a subscription request message in all cases is unnecessary and disproportionate. It is disproportionate to other industries. It is not required in the UK as also acknowledged by Comreg.
2. In connection with the above, suggestion of a double-opt in as described in the consultation paper implicitly assumes poor and / or misleading advertising which is already legislated for and further clarified in the Code of Practice sections relating to promotion of services. Additional requirements place an unnecessary burden on the overwhelming majority of companies that are well-meaning towards consumers and wish to improve the consumer experience in any event. They should not be punished for the sins of a few. Mandating a subscription request message in all cases does not acknowledge the valid involvement of other promotional methods and does not further the interoperability of other technologies (e.g. web) with SMS flows. Silo-ing or isolating SMS from other media and technologies in this way is negative for end-users. This is a backward step.
3. Subscription services already need authorisation from Comreg under the current / new licensing framework so web or mobile-web based mobile entry and authentication should also be permitted, of course subject to this permission. If the code is implemented generally as currently proposed then this Service Authorisation should no longer be required in relation to subscription services but even then there should be provision for simple MO-requested subscriptions as per point 1, above. An MO fulfills the requirement of traceability while acknowledging the validity of other promotional mechanisms.

In relation to STOP and STOP All (section 5.30 of the Draft Code), we believe that Comreg has unnecessarily over complicated matters for end-users and that all short codes used for Subscription services could enable STOP and STOP ALL.

Users know how to STOP.

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

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

Date	Reference
Sept 16 2011	10/27

Q. 4. Do you agree with the draft provisions applicable to the operation of other categories of PRS, also set out in Section 5 of the draft Code? Please provide reasons to support your position.

IPX considers other areas of Section 5 to be broadly reasonable but hopes Comreg can endeavor to ensure flexibility as necessary for the combined practical benefits of end-users and industry providers.

Section 5.24 in relation to 40 days, as we understand was highlighted previously by other respondents to Comreg, may be too short depending on the type of service e.g. event-based triggering. We would like to see some confirmation of willingness on the part of Comreg to show practical flexibility in considering services on a case-by-case as necessary.

In relation to 5.62 and 5.63 we would like to see further clarification from Comreg in relation to what is meant by “reasonable measures”. Examples and further guidelines will inevitably be needed and should be proactively provided.

Q. 5. Do you agree with the draft provisions relating to Customer Service as set out in Section 6 of the draft Code? Please provide reasons to support your position.

IPX considers other areas of Section 5 to be broadly reasonable but hopes Comreg can endeavor to ensure flexibility as necessary for the combined practical benefits of end-users and industry providers.

Q. 6. Do you have any comments on the provisions on the revised draft Code?

As above.

Q. 7. Do you have any views on the Regulatory Impact Assessment with regard to the revised draft Code of Practice? Please provide reasons to support your position.

Section 1.32 which refers to 2011 confirms a drop off rate already of over 33% on an annualised basis in relation to complaints about services compared to previous years. This shows the likely impact that the Comreg licensing regime has already had, as well as consumer confidence and discretion in relation to services brought about by deep economic recession. That trend could be expected to continue.

In this context it seems that some of Comreg’s proposals as outlined in the Draft Code and described above are disproportionate and not considerate of broader and ongoing trends in technology which are already occurring as well as changes in consumer

Date	Reference
Sept 16 2011	10/27

behaviour. The draft code in its current form may assist with irreversible damage of innovation in a sector that once had a significant amount to contribute to the encouragement of Irish society's interaction with ICT services.

6. FDX Ltd.

Submission re ComReg 11/51

We welcome this further consultation, 11/51, from ComReg on the revised Draft Code of Practice.

We would ask that ComReg establish, in the shortest possible time frame, an Industry Working Group to discuss matters impacting on the industry, possible proposed future Code of Practice changes etc. The lack of such a working group is probably one of the main reasons why the process to-date with regards to a new Code of Practice had been so difficult.

We have sought to outline our responses to the consultation below in the format prescribed by the consultation.

Q. 1. Do you agree with the draft provisions applicable to all PRS as set out in Section 3 of the revised draft Code? Please provide reasons to support your position.

We agree with ComReg's general objectives with regards to this section. However, we feel that there are certain aspects which could be better addressed in a more general manner, as opposed to the prescriptive proposals outlined.

Additionally, given the statutory nature of the Code, we are concerned that provisions contained within the headers in section 3 are generally *ultra vires* the powers of ComReg due to restrictions contained within Article 4 and Article 5 of the Unfair Commercial Practices Directive.

Furthermore, it is unclear as to whether those provisions are aspirational or mandatory given their vague nature. We would generally argue that such provisions could not form the basis for a breach of the code, as they are vague and lack legal certainty, and therefore should not be contained within a Section 15 Code.

3.3 As a service provider operating in a competitive market, it is essential that the competitive playing pitch is flat and fair. *ComReg must publish all special/cosy agreements, including any out of court settlements, they reach with individual service providers, such that the market operates in a transparent and non-discriminatory manner.* Additionally, if a particular arrangement is allowed to proceed in a manner, that would otherwise necessitate a change to the code of practice, that permission must equally apply across all service providers. Moreover, where such practices are being discussed by ComReg, it may be more appropriate for them to be handled through an Industry Working Group as opposed to on a private one-to-one basis.

3.9 ComReg, and the wording of the Code, should acknowledge that Service Providers have a primary obligation with regards to Data Protection to those provisions contained within the Data Protection Acts. It should be made clear that where the Code of Practice or requirements of ComReg conflict with requirements under the Data Protection Acts, that the Data Protection Act requirements are superior. We believe that only such data that is necessary for the investigation of a specific breach, and only with the specific approval of the Data Subject, shall be liable to be passed to ComReg. Additionally, it may be that ComReg as part of an Industry Working Group, and together with the Data Protection Commissioner, should seek to develop an industry standard Data Handling Process.

3.17 Given that most services sold in Ireland are targeted at the market in general, and by their nature targeted at over 18s. We believe that the prescriptive sentence in this section should be replaced with something along the lines of 'Where services are targeted at a specific market, than it should be made clear in promotion for that service, the market that is being targeted.'

3.18 We would ask that the term 'silence' and 'error message' be defined in Section 1. Additionally it should be made clear that this section applies to where services have been designed to mimic silence and network tones this part should apply as opposed to when those matters result from genuine network related issues.

3.19-22 This section in it's entirety places a set of burdens on service providers which is unfair. ComReg should be the enforcer of the code, and so long as a clear database is available on the web, with appropriate notifications, the only requirement on Service Providers should be that they make reasonable attempts to ensure that they only trade, with regards to PRS, with those other service providers who are licensed. Furthermore, ComReg should notify all Service Providers when a new Service Provider is added to, or removed from, the list of licensed service providers in a proactive way - by email, in a special section on the website, by letter etc.

Q. 2. Do you agree with the draft provisions relating to the promotion of PRS as set out in Section 4 of the draft Code? Please provide reasons to support your position.

We welcome the principle of ensuring that all promotion is compliant with the Consumer Protection Act 2007 and European Directive 2005/29/EC as outlined in section 4.1 to 4.5.

Directive 2005/29/EC ensures maximum harmonisation of consumer protection across Europe.

Sections 4.6 to 4.35.

We do not agree with the additional measures proposed in sections 4.6 to 4.35 as they undermine this harmonisation and would require Service Providers to introduce specific measures for the Irish market that are not required in other European markets. Indeed, ComReg are explicitly prevented from introducing such market distorting restrictions by Directive 2005/29/EC. If ComReg were to proceed with sections 4. to 4.35 Irish Service Providers would be at a significant competitive disadvantage as EU registered service providers, whose services are information society services, would not be required to implement many of these additional restrictions when operating in the Irish Market.

Apart from the fact, in law, that ComReg must comply with Directive 2005/29/EC the proposed restrictions seem excessive given the existing requirements to fully inform consumers of all material facts that would influence their decision to purchase a promoted service.

4.10, 4.14, 4.15, 4.22 We would disagree with these sections.

Many of the measures being proposed, specifically 4.10, 4.14 require significant additional promotional space and place a significant cost burden on service providers. The requirements in 4.15 and 4.22 to provide spoken information as well as clearly displayed written information on TV promotions is excessive and adds very significant cost. This cost will either be passed on to the consumer or render the service not viable.

This will put service providers operating within Ireland at a significant commercial disadvantage to those operating from other European countries. It may also prevent smaller services from being able to operate at all.

It is reasonable that services marketed to children and other vulnerable consumers may require additional measures. In order to ensure such measures are effective they should be targeted towards a particular identified and quantified concern.

Q. 3. Do you agree with the draft provisions applicable to the operation of Subscription Services as set out in Section 5 of the draft Code? Please provide reasons to support your position.

We generally support ComReg's objectives with regards to the promotion of the interests of the end user.

Additionally, given the statutory nature of the Code, we are concerned that provisions contained within the headers in section 5 are generally beyond the scope of ComReg due to restrictions contained within Article 4 and Article 5 of the Unfair Commercial Practices Directive.

We believe that practically ComReg might better adopt a less prescriptive approach.

However, with regards to some of the detailed provisions

5.13-18 We disagree with the measures proposed. We believe that a general and broad sweeping double opt-in does not address the objective of protecting the interests of end-users. End User interests are best protected by encouraging competition and service innovation amongst service providers, and a broad-sweeping double opt-in does not facilitate that. It may be that further research could be undertaken to understand the nature of the subscription market in Ireland in terms of providing a factual basis for bringing forward such a proposal. In any event, we believe that ComReg would be in a better position to understand the implications of this upon investigating further the merits of the proposal in a more scientific and thoughtful manner.

5.20 We believe that the mandating of standard SMS as the mechanism for informing the client is inappropriate. The client should be informed, however they should be informed using technology that is most appropriate for the service which the customer is using. Additionally, it is unclear why ComReg is proposing an additional Monthly Update message on top of the threshold message, and we disagree with the proposal for the monthly update message as being superfluous and possible leading to a situation where customer begin to ignore the more important threshold message.

5.22 We believe that the Subscription Update Message needs to be reworded in so far as it currently appears to suggest that the consumer has subscribed de-novo, instead of being an update with reference to an existing service that the customer has.

5.26 We believe that this measure is Technically impossible and would suggest ComReg convene a meeting of an Industry Working Group to address it in a further code review. We would welcome a solution which would not burden service provider with unnecessary costs when other less invasive possibilities exist.

5.30 We believe that this measure is Technically impossible and would suggest ComReg convene a meeting of an Industry Working Group to address it in a further code review. We would welcome a solution which would not burden service provider with unnecessary costs when other less invasive possibilities exist.

Q. 4. Do you agree with the draft provisions applicable to the operation of other categories of PRS, also set out in Section 5 of the draft Code? Please provide reasons to support your position.

We generally support ComReg's objective to promoting the interest of the end user.

Additionally, given the statutory nature of the Code, we are concerned that provisions contained with the headers in section 5 are generally beyond the scope of ComReg due to restrictions contained within Article 4 and Article 5 of the Unfair Commercial Practices Directive.

We believe that practically ComReg might better adopt a less prescriptive approach.

However, with regards to some of the detailed provisions

5.43 We are keen to ensure that end user rights to privacy and data protection are prioritised. The Duration of storage of live services goes beyond what is required for purposes of remedying breaches, where the matter concerned can be remedied with a refund. As such, only such information that would relate to billing ought to be stored. In any event, we would ask that ComReg, as part of an Industry Working Group, together with the data protection commissioner might better reach a consensus, and that the prescriptive element contained within this code is inappropriate.

5.44 We believe that this is an Excessive Notification Requirement. It could add between 10-15% to the cost of voice service annually. This is probably more than all the damage outlined in the RIA being done by the industry every year.

5.55 In the case of a service not being provided by a professional qualified, then this makes sense, however if the service is being provided by a registered professional, then it make no sense.

5.59-62 We believe that the distinction between Chatline and Contact/Dating might better be eliminated and the full set of rules merged, to simplify the code.

5.63 We believe this section is overly prescriptive.

5.64 We believe that this measure should distinguish between operator chat services (which might be so restricted), and not peer to peer chat services which ought not be restricted in such a manner.

5.65 We note the higher value levels applied to voice services and would ask that these be harmonised at the voice level threshold for technical and promotional simplicity especially as services become ever more converged.

Q. 5. Do you agree with the draft provisions relating to Customer Service as set out in Section 6 of the draft Code? Please provide reasons to support your position.

We are supportive of this section.

Q. 6. Do you have any comments on the provisions on the revised draft Code?

We specifically agree with ComReg that the legal environment for the regulation of PRS goes beyond the 2010 Act and encompasses EU measures such as the Technical Standards Directive, the E-Commerce directive and the Unfair Commercial Practices Directive.

We are concerned that it appears that the legal footing of those measures within the code at sections 1.6 and 1.7 are deliberately vague, and do not provide an adequate basis upon which we can base our interpretation as to how the code will operate.

Articles 4 and 5 of the Unfair Commercial Practices Directive are clear in so far as they do not allow ComReg to bring forward further measure than are provided for in the UCPD itself, when a service is targeted at the average consumer.

Furthermore, although it appears clear from reading the definition of ISS that all subscription services are ISS, the code does not make clear which parts of itself won't apply vis-a-vis section 1.6.

Q. 7. Do you have any views on the Regulatory Impact Assessment with regard to the revised draft Code of Practice? Please provide reasons to support your position.

We believe that ComReg's RIA is insufficient to justify that the regulations outlined in the Code are necessary for the protection of the average consumer, in general.

Specifically, we believe that the RIA does not adequately provide a scientifically verifiable basis for the imposition of each of the measures proposed in the code. Instead, it appears to generically attempt to justify a broad sweeping set of measures with generic and weak argument.

Finally, as a member of the Irish Phone Paid Services Association, we concur broadly with their consultation response and would ask that you would take on board their specific positions with regards to individual provisions as if they were our position as well.

7. Irish Phone Paid Service Association ("IPPSA")



Consultation submission to Comreg on Consultation: Premium Rate Services Code of Practice (Comreg 11/51)

Contents

Executive Summary	3
Introduction to IPPSA	4
Responses to Consultation Questions	5
Q. 1. Do you agree with the draft provisions applicable to all PRS as set out in Section 3 of the revised draft Code? Please provide reasons to support your position.	6
Q. 2. Do you agree with the draft provisions relating to the promotion of PRS as set out in Section 4 of the draft Code? Please provide reasons to support your position.	8
Q. 3. Do you agree with the draft provisions applicable to the operation of Subscription Services as set out in Section 5 of the draft Code? Please provide reasons to support your position.	12
Q. 4. Do you agree with the draft provisions applicable to the operation of other categories of PRS, also set out in Section 5 of the draft Code? Please provide reasons to support your position.	17
Q. 5. Do you agree with the draft provisions relating to Customer Service as set out in Section 6 of the draft Code? Please provide reasons to support your position.	18
Q. 6. Do you have any comments on the provisions on the revised draft Code?	19
Section 1 Issues.....	19
European Legal Environment.....	19
National Legal Environment	20
Proportionality.....	20
Best Retail Issue.....	21
Direct-to-bill.....	21
Technical Implementation Timelines.....	21
Q. 7. Do you have any views on the Regulatory Impact Assessment with regard to the revised draft Code of Practice? Please provide reasons to support your position.	22
Annex.....	25
Impact analysis of Double Opt-In	26
1. The expected benefits of double opt-in.....	26
2. The impact double opt-in will have on consumers, service providers and the exchequer.....	28
3. Overall impact of Double Opt-in.	29
Impact analysis of spoken promotional requirements.....	30
1. The expected benefits of spoken promotional requirements	30
2. The Impact Speaking Promotions will have on Consumers, Service Providers and the Exchequer....	32
3. Overall impact of Proposed Spoken Requirements.	32

Executive Summary

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

The Core Issues we wish to raise in our response are:

- Industry desire to operate in a co-operative, and productive, manner with the regulatory environment through the establishment of an industry working group.
- That Comreg should use the least harmful way available to it to address emerging concerns before resorting to the draconian options.
- That Comreg should act in clear compliance with EU law.

