



Consultation Paper

## Scope of Premium Rate Services regulation

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All responses to this consultation should be clearly marked:-  
“**Scope of Premium Rate Services regulation - ComReg 10/27**”  
as indicated above, and sent by post, facsimile, e-mail or on-line  
at [www.comreg.ie](http://www.comreg.ie) (current consultations), to arrive on or before  
**4.00 pm on Friday, 30<sup>th</sup> April 2010**, to:

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## 1 Foreword

On 12<sup>th</sup> July 2010, the responsibility for the regulation of premium rate services (PRS) in Ireland transfers to the Commission for Communications Regulation (ComReg), from the Regulator of Premium Rate Telecommunications Services Ltd (RegTel), following the enactment of the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act, 2010 (the *Act*).

This consultation is ComReg's first step in establishing a new regulatory framework for premium rate services (PRS) and PRS providers, which is intended to offer greater protection to consumers and enable consumers to use PRS with trust and confidence.

The Act defines a PRS, a PRS provider, and requires that providers of "*specified*" PRS must be licensed. The responses to this consultation will assist ComReg to determine what classes, or types, of services should be *specified* and, therefore, licensable and subject to statutory regulation, following the transfer of powers to ComReg.

ComReg also considers matters relating to the provision and operation of mobile subscription services, which are currently the predominant source of consumer harm. The responses to the questions on this key issue will provide a valuable contribution as ComReg commences framing a new mandatory Code of Practice for PRS providers.

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

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

It is requested that views are received at ComReg not later than 4.00 pm on Friday, 30<sup>th</sup> April 2010.

**Mike Byrne**  
**Commissioner**

## 2 Executive Summary

This Consultation Paper opens a public consultation on the scope of regulation of Premium Rate Services (PRS), which may also be referred to as phone-paid services.

### *Background*

The Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act<sup>1</sup> (*the Act*) confers the additional function of regulating the market for PRS on ComReg with effect from 12<sup>th</sup> July 2010. The primary purpose of the legislation is to provide a statutory basis for more robust regulation of the sector, in the interest of consumer protection.

### *ComReg's Approach*

ComReg's starting point for determining the future scope of PRS regulation, and introducing a new regulatory framework, is to conduct this public consultation to seek the views of all stakeholders which will assist ComReg in determining the classes, or types, of services to be regulated.

ComReg's indicative timeline to determining the scope of PRS regulation, and establishing the regulatory framework, is illustrated graphically below;



<sup>1</sup> Available at: <http://www.oireachtas.ie/documents/bills28/bills/2009/5109/b51c09d.pdf>

### *The PRS Value Chain*

In Chapter 4, ComReg outlines the roles of the various entities involved in delivering PRS to consumers. The definition of a PRS provider in the Act includes all of the entities involved in the delivery of PRS. ComReg will establish and implement a licensing framework, which will attach conditions, appropriate to the role played in the delivery chain, to each PRS provider's licence.

ComReg also intends to introduce a licensing condition for all PRS providers, regardless of their role, that prohibits licensed PRS providers from entering into contracts with other parties to provide PRS services unless those other parties are also licensed by ComReg to provide PRS. This approach ensures that all parties in the value chain are recognisable, contactable and subject to regulation.

### *New Legal Definition for PRS*

The definition of a PRS in the new legislation is broader than the current definition and the longstanding association, in accordance with the RegTel PRS definition, between PRS and PRS numbers is severed. The result of this redefinition is that certain service providers, who are not currently regulated, may become subject to PRS regulation for the first time. Conversely, the legislation contains provisions to permit ComReg to exempt certain categories of service from PRS regulation. This implies that services that currently require prior approval from RegTel may, in future, be exempted where ComReg considers that the risk of consumer harm is low. A complete overview of the new legislative provisions contained in the Act is attached as Appendix A.

ComReg considers it appropriate to consult on the boundaries between what is regulated as "*specified PRS*" and what is subject to the Code of Practice on a voluntary basis. ComReg wishes to address those areas where widespread consumer harm has occurred and continues to occur (such as mobile subscription services); to introduce mechanisms that modify behaviour in the industry and promote consumer confidence in the PRS market.

### *Services Currently Regulated*

The limit of RegTel's mandate extends solely to services offered on a Premium Rate Number – if a service is not provided via a Premium Rate Number, it is not classified as PRS. ComReg complements RegTel's remit by publishing the National Numbering Conventions, which designate certain number ranges by which PRS may be delivered.

Each Premium Rate Number sits within its own permitted price-band<sup>2</sup>, where the maximum tariff to the caller may not exceed a stipulated limit, thereby enhancing pricing transparency and assist consumers in determining the cost of a PRS.

PRS providers are required to adhere to the provisions of RegTel's Code of Practice (CoP), which contains general provisions pertaining to all PRS, including provisions

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<sup>2</sup> Specific industry-agreed price-points that do not exceed these price-band limits are typically used to implement actual PRS services.

for legality, decency and honesty, pricing and promotion. There are additional specific provisions relating to the particular categories of PRS, including;

- a. Children's services
- b. Competition services
- c. Advice and Information Services
- d. Services of a Sexual Nature
- e. Live Services
- f. Mobile Services, including Mobile Subscription Services

*What Services should be regulated?*

In Chapter 7, ComReg considers whether the two basic criteria of "price" and "nature" of a PRS can be used to assist in determining what should be licensed as *specified PRS* and, consequently, the class, or type, of PRS that may be exempted from formal regulation.

