



Commission for  
**Communications Regulation**

# **Submissions to Consultation 13/84**

## Submissions received from Respondents

### **Submissions to Consultation**

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## Submissions Received from Respondents

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# **1. Eircom Group (“Eircom” & “Meteor”)**

**eircom Group**

**Response to ComReg Consultation:**

**Premium Rate Services - Code of Practice**

**ComReg Document 13/84**

## **Introduction**

This response presents the combined views of eircom Ltd and Meteor Mobile Communications Ltd.

eircom welcomes ComReg's proposals to enhance the Code of Practice with respect to price transparency and the initiative aimed at ensuring that the subscription update message is sent at or before the time that a subscriber has incurred a cumulative cost of €20 through a subscription service.

We also support ComReg's preliminary position not to introduce a threshold value below which the Double Opt-in requirements would apply to subscription services. By their nature, subscription service can result in significant cumulative spend, even in cases where the price point associated with a premium short code might be low. We believe that ComReg has provided strong evidence, based on UK statistics on premium service cases that demonstrates the importance of the double opt-in mechanism in ensuring transparency, while also suggesting that the threshold may have facilitated the operation of services in the UK with inadequate price transparency.

We have proposed a number of additional amendments that we believe are necessary to ensure adequate price transparency and to avoid issues that might arise with the proposed amendments in respect of the subscription update threshold.

In particular with regard to transparency, we have reiterated our previous recommendation to ComReg that the premium SMS short code should be associated with the premium charge. This would help to ensure customer awareness of premium charges applicable on receipt of SMS from a short code and to ensure that they are not in receipt of more of these SMS than was advised in pricing communications. ComReg appears to have overlooked this proposal when we previously raised it. Should ComReg decide not to adopt this proposal we would request that that the rationale for such a decision be provided.

## Responses to Consultation Questions

|     |  |
|-----|--|
| Q.1 | <b>Do you agree with ComReg's proposal to amend the provisions of Section 4.8 of the Code? Please give reasons to support your view.</b> |
|-----|--|

eircom agrees with the proposed amendment. We also urge ComReg to take this opportunity to make a number of important additional amendments.

In its response to the last consultation on the Code of Practice for Premium Rate Services (ComReg 11/51) eircom highlighted the lack of any a clear association between SMS short codes and the premium charge that arises particularly on receiving SMS from a short code. In our previous responses we recommended the direct association of short codes with the premium charge that is incurred, when receiving SMS from a reverse-billed short code. ComReg has previously highlighted from the Ipsos MRBI Quantitative Research that approximately 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 ensure that end users are alerted to a change being incurred and to assist end users in detecting issues such as the receipt of excessive messages from these short codes.

This was not dealt with in ComReg's previous response to consultation and we believe that this review of the Code now presents the opportunity to address it. Eircom believes that this should be addressed along with the other changes proposed for section 4.8. We highlighting here in red underlined or red strikethrough the changes that we are recommending to ComReg's proposed revision to the text:

*"4.8 (a) PRS Providers must ensure that end-users are informed clearly, comprehensively and unambiguously of the full and true cost of using a PRS prior to incurring any charge.*

*(b) Costs must be presented in Euro, inclusive of VAT unless no VAT applies, and include the Euro symbol (€) or, where that is not possible, use the word "EUR" or "Euro". For charges less than €1, prices in cent must be presented as "€0.XX", "EUR 0.XX", "Euro 0.XX" or "cent"*

*(c) Without prejudice to the generality of the requirement imposed by Section 4.8(a) above, PRS providers must, where appropriate, provide the following information*

- (i) any costs, additional to the cost of the service, relating to delivery or other charges,*
- (ii) any sign-up cost,*
- (iii) that additional network data charges may apply,*
- (iv) the premium charge per message received or sent, ~~and~~ the number of messages required to complete the transaction while associating the short code associated with the premium charge.*
- (v) the duration of any "free" or discounted period and the relevant charges that will apply thereafter, and*
- (vi) if it is a Subscription Service, the charge per period and that charge period,*
- (vii) (i) the numerical price per minute for time based/charged services, or (ii) the total cost to the end-user and, if applicable, include the minimum duration of the call necessary to participate, or (iii) whichever of (i) or (ii) is most relevant to the end-user making an informed decision to proceed with a transaction, and*
- (viii) in respect of voice services states the price relates to costs for calling from the Eircom network and that calls from other networks may be higher.*

For consistency similar amendments, as previously put forward by eircom, should be made to Sections 5.14 and 5.17 and 5.21 (e) (i) and 5.22 which require the Subscription Request Message to state charges for each message sent and received. Therefore we once again propose the following amendments:

*5.14 (f), 5.17 (f) (i) and 5.21 (e) (i):the charges for each message received while associating the short code 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].