Introduction to IPPSA

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

The core aims of the association are:

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

The Irish Phone Paid Services Association includes over 70 members who are currently active in the industry in Ireland.

Together the members of IPPSA represent the majority of the industry in terms of revenue, represent both domestically and internationally established firms and represent firms active across the range of Phone Paid and Information Society Service Providers.

Responses to Consultation Questions

Q. 1. Do you agree with the draft provisions applicable to all PRS as set out in Section 3 of the revised draft Code? Please provide reasons to support your position.

We agree with ComReg's general objectives with regards to this section. However, we feel that there are certain aspects which could be better addressed in a more general manner, as opposed to the prescriptive proposals outlined.

Additionally, given the statutory nature of the Code, we are concerned that provisions contained within the headers in section 3 are generally *ultra vires* the powers of ComReg due to restrictions contained within Article 4 and Article 5 of the Unfair Commercial Practices Directive.

Furthermore, it is unclear as to whether those provisions are aspirational or mandatory given their vague nature. We would generally argue that such provisions could not form the basis for a breach of the code, as they are vague and lack legal certainty, and therefore should not be contained within a Section 15 Code.

3.3 As a service provider operating in a competitive market, it is essential that the competitive playing pitch is flat and fair. *ComReg must publish all special/cosy agreements, including any out of court settlements, they reach with individual service providers, such that the market operates in a transparent and non-discriminatory manner.* It is hard to imagine that an individual Service Provider, in agreement with Comreg, can break the Code, and rely upon confidentiality clauses to ensure that the means by which it has broken the code will be held secret if Comreg so desires. This is completely contrary to good regulation practices and should not be permitted under any circumstances. Additionally, if a particular arrangement is allowed to proceed in a manner, that would otherwise necessitate a change to the code of practice, that permission must equally apply across all service providers. Moreover, where such practices are being discussed by ComReg, it may be more appropriate for them to be handled through an Industry Working Group as opposed to on a private one-to-one basis.

3.9 ComReg, and the wording of the Code, should acknowledge that Service Providers have a primary obligation with regards to Data Protection to those provisions contained within the Data Protection Acts. It should be made clear that where the Code of Practice or requirements of ComReg conflict with requirements under the Data Protection Acts, that the Data Protection Act requirements are superior. We believe that only such data that is necessary for the investigation of a specific breach, and only with the specific approval of the Data Subject, shall be liable to be passed to ComReg. Additionally, it may be that ComReg as part of an Industry Working Group, and together with the Data Protection Commissioner, should seek to develop an industry standard Data Handling Process. As an example, Phonepaid contends that it is only necessary to prove that texts were sent to and from its system at particular times, and does not consider the content of the texts to be of any importance to an investigation, unless the use of particular keywords is relevant.

3.17 Given that most services sold in Ireland are targeted at the market in general, and by their nature targeted at over 18s. We believe that the prescriptive sentence in this section should be replaced with something along the lines of 'Where services are targeted at a specific market, than it should be made clear in promotion for that service, the market that is being targeted.'

3.18 We would ask that the term 'silence' and 'error message' be defined in Section 1. Additionally it should be made clear that this section applies to where services have been designed to mimic silence and network tones this part should apply as opposed to when those matters result from genuine network related issues.

3.19-22 This section in it's entirety places a set of burdens on service providers which is unfair. ComReg should be the enforcer of the code, and so long as a clear database is available on the web, with appropriate notifications, the only requirement on Service Providers should be that they make reasonable attempts to ensure that they only trade, with regards to PRS, with those other service providers who are licensed. Furthermore, ComReg should notify all Service Providers when a new Service Provider is added to, or removed

from, the list of licensed service providers in a proactive way - by email, in a special section on the website, by letter etc.

Reporting perceived or suspected breaches of the Code by a contracting partner would appear to open up the possibility of the reporting party facing sanction and/or claims for damages if the breach is not upheld, and financial or reputational harm ensued. Perhaps, Comreg could indemnify Service Providers in cases such as these, otherwise the provision will be flaunted by non-observance.

Q. 2. Do you agree with the draft provisions relating to the promotion of PRS as set out in Section 4 of the draft Code? Please provide reasons to support your position.

We welcome the principle of ensuring that all promotion is compliant with the Consumer Protection Act 2007 and European Directive 2005/29/EC as outlined in section 4.1 to 4.5.

Directive 2005/29/EC ensures maximum harmonisation of consumer protection across Europe.

Section 4.2.

We would note, from the National Consumer Authorities Website, the definition of the average consumer:

“The European Court of Justice interprets the "average consumer" as "reasonably well informed and reasonably observant and circumspect, taking into account social cultural and linguistic factors".

Where a commercial practice is likely to distort the economic behaviour of a clearly identifiable group who are particularly vulnerable because of their mental or physical infirmity, age or credulity in a way which the trader could reasonably be expected to foresee, the average member of that group would be regarded as the "average consumer".”

We do not believe it is credible that Comreg propose to advance the requirements of the code as set out being necessary for the protection of the average consumer, considering the obligations imposed on Comreg under 2005/29/EC.

Sections 4.6 – 4.35

Within the Response to Consultation document (section 2.16 of 11/51) in relation to the Promotion of PRS ComReg states it’s intention, in accordance with the objective of the UCP directive, is that end-users of PRS receive all relevant information which will enable them to make an informed decision to purchase, at the time of the invitation to purchase, but such information need not necessarily be included in all promotions not provided all at the same time.

Phonepaid broadly agrees with this objective. However, the proposed Code goes far beyond meeting this basic objective by introducing obligations on Service Providers promoting PRS that are in clear breach of the UCP Directive. And in direct contradiction to the sentiment of the objective above Section 4.6 of the draft Code requires “All material information and main characteristics of a PRS must be brought to the attention of the consumer with the invitation to purchase by a PRS provider”.

On the basis of review of document ComReg 11/51 and the associated Annexes to this document one can summarise ComReg’s policy objective in relation to the Promotion of PRS as follows:

That ComReg perceives there to be a need to amend the existing Code with prescriptive obligations on Service Providers promoting PRS on the basis of information from consumer contacts to the ComReg call centre and the Qualitative and Quantative studies conducted by IPSOS-MRBI on behalf of ComReg.

Phonepaid disagrees with all measures proposed in Section 4 of the draft Code beyond those required to meet the requirements of the UCP Directive and other relevant legislation. And furthermore on the basis of the following:

- The vast majority of measures proposed in the draft Code exceed the requirements to inform the ‘Average Consumer’ prior to their decision to purchase and as such is in breach of the UCP Directive (see ‘The UCP Directive’ below);
- ComReg has failed to adequately quantify the issues and/or harm to consumers that relates to the current promotion of PRS (see ‘Quantifying the issues/consumer harm relating to the current promotion of PRS’ below);
- ComReg has failed to adequately quantify the impact of the proposed measures in the draft Code on the consumer in terms of addressing the perceived issues or the harm the measures will cause the industry (see ‘Impact of Proposed Measures on Consumers and Industry’ below);

- No alternative regulatory options have been considered in the RIA;

The UCP Directive

The European Court of Justice interprets the "average consumer" as "*reasonably well informed and reasonably observant and circumspect*".

Phonepaid is of the view that the measures proposed in Section 4 of the Code in relation to the promotion of PRS far exceed those required to ensure that an "average consumer" is sufficiently provided for to make an informed decision to purchase.

On this basis ComReg cannot proceed to introduce the measures outlined in Section 4 of the draft Code.

Quantifying the issues/consumer harm relating to the current promotion of PRS

Phonepaid is of the view that ComReg has failed to show verifiable and sound evidence of harm that is proportionate to the measures proposed in the draft Code.

In its RIA (paragraph 1.7) ComReg states that the requirement for amendment of the existing Code in relation to the promotion of PRS is based on "*historical consumer complaints, responses to the initial consultation as well as research surveys on the PRS market.*"

Apart from references to some high-level consumer complaint statistics dating from 2008/2009 ComReg have presented no specific evidence in the RIA of consumer harm based on "consumer complaints". Specifically in relation to this point ComReg has failed to present any statistics relating to the period in which they have been regulating the market.

No information has been presented in the RIA from the previous responses to consultation in relation to consumer harm as a result of the promotion of PRS. A review of the responses to Consultation 10/92a as presented by ComReg in document 11/51 suggests that the vast majority of respondents were opposed to some or all of the key provisions relating to the promotion of PRS. The NCA highlighted concerns regarding some of the challenges faced by the average consumer. Again, our view is that the measures implemented in the Code should meet the requirements of the average consumer and that ComReg have no grounds for introducing measures beyond those required of the UCP Directive.

The primary source of justification for the measures proposed in the draft Code are the research surveys conducted by IPSOS MRBI on behalf of ComReg. We would request that ComReg note our concerns at setting measures in the Code on the basis of two limited surveys bearing in mind the ramifications of these measures on the PRS industry in Ireland and the wider economy as a result. In its treatment of the results of these surveys Phonepaid is of the view that ComReg have focussed on specific elements rather than the totality of information provided in this limited survey and have presented the results in an un-objective manner. Indeed, ComReg appear to interpret the results of these surveys with a bias that has been apparent in the previous consultations and prior to these surveys being conducted.

On several occasions in the RIA ComReg draw attention to the fact that there is a perceived lack of clarity in the pricing of PRS, however the survey results show that 84% of respondents were aware of the charges for a PRS prior to using the service and only 2% of respondents being completely unaware. This statistic suggests that ComReg is proposing to introduce draconian measures in relation to the promotion and operation of PRS to satisfy a small minority of consumers, not representative of the "average consumer". Furthermore in responding to the questionnaire significant proportions of respondents reported "Too Expensive" as a reason for either not engaging with PRS or not re-engaging with PRS. This indicates that clearly these consumers were fully informed of the pricing of services to allow them arrive at this conclusion.

ComReg also suggest that a justifiable basis for the measures proposed in the draft Code is the fact that an "informational asymmetry" exists in relation to consumers knowing from whom or where PRS products are available. ComReg arrive at this conclusion on the basis of the IPSOS survey and a previous survey conducted on behalf of IPPSA by Amarach showing that consumers are most likely to contact their Mobile Operator

(MNO) where the consumer has a query in relation to a PRS. This assumption is an absurd basis for the proposed measures as no consideration has been given to the fact that consumers already have a billing and support relationship with their MNO and are an obvious first point of contact, from a consumer perspective, where a consumer has a query relating to a service delivered to their mobile phone or a charge on their mobile bill.

In summary, Phonepaid is of the view that in this entire process ComReg have failed to demonstrate any justifiable issue/consumer harm relating to the current promotion of PRS and therefore have NO basis for the hugely damaging measures proposed in the draft Code.

Impact of Proposed Measures on Consumers and Industry

ComReg have failed to assess in any detail the possible impact of the measures proposed in the draft Code on consumers or on the PRS industry in Ireland. It is incumbent on ComReg to consider each of the measures proposed and to assess their cost/benefit when conducting a RIA. It is our view that this has not been completed.

ComReg have made broad statements in relation to increased transparency benefiting consumers and the industry. No context relating to the “average consumer” has been given and yet the RIA suggests the proposed measures are intended to:

1. Enhance “trust” – based on ComReg’s survey results this group represents 11% of non-PRS users and 4% of PRS users and;
2. Enhance “pricing transparency” – based on ComReg’s survey results the population who weren’t aware of a services pricing prior to using the service is 16% of PRS users

Clearly these issues relate to a significant minority of consumers and are not indicative of the impact on the “average consumer”.

No analysis has been presented in relation to benefits that will accrue to consumers of each of the individual proposed measures and indeed no analysis has been presented of the devastating consequences of these measures on the PRS industry.

In principle Phonepaid is in agreement that pricing information should be presented in close proximity to the call to action of a PRS promotion but fail to see the justification for ComReg mandating the specific size of the font to be used by Service Providers. Clearly the pricing needs to be clearly visible to the “average consumer” but beyond this requirement the Service Provider should be free to market their product as they see fit in relation to pricing.

Phonepaid 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. Phonepaid 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 Phonepaid Member Firms significant commercial harm by significantly diluting marketing investments by significantly reducing the advertising time available to promote the product or service. In a trial voice-over for one current advertisement adopting the new Code 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 Service Providers to promote their products and services. As shown

in the VO trial the measures proposed in the draft Code will essentially render audio/visual promotion unviable given the limited time to promote Service Provider products despite incurring the full costs for the advertisement. This measure will cause service providers significant commercial harm if implemented.

Phonepaid is of the view that the proposed measures relating to 'Spoken Requirements' are without basis and are 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 Phonepaid 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) Phonepaid suggests that the pricing information should be spoken in as part of any audio/visual advertisement.

Q. 3. Do you agree with the draft provisions applicable to the operation of Subscription Services as set out in Section 5 of the draft Code? Please provide reasons to support your position.

We generally support ComReg's objectives with regards to the promotion of the interests of the end user.

Additionally, given the statutory nature of the Code, we are concerned that provisions contained with the headers in section 5 are generally beyond the scope of ComReg due to restrictions contained within Article 4 and Article 5 of the Unfair Commercial Practices Directive.

We believe that practically ComReg might better adopt a less prescriptive approach.

However, with regards to some of the detailed provisions

Sections 5.9 – 5.18

Phonicaid continues to strongly disagree with ComReg's proposed introduction of a Double Opt-In requirement for subscription services on the following basis:

- Questionable data supporting ComReg's view that subscription services cause disproportionate consumer harm relative to other PRS (see 'Supporting Data' below);
- The proposed measure far exceeds and is wholly dis-proportionate to ComReg's policy objective of ensuring that the "average consumer" is adequately informed of the details of a service to allow an informed decision to purchase (see 'Proposed measures far exceeds policy objective' below);
- The proposed measure will cause devastating harm to both Consumers and Service Providers (see 'Impact of Double Opt-In on Industry' below);
- ComReg has failed to investigate and present alternative regulatory options to achieve the policy objective (see 'Alternative Options' below);
- ComReg's statements in relation to the International experience of Double Opt-In is somewhat misleading in its failing to present detailed analysis of the conditions relating to the implementation of Double Opt-In in the stated countries and the reported impact on industry in these countries (see 'International Experience' below);

Supporting Data

ComReg, in their Response to Consultation document (11/51) and the associated RIA, continue to state that the majority of contacts to their call centre (86%) relate to subscription services. As previously indicated by Phonicaid mobile subscription services account for ~80% of industry revenues and therefore one would expect a proportionate number of consumer complaints. ComReg however, in document 11/51, suggest that this conclusion is invalid and that assessing on the basis of the number of transactions is a better basis for determining the relative complaints to subscription activity. However, ComReg HAS NOT presented the results of this assessment, if indeed it was conducted, and as such has no basis for making this assumption. Phonicaid's position is based on presented empirical data and is indisputable on the basis of the information provided by ComReg.

Phonicaid in its previous response pointed to the reduction in the number of consumer complaints in relation to PRS over the last number of years. Specifically consumer complaints have fallen from ~28,000 contacts per annum in 2008/09 to ~13,000 contacts per annum according to ComReg's figures for 2011. This represents a fall of ~55% in consumer contacts over the past three years. ComReg however dismiss this fall in consumer

contacts as resulting from an overall decline in the PRS market. This decline however is only forecast to be ~38% over the same time period.

ComReg suggest that “one could reasonably draw the conclusion that more consumer harm potentially originates within subscription services...” on the basis of the information presented in the IPSOS MRBI survey and that this is a basis for the introduction of a Double Opt-In mechanism. This basis is formed on the result from the questionnaire that on average 21% of users had experienced “difficulties” with PRS in general and 30% of users of subscription services had experienced “difficulties”.

Phonepaid would point out that the term “difficulty” was not defined within the survey, or at least the presentation of this data in the annex to document 11/51. Therefore it cannot be drawn from this data that all cases of “difficulty” represented cases of real consumer harm which will be addressed by the introduction of Double Opt-In. The commentary associated with this topic in the quantitative analysis gives some insights. Two of the top comments made were:

- *People claimed to be unable or to have had difficulty unsubscribing from the service.*

This is an issue in relation to consumer education regarding the STOP command and an issue of enforcement to ensure that Service Providers are correctly acting on receipt of a STOP message. Double Opt-In will not address this issue for consumers who subscribe to services and subsequently wish to unsubscribe.