In terms of price of PRS, ComReg's preliminary view is that services below 20 cents (€0.20) per minute/per call/per message could be exempted from licensing. ComReg examines the characteristics, or nature, of specific service categories and makes recommendations about certain services it considers should be regulated, irrespective of cost, because of their inherent potential for consumer harm. In addition, ComReg considers the case of mobile networks "*on-portal*" services which, to date, have not been regulated by RegTel as they are not delivered via a PRS number.

Furthermore, ComReg seeks responses to its preliminary view that the following classes, or types, of PRS should be licensed, irrespective of price,

- Sexual entertainment services
- Children's services
- Live entertainment services (e.g. tarot or horoscope lines)
- Internet dialler software
- Virtual Chat, contact and dating services
- Mobile subscription services – services with a recurring cost

*Directory Enquiry (DQ) Services*

In Chapter 8, ComReg examines Directory Enquiry (DQ) services, which are not currently regulated by RegTel, however, are now encompassed in the definition of PRS in the Act. ComReg considers if these services should be subject to formal regulation, as *specified PRS*, or exempt from licensing if they do not exceed the 20 cents (€0.20) price point proposed in Chapter 7.

DQ service providers (DQ SP's) have recently requested ComReg to be permitted to provide additional "value added" services in conjunction with their core functions of providing number information and call completion (i.e. where the DQ SP places a

call that connects the consumer with the number about which they made the enquiry). ComReg's concerns with respect to permitting DQ SP's provide a wider range of "value added" service include,

- Dilution of Standards
- Competition Issues
- The Nature of "Relevant Value Added Services"

ComReg's position is that if DQ SP's assume a wider remit, DQ services will be regulated as *specified PRS* and, therefore, required to be licensed. ComReg also questions if a wider remit would give an unfair advantage to DQ SP's over providers of "core" PRS and, finally, if it would be prudent to designate the class, or type, of service that could be provided as a "relevant value added service" and, therefore, require that DQ SP's obtain prior permission on a case-by-case basis for each of these services.

#### *Effective regulation of mobile subscription services*

In recent years, the majority of complaints received by RegTel have been in relation to mobile subscription services and this is an area that ComReg intends to robustly address from the outset. ComReg is seeking responses on the following options relating to mobile subscription services;

- Introduction of "double opt-in" or "active confirmation"
- Prohibition of Mobile Terminated (*MT*) billing, also known as "Reverse-Billed" SMS. MT billing occurs where the consumer is billed for receiving a message, rather than for sending a message and is a payment mechanism that requires fundamental review as most consumer harm is inflicted using this billing method. ComReg is seeking views on the prohibition of reverse-billed SMS for all subscription services or, for certain categories of service or, at a minimum, on reverse-billed SMS sent using "Invisible SMS". "Invisible SMS" messages are messages sent to the subscriber that are not presented on the handset screen or accompanied with a message alert. The issues of MT payments are not, however, limited to mobile subscription services and the scope for its use is explored in Chapter 9.
- ComReg seeks views on a proposal to prevent chargeable messages being sent to prepaid customers when their accounts are out of credit. This proposal would introduce a procedure that prevents a second message being sent after a fail notification is received for the first message, when the fail reason is "no credit".
- In a similar manner to placing a bar on making calls to premium rate numbers, ComReg is seeking views on requiring Mobile Network Operators (MNOs) to implement the capability to bar consumer access to Premium SMS/MMS.
- Finally, ComReg is also seeking views on limiting, or restricting, the class, or type, of services that may utilise the subscription payment model, particularly if MT-billing continues to be permitted. Some



information services, such as weather or sport alerts, may be considered suitable categories for subscription payments, however it is less clear to understand the rationale for competition, or entertainment services, to be provided in this manner.

#### *Numbering Issues*

In Chapter 10, ComReg seeks responses to the proposal to make provisions in the new framework to ensure that any mobile subscription services or marketing opt-ins associated with a particular number are automatically terminated upon cancellation, or expiry, of the account, or at the point where the subscriber number is quarantined.

Volume discounts offered by network operators to service providers who use 0818 numbers are the equivalent of revenue share and implies that these services meet the definition of what constitutes a PRS. ComReg, therefore, needs to consider, as part of this or any future PRS Scope Review, whether the services should be considered as *specified PRS* and regulated accordingly. In addition, ComReg has received requests from MNO's to extend the use of the PRS 5-digit shortcode numbering range (5XXXX) to premium voice and video services. ComReg will consider statements on these matters in the next review of the National Numbering Conventions, due to take place during 2010.

#### *Statements of Intention*

ComReg intends that its licensing regime for *specified PRS* extends to all parties (aggregators, network operators and content providers) that market and deliver PRS to Irish customers, regardless of the jurisdiction in which they are based.

Finally, with the majority of children now having access to a mobile phone, there is a risk that they may access inappropriate and potentially offensive content, or that they may be specifically targeted by such services. While ComReg acknowledges that for certain types of PRS, the consumer is actively required to confirm that he/she is over 18 by providing age, or date of birth, verification, it is ComReg's intention to engage with industry, particularly the MNOs, to develop a robust classification framework that SP's will be required to adhere to.

#### *Submission of Comments*

It is requested that submissions be received in ComReg not later than 4.00 pm on Friday 30<sup>th</sup> April 2010.

### 3 Introduction

In this Chapter, ComReg outlines the evolution of Premium Rate Service (*PRS*) and their regulation, leading to the Ministerial decision to place the regulation on a statutory footing. ComReg also sets out the indicative timetable of actions that it intends to take prior to, and after, assuming regulatory responsibility. Finally, ComReg provides advice on how it intends to fund its activities.