**Q.2 Do you agree with ComReg's proposal to amend the provisions of Section 5.20 of the Code? Please give reasons to support your view.**

eircom agrees in principle with the proposed amendments, however we foresee potential issues arising from the proposals in relation to the wording that is used in the context of the Update Message and the Reminder Threshold. We have proposed amends that we believe will address these issues.

**Update Messages - Receiving versus Sending**

ComReg proposes in the draft revision to section 5.20, that service providers must ensure that end users receive periodic Regulatory Update Messages. As the ultimately delivery of such messages is often beyond the control of all parties in the value chain e.g. where SMS is the medium used, in the interest of practicality, eircom proposes that the wording should continue to focus on the obligation to send such messages.

**Reminder Threshold**

ComReg is proposing that reminder messages should be sent when the accumulated spend reaches €20 or any lesser amount. eircom supports the rationale for this proposed change however as it is currently worded, in the case of services involving multiple premium charges per transaction, service providers would have to decide on the best point at which to send the reminder message.

For example if a subscription is charged at €2x3 per week, the following options arise:

1. send the first reminder message on week 3, once the accumulated spend reaches €18 or
2. send the first reminder message on week 4 following the first €2 charge allowing sufficient time for the customer to opt-out of the service before sending the second and third €2 charge.

In eircom's view option 2 would not be satisfactory as customers opting-out of the service would have to forgo €2 while potentially receiving no value for it, due to their opting out before making full payment for the transaction.

eircom therefore proposes that the application of the threshold by service providers should implement the threshold such that the threshold would be reduced to a level that accommodates a set number of complete transactions within the €20 spend limit. Therefore in the above example, a reminder message would be sent when the accumulated spend reaches €18 as set out in option 1 above.

Once again the changes proposed by eircom in respect of both of the above concerns are highlighted below as red underlined or red strikethrough text:

5.20 (a) For Subscription Services,  
PRS providers must ensure that end users ~~receive~~ are sent periodic Regulatory Update Messages, containing the information set out in Sections 5.21 and 5.22,

(b) Such Regulatory Update Messages must:

- (i) be sent via a free standard SMS, and
- (ii) be ~~received~~ sent to an end user each and every time an end-user spends a total of €20, or some lesser amount, on the Subscription

Service; and

(iii) in the case of services that are charged through the imposition of a number of charges in order to complete a transaction, the lesser amount referred to in (ii) must accommodate a set number of complete transactions and must not include a partial charge for a transaction.

(c) be sent at a time that allows an end-user a reasonable period of time within which to unsubscribe before any further charges are incurred.

**Q.3 Do you agree with ComReg's preliminary position not to introduce a threshold value below which the Double Opt-in requirements, set out in Sections 5.13 to 5.18 of the Code would not apply? Please give reasons to support your view.**

Eircom agrees with ComReg's preliminary position not to introduce a threshold value below which the Double Opt-in requirements, set out in Sections 5.13 to 5.18 of the Code would not apply. In particular we concur with ComReg assertion that subscriptions PRS are typically contracts of indeterminate duration, regardless of the recurring cost, which makes a threshold value quite meaningless.

Furthermore we agree with ComReg's view that the applications of a threshold on a limited bases, for example, solely in the case of services promoted through print media, would complicate the task of regulating the sector and give rise to unacceptable regulatory overhead. Also in relation to services promoted over print media or any other media, it is possible for end users to become aware of a service through word of mouth, in which case it would be highly likely that the short code and key word for subscribing might be communicated in the absence of any pricing information or other pertinent information relating to the subscription service.

**Q.4 Do you agree with ComReg's preliminary position not to introduce a threshold value below which the Double Opt-in requirements, set out in Sections 5.13 to 5.18 of the Code might apply in a modified manner? Please give reasons to support your view.**

eircom agrees with ComReg's preliminary position not to introduce a threshold value below which the Double Opt-in requirements, set out in Sections 5.13 to 5.18 of the Code might apply in a modified manner for the reasons outlined in response to question 3.

## **2. Fundraising Ireland**

**By Post and Email**

**11/10/2013**

**Response to Premium Rate Services: Consultation on Code of Practice (ComReg 13/84)**

**Retail and Services Division**

Please find below Fundraising Ireland's response to ComReg 13/84, the Premium Rate Services Code of Practice Consultation paper. We very much welcome and support ComReg's continual review of the PRS industry and its practices.

As an initial comment, we would very much like ComReg to actively engage with the charity sector to gain a greater understanding of their use of PRS SMS donations as a growing and highly popular method of fundraising and donating. Moreover, at a minimum, we would like to see the Code of Practice amended to make specific reference to Not for Profit (NFP) organisations using PRS SMS. Finally we would ask ComReg to recognise the fact that charities supply neither goods nor services to PRS end users and as such should be exempt from the Double Opt-In requirements.