- *People claimed they didn't realise they were entering into a subscription.*

The proportionate and proper remedy to this issue is for ComReg to implement the promotional requirements relating to the UCP and Service Providers to ensure that the “average consumer” is fully informed in making their decision to purchase. The introduction of Double Opt-In to address this issue is wholly disproportionate on the basis of the harm it will cause to both consumers and industry and by denying consumers the right to easily choose and engage with the service they wish to.

Finally, ComReg suggest that a key finding of the Qualitative analysis was the overwhelming support of respondents for a Double Opt-In mechanism. Phonepaid is of the view however, and notwithstanding the paragraphs below in relation to regulatory options, that this result is invalid on the basis that the respondents weren't given valid alternative options to suggest. For example, Phonepaid suggests that most consumers would deem themselves adequately informed where given sufficient material to make an informed decision up front in promotions and where reminded of the service terms and how to unsubscribe by text message following their response to advertising.

Proposed measures far exceeds policy objective

ComReg's stated policy objective in document 11/51 is to “ensure that end-users of subscription-based PRS are fully equipped to make an informed decision to purchase and to ensure that there is verifiable evidence to confirm that the end-user was so informed”.

Phonepaid contends that the proposed introduction of Double Opt-In is a completely disproportionate method to address the policy objective above. As is shown below the impact on the industry of Double Opt-In is devastating and it is our view that this objective can be achieved by far less draconian measures.

Firstly, the objective of ensuring that consumers are fully equipped to make an informed decision to purchase is a function of the promotion of the relevant services. ComReg must implement the promotional requirements relating to the UCP and Service Providers must ensure that the “average consumer” is fully informed in making their decision to purchase. The framework for this solution exists and is in place today. Prescribing to one industry requirements beyond the UCP Directive is both without legal basis and indeed places that industry at a competitive disadvantage to other commercial sectors vying for consumers business and also to other PRS service providers operating outside of Ireland.

The result of ComReg introducing Double Opt-In to dis-proportionately meet this objective will result in the decimation of PRS as an industry and payment mechanism for Irish businesses. Consumers will continue to avail of these services but from Service Providers operating from other European jurisdictions and from Irish businesses using alternate payment mechanisms such as credit-card, direct-to-bill etc.

Phonopaid contend that there is no benefit in using Double Opt-In as a method of verifying that consumers have been made aware of the terms of a service over the existing customer acquisition models deployed under the existing Code. Verifiable confirmation that a consumer has been provided with the required 'Welcome' message under the existing Code can be provided by either the (1) Service Provider or (2) the customer's MNO. Under Double Opt-In verifiable evidence of the consumer sending an MO to confirm agreement to join a service will still be required from either the (1) Service Provider or (2) the customer's MNO.

For online acquisitions Phonopaid would suggest that ComReg mandate an independent 3rd party PIN verification model to ensure that there is independent verifiable evidence that a consumer confirmed their being in possession of their mobile phone for consumers who sign-up for services in an online environment.

Impact of Double Opt-In on Industry

Phonopaid is of the view that ComReg have not considered sufficiently the potential impact of Double Opt-In on consumers and the Industry nor considered the huge dis-proportionality of the impact on industry when compared with the perceived consumer benefits.

Phonopaid previously submitted the results of a trial conducted demonstrating the impact on customer acquisitions as a result of the introduction of Double Opt-In.

ComReg have presented NO data or evidence in relation to the impact of Double Opt-In on the PRS industry in Ireland. Indeed, rather than taking a proactive stance to the information provided by Phonopaid, ComReg simply dismissed the results on the basis that they questioned the sample size of the trial. Given the crucial nature of the decisions that ComReg are undertaking here, Phonopaid would have considered it reasonable that ComReg would at least investigate the suggestions of the trial conducted and perhaps extend the trial or request further data from Phonopaid. Indeed, the sample size of 131 participants is statistically significant given appropriate confidence levels and intervals.

The results of Modeva's trial in relation to the impact of Double Opt-In have been previously submitted is of the view that the fall-off in customer acquisitions is largely caused by the disruption in the user flow of having to respond with an MO to a text message received. Consumers today are more and more attuned to smooth user flows in acquiring the things they wish to acquire particularly in the consumption of digital content.

One need only briefly analyse the processes used within the Apple & Android App stores to see the flows required to recruit customers in this competitive environment. Consumers now expect 'one click' purchases and to deviate from a tight acquisition process by requiring consumers to switch communication medium to SMS and respond to a somewhat disconnected message will hugely confuse/undermine the confidence of the consumer in the offering they are responding to.

Phonopaid has conducted a further analysis combining the findings of our previous trial with the findings from ComReg's IPSOS MRBI surveys and have come to the following conclusions:

- The reduction in consumer harm resulting from the introduction of Double Opt-In will be marginal at best
- The harm caused to consumers resulting from the introduction of Double Opt-In will be of the order of €6.3 million to €31.7 million.

Full details of this analysis is included in the Annex of this document.

Double Opt-In will essentially end the PRS industry in Ireland and result in significant lost tax revenue for the government and loss of jobs in the state.

It is our view that ComReg is not addressing these impacts in any level of detail and would further suggest that these impacts are not being taken seriously. Notwithstanding the paragraphs below relating to International experience there is significant evidence of loss of revenue of the order suggested by our trial in countries that have introduced Double Opt-In in the manner suggested by ComReg.

Alternative Options

It is considered best practise when considering regulatory change to conduct a RIA which considers various options to address a specific policy objective. Throughout this consultation and within the published RIA ComReg have failed in general and specifically in relation to Double Opt-In to investigate and seek views on alternative regulatory options.

Throughout document 11/51 ComReg state their view and indeed the views of many respondents that facilitating a “cooling-off” period would be a desirable process for subscription services given that the establishment of a contract for a subscription service is analogous to a user setting up a direct debit (DD) from their mobile bill. However, ComReg at no stage investigated the concept of a “cooling-off” period in the consultation process.

Phonepaid would support a proposal whereby a consumer is forwarded product details by SMS following their signing up to a service (in response to advertising fully complying with the UCP Directive) including clear details of how to unsubscribe from the service and that the consumer would have specified period of time (a “cooling-off”) to act on this information (and indeed, the information provided in the promotional material) prior to incurring any costs.

It is our view that this approach would proportionately satisfy ComReg’s policy objectives. However, ComReg have NOT considered alternative options and have simply persisted with the most severe regulatory measures despite questionable basis and the disproportionality of the proposed measure.

International Experience

One of the key supports for ComReg’s proposed introduction of Double Opt-In is in line with good practise internationally. However ComReg have failed, with the exception of some detail provided regarding the Australian market, to present a detailed analysis of how these countries implemented the Double Opt-In measure and the subsequent impact on industry.

A key market where the introduction of Double Opt-In has been hailed as huge success is the UK. However, Double Opt-In in the UK is only required for subscription services charging more £4.50 per week. Prior to the introduction of the new PhonePaidPlus (PPP) Code this year, PPP had reserved the right to review this measure and choose not to revise it in the new Code – clearly indicating their satisfaction with the measure.

Phonepaid would ask ComReg to reconsider this experience in the UK and learn from a market that is culturally similar to our own but with significantly more experience and with a stabilised and mature market for PRS. Service Providers operating in some of the other regions that have introduced Double Opt-In have reported significant declines in revenues since the introduction of Double Opt-In.

Where ComReg consider the implementation of Double Opt-In in the Irish market Phonepaid would strongly support an implementation mirroring that in the UK market..

5.15 - The double opt-in methodology proposed is obsolete as it takes no account of the user flows and information provided by the most common forms of sign at this point, namely via the fixed and mobile web. To sign up a consumer for a subscription via web advertising, most SPs use a PIN sign-up mechanism which involves people entering their phone number on a landing page, and then receiving a PIN sent to their phone. Only upon entering this PIN into the box on the landing page does a subscription start. The consumer will have seen the terms and conditions on the page, ticked a tick box and then, upon receiving a PIN, entered it into the necessary box. At that point, a subscription confirmation will be received, allowing people to unsubscribe

immediately if they so wish. Adding a further requirement for another affirmation at this point is confusing and does not serve the consumer well. A similar logic prevails when signing up on a mobile phone, except that the need for an affirmation text is completely contrary to good user experience. A consumer signs up inside an application, and then has to leave the app and open a text message to respond and then go back in to consume the service. This is completely at odds with the experience most people are now used to when purchasing applications within app stores.

5.18 The wording of this text is completely confusing and will lead people to believe they've signed up for the same service twice.

5.20 We believe that the mandating of standard SMS as the mechanism for informing the client is inappropriate. The client should be informed, however they should be informed using technology that is most appropriate for the service which the customer is using. Additionally, it is unclear why ComReg is proposing an additional Monthly Update message on top of the threshold message, and we disagree with the proposal for the monthly update message as being superfluous and possible leading to a situation where customer begin to ignore the more important threshold message.

5.22 We believe that the Subscription Update Message needs to be reworded in so far as it currently appears to suggest that the consumer has subscribed de-novo, instead of being an update with reference to an existing service that the customer has. We suggest that sending monthly spend reminders in addition to €20 reminders is overkill and again will serve only to confuse consumers. Reading the text as it stands at this point would certainly make people think that they have signed up for additional services. Coming out the blue as it does, it will lead to confusion and to a higher level of people unsubscribing from services they are perfectly content to continue with.

5.26 We believe that this measure is technically impossible and would suggest ComReg convene a meeting of an Industry Working Group to address it in a further code review. We would welcome a solution which would not burden service provider with unnecessary costs when other less invasive possibilities exist.

5.28 We believe that this measure is technically very difficult to achieve, and does not seem to be drawn from any other markets our members are familiar with. We would suggest ComReg convene a meeting of an Industry Working Group to address it in a further code review. We would welcome a solution which would not burden service provider with unnecessary costs when other less invasive possibilities exist.

5.30 We believe that this measure is Technically impossible and would suggest ComReg convene a meeting of an Industry Working Group to address it in a further code review. We would welcome a solution which would not burden service provider with unnecessary costs when other less invasive possibilities exist.

5.31 The PR SMS industry in Ireland is based upon using a small number of shortcodes shared between multiple users. This is necessary as the cost of setting up and renting shortcodes is extremely high, particularly in comparison with other countries, and in proportion to the size of the addressable market. (It is 70% cheaper to set up a shortcode in the UK to address 60M mobile consumers, effectively equating to a 45 fold price differential) The practice therefore is for multiple SPs to share shortcodes. Taking account of this, a very practical solution for handling STOPs was put in place, with the full approval of Regtel in 2007. This solution assigns a STOP request received from a consumer to the last message received and organises the stopping of that subscription or removal from a marketing database. Implementing the new solution proposed by Comreg is technically extremely challenging, and is not warranted by any evidence of consumer harm.

Q. 4. Do you agree with the draft provisions applicable to the operation of other categories of PRS, also set out in Section 5 of the draft Code? Please provide reasons to support your position.

We generally support ComReg's objective to promoting the interest of the end user.

Additionally, given the statutory nature of the Code, we are concerned that provisions contained with the headers in section 5 are generally beyond the scope of ComReg due to restrictions contained within Article 4 and Article 5 of the Unfair Commercial Practices Directive.

We believe that practically ComReg might better adopt a less prescriptive approach.

However, with regards to some of the detailed provisions

5.43 We are keen to ensure that end user rights to privacy and data protection are prioritised. The Duration of storage of live services goes beyond what is required for purposes of remedying breaches, where the matter concerned can be remedied with a refund. As such, only such information that would relate to billing ought to be stored. In any event, we would ask that ComReg, as part of an Industry Working Group, together with the data protection commissioner might better reach a consensus, and that the prescriptive element contained within this code is inappropriate.

5.44 We believe that this is an Excessive Notification Requirement. It could add between 10-15% to the cost of voice service annually. This is probably more than all the damage outlined in the RIA being done by the industry every year.

5.55 In the case of a service not being provided by a professional qualified, then this makes sense, however if the service is being provided by a registered professional, than it make no sense.

5.59-62 We believe that the distinction between Chatline and Contact/Dating might better be eliminated and the full set of rules merged, to simplify the code.

5.63 We believe this section is overly prescriptive.

5.64 We believe that this measure should distinguish between operator chat services (which might be so restricted), and not peer to peer chat services which ought not be restricted in such a manner. This clause takes no account of how many chat services operate. "All you can eat" chat services afford consumers the capability to engage in as many conversations as possible, without worrying about the cost of each message. Enforcing such a restriction broadly makes this very popular cost model impossible, thereby reducing consumer choice.

5.65 We note the higher value levels applied to voice services and would ask that these be harmonised at the voice level threshold for technical and promotional simplicity especially as services become ever more converged.

Q. 5. Do you agree with the draft provisions relating to Customer Service as set out in Section 6 of the draft Code? Please provide reasons to support your position.

We are supportive of this section.

Q. 6. Do you have any comments on the provisions on the revised draft Code?

Section 1 Issues

European Legal Environment

We specifically agree with ComReg that the legal environment for the regulation of PRS goes beyond the 2010 Act and encompasses EU measures such as the Technical Standards Directive, the E-Commerce directive, The Services Directive, The Distance Selling Directive and the Unfair Commercial Practices Directive.

We are concerned that it appears that the legal footing of those measures within the code at sections 1.6 and 1.7 are deliberately vague, and do not provide an adequate basis upon which we can base our interpretation as to how the code will operate.

In section 1.6 the code states that it shall, in stated circumstances, apply only to the extent permitted by Directive 2000/31/EC on Electronic Commerce. Comreg does not clearly state those sections of the code that shall apply or not, this level of vagueness and lack of certainty does not allow for firms who are established outside of Ireland to compete on regulatory level playing pitch. We would ask that Comreg would note beside each section of the code whether it is permitted to be applied to firms established in member states outside of Ireland, or not.

We believe this is especially important in so far as there is clear case law in the EU on the use of Public Policy grounds in the area of consumer protection, and the limitations of invoking it, ECJ 177/83:

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

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

In section 1.7 the code states:

'These aspects of the Code are to be interpreted and understood in light of the provisions of the Unfair Commercial Practices Directive (Directive 2005/29/EC) and the Consumer Protection Act 2007 which implements this Directive in Ireland.'

Given that Articles 4 and 5 of the Unfair Commercial Practices Directive are clear in so far as they do not allow ComReg to bring forward further 'Consumer Protection' measures than are provided for in the directive itself, when a service is targeted at the average consumer, then Comreg should highlight those aspects of the code which breach those provisions of the directive, and eliminate the vagueness and lack of regulatory clarity.

Perhaps those provisions could be highlighted as 'good practice' and would have a moral authority without causing the code to breach the directive.

Furthermore, although it appears clear from reading the definition of ISS that all subscription services are ISS, the code does not make clear which parts of itself won't apply vis-a-vis section 1.6.

National Legal Environment

We are concerned that the single statutory objective of Comreg with regards to PRS is along the lines of 'to protect the interests of end-users'.

Despite being given the power to create a Code of Practice in this light. Phonepaid would like to emphasise to Comreg that its capacity to create 'Soft Law' such as the Code is, is more restricted than empowered by that limited policy objective.

It is not clear, and we would argue is beyond the scope of Comreg's power to usurp the role of the Oireachtas. Comreg has not been granted the objective of constraining the operations of service providers, by for example introducing Double Opt-In, and was not given the green light to breach EU law.

Proportionality

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

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

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

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

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

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

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

Having reviewed both the RIA and the measure proposed in the draft code of practice we believe that Comreg did not even attempt to review either documents, or their proposals in light of the requirements to act proportionately.

Best Retail Issue

1.1 Phonepaid can find no justification in the grounding acts to justify Comreg purporting its goal to be that of ensuring that PRS users equate its usage with best practice retail services. Comreg’s role is to protect end users only, not to find ways of improving user experiences. Phonepaid would also contend that Comreg is not in a position to provide confidence to end users in relation to their usage of new and innovative services, as its remit is limited to PRS only, and will not cover the majority of application purchase possibilities via iPhone and Android appstores.