#### 3.1 Background

The Commission for Communications Regulation (ComReg) is the statutory body responsible for the regulation of the electronic communications sector (telecommunications, radiocommunications and broadcasting transmission) and the postal sector. ComReg's functions, as set out in primary legislation<sup>3</sup>, have now been expanded to include additional responsibilities with respect to the regulation of PRS. In accordance with the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010<sup>4</sup> (*the Act*), ComReg now wishes to elicit the opinions of consumers, industry and all interested stakeholders prior to deciding on the most effective regulatory framework for this sector.

PRS (also referred to as phone-paid services) are goods or services that can be bought or accessed by charging the cost to the buyer's phone bill, whether the buyer has a fixed line or mobile phone, a pre-paid or post-paid account. PRS, typically, consist of "content", which traditionally have been accessed by means of a specific telephone number prefix<sup>5</sup> or over an internet-enabled mobile handset and include information and entertainment services, such as traffic and travel information, weather forecasts, sports results, chat lines and horoscopes, in addition to services such as entry to competitions or casting a vote on a TV programme.

The current regulator of PRS in the State, the Regulator of Premium Rate Telecommunications Services (*RegTel*), is an independent private company that regulates by means of a Code of Practice to which all service providers are required to adhere. RegTel is funded by a levy on the service providers (SPs) and telecommunications network operators that carry PRS. This is, essentially, an industry co-regulation model. In accordance with the statement of the Minister for Communications, Energy and Natural Resources on 22 May 2008<sup>6</sup>, the primary purpose of the Act is to provide a statutory basis for more effective regulation of the sector in the interest of consumer protection.

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<sup>3</sup> The Communications Regulation Act, 2002 as amended by the Communications Regulation (Amendment) Act, 2007

<sup>4</sup> The Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010 has been passed into law and Part II will come into force on 12<sup>th</sup> July 2010

<sup>5</sup> The 15xx prefix is used for premium rate telephone services. 5xxxx premium rate short codes are used for premium rate messaging services

<sup>6</sup>

<http://www.dcenr.gov.ie/Press+Releases/2008/Broadcasting+Bill+to+tackle+premium+rate+s+cams.htm>

Industry trends suggest that the range of products and services available, particularly on mobile devices, will grow rapidly as both network and mobile handset technology evolve. Between 2001 and 2007, annual revenue grew from €31 million, to €95 million, an increase of over 200% - mainly due to the strong growth in Premium SMS. Revenue for the 2009 was down 14 % to €81 million.

The increase in mobile phone usage has led to a strong increase in mobile PRS usage and, subsequently, mobile PRS-related complaints. Other factors relating to this increase include a greater number of Service Providers offering PRS and technological advances that have enabled high quality digital content, new delivery channels and new payment mechanisms. These developments have resulted in a lack of clarity in the sector as to which services are subject to PRS regulation and therefore the risk of consumer harm has been enhanced. The legislature has recognised these market changes and the need for a review of the regulatory framework to protect consumers and enable consumers to purchase PRS with trust and confidence.

### **3.2 Characteristics of Premium Rate Services**

Many PRS, although typically more expensive than ordinary telephone communications, require light regulation. Other forms of content offered over telephone networks, such as adult chat lines, require tighter regulation due to the risk that minors may access such content or that the services may be considered offensive or inappropriate to certain groups or individuals in society. Prices for certain types of PRS can result in substantial charges on a telephone bill, or prepaid account, if the consumer is not vigilant or if the phone is used by a minor, or other, user who may not be the bill-payer and, perhaps, is unaware of the potential to trigger large telephone bills that can cause surprise, distress and, ultimately, financial harm.

The International Audiotext Regulators Network (IARN)<sup>7</sup> - an international body that encourages and facilitates the exchange of information between national PRS regulators - sets out the characteristics of PRS and the associated risks of consumer harm as follows;

- A complex variety of billing and delivery mechanisms that constantly adapts to innovation. This makes it difficult for consumers to make a fully informed decision prior to purchase
- A high percentage of mobile consumers who have prepaid contracts and, therefore, have reduced, or no, billing record. This may reduce their proof that they have suffered harm
- A technology that allows almost immediate access to millions of potential consumers, and that makes cross-border selling relatively easy
- A technology that facilitates an unscrupulous PRS provider to cause consumer harm quickly and widely, or to market immediately and directly to a consumer in a way that invades their privacy

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<sup>7</sup> The International Audiotex Regulators Network - <http://www.iarn.org/>

- A fragmented value chain, any part of which can be the cause of consumer harm, where the sharing of revenue between the different parts can create conflicting incentives that act against consumer protection
- The majority of the products on offer are digital content or services rather than physical goods, which provide instant enjoyment with little, or no, retained value
- The nature of some of the services provided (e.g. sexual entertainment, tarot, counselling, Quiz TV) may dissuade consumers to actively seek redress due to embarrassment over their actions, and
- A high risk to vulnerable sections of society such as children, the elderly, or those with learning difficulties.

It is ComReg's view that, in order to address the factors set out above, it is essential that a robust regulatory framework exists that can be applied nationally and, where possible, across borders.

### **3.3 ComReg's Approach to Regulation**

In light of technological developments, the diversity of services available and the growth of PRS as a mainstream micropayment<sup>8</sup> mechanism, ComReg must carefully consider the manner in which PRS will be regulated from the outset, taking account of the above characteristics. The scope of PRS regulation must be clearly set out to ensure that the proposed regulatory framework meets the needs of consumers by affording an appropriate level of protection which ComReg believes will, in turn, instil confidence in, and support the growth of, an innovative and dynamic PRS market.

The Act proposes a new regulatory framework that addresses issues that may arise in the provision of PRS, particularly in the areas of supply chain, content, pricing and transparency. The legislation also makes provisions for a licensing framework, supported by statutory enforcement powers.