**Section 5.20 Regulatory Reminder Messages** – If and when charities begin to use Subscription PRS as a method for recurring donations from donors, it is patently obvious that this method in contrast to other recurring donation methods would suffer from grossly inflated attrition rates due to the reminder messages after a nominal spend (donation amount) by the end user. This method of capturing recurring charitable donations would be the only recurring donation method that continually reminds the end user that they are able to Opt-Out. Donors who use either a recurring Direct Debit or Credit Card payments are subject to no such communication and this requirement would severely curtail the ability of charities to use recurring mobile donations as a viable donation mechanism.

Using the latest technology to engage with prospective supporters and efficiently fundraise is critical to the efficient operation of charities in Ireland. The introduction of mobile texting technology to the sector that enables 100% giving is a much needed development and boost to the fundraising capabilities of charities in Ireland.

We understand that there are regulatory requirements that must be adhered to by charities; however the degree of regulation with regard to Double Opt-In is not only onerous but unjustified in terms of statute and administration, and will effectively eliminate this form for fundraising.

There is no evidence that charitable donations collected in this manner pose a significant risk to consumers. Indeed there are many benefits to consumers, in terms of convenience and control. If charities are to fully utilise the benefits of mobile technology and its potential they must be exempted from Double Opt-In regulation.

#### **Section 4.3 Price threshold for Subscription PRS**

As we understand the matter, when a member of the public donates to a charity after viewing an ad or other campaign material, there is no supply of goods or services to that member of the public

(end-user). The end-user has made that monetary donation to the charity with no expectation of a good or service being supplied to them in return.

All charities in Ireland, be they International, National or local rely on the kindness and generosity of the public to fund their work to a greater or lesser extent. The State has recognised the good works and contribution to society that charities make and as such has afforded them a number of exemptions. If any doubt surrounded the integrity of any of these organisations with regard to any aspect of their work, their legitimacy with both the public as a whole and their key stakeholders would be irreversibly damaged. All appeals, campaigns and events that feature advertising material with donation methods are worded clearly and concisely lest any potential supporter be confused.

It is clear that in such circumstances and taking into account the limited potential for consumer harm that in the event that double opt-in was to apply, it should only apply to donations of over €5 per week or €22 per month. This threshold is important in terms of the €250 per year threshold on tax claims that can be processed by charities.

#### **Section 4.3.2 – Double Opt-In**

As a starting point we would like to see a review of the theory requiring charities to use Double Opt-In and call for ComReg to conduct new qualitative and quantitative research in light of recent technological developments. This request is based on the fact that ComReg's can now be seen to be out-dated. Charities use of mobile technology as a means of fundraising has grown significantly in the last twelve months while ComReg's research was conducted three years ago at a time when charities were not using PR SMS and were left out of the research. Therefore charities have to adhere to a Code of Practice that never considered their use of PRS when it was implemented.

We believe that there is no evidence to support the application of double opt-in to charity donations.

#### **4.3.3 – Means of Subscribing**

Charities use all media platforms on a daily basis to engage with current and prospective donors. Charities have traditionally been able to rely on a variety of fundraising mechanisms. Since the advent of Likecharity's mobile donation platform, SMS donations are growing in market share compared to other methods such as door to door, on street or via a charity website or telephone line.

#### **Online Subscriptions**

There is a fundamental difference between a PRS providers "promotion" and a charity's "campaign". The basis on ComReg's use of Double Opt-In for online Subscriptions is when an "End user lands on a PRS providers webpage and in response to the promotion enters their mobile number into a webform". If donors were to agree to a recurring monthly donation via SMS that was advertised online, the associated cost and billing period would be clearly displayed in the charity's online

advert. All end-users are given the option to text STOP at any given time thereby ending their recurring donation to their chosen charity.

There is no basis to apply the measures being suggested by ComReg to charitable donations.

### **Mobile Browsing**

ComReg's position on Double Opt-In for Mobile Browsing appears to be based on the practices of traditional PRS providers and fails to make account for charities use of PRS as a fundraising mechanism and the societal good that it can do. Charities do not use either "MSISDN forwarding" or "Developments in digital marketing practices" as a fundraising method. All online advertising would redirect a prospective end-user to the charities donate page where they are given the same webpage and option as an end-user using the internet,

Given that the central purpose of any donation page would be for the donor to select the amount they wish to donate. There can be no basis to suggest that this might be unclear.

ComReg have provided no basis on which to justify charity donations are treated the same as other services.

### **Television/Radio**

Again the qualitative and quantitative research that was undertaken by ComReg between December 2010 and January 2011 takes no consideration of the public impression of charity PRS. Charity television and radio adverts have a number of significant differences from goods and services PRS adverts.

The optimisation of images throughout a charity TV advert ensures that the "call to action" is both clear and unambiguous in terms of monetary amount and length of time they are displayed on screen for.