Direct-to-bill

Phonepaid is concerned that the draft code does not clarify whether the draft code covers the new Direct to Bill offerings being introduced by the MNOs in Ireland, which will allow consumers to purchase items for up to €30 with the payment following through their mobile phone bills?

Technical Implementation Timelines

Phonepaid is concerned that many of the changes will require both expensive and extensive technical changes, if possible at all with current machinery, and would request the practical operational date for the new draft code be at least 8 months after the commencement of the next new budget year, to allow time for adequate financial provisioning as well as for the project delivery timelines to introduce changes, recast any advertisements etc.

Q. 7. Do you have any views on the Regulatory Impact Assessment with regard to the revised draft Code of Practice? Please provide reasons to support your position.

We believe that the current RIA is insufficient to justify the draconian measures it purports to support. To the contrary, it would be in the interest of all stakeholders within the Industry, including Comreg, that the RIA be reviewed, together in an Industry Working Group Context, in order to examine in greater detail the areas we highlight below:

The Policy Context

Comreg failed, in contravention to the Revised RIA Guidelines, to carry out any analysis within the RIA of the legislative environment impacting on PRS. This legislative analysis should have included all the national as well as EU law that currently impacts, however tangentially on the sector.

The requirement for this is based on the requirement under the principles of proportionality to ensure that new measures are both necessary (not already dealt with under existing law) and themselves legal.

As an example of our concern, we believe that the Consumer Protection Act 2007, which implements the EU Directive on Unfair Commercial Practices in Ireland, provides the maximum protection that the state may grant to consumers in terms of promotional materials, transparency etc.

We believe that Comreg ought, at least, to have raised the existence of this overlap, and should following appropriate analysis, have more carefully considered the ramifications upon the measures favoured by the RIA.

We believe that by failing to do this that Comreg has failed to provide a basis to support the draconian measures that are advance in the draft code of practice.

Comreg singular statutory objective

We are concerned that while Comreg pays lip service to the principles of proportionality that it does not actually follow word with deed. This is evidenced by failure to consider the legal environment and in not considering similarly effective but less impactful alternate solutions amongst other things. Moreover, the RIA fails to consider adequately the impacts/costs on service providers nominally as well as relatively between alternatives.

The crude focus on the singularly bland statutory objective to allow, and/or justify Comreg taking law making into their own hands, especially law making that will damage the property rights of stakeholders to those decisions who have clearly registered their concern and willingness to engage to understand and address the symptoms and causes of the problems that Comreg identifies, independently of a Code of Practice, demonstrates a lack of concern for Service Providers itself.

The Statistical Basis

While the use of paid for market research studies can bring an interesting 'colouring' to a RIA, in order to comply with the true meaning of the principles of proportionality Comreg should also have used the factual non-sampled statistics it has at its disposal to provide a scientifically provable analysis.

It is notable that Comreg in this consultation round omitted to provide, or open up actual and comprehensive information with regards to its call center contacts, or the service statistics it receives from Mobile Network Operators relevant to PRS. It is an industry contention that those figures would have revealed a continuing positive decline year-on-year in customer contacts to the regulatory call center and would have been seen as an argument against the adoption of the measures proposed by the RIA

The lack of putting true figures openly into consideration leaves the RIA's basis open to accusation of 'statistical bias' as opposed to providing any valid or sound 'statistical basis'. In this context, we would note that the logo on the IpSoS slides is clearly neither balanced nor without theatre:



Furthermore, Comreg has failed to use its powers under the act to collect actual hard data to support the conclusions it advances to ground the proposals it makes.

Additionally, the proposed measures are bundled together in an aggregate of negative sentiment and statistically inflated possibilities and conjecture. Comreg has proposed many measure which are individually punitive and draconian which ought themselves to have been subject to independent and individual scrutiny, as opposed to being lumped in together.

The Comreg "Model" – Figure C6

The use by Comreg of derived and abstracted statistics does not provide a scientific basis to the proposal they have made.

It is clear that the model in Figure C6 of the RIA is work of a complete hokum pokum nature. As an example:

The notion that a "Those who did complain but were dissatisfied" (being a multiplier of the larger 700k euro amount) is a component indicator of consumer harm, is clearly prejudicial. Such dissatisfaction could merely arise because their complaint was unfounded, rejected and they were annoyed. Consumers also bear responsibility for their own action.

This is borne out by the high levels (unpublished in this RIA by Comreg), of contacts to their call center whose 'complaint' reason, upon investigation with the service providers, proves ultimately to be unfounded.

Comreg ought to have undertaken a rigorous and scientifically challengeable analysis of real data in order to justify the RIA's bald support for the measures proposed.

Analysis of Costs, Benefits and Impacts

Comreg's RIA did not follow the Revised RIA Guidelines and failed to perform any basic or rudimentary analysis between alternate policy options for the achievement of the two policy objectives outlined in the RIA.

All Comreg 'Options' were pre-selected without any analysis within the RIA of any real alternatives, some of which were highlighted in previous consultations by Phonepaid.

Moreover, no multi criteria analysis, which would have been the most appropriate procedure to follow, was attempted.

Additionally, No tangible estimate of the impact of the measures on Industry, and are other stakeholders were provided. Indeed apart from trying to knock the only independently validated study provided by Phonepaid in a previous consultation process, Comreg with a typically Jesuitical argument attempts to make a virtue out of their draconian proposals.

We would ask that Comreg would consider the Annexed draft impact analysis that we conducted vis-a-vis double opt-in and the additional promotional requirements. It clearly shows, and has the potential to show at much more benign thresholds, the disproportionate impact that such a proposed measure would have.

We believe that ComReg's RIA is insufficient to justify that the regulations outlined in the Code are necessary for the protection of the average consumer, in general.

Annex

Impact analysis of Double Opt-In

1. The expected benefits of double opt-in

1.1 According to Figure C.5 in of the Draft RIA, 84% of people are currently aware of the charges involved before using PRS. 14% claim to be somewhat unaware and only 2% claim to be totally unaware.

1.2 This clearly demonstrates that consumers are provided with sufficient information in order to make an informed decision. 84% of consumers being rational and circumspect make them selves aware of the costs before using the service. For some cost may not be a concerning factor and they continue with only some awareness of the costs. Only 2% proceed without any awareness of the costs in advance.

1.3 This high level of awareness of the costs in advance of using PRS is then re-enforced by the current system of providing every consumer of a subscription service with a clear confirmation message that again communicates the costs. While this message is not required by 84% of consumers it will certainly enlighten the 16% of consumers who are less aware of the costs.

1.4 It must be assumed that 95% of consumers read the text message they receive and are then made aware. On this basis only 0.7% of consumers would remain somewhat unaware and a tiny 0.1% of consumers remain totally unaware. It would seem that their level of unawareness is entirely their own responsibility having been repeatedly and explicitly informed of the costs.

1.5 Double opt-in does not improve awareness or transparency. It may prevent the 0.1% of consumers that remain totally unaware of the costs from subscribing to a service.

1.6 On the basis that 59% (1.27 of the Draft RIA) of consumers have used subscription services and that 1,221,000 (1.42 of the Draft RIA) consumers use PRS service. This means that 720,390 people use subscription services.

1.7 Assuming that 0.1% (from 4 & 5 above) of these currently totally unaware of the costs that would equate to 720 people. Using the assumed harm model on figure C.6 of the RIA this would equate to €1,440 of harm prevented. Even assume that harm is caused to all those that are somewhat unaware (5,042 people) this would equate to an additional €10,084 of harm prevented.

1.8 It is clear that the total harm prevented as a result of the increased transparency that double opt-in would provide equates to €11,526.

Description	Percentage	Subscribers
A1-Consumers who use PRS (Figure C.5 of Draft RIA)		1,221,000
A2-Consumers that use Subscription Services (1.27 of Draft RIA)	59%	720,390
A4-Consumers aware of costs before using PRS (Figure C.5 Draft RIA)	84%	605,127
A5-Consumers somewhat unaware of costs before using PRS (Figure C.5 Draft RIA)	14%	84,717
A6-Consumers totally unaware before using PRS (Figure C.5 Draft RIA)	2%	12,102
A7-Percentage of consumers that read the subscription confirmation text message (Assumed)	95%	
A8-Additional consumers aware of costs after receiving the current subscription confirmation message. (95% of A5 and 95% of A6)	15.200%	109,499
A9 - Percentage of consumers who are aware of the costs of PRS services having been informed before using, and after having engaged with the service. (A4+A8)	99.200%	714,626
A10-Consumers who remain somewhat unaware under current system	0.7%	5,042
A11-Consumers who remain totally unaware under the current system	0.1%	720
A12-Assumed harm per uninformed consumer (Figure C.6 of Draft RIA)	€2	
A13-Harm prevented by improved transparency facilitated by double opt-in to consumers that are somewhat aware of costs (A10)	€10,085.46	
A14-Harm prevented by improved transparency facilitated by double opt-in to consumers that are totally unaware of costs (A11)	€1,440.78	
Total Harm prevented by Double opt-in	€11,526.24	

Figure 1.1 – Analysis of Harm Prevented by Double Opt-in

1.9 It is no surprise that double opt-in will have little impact on improving how well consumers are informed in advance of using service as they are currently very well informed.

As a result it is also clear that it will have little impact on those experiencing difficulty.

According to section 1.27 of the draft RIA 21% of PRS user had difficulty with PRS services, while 30% of Subscription users had difficulty. This discrepancy is entirely explained by the fact that subscribers to subscription services interact with these services on an ongoing based and spend 32% more on these services. When you measure complaints, weighted, by revenue (ie usage of service) it suggests that 66% of industry revenue relates to subscription services and 68% of customers having difficulty relate to subscription services. While this data is based on a Ipsos MRBI poll rather than factual data, it is the only usable data provided by Comreg for comment.

It clearly demonstrates that there is no significant difference in difficulty experienced

2. The impact double opt-in will have on consumers, service providers and the exchequer.

2.1 It is clear that the impact of double opt-in would be massively detrimental to subscription services. It is highly likely that this portion of the market would be almost totally eliminated, as evidenced by IPPSA in a detailed analysis that suggest that completion rates will fall to between 0 and 10% (analysis reported 1.5%, with a margin of error of 8.5%)

2.2 The draft RIA Comreg suggests that 720,390 people use subscription services (1.6 above)

2.3 Consumers of subscription services spend €14.69 per month on services (1.27 of the Draft RIA)

2.4 It is estimated that about 50% of these consumers are actively subscribed at any one time, suggesting that these consumers spend about €63 million euro on subscription services. No clear market data has been provided within the draft RIA so it is clear that Comreg has not conducted any detailed analysis of the impact of the measure, either on consumers, service providers or any other stakeholder.

Description		Subscribers
A1-Consumers who use PRS (Figure C.5 of Draft RIA)		1,221,000
A2-Consumers that use Subscription Services (1.27 of Draft RIA)	59%	720,390
A3-Average Spend per consumer (1.27 of Draft RIA)	€14.69	
A4-Percentage of subscription users subscribed at any one time (Assumed based on industry revenues)	50%	360,195
A5-Monthly Spend of PRS Subscription users		€5,291,264
A6-Annual Spend of PRS Subscription users		€63,495,174

Figure 2.1 – Analysis of current consumer spending on Subscription Services

2.5 It is clear that the impact of double opt-in will be dramatic for all stakeholders. IPPSA trials suggest that revenues from subscription services will effectively be eliminated. Even taking the best possible case scenario of a 90% reduction the impact will be devastating.

In addition to depriving service providers of over €571 million of revenue over 10 years, it will also deprive the exchequer of over €177 million in various taxes and levies over 10 years as per figure 2.2 below.

Impact of 90% reduction in Subscription Services	Revenue Lost by Services	VAT Lost	Corporation Tax Lost	PRS Levy Lost	PAYE/PRSI Lost
Monthly Impact	€4,762,138	€826,487	€89,290	€83,337	€476,214
Impact after 1 year	€57,145,657	€9,917,841	€1,000,049	€1,000,049	€5,714,566
Impact after 10 years	€571,456,571	€99,178,413	€10,000,490	€10,000,490	€57,145,657

Figure 2.2 – Analysis of impact of a 90% drop in subscription services.

2.6 As the market implodes any remaining services will need to charge consumers considerable more than currently in order operate within a double opt-in environment. These costs will be borne by consumers. Even assuming that prices only increase by 25%, in a significantly reduced market this would equate to additional consumer costs of over €1.5 million per year.

2.7 Comreg make the suggestion that the industry will bounce back once consumers begin to trust services. This assumption is totally flawed and without basis. Indeed Figure C.2 in the Draft RIA clearly shows that only 11% of people don't use PRS services because of a lack of trust.

2.8 Even if over a number of years all of this 11% begins to trust PRS services, it will have little impact in comparison to the devastating drop in revenue.

2.9 There is a real risk that no indigenous Irish service providers will survive as the market rapidly contracts. It is likely that the vast majority of services will be provided by overseas service providers.

3. Overall impact of Double Opt-in.

3.1 It is clear that Comreg have still done no analysis of the impact that double opt-in would have on any of the stakeholders, including consumers. No models have been provided, no clear benefit analysis, no cost analysis and no options considered.

3.2 Comregs own data suggests that consumers are already well informed in advance of using subscription services and as such double opt-in will have little impact on improving pricing awareness.

3.3 The analysis that IPPSA has conducted in conjunction with KPMG, strongly suggests that the impact will be devastating to consumers, service providers and the exchequer.

3.4 The benefit is likely to be in the quantum of €11,500 per year, weighed against a likely cost of over €57 million per year!

3.5 It is clear that double opt-in should not be introduced.

Impact analysis of spoken promotional requirements

1. The expected benefits of spoken promotional requirements

- 1.1 According to Figure C.5 in of the Draft RIA, 84% of people are currently aware of the charges involved before using PRS. 14% claim to be somewhat unaware and only 2% claim to be totally unaware.
- 1.2 This clearly demonstrates that consumers are provided with sufficient information in order to make an informed decision. 84% of consumers being rational and circumspect make them selves aware of the costs before using the service. For some, cost may not be a concerning factor and they continue with only some awareness of the costs. Only 2% proceed without any awareness of the costs.
- 1.3 This high level of awareness of the costs in advance of using PRS, is then re-enforced by the current system of explicitly providing every consumer with clear pricing information upon engagement, that again communicates the costs. While this information is not required by 84% of consumers, it will certainly enlighten the 16% of consumers who are less aware of the costs.
- 1.4 It must be assumed that 95% of consumers, read/listen to this explicit message and are then made aware. On this basis only 0.7% of consumers would remain somewhat unaware and a tiny 0.1% of consumers remain totally unaware. It would seem that their level of unawareness is entirely their own responsibility having been repeatedly and explicitly informed of the costs.
- 1.5 While additional spoken requirements may improve awareness and transparency to some degree, it will be marginal, given the current high levels of awareness. It must also be considered in the context of the further information provided to consumers at their point of engagement with service.
- 1.6 1,221,000 (1.42 of the Draft RIA) consumers use PRS services
- 1.7 Assuming that 0.1% (from 1.5 & 1.6 above) of these are currently totally unaware of the costs, that would equate to 1,221 people. Using the assumed harm model on figure C.6 of the RIA this would equate to €2,442 of harm prevented. Even assuming that harm is caused to all those that are somewhat unaware (8,547 people) this would equate to an additional €17,094 of harm prevented.
- 1.8 It is clear that the total harm prevented, as a result of the increased transparency that speaking certain conditions in promotions would provide, equates to €19,536.