The Act requires ComReg to make regulations specifying the class, or type, of premium rate services to be licensed. The purpose of this consultation is, therefore, to seek views that will assist ComReg in deciding on the categories of PRS to be regulated in the licensing framework.

ComReg's starting point, for determining the future scope of PRS regulation, and introducing a new regulatory framework, is with RegTel's current Code of Practice<sup>9</sup>. The indicative timelines in ComReg's plan to establish a new PRS regulatory framework are graphically set out below;

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<sup>8</sup> A micropayment is a financial transaction involving a very small amount of money, typically under €10. E.g. pay for parking services.

<sup>9</sup> Available to download at - <http://www.regtel.ie/cm135252-2-cop2008final.pdf>



### 3.4 Covering the cost of regulation

Under the current PRS regulatory framework, PRS providers (i.e. those to whom a PRS number has been assigned) are levied on their business. Each of the networks submit data to RegTel that indicates the traffic on each of the PRS numbers, RegTel, in turn, raises invoices for each of the PRS providers.

Under the new framework, ComReg intends to levy PRS providers for the purpose of meeting expenses properly incurred in the discharge of its functions to regulate the provision, content and promotion of premium rate services. ComReg may not impose a levy on PRS providers in respect of expenses incurred for regulating postal services or electronic communications services, therefore any funds raised through a levy on the PRS industry will be “ring fenced” to cover the cost of regulation of that sector. If a surplus is collected, this may be returned to PRS providers or credited towards the following year’s levy amount.

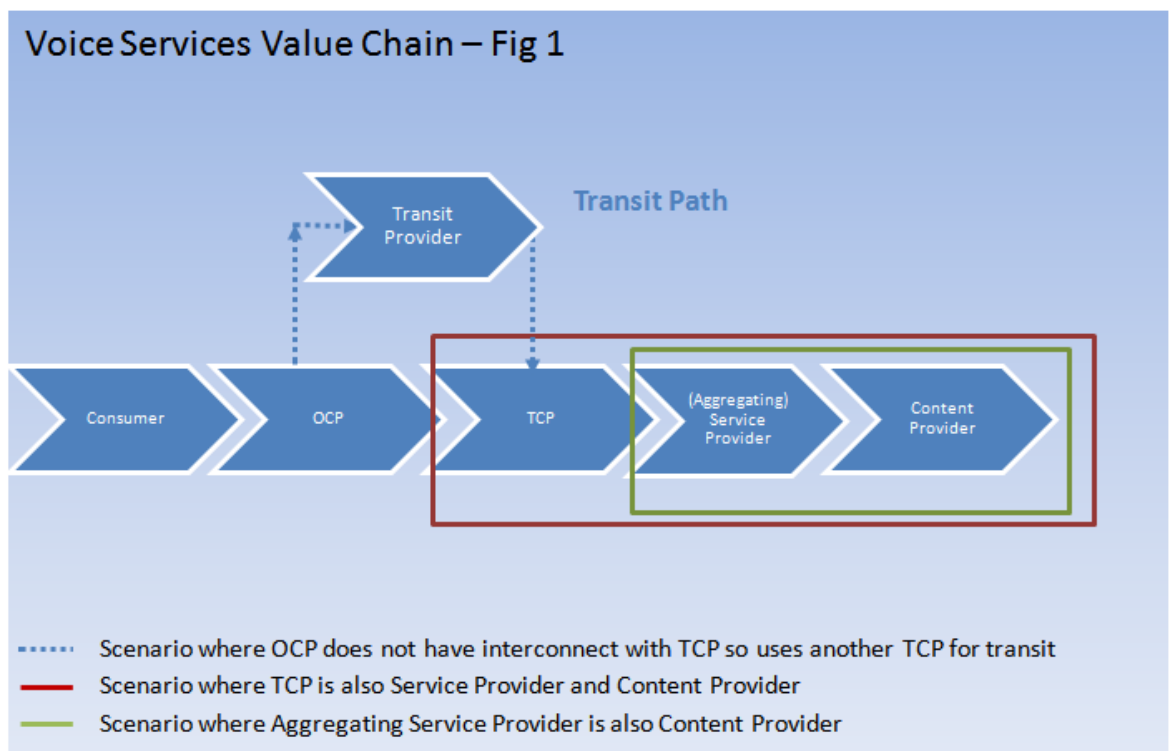
In the new regulatory framework, where every entity involved in the delivery of services, is included as a PRS provider, network operators will be required to differentiate their PRS income from any income generated from other communications services that they provide.

ComReg will give further consideration to the levy and will consult separately on the issue at a later date.

## 4 The PRS value chain

There are, typically, a number of parties involved in the supply of a PRS and it is important to understand the value chain within the PRS industry prior to considering the scope of the new regulatory framework. The diagrams below illustrate the respective value chains for a “Voice Services” PRS and a “Mobile Messaging” PRS, which are the most common PRS services.

### 4.1 Voice Services Value Chain



#### 4.1.1 The consumer

Typically, the consumer responds to PRS promotional material that he/she has seen, or received, by calling a PRS number. While this is most commonly used to access a live conversation service or recorded voice service, other service types are available such as technical support, competition entry, long distance calling platforms, etc.

#### 4.1.2 Originating Communications Provider (OCP)

The OCP is the telephone network to which the consumer subscribes (the consumer’s billing network). The OCP relays the call to the Terminating Communications Provider (TCP), which provides the network facility for the Service Provider. If the OCP does not have a direct interconnect relationship with the TCP, then a transit operator will be used, as illustrated in Figure 1 above. As an originating provider, it is possible that the OCP has no commercial interest in the provision of the PRS and it is, therefore, solely providing a communications service. In such cases, the OCP will bill the customer for the relevant amount and retain a charge for

call origination or call transit. This is an important distinction from “revenue sharing” where the TCP and the PRS Content Provider share the revenues generated from the provision of the PRS.