In contrast to goods and services adverts, the terms and conditions are up for a significant period of the overall advert time, while the donation amount appears before the terms and conditions allowing the viewer ample time to read them. Finally charities do not attempt any "ploys to circumvent end users considerations of the T&C's". There has been no evidence of consumer harm with regard to charitable SMS donations made following a TV or Radio advert.

The research used by ComReg to justify the current position is not applicable to charity donations and therefore double opt-in should not apply. The donation amount and details are the very essence that is communicated in a charity advert.

### **Print (Including billboards/posters)**

In contrast to ComReg's experience that "very few PRS are promoted through this medium", the vast majority of all charities use print media to advertise their campaigns and to seek donations from the public be it via a PRS SMS donations, a phone call to their fundraising line or by visiting the donation page on their website. Again there is no evidence of consumer harm. In contrast we have seen growing levels of consumer understanding of mobile donations and how it works particularly after a number a high profile TV, Radio and Print media campaigns throughout the past year. There are real

and demonstrable levels of consumer confidence in this service provision. It is our position that growing numbers of end users are now reading the Terms and Conditions to ensure that 100% of their donation goes to the charity of their choice. In a time of economic stagnation, end users are now looking to ensure that charities are receiving their full donation.

Again it appears that ComReg's position is based on the assumption that questionable practices of goods and services providers who they believe may on occasion, be ambiguous about the cost and billing frequency of their products, thereby hindering the ability of an end user "to make an informed transactional decision". Given that charity artwork is aimed at generating donations from end users via SMS donations or visits to their website or telephone line, the call to action on the artwork needs to display the donation amount that an end user would be donating. Additionally in the billing receipt message, the donated amount and billing frequency be it one off or recurring is displayed in the message. In the case of recurring SMS donations all end users are given the option to text STOP at given time thereby ending their recurring donation to their chosen charity.

In order to help the Irish charities maintain their current capabilities in terms of fundraising and support, there needs to be active engagement in order to allow charities to effectively use mobile technology to engage with prospective supporters.

Effective use of mobile technologies is of critical importance to charities wishing to expand their fundraising techniques and to engage with current and prospective supporters. There is now an expectation that charities will engage with their supporters through their mobile devices. There is also continuous pressure and expectation on charities to be efficient in how they operate and new technology plays an increasingly important role in that pressure and expectation.

### **3. Hutchison 3G Ireland Limited ("Three")**



Hutchison 3G Ireland Limited (“Three”) response to Premium Rate Services  
Consultation Reference: ComReg 13/84



Three welcomes the opportunity to provide input into ComReg's consultation regarding Premium Rate Services ("PRS") Code of Practice ('COP').

Please note the following responses to ComReg's Consultation Document No. 13/53 ('Consultation'):

Q. 1 Do you agree with ComReg's proposal to amend the provisions of Section 4.8 of the Code?

Three agrees with ComReg's proposal to amend the provisions of Section 4.8 of the Code. Three believes that users must be fully informed of the full and true cost of any service, including PRS prior to incurring any charges. As per ComReg's Code for Tariff Presentation<sup>1</sup> all pricing information must be comprehensive, accurate and accessible to ensure end-users can make informed transactional decisions. Enhancing price transparency for PRS, will provide better clarity to the customer, provide less ambiguity and lessen negative customer experience. This will not eradicate complaints and customers will continue to use a perceived lack of clarity for a "get out of jail" but Three agrees with ComReg's intentions regarding full transparency.

Q. 2 Do you agree with ComReg's proposal to amend the provisions of Section 5.20 of the Code?

Three agrees with ComReg's proposal to amend the provisions of Section 5.20 of the Code to ensure that subscriptions end users receive the required Regulatory Update Messages at intervals no greater than €20. Three considers that this proposal will provide greater consumer confidence in subscription services as this change will ensure end users are informed of and can manage their outgoings, which ultimately is in the interest of end-users.

Q. 3 Do you agree with ComReg's preliminary position not to introduce a threshold value below which the Double Opt-in requirements, set out in Sections 5.13 to 5.18 of the Code would not apply?

Three agrees with ComReg's preliminary position not to introduce a threshold value below which the Double Opt-in requirements, set out in Sections 5.13 to 5.18 of the Code would not apply.

Three agrees with ComReg in that the double opt-in provisions, regardless of amount greatly enhances consumer awareness of the costs of PRS subscriptions, provides greater clarity for all parties involved in the supply of the subscription service and ultimately assists ComReg in any dispute if raised. Ensuring double opt-in is required for all subscription services regardless of amounts, ensures consistency across the PRS industry which should ultimately increase consumer confidence in the PRS market.

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<sup>1</sup> ComReg Code for Tariff Presentation D11/04



Q. 4 Do you agree with ComReg's preliminary position not to introduce a threshold value below which the Double Opt-in requirements, set out in Sections 5.13 to 5.18 of the Code might apply in a modified manner?