Description	Percentage	Subscribers
A1-Consumers who use PRS (Figure C.5 of Draft RIA)		1,221,000
A2-Consumers aware of costs before using PRS (Figure C.5 Draft RIA)	84%	1,025,640
A3-Consumers somewhat unaware of costs before using PRS (Figure C.5 Draft RIA)	14%	143,589
A4-Consumers totally unaware before using PRS (Figure C.5 Draft RIA)	2%	20512
A5-Percentage of consumers that read/listen to the informational pricing message (Assumed)	95%	
A6-Additional consumers aware of costs after getting informational message. (95% of A3 and 95% of A4)	15.200%	185,592
A7 - Percentage of consumers who are aware of the costs of PRS services having been informed before using, and after having engaged with the service. (A2+A6)	99.200%	1,211,232
A8-Consumers who remain somewhat unaware under current system	0.7%	8,547
A9-Consumers who remain totally unaware under the current system	0.1%	1221
A10-Assumed harm per uninformed consumer (Figure C.6 of Draft RIA)	€2	
A11-Harm prevented by improved transparency facilitated by spoken requirements consumers that are somewhat aware of costs (A10)	€17,094	
A12-Harm prevented by improved transparency facilitated by proposed spoken requirements consumers that are totally unaware of costs (A11)	€2,442	
Total Harm prevented by Spoken Requirements	€19,536	

Figure 1.1 – Analysis of Harm Prevented by Spoken Requirements

- 1.9 It is no surprise that speaking additional terms within promotions will have little impact on improving how well consumers are informed in advance of using service as they are currently very well informed.
As a result it is also clear that it will have little impact on those experiencing difficulty.

2. The Impact Speaking Promotions will have on Consumers, Service Providers and the Exchequer.

2.1 It is clear that the impact of speaking terms within promotions be massively detrimental to the promotion of PRS services.

2.2 It will result in additional costs of up to 50% in terms of TV advertising costs.

Description		Subscribers
A1-Estimated Value of PRS TV advertising in Q2'2011		€5,000,000
A2-Additional Airtime required to meet requirements	50%	€2,500,000
A3-Yearly Cost of additional airtime		€10,000,000
A4-Cost over 10 years		€100,000,000

Figure 2.1 – Analysis of the cost impact of proposed spoken requirements

2.3 It is clear that the impact of speaking terms will be dramatic for all stakeholders.

2.4 Ultimately the cost of regulation is paid for by consumers. This proposed measure will inevitably result in significant increases of between 10% and 15% in the retail price of services. This will cost consumers up to €100 million over 10 years.

3. Overall impact of Proposed Spoken Requirements.

3.1 It is clear that Comreg have still done no analysis of the impact that the proposed spoken requirements would have on any of the stakeholders, including consumers. No models have been provided, no clear benefit analysis, no cost analysis and no options considered.

3.2 Comreg's own data suggests that consumers are already well informed in advance of using subscription services and, as such, spoken requirements will have little impact on improving pricing awareness.

3.4 The benefit is likely to be in the quantum of €19,536 per year, weighed against a likely cost of over €10 million per year, much of which will likely be ultimately borne by consumers.

3.5 It is clear that t

8. Irish Tarot

From: David A. O'Reilly M.Sc, B.Sc
Sent: 16 September 2011 14:00
To: retailconsult
Subject: Submission for 4pm today

Dear Sir/Madam

I am a member of the Irish Phone Paid Services Association so I have made my submissions via there. However I have the following that I wish to add.

I would urge ComReg to review how call costs are advertised because in the current situation it is impossible for PRS operators to know this information. The 2 Euro 40 per minute rate for 1580 numbers is invalid as it appears that almost all carriers, other than Eircom, are 'secretly' overcharging their customers - sometimes by over a Euro extra per minute and this is not just mobile providers - yet it is up to the PRS operator to somehow "know" this when they clearly display their charges. I believe ComReg needs to immediately force the carriers to stop overcharging in order for us, the providers, to be able to comply with the code and display clear pricing in our advertising. It is unacceptable for the end user to not know how much a call will cost, yet as it stands this is the case as carriers can charge whatever they like in secret - they user finds out when they get their bill - even though we have advertised 2 euro 40 per minute. I do not accept that putting "Calls may cost more from mobiles" is enough - it appears almost all providers charge more - both landline and mobile. In effect what we are really saying currently is that "We don't know how much calls will cost but we think they should be 2 euro 40 per minute". Therefore carriers must be prevented from overcharging or at least put a price warning.

It is my view that this is a very serious abuse of the industry by carriers that ComReg should really look at. In regards our code, it is impossible currently to comply with the code as it stands so either we change the code in regards to pricing or force the carriers to stop overcharging without warning their own customers.

For example, if a customer calls a 1580 number on a Meteor mobile they will expect to pay 2 euro 40 per minute... however they will be charged €3.58 per minute without warning. This goes far beyond saying "calls may cost more from mobiles". Many landline carriers also charge extra, for example TalkTalk/DigiWeb who charge a significant extra charge per minute or nearly 50 cent extra - all of which are done in secret and the client finds out when they get their bill.

I also disagree that it is up to the caller to find out the costs and I also disagree that we, the operators, should warn the client that it may cost more from certain carriers - the carriers should be responsible for warning their customers if they are overcharging them. As it has not come up in the draft I don't think ComReg understand how serious this problem is and how we are actually unable to clearly state how much our services cost. This confuses and infuriates our customers.

I would call on ComReg to immediately ban carriers from overcharging

or force them to put a free price warning on all calls warning their customers that they are overcharging. It must not be up to the operator to tell customers that calls may cost more than advertised but we don't know by how much as it depends on the carrier. I would also point out that 95% of calls to my 1580 services comes from mobiles so these hidden charges impact almost all of my customers so is extremely serious.

Many thanks
Dáibhéad O'Reilligh

--

Go raibh maith agat as do chustaiméireacht.
(Thanks a million for your custom)

Irishtarot.com - Open your mind to zero limitations

9. Magnum Billing

Submission re ComReg 11/51

We welcome this further consultation, 11/51, from ComReg on the revised Draft Code of Practice.

We would ask that ComReg establish, in the shortest possible time frame, an Industry Working Group to discuss matters impacting on the industry, possible proposed future Code of Practice changes etc. The lack of such a working group is probably one of the main reasons why the process to-date with regards to a new Code of Practice had been so difficult.

We have sought to outline our responses to the consultation below in the format prescribed by the consultation.

Q. 1. Do you agree with the draft provisions applicable to all PRS as set out in Section 3 of the revised draft Code? Please provide reasons to support your position.

We agree with ComReg's general objectives with regards to this section. However, we feel that there are certain aspects which could be better addressed in a more general manner, as opposed to the prescriptive proposals outlined.

Additionally, given the statutory nature of the Code, we are concerned that provisions contained within the headers in section 3 are generally *ultra vires* the powers of ComReg due to restrictions contained within Article 4 and Article 5 of the Unfair Commercial Practices Directive.

Furthermore, it is unclear as to whether those provisions are aspirational or mandatory given their vague nature. We would generally argue that such provisions could not form the basis for a breach of the code, as they are vague and lack legal certainty, and therefore should not be contained within a Section 15 Code.

3.3 As a service provider operating in a competitive market, it is essential that the competitive playing pitch is flat and fair. *ComReg must publish all special/cosy agreements, including any out of court settlements, they reach with individual service providers, such that the market operates in a transparent and non-discriminatory manner.* Additionally, if a particular arrangement is allowed to proceed in a manner, that would otherwise necessitate a change to the code of practice, that permission must equally apply across all service providers. Moreover, where such practices are being discussed by ComReg, it may be more appropriate for them to be handled through an Industry Working Group as opposed to on a private one-to-one basis.

3.9 ComReg, and the wording of the Code, should acknowledge that Service Providers have a primary obligation with regards to Data Protection to those provisions contained within the Data Protection Acts. It should be made clear that where the Code of Practice or requirements of ComReg conflict with requirements under the Data Protection Acts, that the Data Protection Act requirements are superior. We believe that only such data that is necessary for the investigation of a specific breach, and only with the specific approval of the Data Subject, shall be liable to be passed to ComReg. Additionally, it may be that ComReg as part of an Industry Working Group, and together with the Data Protection Commissioner, should seek to develop an industry standard Data Handling Process.

3.17 Given that most services sold in Ireland are targeted at the market in general, and by their nature targeted at over 18s. We believe that the prescriptive sentence in this section should be replaced with something along the lines of 'Where services are targeted at a specific market, than it should be made clear in promotion for that service, the market that is being targeted.'

3.18 We would ask that the term 'silence' and 'error message' be defined in Section 1. Additionally it should be made clear that this section applies to where services have been designed to mimic silence and network tones this part should apply as opposed to when those matters result from genuine network related issues.

3.19-22 This section in it's entirety places a set of burdens on service providers which is unfair. ComReg should be the enforcer of the code, and so long as a clear database is available on the web, with appropriate notifications, the only requirement on Service Providers should be that they make reasonable attempts to ensure that they only trade, with regards to PRS, with those other service providers who are licensed. Furthermore, ComReg should notify all Service Providers when a new Service Provider is added to, or removed from, the list of licensed service providers in a proactive way - by email, in a special section on the website, by letter etc.

Q. 2. Do you agree with the draft provisions relating to the promotion of PRS as set out in Section 4 of the draft Code? Please provide reasons to support your position.

We welcome the principle of ensuring that all promotion is compliant with the Consumer Protection Act 2007 and European Directive 2005/29/EC as outlined in section 4.1 to 4.5.

Directive 2005/29/EC ensures maximum harmonisation of consumer protection across Europe.

Sections 4.6 to 4.35.

We do not agree with the additional measures proposed in sections 4.6 to 4.35 as they undermine this harmonisation and would require Service Providers to introduce specific measures for the Irish market that are not required in other European markets. Indeed, ComReg are explicitly prevented from introducing such market distorting restrictions by Directive 2005/29/EC. If ComReg were to proceed with sections 4. to 4.35 Irish Service Providers would be at a significant competitive disadvantage as EU registered service providers, whose services are information society services, would not be required to implement many of these additional restrictions when operating in the Irish Market.

Apart from the fact, in law, that ComReg must comply with Directive 2005/29/EC the proposed restrictions seem excessive given the existing requirements to fully inform consumers of all material facts that would influence their decision to purchase a promoted service.

4.10, 4.14, 4.15, 4.22 We would disagree with these sections.

Many of the measures being proposed, specifically 4.10, 4.14 require significant additional promotional space and place a significant cost burden on service providers. The requirements in 4.15 and 4.22 to provide spoken information as well as clearly displayed written information on TV promotions is excessive and adds very significant cost. This cost will either be passed on to the consumer or render the service not viable.

This will put service providers operating within Ireland at a significant commercial disadvantage to those operating from other European countries. It may also prevent smaller services from being able to operate at all.

It is reasonable that services marketed to children and other vulnerable consumers may require additional measures. In order to ensure such measures are effective they should be targeted towards a particular identified and quantified concern.

Q. 3. Do you agree with the draft provisions applicable to the operation of Subscription Services as set out in Section 5 of the draft Code? Please provide reasons to support your position.

We generally support ComReg's objectives with regards to the promotion of the interests of the end user.

Additionally, given the statutory nature of the Code, we are concerned that provisions contained within the headers in section 5 are generally beyond the scope of ComReg due to restrictions contained within Article 4 and Article 5 of the Unfair Commercial Practices Directive.

We believe that practically ComReg might better adopt a less prescriptive approach.

However, with regards to some of the detailed provisions

5.13-18 We disagree with the measures proposed. We believe that a general and broad sweeping double opt-in does not address the objective of protecting the interests of end-users. End User interests are best protected by encouraging competition and service innovation amongst service providers, and a broad-sweeping double opt-in does not facilitate that. It may be that further research could be undertaken to understand the nature of the subscription market in Ireland in terms of providing a factual basis for bringing forward such a proposal. In any event, we believe that ComReg would be in a better position to understand the implications of this upon investigating further the merits of the proposal in a more scientific and thoughtful manner.

5.20 We believe that the mandating of standard SMS as the mechanism for informing the client is inappropriate. The client should be informed, however they should be informed using technology that is most appropriate for the service which the customer is using. Additionally, it is unclear why ComReg is proposing an additional Monthly Update message on top of the threshold message, and we disagree with the proposal for the monthly update message as being superfluous and possible leading to a situation where customer begin to ignore the more important threshold message.

5.22 We believe that the Subscription Update Message needs to be reworded in so far as it currently appears to suggest that the consumer has subscribed de-novo, instead of being an update with reference to an existing service that the customer has.

5.26 We believe that this measure is Technically impossible and would suggest ComReg convene a meeting of an Industry Working Group to address it in a further code review. We would welcome a solution which would not burden service provider with unnecessary costs when other less invasive possibilities exist.

5.30 We believe that this measure is Technically impossible and would suggest ComReg convene a meeting of an Industry Working Group to address it in a further code review. We would welcome a solution which would not burden service provider with unnecessary costs when other less invasive possibilities exist.

Q. 4. Do you agree with the draft provisions applicable to the operation of other categories of PRS, also set out in Section 5 of the draft Code? Please provide reasons to support your position.

We generally support ComReg's objective to promoting the interest of the end user.

Additionally, given the statutory nature of the Code, we are concerned that provisions contained with the headers in section 5 are generally beyond the scope of ComReg due to restrictions contained within Article 4 and Article 5 of the Unfair Commercial Practices Directive.

We believe that practically ComReg might better adopt a less prescriptive approach.

However, with regards to some of the detailed provisions

5.43 We are keen to ensure that end user rights to privacy and data protection are prioritised. The Duration of storage of live services goes beyond what is required for purposes of remedying breaches, where the matter concerned can be remedied with a refund. As such, only such information that would relate to billing ought to be stored. In any event, we would ask that ComReg, as part of an Industry Working Group, together with the data protection commissioner might better reach a consensus, and that the prescriptive element contained within this code is inappropriate.

5.44 We believe that this is an Excessive Notification Requirement. It could add between 10-15% to the cost of voice service annually. This is probably more than all the damage outlined in the RIA being done by the industry every year.

5.55 In the case of a service not being provided by a professional qualified, then this makes sense, however if the service is being provided by a registered professional, than it make no sense.

5.59-62 We believe that the distinction between Chatline and Contact/Dating might better be eliminated and the full set of rules merged, to simplify the code.

5.63 We believe this section is overly prescriptive.

5.64 We believe that this measure should distinguish between operator chat services (which might be so restricted), and not peer to peer chat services which ought not be restricted in such a manner.

5.65 We note the higher value levels applied to voice services and would ask that these be harmonised at the voice level threshold for technical and promotional simplicity especially as services become ever more converged.

Q. 5. Do you agree with the draft provisions relating to Customer Service as set out in Section 6 of the draft Code? Please provide reasons to support your position.

We are supportive of this section.

Q. 6. Do you have any comments on the provisions on the revised draft Code?

We specifically agree with ComReg that the legal environment for the regulation of PRS goes beyond the 2010 Act and encompasses EU measures such as the Technical Standards Directive, the E-Commerce directive and the Unfair Commercial Practices Directive.

We are concerned that it appears that the legal footing of those measures within the code at sections 1.6 and 1.7 are deliberately vague, and do not provide an adequate basis upon which we can base our interpretation as to how the code will operate.

Articles 4 and 5 of the Unfair Commercial Practices Directive are clear in so far as they do not allow ComReg to bring forward further measure than are provided for in the UCPD itself, when a service is targeted at the average consumer.

Furthermore, although it appears clear from reading the definition of ISS that all subscription services are ISS, the code does not make clear which parts of itself won't apply vis-a-vis section 1.6.

Q. 7. Do you have any views on the Regulatory Impact Assessment with regard to the revised draft Code of Practice? Please provide reasons to support your position.

We believe that ComReg's RIA is insufficient to justify that the regulations outlined in the Code are necessary for the protection of the average consumer, in general.

Specifically, we believe that the RIA does not adequately provide a scientifically verifiable basis for the imposition of each of the measures proposed in the code. Instead, it appears to generically attempt to justify a broad sweeping set of measures with generic and weak argument.

Finally, as a member of the Irish Phone Paid Services Association, we concur broadly with their consultation response and would ask that you would take on board their specific positions with regards to individual provisions as if they were our position as well.