It is worth noting that vertical integration can take place across the value-chain. There are network operators which provide call-origination but may also contract with service and content providers and, thereby, provide the functions of a Terminating Communications Provider (TCP). Indeed, there are instances where networks operators provide PRS, for example with Directory Enquiry (DQ) services. In such circumstances, the parties are regulated in relation to the PRS services provided.

#### *4.1.3 Terminating Communications Provider (TCP)*

The TCP has “rights of use” to blocks of premium rate numbers allocated from ComReg’s National Numbering Scheme. These numbers are then allocated on a secondary basis, along with network connectivity, to the Service Provider. The TCP is contracted in a revenue sharing agreement with the Service Provider. It is possible that TCPs provide, promote and deliver their own content and, in such cases, the TCP is also the Aggregating Service Provider and Content Provider, as illustrated in Figure 1 above.

#### *4.1.4 Service Provider (SP)*

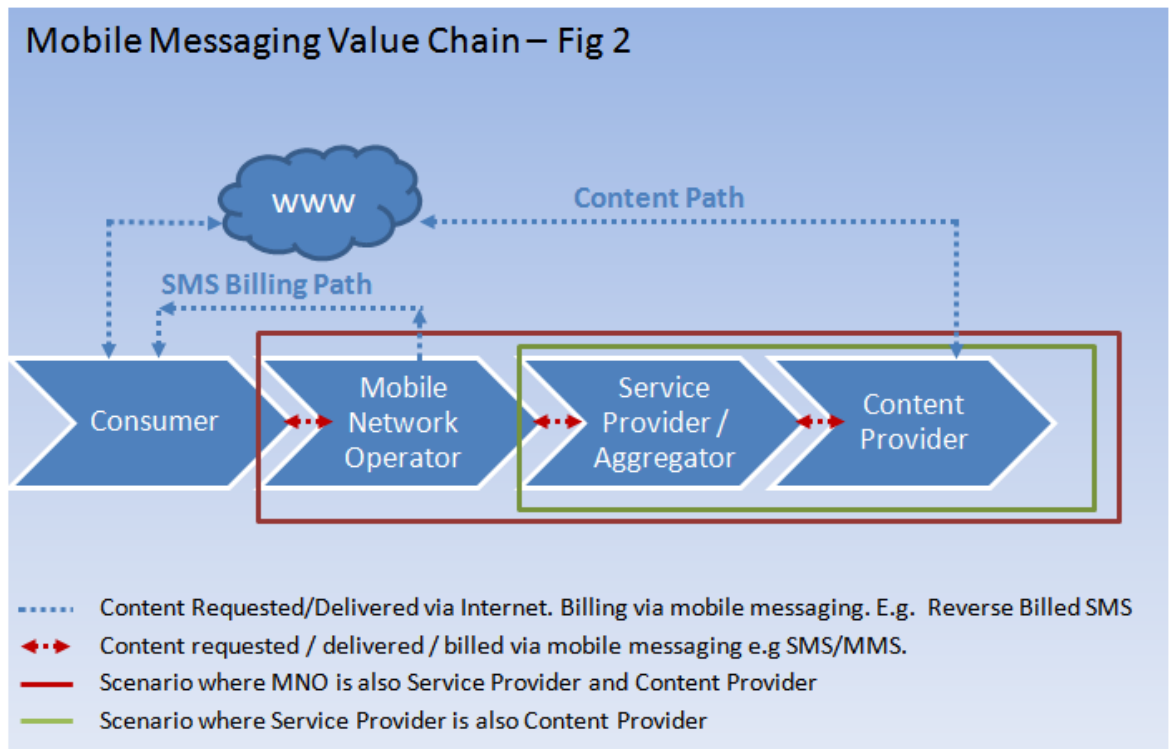
The SP has acquired a PRS number and network connectivity from the TCP. The number can be used to provide premium rate charging for the PRS. It is possible for SP’s to provide and promote their own content and, in such cases, the SP is also the Content Provider, as illustrated in Figure 1 above.

#### *4.1.5 Content Provider (CP)*

The CP provides and promotes PRS content as its core business. Its revenue derives exclusively from revenue sharing deals with SP’s. It is unusual for a CP to further sub-contract the provision of content to another CP, particularly in the fixed-line sector.



## 4.2 Mobile Messaging Value Chain PRS



### 4.2.1 The consumer

Typically, the consumer responds to PRS promotional material that he/she has seen, or received, by texting a key-word to a specified mobile short code, or by accessing a website (where mobile short codes are used for charging purposes). PRS content such as images, video clips, games or information can be downloaded from the website or delivered using mobile messaging functionality such as MMS<sup>10</sup> or SMS<sup>11</sup>. The charging event in both scenarios is normally by “Mobile Terminated”<sup>12</sup> (MT) SMS, commonly referred to as “Reverse-Billed” SMS.

### 4.2.2 The Mobile Network Operator (MNO)

In all cases, the MNO acts as both OCP and TCP relaying text messages, or calls, from the consumer to the Service Provider (SP). MNO’s are, therefore, the consumer’s contracted billing network, with whom the consumer has a direct retail relationship and are also party to a contractual revenue share arrangement with the

<sup>10</sup> MMS – Multi-Media Messaging Service

<sup>11</sup> SMS – Short Message Service

<sup>12</sup> Mobile Terminated Billing is a mechanism to bill whereby a consumer is charged for receiving a message at the retail level. The opposite of this is Mobile Originated (MO) Billing where the consumer is charged for sending a message. These terms should not be confused with wholesale mobile origination and mobile termination charges levied at inter-operator level, which is a fundamentally different concept.