Three would be supportive of a modified approach to the Double Opt In requirement. Three does not believe that it must be equivalent to the UK level of £4.50, but would request that ComReg consult on this issue separately. Three believes that introducing some level of flexibility in the ruling could stimulate uptake in PRS service demand at the agreed threshold level.

## **4. LikeCharity**

**By Email**

11/10/2013

**Response to Premium Rate Services: Consultation on Code of Practice (ComReg 13/84)  
Retail and Services Division**

Please find below LIKECHARITY'S response to the Premium Rate Services Code of Practice Consultation Paper. We very much welcome this opportunity to proactively engage with ComReg on the regulations governing the PRS industry in Ireland and their potential impact of the fundraising ability of Irish charities.

As a general comment, we would suggest that ComReg considers whether made to charities, which are by definition organisations that are not operating 'for gain' and are given without return consideration, come under the scope of the Regulations and the Code of Practice. Moreover we suggest that Code of Practice should be updated to explicitly state that charities, as organisations which provide neither services nor goods to the end user, are not providers of Premium Rate Services.

**Section 5.20 Regulatory Reminder Messages** states that "every time an end-user has spent a total of €20 on the Subscription Service a Regulatory Update Message must be sent via a free standard SMS to the end-user." This mechanism was in theory devised to allow end users "be aware of their outgoings and allow them to make informed transactional decisions" in the event that there was some ambiguity about the amount an end user was being charged and at what interval they were being charged. However in practice, all charitable fundraising material, in strict adherence to the current regulations, displays unambiguously and prominently, the full amount being charged to the end user.

Additionally, recurring charitable donations made via a mobile phone would be the only recurring donation method that would be liable to such onerous Opt-Out communication. Recurring Direct Debit and Credit Card donations to charities are subject to no such communication and this requirement would severely curtail the ability of charities to use recurring mobile donations as a viable donation mechanism.

There is no evidence that charitable donations collected in this manner pose a significant risk to consumers. Indeed there are many benefits to consumers, in terms of convenience and control. ComReg's current position appears be contrary to Government policy and most specifically, to the Government established Forum on Philanthropy, which identified the need to "...support the development of an infrastructure in relation to giving by ensuring that there is a spectrum of giving opportunities suited to individuals' preferences and circumstances"

Maintaining a double opt-in regime for charitable donations appears unjustified in terms of statute and administration, and will effectively eliminate this form for fundraising.

### **Section 4.3 Price threshold for Subscription PRS**

When a member of the public donates via SMS, there is no supply of goods or services to an end-user.

Charities fundamentally rely on the goodwill and generosity of members of the public to donate to their cause. They are not operating 'for gain' and if there was any question surrounding of impropriety with regard to their fundraising activity, their legitimacy with key stakeholders would be undermined, irrevocably curtailing their ability to fundraise. As such all advertising streams used by charities to promote their fundraising campaigns are clear and concise. There are no hidden or charges or sign up fees. Each and every cent of the full donation amount goes to the charity.

With this borne in mind, if and when charities use subscription PRS as method of capturing recurring donations from supporters their advertising would make it abundantly clear that any potential donors are agreeing to a recurring monthly subscription.

It is clear that in such circumstances and taking into account the limited potential for consumer harm that in the event that double opt-in was to apply, it should only apply to donations of over €5 per week or €22 per month. This threshold is important in terms of the €250 per year threshold on tax claims that can be processed by Charities.

#### **Section 4.3.2 – Double Opt-In**

We would argue that the onerous double opt-in requirement which charities have to abide by is fundamentally flawed. This assertion is based on the belief that the qualitative and quantitative research referred to by ComReg throughout the Code of Practice and that is something evidently that underpins their position on a number of points is based on the responses of a relatively small sample of people<sup>1</sup> conducted nearly three years ago<sup>2</sup>. Given that in the intervening period Irish charities use of PRS as a method of fundraising has grown exponentially and that the survey conducted by ComReg focuses exclusively on PRS providers who supply goods and services to the end user, it is evident that the use of PRS by charities was never considered when the original Code of Practice was drafted.

We believe that there is no evidence to support the application of double opt-in to charity donations.

#### **4.3.3 – Means of Subscribing**

Charities use various media platforms including TV, radio, print and online to fundraise. PRS SMS is a staple of these mediums. This method will continue to grow to become the medium whereby the public donates to a charity following a campaign.