10. Modeva

MODEVA

Interactive Media & Entertainment Services

Response to Consultation Document (ComReg 11/51)

Response to Consultation Document No. 10/92a, and further
consultation on the Code of Practise for Premium Rate Service
Providers

16th September, 2011

Contents

Introduction.....	3
Legal Basis.....	3
Proportionality and Basis for Proposed Measures.....	4
Technical Implementation Timelines.....	5
Comments in Relation to Section 1 (Introduction) of the draft Code of Practice	6
Provisions Applicable to all PRS	7
Q1. Do you agree with draft provisions applicable to all specified PRS as set out in Section 3 of the revised draft Code? Please provide reasons to support your position.	7
PRS Promotions.....	8
Q2. Do you agree with draft provisions relating to the promotion of PRS as set out in Section 4 of the revised draft Code? Please provide reasons to support your position.	8
Provision of Premium Rate Services	12
Q3. Do you agree with draft provisions applicable to the operation of Subscription Services as set out in Section 5 of the revised draft Code? Please provide reasons to support your position.	12
Q4. Do you agree with draft provisions applicable to the operation of other categories of PRS, also set out in Section 5 of the revised draft Code? Please provide reasons to support your position. ..	17
Customer Service.....	18
Q5. Do you agree with draft provisions relating to Customer Service as set out in Section 6 of the revised draft Code? Please provide reasons to support your position.	18
General.....	19
Q6. Do you have any comments on the provisions on the revised draft Code.....	19
Regulatory Impact Assessment	20
Q7. Do you have any views on the Regulatory Impact Assessment with regard to the revised draft Code of Practise? Please provide reasons to support your position.	20
Appendix 1 – Impact Analysis of Spoken Promotional Requirements.....	23
Appendix 2 – Impact Analysis of Double Opt-In	26
Appendix 3 – KPMG Report on Revenue Impact of Double Opt-In and Recurring Opt-In measures ..	30

Introduction

Modeva welcomes this opportunity to respond to ComReg's Consultation document (11/51) on "Response to Consultation Document No. 10/92a, and further consultation on the Code of Practice for Premium Rate Service Providers".

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.

In the following sections and appendices we outline our views in relation to the provisions of the new draft Code of most interest to us and answer the specific questions posed by ComReg

Legal Basis

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 the obligations being proposed in the draft Code are inconsistent with the obligations of the Unfair Commercial Practices Directive (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.

Given that Articles 4 and 5 of the Unfair Commercial Practices Directive are clear in so far as they do not allow ComReg to bring forward further 'Consumer Protection' measures than are provided for in

the directive itself, when a service is targeted at the average consumer, then ComReg should highlight those aspects of the code which breach those provisions of the directive, and eliminate the vagueness and lack of regulatory clarity.

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 11/51d in the manner in which it has been proposed.

Proportionality and Basis for Proposed Measures

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

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

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

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

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

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

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

Having reviewed both the RIA and the measure proposed in the draft code of practice we believe that ComReg did not even attempt to review either documents, or their proposals in light of the requirements to act proportionately.

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.

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. It is our view that the some of the measures proposed in the Code 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.
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 Code.

Ultimately, 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 Code as it is individually with many of the unbalanced measures being proposed.

Technical Implementation Timelines

Modeva is concerned that many of the changes will require both expensive and extensive technical changes, if possible at all with current machinery, and would request the practical operational date for the new draft code be at least 8 month after the commencement of the next new budget year, to allow time for adequate financial provisioning as well as for the project delivery timelines to introduce changes, recast any advertisements etc.

Comments in Relation to Section 1 (Introduction) of the draft Code of Practice

While there are no specific questions posed in the Consultation document in relation to Section 1 of the draft Code Modeva would like to comment on the following sections of the draft Code as follows.

Section 1.3

The primary measures relating to Promotions and Double Opt-In presented in the Code are fundamentally based on providing protection for users who do not inform themselves of the information presented to them. However, ComReg, in this section, state that end-users must bear a level of responsibility for their own actions. This section reflects the sentiments of the Unfair Commercial Practices (UCP) Directive but unfortunately the provisions of the Code attempt to protect all users far beyond the reach of the definition of the “Average Consumer” as per the UCP Directive.

Section 1.6

The vast majority of Modeva’s services are Information Society Services as defined in Directive 98/48/EC. This clause and by extension, this code, puts Modeva at a significant disadvantage relative to other Service Providers based outside of Ireland but providing services in Ireland as their services will not be subject to the provisions of this Code. This Code will result in the demise of the PRS industry in Ireland and the associated tax revenues and employment. The demand for these types of services in Ireland will then be satisfied by service providers operating from outside of Ireland.

Section 1.7

This clause is confusing and indeed undermines the entire Code. It suggests that the Code will be interpreted and understood in light of the UCP Directive. However the primary provisions of the Code are in breach of the UCP Directive. Throughout the Code ComReg is paying ‘lip-service’ to the UCP Directive yet suggesting measures clearly in breach of the Directive.

Provisions Applicable to all PRS

Q1. Do you agree with draft provisions applicable to all specified PRS as set out in Section 3 of the revised draft Code? Please provide reasons to support your position.

In general, Modeva agrees with the proposed provisions, applicable to all specified PRS as set out in Section 3 of the draft Code. However Modeva would raise a concern in relation to Section 3.3 of the draft Code and would seek ComReg's views on our concern.

Section 3.3

The industry must have clarity in relation to this point. Currently, the provision facilitates ComReg agreeing alternative means of satisfying the Code with one operator without that means being published to industry and consumers. In this circumstance ComReg will be directly interfering with the 'level playing-field' of this competitive market place giving certain service providers a competitive advantage and causing confusion to consumers.

PRS Promotions

Q2. Do you agree with draft provisions relating to the promotion of PRS as set out in Section 4 of the revised draft Code? Please provide reasons to support your position.

Modeva disagrees with all proposed provisions in the draft Code that exceed those required to be compliant with the Unfair Commercial Practises (UCP) Directive and are of the view that ComReg has no basis for mandating such provisions.

Sections 4.6 – 4.35

Within the Response to Consultation document (section 2.16 of 11/51) in relation to the Promotion of PRS ComReg states it's intention, in accordance with the objective of the UCP directive, is that end-users of PRS receive all relevant information which will enable them to make an informed decision to purchase, at the time of the invitation to purchase, but such information need not necessarily be included in all promotions not provided all at the same time.

Modeva broadly agrees with this objective. However, the proposed Code goes far beyond meeting this basic objective by introducing obligations on Service Providers promoting PRS that are in clear breach of the UCP Directive. And in direct contradiction to the sentiment of the objective above Section 4.6 of the draft Code requires "All material information and main characteristics of a PRS must be brought to the attention of the consumer with the invitation to purchase by a PRS provider".

On the basis of review of document ComReg 11/51 and the associated Annexes to this document one can summarise ComReg's objective in relation to the Promotion of PRS as follows:

That ComReg perceives there to be a need to amend the existing Code with prescriptive obligations on Service Providers promoting PRS on the basis of information from consumer contacts to the ComReg call centre and the Qualitative and Quantative studies conducted by IPSOS-MRBI on behalf of ComReg.

Modeva disagrees with all measures proposed in Section 4 of the draft Code beyond those required to meet the requirements of the UCP Directive and other relevant legislation. And furthermore on the basis of the following:

- The vast majority of measures proposed in the draft Code exceed the requirements to inform the 'Average Consumer' prior to their decision to purchase and as such is in breach of the UCP Directive (see 'The UCP Directive' below);
- ComReg has failed to adequately quantify the issues and/or harm to consumers that relates to the current promotion of PRS (see 'Quantifying the issues/consumer harm relating to the current promotion of PRS' below);
- ComReg has failed to adequately quantify the impact of the proposed measures in the draft Code on the consumer in terms of addressing the perceived issues or the harm the measures will cause the industry (see 'Impact of Proposed Measures on Consumers and Industry' below);
- No alternative regulatory options have been considered in the RIA (see 'Regulatory Options considered in the RIA' below);

The UCP Directive

The European Court of Justice interprets the "average consumer" as "*reasonably well informed and reasonably observant and circumspect*".

Modeva is of the view that the measures proposed in Section 4 of the Code in relation to the promotion of PRS far exceed those required to ensure that an "average consumer" is sufficiently provided for to make an informed decision to purchase.

On this basis ComReg cannot proceed to introduce the measures outlined in Section 4 of the draft Code.

Quantifying the issues/consumer harm relating to the current promotion of PRS

Modeva is of the view that ComReg has failed to show verifiable and sound evidence of harm that is proportionate to the measures proposed in the draft Code.

In its RIA (paragraph 1.7) ComReg states that the requirement for amendment of the existing Code in relation to the promotion of PRS is based on “*historical consumer complaints, responses to the initial consultation as well as research surveys on the PRS market.*”

Apart from references to some high-level consumer complaint statistics dating from 2008/2009 ComReg have presented no specific evidence in the RIA of consumer harm based on “consumer complaints”. Specifically in relation to this point ComReg has failed to present any statistics relating to the period in which they have been regulating the market.

No information has been presented in the RIA from the previous responses to consultation in relation to consumer harm as a result of the promotion of PRS. A review of the responses to Consultation 10/92a as presented by ComReg in document 11/51 suggests that the vast majority of respondents were opposed to some or all of the key provisions relating to the promotion of PRS. The NCA highlighted concerns regarding some of the challenges faced by the average consumer. Again, our view is that the measures implemented in the Code should meet the requirements of the average consumer and that ComReg have no grounds for introducing measures beyond those required of the UCP Directive.

The primary source of justification for the measures proposed in the draft Code are the research surveys conducted by IPSOS MRBI on behalf of ComReg. We would request that ComReg note our concerns at setting measures in the Code on the basis of two limited surveys bearing in mind the ramifications of these measures on the PRS industry in Ireland and the wider economy as a result. In its treatment of the results of these surveys Modeva is of the view that ComReg have focussed on specific elements rather than the totality of information provided in this limited survey and have presented the results in an un-objective manner. Indeed, ComReg appear to interpret the results of these surveys with a bias that has been apparent in the previous consultations and prior to these surveys being conducted.

On several occasions in the RIA ComReg draw attention to the fact that there is a perceived lack of clarity in the pricing of PRS, however the survey results show that 84% of respondents were aware of the charges for a PRS prior to using the service and only 2% of respondents being completely unaware. This statistic suggests that ComReg is proposing to introduce draconian measures in relation to the promotion and operation of PRS to satisfy a small minority of consumers, not representative of the “average consumer”. Furthermore in responding to the questionnaire significant proportions of respondents reported “Too Expensive” as a reason for either not engaging with PRS or not re-engaging with PRS. This indicates that clearly these consumers were fully informed of the pricing of services to allow them arrive at this conclusion.

ComReg also suggest that a justifiable basis for the measures proposed in the draft Code is the fact that an “informational asymmetry” exists in relation to consumers knowing from whom or where PRS products are available. ComReg arrive at this conclusion on the basis of the IPSOS survey and a previous survey conducted on behalf of IPPSA by Amarach showing that consumers are most likely to contact their Mobile Operator (MNO) where the consumer has a query in relation to a PRS. This assumption is an absurd basis for the proposed measures as no consideration has been given to the fact that consumers already have a billing and support relationship with their MNO and are an obvious first point of contact, from a consumer perspective, where a consumer has a query relating to a service delivered to their mobile phone or a charge on their mobile bill.

In summary, Modeva is of the view that in this entire process ComReg have failed to demonstrate any justifiable issue/consumer harm relating to the current promotion of PRS and therefore have NO basis for the hugely damaging measures proposed in the draft Code.

Impact of Proposed Measures on Consumers and Industry

ComReg has failed to assess in any detail the possible impact of the measures proposed in the draft Code on consumers or on the PRS industry in Ireland. It is incumbent on ComReg to consider each of the measures proposed and to assess their cost/benefit when conducting a RIA. It is our view that this has not been completed.

ComReg have made broad statements in relation to increased transparency benefiting consumers and the industry. No context relating to the “average consumer” has been given and the RIA suggests the proposed measures are intended to:

1. Enhance “trust” – based on ComReg’s survey results this group represents 11% of non-PRS users and 4% of PRS users and;
2. Enhance “pricing transparency” – based on ComReg’s survey results the population who weren’t aware of a services pricing prior to using the service is 16% of PRS users

Clearly these issues relate to a significant minority of consumers and are not indicative of the impact on the “average consumer”.

No analysis has been presented in relation to benefits that will accrue to consumers of each of the individual proposed measures and indeed no analysis has been presented of the devastating consequences of these measures on the PRS industry.

In principle Modeva is in agreement that pricing information should be presented in close proximity to the call to action of a PRS promotion but fail to see the justification for ComReg mandating the specific size of the font to be used by Service Providers. Clearly the pricing needs to be clearly visible to the “average consumer” but beyond this requirement the Service Provider should be free to market their product as they see fit in relation to pricing.

Modeva have previously demonstrated the potential harm to the industry arising from the requirements of the draft Code to speak specific information in relation to PRS for all audio/visual promotions. This measure is proposed on the basis that it represents best practice across all retail services.

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 Code resulted in 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 Code 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.

Furthermore Modeva have conducted a further analysis, detailed in Appendix 1 which combines Modeva's previous trial and the information available from ComReg's IPSOS MRBI research. The outcome of this analysis can be summarised as follows:

- It is clear that ComReg have still done no analysis of the impact that the proposed spoken requirements would have on any of the stakeholders, including consumers. No models have been provided, no clear benefit analysis, no cost analysis and no options considered;
- ComReg's own data suggests that consumers are already well informed in advance of using subscription services and, as such, spoken requirements will have little impact on improving pricing awareness;
- The benefit is likely to be in the quantum of €19,536 per year, weighed against a likely cost of over €10 million per year, much of which will likely be ultimately borne by consumers;
- It is clear that the proposed spoken promotional requirements should not be introduced.

Therefore Modeva is of the view that the proposed measures relating to 'Spoken Requirements' are without basis and are 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.

Regulatory Options considered in the RIA

It is considered best practise when considering regulatory change to conduct a RIA which considers various options to address a specific policy objective. Throughout this consultation and within the published RIA ComReg have failed in general and specifically in relation to the Promotion of PRS to investigate and seek views on alternative regulatory options.

Provision of Premium Rate Services

Q3. Do you agree with draft provisions applicable to the operation of Subscription Services as set out in Section 5 of the revised draft Code? Please provide reasons to support your position.

Sections 5.9 – 5.18

Modeva continues to strongly disagree with ComReg's proposed introduction of a Double Opt-In requirement for subscription services on the following basis:

- Questionable data supporting ComReg's view that subscription services cause disproportionate consumer harm relative to other PRS (see 'Supporting Data' below);
- The proposed measure far exceeds and is wholly dis-proportionate to ComReg's policy objective of ensuring that the "average consumer" is adequately informed of the details of a service to allow an informed decision to purchase (see 'Proposed measures far exceeds policy objective' below);
- **The proposed measure will cause devastating harm to both Consumers and Service Providers (see Impact of Double Opt-In' below);**
- ComReg has failed to investigate and present alternative regulatory options to achieve the policy objective (see 'Alternative Options' below);
- ComReg's statements in relation to the International experience of Double Opt-In is somewhat misleading in its failing to present detailed analysis of the conditions relating to the implementation of Double Opt-In in the stated countries and the reported impact on industry in these countries (see 'International Experience' below);

Supporting Data

ComReg, in their Response to Consultation document (11/51) and the associated RIA, continue to state that the majority of contacts to their call centre (86%) relate to subscription services. As previously indicated by Modeva mobile subscription services account for ~80% of industry revenues and therefore one would expect a proportionate number of consumer complaints. ComReg however, in document 11/51, suggest that this conclusion is invalid and that assessing on the basis of the number of transactions is a better basis for determining the relative complaints to subscription activity. However, ComReg HAS NOT presented the results of this assessment, if indeed it was conducted, and as such has no basis for making this assumption. Referring to Appendix 2 when one measures complaints, weighted, by revenue (i.e. usage of service) it suggests that 66% of industry revenue relates to subscription services and 68% of customers having difficulty relate to subscription services. While this data is based on a IPSOS MRBI poll rather than factual data, it is the only usable data provided by ComReg for comment.

Modeva's position to date has been based on presented empirical data and is indisputable on the basis of the information provided by ComReg.