SP. MNOs relay SMS messages, or calls, containing PRS content, or billing instructions, back to the consumer. The MNO makes a charge to the consumer's phone bill or deducts the amount from prepaid credit. A portion of the charge to the consumer is retained by the MNO, with the remainder passed on to the SP which, in turn, shares it with the Content Provider (CP).

#### 4.2.3 Service Provider (SP) or Aggregator

The Service Provider applies to ComReg for an allocation of premium rate messaging short codes (5XXXX). The SP then enters into an agreement with each individual MNO to provision the allocated short code on the MNO's network to enable consumers to purchase PRS and to deliver those services to the consumer's mobile handset.

In Ireland, SP's are commonly referred to as Aggregators. Aggregators do not have their own mobile network infrastructure. They interface with MNOs over a secure Internet<sup>13</sup> connection directly to the MNO's messaging platforms. An Aggregator can provide access by millions of mobile subscribers to its CP customer's content. Conversely, the CP can access customer mobile phone billing accounts by sending MT-billed (reversed-billed) content to the consumer. Some Aggregators in the mobile sector could provide their own premium rate content however, in practice, this is uncommon. They, instead, concentrate on collating or "aggregating" PRS content and providing the gateway to mobile customers for CPs.

#### 4.2.4 Content Provider (CP)

The CP provides and promotes the PRS on offer. It has become increasingly common for CPs to sub-contract to other CPs in respect of some, or all, of the PRS content.

### 4.3 Accountability for All Parties in the Value Chain

The diagrams above illustrate the complexity that can arise in identifying the parties ultimately responsible for ensuring compliance with any conditions applying to the provision and promotion of PRS, given the number of entities that may be involved in the promotion, operation, or delivery, of the service. These include broadcasters; publishers; advertising or marketing agencies and originating networks that provide carriage, however, do not receive revenue share<sup>14</sup>.

However, there are three parties in the PRS value chain that are generally considered responsible for the promotion, operation, or delivery, of the service;

- Telecommunications Networks (which receive revenue share)
- Service Providers/Aggregators

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<sup>13</sup> Typically, a secure IP socket connection to a defined port over high speed broadband

<sup>14</sup> The exception to this can be a Mobile Network where it is an OCP and also a TCP, as noted in section 4.2.2.

- Content (Information) Providers

The definition of a PRS provider in the Act includes each of these parties and, as required under the regulatory framework prescribed in the Act, ComReg will establish and implement a licensing framework where a database of licensed PRS providers will be maintained.

All instances of consumer harm associated with PRS, which mainly consist of a financial loss to the consumer, must be attributable to some party that was involved in the delivery of the PRS. ComReg is, therefore, required to have regulatory oversight of all parties in the PRS value chain to assign regulatory responsibility on the parties involved, appropriate to their roles.

Each licensed PRS provider will have conditions attached to its license, based on its respective roles in the value chain. The following factors will be considered in defining these responsibilities;

- What tasks must be undertaken to establish accountability?
- What party in the value chain is best placed to undertake each of these tasks?
- Where in the value chain will enforcement be most effective to ensure compliance? (For example, is it appropriate for more than one party in the value chain to share responsibility for a compliance failure?)
- Where in the value chain will enforcement be most efficient, particularly when it comes to a decision to issue refunds or to suspend a service and the payments derived from it?

A central principle, in terms of minimising the potential for consumer harm, lies at the point of contract between telecommunications networks and SP's, as this is the optimum point at which a PRS can be terminated and revenue share payments stopped or withheld. Network providers have a critically important role in ensuring compliance with the Regulations and the Code of Practice as they have the capacity to, as appropriate, cut-off access to numbers; disconnect mobile short codes and stop the payment of customer charges to providers of non-compliant services. The new regulatory framework will, therefore, contain core provisions in relation to network providers, placing responsibility on them to prevent, halt and remedy consumer harm. In certain circumstances the remedy of harm will involve refund payments and ComReg will address the potentially important role that OCPs may play in this regard.

## 5 Approach to Determining the Scope of PRS Regulation

In this Chapter, the changes that the Act introduces, in terms of what could be included within the scope of regulation is examined, and the analytical approach that ComReg will use to assist in determining the future scope of regulation is articulated. (*Note: A more comprehensive synopsis of the provisions of the Act is enclosed at Appendix A*)

### 5.1 New Definition for PRS

The Act defines a PRS as follows:

*“premium rate service” means a service having all of the following characteristics:*

- a. it consists in the provision of the contents of communications (other than a broadcasting service) through an electronic communications network or by using an electronic communications service, which may involve the use of a facility<sup>15</sup> made available to the users of the service,*
- b. there is a charge for the provision of the service which exceeds the cost attributable to communications carriage alone, and*
- c. the charge referred to in paragraph (b) is paid by the end user of the service to the provider of the electronic communications network or service through which the service was transmitted, by means of a billing or other agreed payment mechanism;”*

In analysing this definition, the following changes under the new legislation are noted;

- The “new” definition caters for a broader range of services than at present, where PRS numbers need not necessarily be used for delivery or billing purposes, therefore the absolute connection between PRS and PRS numbers is removed.
- The “old” definition explicitly requires that “revenue sharing” (i.e. *where part of the overall charge is passed on...*) is a characteristic of a PRS. The “new” definition broadens the scope of what could be defined as a PRS by simply stating that the charge for the service “*exceeds the cost attributable to communications carriage alone*”. This approach encompasses services delivered in a “vertically integrated” manner, where one organisation may be the Content Provider, the

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<sup>15</sup> “facility” includes a facility for (a) making a payment for goods or services, (b) entering a competition or claiming a prize, or (c) registering a vote or recording a preference or (d) enabling access to a premium rate service

communications carrier and/or the billing operator (e.g. games or ringtones provided by MNO's – referred to as “on-portal” offerings).