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<sup>1</sup> 12

<sup>2</sup> December 2010 – January 2011

## **Online Subscriptions**

Double Opt-In via an online promotion is described by ComReg as when an “End user lands on a PRS providers webpage and in response to the promotion enters their mobile number into a webform”. There is a definitive difference between a PRS providers “promotion” and a charity’s “campaign”. ComReg has shown that some PRS providers’ promotions can be very vague when it comes to the cost associated with the Online Subscription PRS.<sup>3</sup> If donors were to agree to a recurring monthly donation via SMS, the associated cost and billing period would be clearly displayed in their online advert. Fundamentally, charities cannot afford to be seen to have questionable fundraising practices. There is no need for enhanced price clarity as all end users would receive a billing message receipt that would outline their monthly or weekly commitment to their chosen charity.

There is no basis to apply the measures being suggested by ComReg to charitable donations.

## **Mobile Browsing**

ComReg’s position on Double Opt-In and Mobile Browsing is based around “MSISDN forwarding” and “Developments in digital marketing practices”. Once again this position is/was based on the practices of goods and services PRS providers. In practice charities do not use either of these mechanisms to secure donations from the public. If a member of the public is to use their mobile to browse the internet and see an ad or promoted tweet or Facebook post, they would be redirected to the donation page on the charity’s website, where they would be given the option of a number of traditional donation methods. A second scenario would be where they are asked to donate via SMS. They would then text a specific KEYWORD to make a donation as the advert, post or tweet would display all necessary information.

Given that the central purpose of any donation page would be for the donor to select the amount they wish to donate. There can be no basis to suggest that this might be unclear.

ComReg have provided no basis on which to justify charity donations are treated the same as other services.

## **Television/Radio**

Again the basis of ComReg’s position for Double Opt-In for Television and Radio adverts is its qualitative research and the activities of goods and services PRS providers. Again this research is flawed as it does not include charity television and radio adverts, which are significantly different from the ads of goods and services PRS providers. The pacing of adverts for charity is not high tempo, as they are emotive and telling a story. All charity promotions are clear and unambiguous in the amounts and length of time they are for and this is based on the reasons as outlined in this document previously. In contrast to goods and services adverts, the terms and conditions are left up for a significant period of the overall advert time, while the donation amount appears before the terms and conditions allowing the viewer ample time to read them. Finally there are no “ploys to circumvent end users considerations of the T&C’s”. There has been no evidence of consumer harm with regard to charitable SMS donations made following a TV or Radio advert.

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<sup>3</sup> “It was evident to ComReg that the cost of the PRS was not always provided on the website where the end user first entered their mobile phone number and when the pricing information was provided it was not always prominent”.

The research used by ComReg to justify the current position is not applicable to charity donations and therefore double opt-in should not apply. The donation amount and details are the very essence that is communicated in a charity advert.

### **Print (Including billboards/posters)**

In direct contrast to ComReg's experience that "very few PRS are promoted through this medium", the vast majority of all charities use print media to advertise their campaigns and to seek donations from the public be it via a PRS SMS donations, a phone call to their fundraising line or by visiting the donation page on their website. Again there is no evidence of consumer harm. In contrast we have seen growing levels of consumer understanding of mobile donations and how it works particularly after a number a high profile TV, Radio and Print media campaigns throughout the past year. There are real and demonstrable levels of consumer confidence in this service provision. It is our position that growing numbers of end users are now reading the Terms and Conditions to ensure that 100% of their donation goes to the charity of their choice. In a time of economic stagnation, end users are now looking to ensure that charities are receiving their full donation.

Again it appears that ComReg's position is based on the assumption that questionable practices of goods and services providers who they believe may on occasion, be ambiguous about the cost and billing frequency of their products, thereby hindering the ability of an end user "to make an informed transactional decision". Given that charity artwork is aimed at generating donations from end users via SMS donations or visits to their website or telephone line, the call to action on the artwork needs to display the donation amount that an end user would be donating. Additionally in the billing receipt message, the donated amount and billing frequency be it one off or recurring is displayed in the message. In the case of recurring SMS donations all end users are given the option to text STOP at given time thereby ending their recurring donation to their chosen charity.

Mobile fundraising is an unobtrusive form of fundraising that is expected to have a significant market share in Ireland in the coming years. This point is based on worldwide giving trends and the growth of SMS donations market share. To date over 100,000 individual donors have donated to charity via the LIKECHARITY platform, with no evidence of consumer harm or complaints to ComReg. This level of use with minimal, if any, levels of consumer harm/complaints cannot be ignored. The use of PRS by not for profit charities in contrast to for profit companies is profoundly different and is something that the end-user recognises. As such charities should not be subjected to the same onerous requirements as for profit companies.

The effect of Double Opt-In on the fundraising capabilities is evident from the experience of charities that have used the LIKECHARITY platform. One well known Irish charity saw a loss of 92% of potential leads when they used the Double Opt-In mechanism. Finally if a donor has enough clarity to, in the first instance, donate then why do they need to confirm again?