Modeva and many other providers in its previous response pointed to the reduction in the number of consumer complaints in relation to PRS over the last number of years. Specifically consumer complaints have fallen from ~28,000 contacts per annum in 2008/09 to ~13,000 contacts per annum according to ComReg's figures for 2011. This represents a fall of ~55% in consumer contacts over the past three years. ComReg however dismiss this fall in consumer contacts as resulting from an overall decline in the PRS market. This decline however is only forecast to be ~38% over the same time period.

ComReg suggest that "one could reasonably draw the conclusion that more consumer harm potentially originates within subscription services..." on the basis of the information presented in the

IPSOS MRBI survey and that this is a basis for the introduction of a Double Opt-In mechanism. This basis is formed on the result from the questionnaire that on average 21% of users had experienced “difficulties” with PRS in general and 30% of users of subscription services had experienced “difficulties”.

Modeva would point out that the term “difficulty” was not defined within the survey, or at least the presentation of this data in the annex to document 11/51. Therefore it cannot be drawn from this data that all cases of “difficulty” represented cases of real consumer harm which will be addressed by the introduction of Double Opt-In. Furthermore the discrepancy between these figures is entirely explained by the fact that subscribers to subscription services interact with these services on an ongoing basis and spend 32% more on these services.

The commentary associated with this topic in the quantitative analysis gives some further insights. Two of the top comments made were:

- *People claimed to be unable or to have had difficulty unsubscribing from the service.*

This is an issue in relation to consumer education regarding the STOP command and an issue of enforcement to ensure that Service Providers are correctly acting on receipt of a STOP message. Double Opt-In will not address this issue for consumers who subscribe to services and subsequently wish to unsubscribe.

- *People claimed they didn't realise they were entering into a subscription.*

The proportionate and proper remedy to this issue is for ComReg to implement the promotional requirements relating to the UCP and Service Providers to ensure that the “average consumer” is fully informed in making their decision to purchase. The introduction of Double Opt-In to address this issue is wholly disproportionate on the basis of the harm it will cause to both consumers and industry and by denying consumers the right to easily choose and engage with the service they wish to.

Finally, ComReg suggest that a key finding of the Qualitative analysis was the overwhelming support of respondents for a Double Opt-In mechanism. Modeva is of the view however, and notwithstanding the paragraphs below in relation to regulatory options, that this result is invalid on the basis that the respondents weren't given valid alternative options to suggest. For example, Modeva suggests that most consumers would deem themselves adequately informed where given sufficient material to make an informed decision up front in promotions and where reminded of the service terms and how to unsubscribe by text message following their response to advertising.

Proposed measures far exceeds policy objective

ComReg's stated policy objective in document 11/51 is to “ensure that end-users of subscription-based PRS are fully equipped to make an informed decision to purchase and to ensure that there is verifiable evidence to confirm that the end-user was so informed”.

Modeva contends that the proposed introduction of Double Opt-In is a completely disproportionate method to address the policy objective above. As is shown below the impact on the industry of Double Opt-In is devastating and it is our view that this objective can be achieved by far less draconian measures.

Firstly, the objective of ensuring that consumers are fully equipped to make an informed decision to purchase is a function of the promotion of the relevant services. ComReg must implement the promotional requirements relating to the UCP and Service Providers must ensure that the “average consumer” is fully informed in making their decision to purchase. The framework for this solution exists and is in place today. Prescribing to one industry requirements beyond the UCP Directive is both without legal basis and indeed places that industry at a competitive disadvantage to other commercial sectors vying for consumers business and also to other PRS service providers operating outside of Ireland.

The result of ComReg introducing Double Opt-In to dis-proportionately meet this objective will result in the decimation of PRS as an industry and payment mechanism for Irish businesses. Consumers will continue to avail of these services but from Service Providers operating from other European jurisdictions and from Irish businesses using alternate payment mechanisms such as credit-card, direct-to-bill etc.

Modeva contend that there is no benefit in using Double Opt-In as a method of verifying that consumers have been made aware of the terms of a service over the existing customer acquisition models deployed under the existing Code. Verifiable confirmation that a consumer has been provided with the required 'Welcome' message under the existing Code can be provided by either the (1) Service Provider or (2) the customer's MNO. Under Double Opt-In verifiable evidence of the consumer sending an MO to confirm agreement to join a service will still be required from either the (1) Service Provider or (2) the customer's MNO.

For online acquisitions Modeva would suggest that ComReg mandate an independent 3rd party PIN verification model to ensure that there is independent verifiable evidence that a consumer confirmed their being in possession of their mobile phone for consumers who sign-up for services in an online environment.

Impact of Double Opt-In

Modeva is of the view that ComReg have not considered sufficiently the potential impact of Double Opt-In on consumers and the Industry nor considered the huge dis-proportionality of the impact on industry when compared with the perceived consumer benefits.

Modeva previously submitted the results of a trial conducted demonstrating the impact on customer acquisitions as a result of the introduction of Double Opt-In.

ComReg have presented NO data or evidence in relation to the impact of Double Opt-In on the PRS industry in Ireland. Indeed, rather than taking a proactive stance to the information provided by Modeva, ComReg simply dismissed the results on the basis that they questioned the sample size of the trial. Given the crucial nature of the decisions that ComReg are undertaking here, Modeva would have considered it reasonable that ComReg would at least investigate the suggestions of the trial conducted and perhaps extend the trial or request further data from Modeva. Indeed, the sample size of 131 participants is statistically significant given appropriate confidence levels and intervals.

The results of Modeva's trial in relation to the impact of Double Opt-In, which have been previously submitted but are attached again in Appendix 3 of this document. Modeva is of the view that the fall-off in customer acquisitions is largely caused by the disruption in the user flow of having to respond with an MO to a text message received. Consumers today are more and more atuned to smooth user flows in acquiring the things they wish to acquire particularly in the consumption of digital content.

One need only briefly analyse the processes used within the Apple & Android App stores to see the flows required to recruit customers in this competitive environment. Consumers now expect 'one click' purchases and to deviate from a tight acquisition process by requiring consumers to switch communication medium to SMS and respond to a somewhat disconnected message will hugely confuse/undermine the confidence of the consumer in the offering they are responding to.

Modeva has conducted a further analysis combining the findings of our previous trial with the findings from ComReg's IPSOS MRBI surveys and have come to the following conclusions:

- It is clear that Comreg have still done no analysis of the impact that double opt-in would have on any of the stakeholders, including consumers. No models have been provided, no clear benefit analysis, no cost analysis and no options considered.
- ComReg's own data suggests that consumers are already well informed in advance of using subscription services and as such double opt-in will have little impact on improving pricing awareness.

- The analysis that Modeva conducted in conjunction with KPMG, strongly suggests that the impact will be devastating to consumers, service providers and the exchequer.
- The reduction in consumer harm resulting from the introduction of Double Opt-In will be marginal at best
- The harm caused to consumers and Industry resulting from the introduction of Double Opt-In will of the order of €57 million per annum and a loss of revenue to the state of ~€18 million.

Full details of this analysis are included in Appendix 2 of this document and should be considered as an integral part of Modeva's submission to this Consultation.

Double Out-In will essentially end the PRS industry in Ireland and result in significant lost tax revenue for the government and loss of jobs in the state.

It is our view that ComReg is not addressing these impacts in any level of detail and would further suggest that these impacts are not being taken seriously. Notwithstanding the paragraphs below relating to International experience there is significant evidence of loss of revenue of the order suggested by our trial in countries that have introduced Double Op-In in the manner suggested by ComReg.

Alternative Options

It is considered best practise when considering regulatory change to conduct a RIA which considers various options to address a specific policy objective. Throughout this consultation and within the published RIA ComReg have failed in general and specifically in relation to Double Opt-In to investigate and seek views on alternative regulatory options.

Throughout document 11/51 ComReg state their view and indeed the views of many respondents that facilitating a "cooling-off" period would be a desirable process for subscription services given that the establishment of a contract for a subscription service is analogous to a user setting up a direct debit (DD) from their mobile bill. However, ComReg at no stage investigated the concept of a "cooling-off" period in the consultation process.

Modeva would support a proposal whereby a consumer is forwarded product details by SMS following their signing up to a service (in response to advertising fully complying with the UCP Directive) including clear details of how to unsubscribe from the service and that the consumer would have specified period of time (a "cooling-off") to act on this information (and indeed, the information provided in the promotional material) prior to incurring any costs.

It is our view that this approach would proportionately satisfy ComReg's policy objectives. However, ComReg have NOT considered alternative options and have simply persisted with the most severe regulatory measures despite questionable basis and the dis-proportionality of the proposed measure.

International Experience

One of the key supports for ComReg's proposed introduction of Double Opt-In is in line with good practise internationally. However ComReg have failed, with the exception of some detail provided regarding the Australian market, to present a detailed analysis of how these countries implemented the Double Opt-In measure and the subsequent impact on industry.

A key market where the introduction of Double Opt-In has been hailed as huge success is the UK. However, Double Opt-In in the UK is only required for subscription services charging more £4.50 per week. Prior to the introduction of the new PhonePaidPlus (PPP) Code this year, PPP had reserved the right to review this measure and choose not to revise it in the new Code – clearly indicating their satisfaction with the measure.

Modeva would ask ComReg to reconsider this experience in the UK and learn from a market that is culturally similar to our own but with significantly more experience and with a stabilised and mature market for PRS.

Service Providers operating in some of the other regions that have introduced Double Opt-In have reported significant declines in revenues since the introduction of Double Opt-In.

Where ComReg consider the implementation of Double Opt-In in the Irish market Modeva would strongly support an implementation mirroring that in the UK market..

Section 5.19

Modeva consider it inappropriate, without basis and indeed discriminatory to establish specific requirements in relation to message content for subscription services delivered via WAP. On what basis and to what end does ComReg require this additional information to be provided for services delivered by WAP?

Q4. Do you agree with draft provisions applicable to the operation of other categories of PRS, also set out in Section 5 of the revised draft Code? Please provide reasons to support your position.

Modeva submit the comments on the following sections.

Section 5.22

Modeva is of the view that ComReg, in the context of the UCP, have no basis to specify the text required in any message sent to the user.

Section 5.64

ComReg have outlined no policy objective or basis for this proposed measure and have presented no analysis in relation to it. A “one message in – one message out” requirement for Virtual Chat service completely undermines the value that a Virtual Chat service offers to consumers and service providers alike.

From the consumer perspective these types of Chat services facilitate consumers engaging in message exchange with one another. This is the value proposition to the consumer, the ability to exchange messages with others. Given the real-time nature of these message exchanges the catalyst for activity is generally either the user actively searching for and initiating message exchange with a user or the reverse whereby another user searches out the consumer in question and attempts to initiate a message exchange. Where ComReg proceed with the measure detailed in section 5.64 of the draft Code then consumers cannot be notified where another user wishes to exchange messages with them – thereby significantly undermining the value proposition of the service and likely rendering the service unviable. A significant part of this value proposition is the ‘thrill’ of being invited to exchange messages which another user.

From the service provider perspective the loss of the consumer value proposition will significantly undermine the value of the service but more importantly the proposed measure limits the service provider in terms of the pricing model they wish to adopt. For example, an ‘all-you-can-eat’ flat rate service will not be viable under the proposed measure.

Modeva are strongly opposed to the introduction of this measure and suggest that ComReg has provided no basis to justify its introduction.

Customer Service

Q5. Do you agree with draft provisions relating to Customer Service as set out in Section 6 of the revised draft Code? Please provide reasons to support your position.

Modeva broadly 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.

Section 6.3

Modeva notes ComReg's new proposed requirement for Service Providers to record all Customer Service calls in order to meet the requirements of Sections 6.3, 6.3(a) and 6.3(b). While Modeva are fully supportive of measures to ensure that any consumer complaints are addressed and resolved as efficiently as possible ComReg have provided no basis or background information in relation to this new requirement which will be onerous on Service Providers in terms of establishing and maintaining these records. Furthermore, ComReg have not indicated any parameters in relation to this new requirement, such as, how long such records will be required to be maintained for etc.

General

Q6. Do you have any comments on the provisions on the revised draft Code.

Modeva's general views in relation to the provisions of the new draft Code are laid out in the Introduction to our response, in our specific responses to Q1 – Q5 & Q7 and in the Appendices to this response. Modeva request that all of this information be considered by ComReg in response to the generality of Q6 of the Consultation document.

Regulatory Impact Assessment

Q7. Do you have any views on the Regulatory Impact Assessment with regard to the revised draft Code of Practise? Please provide reasons to support your position.

Modeva is of the view that the current RIA is insufficient to justify the draconian measures it purports to support. To the contrary, it would be in the interest of all stakeholders within the Industry, including ComReg, that the RIA be reviewed, together in an Industry Working Group Context, in order to examine in greater detail the areas we highlight below:

The Policy Context

ComReg has failed, in contravention to the Revised RIA Guidelines, to carry out any analysis within the RIA of the legislative environment impacting on PRS. This legislative analysis should have included all of the national as well as EU law that currently impacts, however tangentially, on the sector.

The requirement for this is based on the requirement under the principles of proportionality to ensure that new measures are both necessary (not already dealt with under existing law) and themselves legal.

As an example of our concern, we believe that the Consumer Protection Act 2007, which implements the EU Directive on Unfair Commercial Practices in Ireland, provides the maximum protection that the state may grant to consumers in terms of promotional materials, transparency etc.

We believe that ComReg ought, at least, to have raised the existence of this overlap, and should following appropriate analysis, have more carefully considered the ramifications upon the measures favoured by the RIA.

We believe that by failing to do this that ComReg has failed to provide a basis to support the draconian measures that are advance in the draft code of practice.

ComReg singular statutory objective

We are concerned that while ComReg pays lip service to the principles of proportionality that it does not actually follow word with deed. This is evidenced by failure to consider the legal environment and in not considering similarly effective but less impactful alternate solutions amongst other things. Moreover, the RIA fails to consider adequately the impacts/costs on service providers nominally as well as relatively between alternatives.

The crude focus on the singularly bland statutory objective to allow, and/or justify ComReg taking law making into their own hands, especially law making that will damage the property rights of stakeholders to those decisions who have clearly registered their concern and willingness to engage to understand and address the symptoms and causes of the problems that ComReg identifies, independently of a Code of Practice, demonstrates a lack of concern for Service Providers itself.

The Statistical Basis

While the use of paid for market research studies can bring an interesting 'colouring' to a RIA, in order to comply with the true meaning of the principles of proportionality ComReg should also have used the factual non-sampled statistics it has at its disposal to provide a scientifically provable analysis.

It is notable that ComReg in this consultation round omitted to provide, or open up actual and comprehensive information with regards to its call center contacts, or the service statistics it receives from Mobile Network Operators relevant to PRS. It is an industry contention that those figures would have revealed a continuing positive decline year-on-year in customer contacts to the regulatory call center and would have been seen as an argument against the adoption of the measures proposed by the RIA.

The lack of putting true figures openly into consideration leaves the RIA's basis open to accusation of 'statistical bias' as opposed to providing any valid or sound 'statistical basis'. In this context, we would note that the logo on the IPSOS slides is clearly neither balanced nor without theatre:



Furthermore, ComReg has failed to use its powers under the act to collect actual hard data to support the conclusions it advances to ground the proposals it makes.

Additionally, the proposed measures are bundled together in an aggregate of negative sentiment and statistically inflated possibilities and conjecture. ComReg has proposed many measure which are individually punitive and draconian which ought themselves to have been subject to independent and individual scrutiny, as opposed to being lumped in together.

The ComReg “Model” – Figure C6

The use by ComReg of derived and abstracted statistics does not provide a scientific basis to the proposals they have made.

It is clear that the model in Figure C6 of the RIA is work of a complete hokum pokum nature. As an example:

The notion that a “Those who did complain but were dissatisfied” (being a multiplier of the larger 700k euro amount) is a component indicator of consumer harm, is clearly prejudicial. Such dissatisfaction could merely arise because their complaint was unfounded, rejected and they were annoyed. Consumers also bear responsibility for their own action.

This is borne out by the high levels (unpublished in this RIA by ComReg), of contacts to their call center whose ‘complaint’ reason, upon investigation with the service providers, proves ultimately to be unfounded. For example, a review of Modeva’s unsubscribe complaints received for the month of August 2011 shows that Modeva only needed to act on 36% of complaints as the remaining 64% had already successful unsubscribed prior to making their complaint.