- The “new” definition is explicit that the charge is paid by the consumer of the service by means of a “*billing or other agreed mechanism*”. This provides for instances where the consumer has either a telephone (fixed or mobile) bill or prepay account, however it is also broad enough to include other communications-based payment mechanisms that may be developed in the future.

In summary, the “new” definition has been drafted to encompass not only existing types of PRS but also services that may be developed in the future as a result of developments in information and communications technologies and pattern changes in consumer behaviour, however it does not apply to services that use debit cards, credit cards, cash, cheque or other forms of payment, where the charges to the consumer are not paid to, and through, the telecommunications provider.

The definition, however, specifically excludes broadcast services, as defined in the Broadcasting Act, 2009, as these are regulated by the Broadcasting Authority of Ireland. The Act does, nevertheless, include PRS that may be promoted via a broadcast service, or carried on, and as part of, a radio or TV programme.

## 5.2 Analytical Approach to determining the Future Scope of PRS Regulation

Section 7 of the Act requires ComReg to make Regulations specifying the class, or type, of PRS which require to be licensed and the conditions to be attached to licenses. The primary purpose of this consultation is to determine **what** should be regulated. ComReg will publish Regulations and a draft Code of Practice at a later date that will address “**how**” the PRS market will be regulated.

It is important to understand that the “new” definition of a PRS encompasses services that were not previously considered PRS. While such services are now defined as PRS, it is ComReg’s responsibility to determine if they should be classified as “*specified PRS*”<sup>16</sup>, thereby requiring to be licensed and subject to regulation. Conversely, the Act also provides ComReg with the power to exempt from licensing (i.e. not to classify as a *specified PRS*) certain classes, or types, of PRS.

To assist in determining what classes or types of PRS should be a “specified PRS” and, consequently, be subject to regulation through licensing, ComReg intends to;

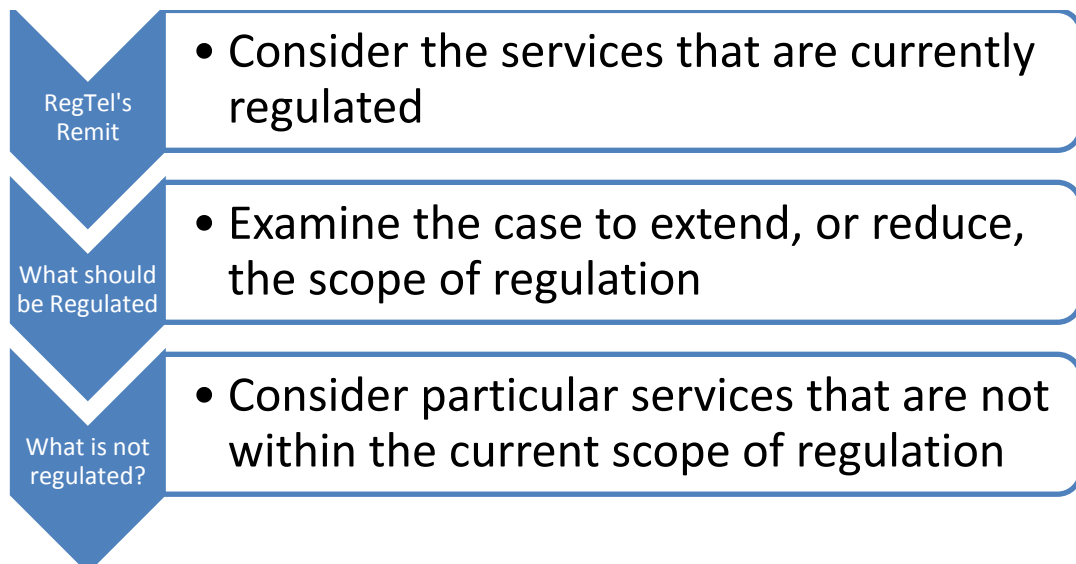
- set out the services that RegTel currently regulates through its Code of Practice

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<sup>16</sup> The Act defines a specified premium rate as follows - “specified premium rate service” means a premium rate service which is a premium rate service specified in regulations under *section 7* as being a premium rate service which is required to be licensed under *section 6*

- having taking into account the over-riding principle of consumer protection, examine if the current scope of regulation (i.e. the services that RegTel regulates), should;
  - a. be extended to those services not currently regulated, however which fall within the revised definition of a PRS, and/or
  - b. be narrowed to exclude certain services that are currently regulated, however are considered unlikely to cause consumer harm.
- consider the characteristics of services not currently regulated as PRS and determine if they should be included within the scope of regulation.

In summary, ComReg's approach to determining the scope of PRS regulation is illustrated below;



## 6 Services Currently Regulated

RegTel's Code of Practice<sup>17</sup> provides that PRS are those;

*“..services run on a Premium Rate Number where part of the overall charge payable by the consumer to the originating Network Operator is passed on by the operator of the terminating network, directly or indirectly, to the Service Provider or to an individual, organisation or company which participates in the provision of the Service”.*

The limit of RegTel's mandate, therefore, extends solely to services offered on a Premium Rate Number – if a service is not provided via a Premium Rate Number, it is not classified as PRS. ComReg's National Numbering Conventions complements RegTel's remit by designating certain number ranges by which PRS may be delivered and, at present, contain;

- ten numbering ranges (using the prefix 15XX) for “*per-minute*” charged PRS
- eight numbering ranges (also using the prefix 15XX) for “*per-call*” charged services, and
- five numbering ranges of short codes (using 5XXXX) for messaging services.