## **5. Office of the Data Protection Commissioner (“ODPC”)**

## **Premium Rate Services: Consultation on Code of Practice 13/84**

### **Submission from the Office of the Data Protection Commissioner – October 2013**

The Office of the Data Protection Commissioner (ODPC) welcomes the opportunity given by ComReg to make submissions on the Premium Rate Services Code of Practice in ComReg 13/84.

Set out hereunder is the submission of the Office of the Data Protection Commissioner. We are again confining our submission to those aspects of the Consultation Paper which, from the perspective of the Office, have a linkage to compliance with the Data Protection Acts 1988 & 2003 or SI 336 of 2011.

**Question 3: Do you agree with ComReg’s preliminary position not to introduce a threshold value below which the Double Opt-in requirements, set out in Sections 5.13 to 5.18 of the Code would not apply? Please give reasons to support your view.**

**Question 4: Do you agree with ComReg’s preliminary position not to introduce a threshold value below which the Double Opt-in requirements, set out in Sections 5.13 to 5.18 of the Code might apply in a modified manner? Please give reasons to support your view.**

In our previous submissions on the Code of Practice (11/51 etc), we indicated our full support for the proposal from ComReg that it should consider the introduction of a "double opt-in" requirement for entry into subscription services. We are fully supportive of the inclusion of the Double Opt-In requirements in the manner in which they current stand in the Code of Practice.

In our previous submissions we also stated that *“it would appear essential that a service provider abide by the principle of positive end-user consent in order to be able to defend themselves in any proceedings which may arise for an offence under Regulation 13 of S.I. 535 of 2003 (as amended). In that regard, it should be noted that Regulation 13(9C) of S.I. 535 of 2003 (as amended) places the onus on the defendant of establishing that a subscriber consented to the receipt of an unsolicited communication or call. The double opt-in requirements for Subscription Services would be of considerable value to a service provider who found themselves in the position of having to defend themselves in such proceedings.”* In the meantime, the Statutory Instrument referred to above has been revoked by the Minister for Communications, Energy and Natural Resources and it has been replaced by S.I. 336 of 2011. Regulation 13(14) of S.I. 336 of 2011 is as follows:

*If, in proceedings for an offence under this Regulation, the question of whether or not a subscriber or user consented to receiving an unsolicited communication or call is in issue, the onus of establishing that the subscriber or user concerned unambiguously consented to the receipt of the communication or call lies on the defendant.*

The insertion of the word ‘unambiguously’ in the text above in relation to consent has significant consequences. The intention of its inclusion is to ensure that informed consent has been given by the subscriber or user concerned, that a record of that

informed consent and how it was obtained has been kept, and that a copy of that informed consent is available if required during prosecution proceedings before a court. In the matter of a prosecution in relation to PRS and the specific issue of whether the subscriber or user had given consent to the service provider concerned, it now appears essential under this Regulation that the service provider produce evidence of a double opt-in in order to demonstrate that the “*subscriber or user concerned unambiguously consented to receipt of the communication.*” The provisions contained in Section 5 of the Code of Practice as they currently stand assists service providers in that regard. At the same time, they greatly enhances the user’s experience in relation to premium rate services.

In summary, from the perspective of the ODPC, there is no credible case to be made for the dilution in any way, by the introduction of thresholds or otherwise, of the existing provisions in the Code of Practice with regard to the Double Opt-In requirements. The net effect of the introduction of threshold values would be to considerably weaken the data protection rights of those individual subscribers affected by the threshold values. Clearly there is no justification for the lessening of data protection rights on the basis of a threshold value. The ODPC therefore fully supports ComReg’s position not to introduce thresholds.

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Office of the Data Protection Commissioner

2 October, 2013

## **6. RTÉ**

## Premium Rate Services Consultation on Code of Practice: ComReg Reference: 13/84

### RTÉ Response

***Q. 1 - Do you agree with ComReg's proposal to amend the provisions of Section 4.8 of the Code?***

We believe that any amendment of the provisions, as illustrated in Annex 1 of ComReg Reference 13/84 to maintain fairness and clarity within the marketplace for consumers using PRS, is highly commendable.

To assist in purposes of clarity and avoidance of doubt on behalf of the consumer, consideration should be given to including a statement specifically identifying the service as a subscription service, where applicable. At present in Section 4.8 (vi) of the proposed new text, the current wording does not state this as a requirement and only identifies the charge per period, and period involved.

***Q. 2 - Do you agree with ComReg's proposal to amend the provisions of Section 5.20 of the Code?***

We believe that any amendment of the provisions, as illustrated in Annex 2 of ComReg Reference 13/84, to maintain fairness and clarity in the marketplace for consumers using subscription services, is highly commendable.

***Q. 3 - Do you agree with ComReg's preliminary position not to introduce a threshold value below which the Double Opt-in requirements, set out in Sections 5.13 to 5.18 of the Code would not apply?***

We consider, that by not introducing a threshold value, this induces a safer environment for all subscribers, and that any amendment of the provisions considered for introduction should be focussed on fairness and clarity in the marketplace for consumers using subscription services.