ComReg ought to have undertaken a rigorous and scientifically challengeable analysis of real data in order to justify the RIA’s bald support for the measures proposed.

Analysis of Costs, Benefits and Impacts

ComReg’s RIA did not follow the Revised RIA Guidelines and failed to perform any basic or rudimentary analysis between alternate policy options for the achievement of the two policy objectives outlined in the RIA.

All of ComReg’s ‘Options’ were pre-selected without any analysis within the RIA of any real alternatives, some of which were highlighted in previous consultations by Modeva and other respondents.

Moreover, no multi criteria analysis, which would have been the most appropriate procedure to follow, was attempted.

Additionally, No tangible estimate of the impact of the measures on Industry, or other stakeholders were provided. Indeed apart from trying to knock the only independently validated study provided by industry in a previous consultation process, ComReg with a typically Jesuitical argument attempts to make a virtue out of their draconian proposals.

We would ask that ComReg would consider the appended draft impact analysis that has been conducted vis-a-vis double opt-in. It clearly shows, and has the potential to show at much more benign thresholds, the disproportionate impact that such a proposed measure would have.

We believe that ComReg's RIA is insufficient to justify that the regulations outlined in the Code are necessary for the protection of the average consumer, in general.

Appendix 1 – Impact Analysis of Spoken Promotional Requirements

1. The expected benefits of spoken promotional requirements
- 1.1 According to Figure C.5 in of the Draft RIA, 84% of people are currently aware of the charges involved before using PRS. 14% claim to be somewhat unaware and only 2% claim to be totally unaware.
- 1.2 This clearly demonstrates that consumers are provided with sufficient information in order to make an informed decision. 84% of consumers being rational and circumspect make them selves aware of the costs before using the service. For some, cost may not be a concerning factor and they continue with only some awareness of the costs. Only 2% proceed without any awareness of the costs.
- 1.3 This high level of awareness of the costs in advance of using PRS, is then re-enforced by the current system of explicitly providing every consumer with clear pricing information upon engagement, that again communicates the costs. While this information is not required by 84% of consumers, it will certainly enlighten the 16% of consumers who are less aware of the costs.
- 1.4 It must be assumed that 95% of consumers, read/listen to this explicit message and are then made aware. On this basis only 0.7% of consumers would remain somewhat unaware and a tiny 0.1% of consumers remain totally unaware. It would seem that their level of unawareness is entirely their own responsibility having been repeatedly and explicitly informed of the costs.
- 1.5 While additional spoken requirements may improve awareness and transparency to some degree, it will be marginal, given the current high levels of awareness. It must also be considered in the context of the further information provided to consumers at their point of engagement with service.
- 1.6 1,221,000 (1.42 of the Draft RIA) consumers use PRS services
- 1.7 Assuming that 0.1% (from 1.5 & 1.6 above) of these are currently totally unaware of the costs, that would equate to 1,221 people. Using the assumed harm model on figure C.6 of the RIA this would equate to €2,442 of harm prevented. Even assuming that harm is caused to all those that are somewhat unaware (8,547 people) this would equate to an additional €17,094 of harm prevented.
- 1.8 It is clear that the total harm prevented, as a result of the increased transparency that speaking certain conditions in promotions would provide, equates to €19,536.

Description	Percentage	Subscribers
A1-Consumers who use PRS (Figure C.5 of Draft RIA)		1,221,000
A2-Consumers aware of costs before using PRS (Figure C.5 Draft RIA)	84%	1,025,640
A3-Consumers somewhat unaware of costs before using PRS (Figure C.5 Draft RIA)	14%	143,589
A4-Consumers totally unaware before using PRS (Figure C.5 Draft RIA)	2%	20512

A5-Percentage of consumers that read/listen to the informational pricing message (Assumed)	95%	
A6-Additional consumers aware of costs after getting informational message. (95% of A3 and 95% of A4)	15.200%	185,592
A7 - Percentage of consumers who are aware of the costs of PRS services having been informed before using, and after having engaged with the service. (A2+A6)	99.200%	1,211,232
A8-Consumers who remain somewhat unaware under current system	0.7%	8,547
A9-Consumers who remain totally unaware under the current system	0.1%	1221
A10-Assumed harm per uninformed consumer (Figure C.6 of Draft RIA)	€2	
A11-Harm prevented by improved transparency facilitated by spoken requirements consumers that are somewhat aware of costs (A10)	€17,094	
A12-Harm prevented by improved transparency facilitated by proposed spoken requirements consumers that are totally unaware of costs (A11)	€2,442	
Total Harm prevented by Spoken Requirements	€19,536	

Figure 1.1 – Analysis of Harm Prevented by Spoken Requirements

- 1.9 It is no surprise that speaking additional terms within promotions will have little impact on improving how well consumers are informed in advance of using service as they are currently very well informed.
As a result it is also clear that it will have little impact on those experiencing difficulty.
2. The Impact Speaking Promotions will have on Consumers, Service Providers and the Exchequer.
 - 2.1 It is clear that the impact of speaking terms within promotions be massively detrimental to the promotion of PRS services.
 - 2.2 It will result in additional costs of up to 50% in terms of TV advertising costs.

Description		Subscribers
A1-Estimated Value of PRS TV advertising in Q2'2011		€5,000,000
A2-Additional Airtime required to meet requirements	50%	€2,500,000
A3-Yearly Cost of additional airtime		€10,000,000
A4-Cost over 10 years		€100,000,000

Figure 2.1 – Analysis of the cost impact of proposed spoken requirements

- 2.3 It is clear that the impact of speaking terms will be dramatic for all stakeholders.
- 2.4 Ultimately the cost of regulation is paid for by consumers. This proposed measure will inevitably result in significant increases of between 10% and 15% in the retail price of services. This will cost consumers up to €100 million over 10 years.
- 3. Overall impact of Proposed Spoken Requirements.
 - 3.1 It is clear that Comreg have still done no analysis of the impact that the proposed spoken requirements would have on any of the stakeholders, including consumers. No models have been provided, no clear benefit analysis, no cost analysis and no options considered.
 - 3.2 Comreg's own data suggests that consumers are already well informed in advance of using subscription services and, as such, spoken requirements will have little impact on improving pricing awareness.
 - 3.4 The benefit is likely to be in the quantum of €19,536 per year, weighed against a likely cost of over €10 million per year, much of which will likely be ultimately borne by consumers.
 - 3.5 It is clear that the proposed spoken promotional requirements should not be introduced.

Appendix 2 – Impact Analysis of Double Opt-In

1. The expected benefits of double opt-in
 - 1.1 According to Figure C.5 in of the Draft RIA, 84% of people are currently aware of the charges involved before using PRS. 14% claim to be somewhat unaware and only 2% claim to be totally unaware.
 - 1.2 This clearly demonstrates that consumers are provided with sufficient information in order to make an informed decision. 84% of consumers being rational and circumspect make them selves aware of the costs before using the service. For some, cost may not be a concerning factor and they continue with only some awareness of the costs. Only 2% proceed without any awareness of the costs.
 - 1.3 This high level of awareness of the costs in advance of using PRS, is then re-enforced by the current system of providing every consumer, of a subscription service, with a clear confirmation message that again communicates the costs. While this message is not required by 84% of consumers, it will certainly enlighten the 16% of consumers who are less aware of the costs.
 - 1.4 It must be assumed that 95% of consumers read the text message they receive and are then made aware. On this basis only 0.7% of consumers would remain somewhat unaware and a tiny 0.1% of consumers remain totally unaware. It would seem that their level of unawareness is entirely their own responsibility having been repeatedly and explicitly informed of the costs.
 - 1.5 Double opt-in does not improve awareness or transparency. It may prevent the 0.1% of consumers that remain totally unaware of the costs from subscribing to a service.
 - 1.6 On the basis that 59% (1.27 of the Draft RIA) of consumers have used subscription services and that 1,221,000 (1.42 of the Draft RIA) consumers use PRS service, means that 720,390 people use subscription services.
 - 1.7 Assuming that 0.1% (from 1.5 & 1.6 above) of these are currently totally unaware of the costs, that would equate to 720 people. Using the assumed harm model on figure C.6 of the RIA this would equate to €1,440 of harm prevented. Even assuming that harm is caused to all those that are somewhat unaware (5,042 people) this would equate to an additional €10,084 of harm prevented.
 - 1.8 It is clear that the total harm prevented, as a result of the increased transparency that double opt-in would provide, equates to €11,526.

Description	Percentage	Subscribers
A1-Consumers who use PRS (Figure C.5 of Draft RIA)		1,221,000
A2-Consumers that use Subscription Services (1.27 of Draft RIA)	59%	720,390
A4-Consumers aware of costs before using PRS (Figure C.5 Draft RIA)	84%	605,127
A5-Consumers somewhat unaware of costs before using PRS (Figure C.5 Draft RIA)	14%	84,717
A6-Consumers totally unaware before using PRS (Figure C.5 Draft RIA)	2%	12,102
A7-Percentage of consumers that read the subscription confirmation text message (Assumed)	95%	

A8-Additional consumers aware of costs after receiving the current subscription confirmation message. (95% of A5 and 95% of A6)	15.200%	109,499
A9 - Percentage of consumers who are aware of the costs of PRS services having been informed before using, and after having engaged with the service. (A4+A8)	99.200%	714,626
A10-Consumers who remain somewhat unaware under current system	0.7%	5,042
A11-Consumers who remain totally unaware under the current system	0.1%	720
A12-Assumed harm per uninformed consumer (Figure C.6 of Draft RIA)	€2	
A13-Harm prevented by improved transparency facilitated by double opt-in to consumers that are somewhat aware of costs (A10)	€10,085.46	
A14-Harm prevented by improved transparency facilitated by double opt-in to consumers that are totally unaware of costs (A11)	€1,440.78	
Total Harm prevented by Double opt-in	€11,526.24	

Figure 1.1 – Analysis of Harm Prevented by Double Opt-in

- 1.9 It is no surprise that double opt-in will have little impact on improving how well consumers are informed in advance of using service as they are currently very well informed.
- As a result it is also clear that it will have little impact on those experiencing difficulty.
- According to section 1.27 of the draft RIA, 21% of PRS users had difficulty with PRS services, while 30% of subscription users had difficulty. This discrepancy is entirely explained by the fact that subscribers to subscription services interact with these services on an ongoing basis and as evidenced by the Ipsos MBRI report, spend 32% more on these services. When you measure complaints, weighted by revenue (ie usage of service) it suggests that 66% of industry revenue relates to subscription services and 68% of customers having difficulty relate to subscription services. While this data is based on a Ipsos MRBI poll rather than factual data, it is the only usable data provided by Comreg for comment. It is our belief that subscription services make up more than 66% of revenue.
- It clearly demonstrates that in the case of the Ipsos MRBI poll there is no significant difference in difficulty experienced.
2. The Impact Double Opt-In will have on Consumers, Service Providers and the Exchequer.
- 2.1 It is clear that the impact of double opt-in would be massively detrimental to subscription services. It is highly likely that this portion of the market would be almost totally eliminated, as evidenced by IPPSA in a detailed analysis that suggest completion rates will fall to between 0 and 10% (analysis reported 1.5%, with a margin of error of 8.5%)
- 2.2 The draft RIA Comreg suggests that 720,390 people use subscription services (1.6 above)

- 2.3 Consumers of subscription services spend €14.69 per month on services (1.27 of the Draft RIA)
- 2.4 It is estimated that about 50% of these consumers are actively subscribed at any one time, suggesting that these consumers spend about €63 million euro on subscription services. No clear market data has been provided within the draft RIA, so it is clear that Comreg has not conducted any detailed analysis of the impact of the measure, either on consumers, service providers or any other stakeholder.

Description		Subscribers
A1-Consumers who use PRS (Figure C.5 of Draft RIA)		1,221,000
A2-Consumers that use Subscription Services (1.27 of Draft RIA)	59%	720,390
A3-Average Spend per consumer (1.27 of Draft RIA)	€14.69	
A4-Percentage of subscription users subscribed at any one time (Assumed based on industry revenues)	50%	360,195
A5-Monthly Spend of PRS Subscription users		€5,291,264
A6-Annual Spend of PRS Subscription users		€63,495,174

Figure 2.1 – Analysis of current consumer spending on Subscription Services

- 2.5 It is clear that the impact of double opt-in will be dramatic for all stakeholders. IPPSA trials suggest that revenues from subscription services will effectively be eliminated. Even taking the best possible case scenario of a 90% reduction, the impact will be devastating.

In addition to depriving service providers of over €571 million of revenue over 10 years, it will also deprive the exchequer of over €177 million in various taxes and levies over 10 years, as per figure 2.2 below.

Impact of 90% reduction in Subscription Services	Revenue Lost by Services	VAT Lost	Corporation Tax Lost	PRS Levy Lost	PAYE/PRSI Lost
Monthly Impact	€4,762,138	€826,487	€89,290	€83,337	€476,214
Impact after 1 year	€57,145,657	€9,917,841	€1,000,049	€1,000,049	€5,714,566
Impact after 10 years	€571,456,571	€99,178,413	€10,000,490	€10,000,490	€57,145,657

Figure 2.2 – Analysis of impact of a 90% drop in subscription services.

- 2.6 As the market implodes, any remaining services will need to charge consumers considerable more than currently, in order to operate within a double opt-in environment. These costs will be borne by consumers. Even assuming that prices only increase by 25%, in a significantly reduced market this would equate to additional consumer costs of over €1.5 million per year.
- 2.7 Comreg make the suggestion that the industry will bounce back once consumers begin to trust services. This assumption is totally flawed and without basis. Indeed Figure C.2 in the Draft RIA clearly shows that only 11% of people don't use PRS services because of a lack of trust.
- 2.8 Even if over a number of years all of this 11% begins to trust PRS services, it will have little impact in comparison to the devastating drop in revenue.

- 2.9 There is a real risk that no indigenous Irish service providers will survive as the market rapidly contracts. It is likely that the vast majority of services will be provided by overseas service providers.
- 3. Overall impact of Double Opt-in.
- 3.1 It is clear that Comreg have still done no analysis of the impact that double opt-in would have on any of the stakeholders, including consumers. No models have been provided, no clear benefit analysis, no cost analysis and no options considered.
- 3.2 Comreg's own data suggests that consumers are already well informed in advance of using subscription services and, as such, double opt-in will have little impact on improving pricing awareness.
- 3.3 The analysis that IPPSA has conducted in conjunction with KPMG, strongly suggests that the impact will be devastating to consumers, service providers and the exchequer.
- 3.4 The benefit is likely to be in the quantum of €11,500 per year, weighed against a likely cost of over €57 million per year!
- 3.5 It is clear that double opt-in should not be introduced.

Appendix 3 – KPMG Report on Revenue Impact of Double Opt-In and Recurring Opt-In measures



TRANSACTION SERVICES

Irish Phone Paid Services Association

Agreed upon procedures

31 January 2011

ADVISORY



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

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

31 January 2011

Dear Sirs

Project Phone

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

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

Yours faithfully



KPMG, a partnership established under Irish law,
is the Irish member firm of KPMG International,
a Swiss cooperative.

Important notice

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

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

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

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

	Page
Executive summary	5
Agreed upon procedures:	
Description	6
Key findings	8
Appendices	
1. Scope of work – agreed upon procedures	9
2. Irish Phone Paid Services Association - Background	10

Headlines

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

Description

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

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

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

Sample selected for IPPSA testing¹

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

Overview of Modeva operating system¹

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

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

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

Results (Test 1)¹

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

¹ Source: Modeva management information, not verified by KPMG

Description (continued)

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

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

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

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

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

Results (Test 2) ¹

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

¹ Source: Modeva management information, not verified by KPMG

Key findings

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

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

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

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

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

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

Scope of work – agreed upon procedures

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

Procedure 1:- New subscription revenue sample test

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

Procedure 2:- Subscription continuation revenue test

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

Irish Phone Paid Services Association - Background

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

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

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

Overview

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

Sector analysis

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

Regulatory environment

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

ComReg Premium Rate Services Code of Practice

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

Proposed submission and role of KPMG

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

Source: ¹ www.phonepaid.org