***Q. 4 - Do you agree with ComReg's preliminary position not to introduce a threshold value below which the Double Opt-in requirements, set out in Sections 5.13 to 5.18 of the Code might apply in a modified manner?***

We consider, that by not introducing a threshold value, this induces a safer environment for all subscribers, and that any amendment of the provisions considered for introduction should be focussed on fairness and clarity in the marketplace for consumers using subscription services.

## **7. Vodafone Ireland Ltd.**



## **Vodafone Response to the ComReg Consultation on the Premium Rate Services Code of Practice**

## Introduction

Vodafone welcomes ComReg's consultation on proposed changes to the Premium Rate Services Code of Practice. We believe that it is important that the Code of Practice is reviewed on a regular basis, and when appropriate amended, to take account of economic and technological developments, changes in premium rate services (PRS) and changes in the way these are advertised to, and used by, consumers. This will ensure that the Code of Practice is fit for purpose in protecting the interests of PRS end users.

Our views in relation to the specific amendments proposed, and issues assessed, by ComReg are set out in response to the consultation questions below.

## Consultation Questions

**Q. 1 Do you agree with ComReg's proposal to amend the provisions of Section 4.8 of the Code? Please provide reasons to support your view.**

Vodafone considers that it is essential that consumers are aware of the total cost of a PRS before any decision to subscribe to the PRS is made by them. We also believe that pricing information for PRS should always be clear, transparent, and unambiguous.

Vodafone supports the intent of ComReg's proposed amendments to Section 4.8 of the Code, of increasing price transparency for end users of PRS. However it is not clear to Vodafone that the current changes to the text of Section 4.8 that are proposed by ComReg actually strengthen the provisions of Section 4.8 in terms of ensuring full price transparency beyond what is already set down in the existing Code. In particular it is not clear to Vodafone how the proposed amendments to the current text address the specific instances of ambiguous or confusing pricing (described in Section 4.1 of the consultation document) beyond what could be achieved by the enforcement of the provisions of the existing text of Section 4.8.

**Q. 2 Do you agree ComReg proposal to amend the provisions of Section 5.20 of the Code? Please provide reasons to support your view.**

Vodafone agrees that, in respect of PRS subscription voice and SMS services, it is at present appropriate and necessary that end users receive periodic regulatory update messages within each spending interval of not more than €20. We therefore support in principle the proposed amendments to Section 5.20 of the Code to facilitate the sending by PRS providers of regulatory update/reminder messages of the form specified by ComReg on a regular basis within spending intervals of not more than €20 for PRS end users.

We consider that the intention of the amendment to provide greater flexibility to service providers (e.g. allowing them to send a regulatory reminder message upon every €16 spending interval if this is easier to implement on the basis of how payment for their services are structured) on regulatory reminder messages, while still complying with a maximum €20 spend interval between regulatory reminder messages is welcome.

However there is a clear distinction between premium rate SMS and voice services, which generate significant volumes of consumer complaints, and new and emerging services also within the scope of the definition of PRS – particularly Direct Carrier Billing (DCB) services for non-digital goods and services (parking tolls, cinema tickets etc.) that are essentially just another means of payment. These DCB services are not a source of significant

consumer complaint, and are unlikely to be so in the future given their inherent characteristics (DCB services are merely an alternative means of making payments via charging to a mobile account).

Vodafone considers that it is important, in the interests of maximising regulatory certainty, that ComReg confirm that the Code of Practice provisions in respect of regulatory update messages (Section 5.20 of the Code) do not have any applicability to these types of DCB services.

**Q. 3 Do you agree with ComReg’s preliminary position not to introduce a threshold value below which the Double Opt-in requirements, set out in Sections 5.13 to 5.18 of the Code would not apply? Please provide reasons to support your view.**

Vodafone has no objection to ComReg’s preliminary position not to introduce a threshold value below which the Double Opt-in requirements would not apply in respect of premium rate voice and SMS services. However there is a clear distinction between premium rate SMS and voice services, which generate significant volumes of consumer complaints, and new and emerging services also within the scope of the definition of PRS – particularly Direct Carrier Billing (DCB) services that are not a source of significant consumer complaint, and are unlikely to be so in the future given their inherent characteristics (DCB services are merely an alternative means of making payments via charging to a mobile account).

Vodafone considers that it is important, in the interests of maximising regulatory certainty, that ComReg confirm that the Code of Practice provisions in respect of Double Opt-In are not intended to have any applicability to the types of DCB services described in the response to question 2.

**Q. 4 Do you agree with ComReg’s preliminary position not to introduce a threshold value below which the Double Opt-in requirements, set out in Sections 5.13 to 5.18 of the Code might apply in a modified manner? Please provide reasons to support your view.**

Please see the response to question 3.