Each Premium Rate Number sits within its own permitted price-band<sup>18</sup>, where the maximum tariff to the caller may not exceed a stipulated limit, thereby enhancing pricing transparency and assist consumers in determining the cost of a PRS. The PRS price bands set out in the National Numbering Conventions are as follows,

**Fig 1 Price Bands for “per-minute” Charged PRS**

Access Code	Price-band (Retail cost per minute <sup>19</sup> ; VAT incl.)
1520	Not exceeding €0.30
1530	Not exceeding €0.50
1540	Not exceeding €0.70
1550	Not exceeding €1.20
1560	Not exceeding €1.80
1570	Not exceeding €2.40
1580	Not exceeding €2.95
1590	Not exceeding €3.50
1598 (Adult services; General)	Variable price up to €3.50
1598 (Adult services; Sexual nature)	Variable price up to €3.50

<sup>17</sup> <http://www.regtel.ie/cm135252-2-cop2008final.pdf>

<sup>18</sup> Specific industry-agreed price-points that do not exceed these price-band limits are typically used to implement actual PRS services.

<sup>19</sup> Actual billing may be done on a different basis (e.g. per-second billing).

**Fig 2 Price Bands for “per-call” Charged PRS**

Access Code	Price-band (Retail cost per call; VAT incl.)
1512	Not exceeding €0.50
1513	Not exceeding €0.70
1514	Not exceeding €0.90
1515	Not exceeding €1.20
1516	Not exceeding €1.80
1517	Not exceeding €2.50
1518	Not exceeding €3.50

**Fig 3 Price Bands for Premium Messaging (ranges 52xxx, 54xxx, 55xxx, 56xxx reserved for future expansion)**

Range	Category	Price-band (Retail cost per call; VAT incl.)
50 000 – 50 998	Free	Free
51 000 – 51 998	Standard Rate	Not exceeding €0.16
53 000 – 53 998	Basic Premium	Not exceeding €0.80
57 000 – 57 998	High Premium	€0.80 or above
58 000 – 58 998	Adult – General	Variable Price
59 000 – 59 998	Adult – Sexual Nature	Variable Price

With its scope of regulation determined by the designation of Premium Rate numbers in the National Numbering Conventions, RegTel sets out a series of “rules” in its Code of Practice, which includes general provisions for all PRS and also specific provisions, which apply to various categories of service. Providers of PRS are required to adhere to the provisions in the Code of Practice. A summary of the rules are as follows;

- (1) General provisions pertaining to all PRS, including provisions for legality, decency and honesty, pricing and promotion
- (2) Specific provisions relating to the following specific categories of PRS;
  - a. Children’s services – those aimed at persons under 18 years of age
  - b. Competition services – such as lotteries, competitions, scratch cards, games or promotions with prizes
  - c. Advice and Information Services
  - d. Services of a Sexual Nature – offering advice or material
  - e. Virtual Chat Services – enable two or more consumers to exchange separate recorded messages while connected to the service
  - f. Contact and Dating Service – enable previously unacquainted people to make initial contact and arrange to meet in person.



- g. Live Services – involving two-way or multi-way live voice conversation
- h. Mobile Service, including Mobile Subscription Services – services accessed via a mobile phone, including services where there is a recurring charge.

It is to be noted that, under the Act, not all services may require licensing due to their nature and relatively low cost. It is further noted that, under the current definition of PRS, RegTel is responsible for regulating services that may not result in any cost to the consumer (for example, direct marketing or promotional messages, which are delivered to a consumer's mobile handset via mobile shortcode in the range 50000 – 50998).

## 7 What Services should be regulated?

In this Chapter, ComReg considers the range of specific service categories that could be included within the scope of regulation, having due consideration for such factors as legal definitions, the nature and cost of services and, ultimately, the potential for consumer harm.

### 7.1 PRS and “Specified PRS”

Chapter 5 sets out the new definition of a PRS, including provisions that provides ComReg with the power and responsibility to distinguish between those services which fall within this broad definition of PRS and those services that should be defined as “*Specified PRS*”, thereby required to be licensed. ComReg’s intention is to focus the regulatory arrangements on those areas which hold a higher potential for consumer harm and, conversely, to take a proportionate approach to services that pose less risk.

It is important to note that certain services that ComReg may, initially, decide not to include as *Specified PRS* are still premium rate services, within the new legal definition of PRS. As such, ComReg may, in light of subsequent events, conduct a review of certain service categories and decide that they should also be included as *Specified PRS*. The legislative framework also permits the opposite approach, where ComReg may decide to remove certain service categories from the *Specified PRS* arrangements, based on an assessment of risk and a record of strong compliance.

While compliance with the PRS Code of Practice is mandatory for “*Specified PRS*”, ComReg would expect that all SPs, whether the services they promote and operate are “*Specified PRS*” or not, would comply with the general terms of ComReg’s Code of Practice on a voluntary basis. Such observance will assist in ensuring there is a framework of standards to protect consumers and will minimise ComReg’s requirement to review and revise any exemptions from licensing.

### 7.2 The “Nature” and Cost of Services

Accepting that some form of regulation is required to protect consumers and prevent consumer harm, the two main characteristics of a PRS that will determine if it should be regulated are,

- Type or nature of service, and
- Cost of the service

#### 7.2.1 The “Nature” of Services

The type, or nature, of a service is linked to its very essence and may raise issues relating to its appropriateness for general distribution. For example, it would not be appropriate for a minor (a person under 18 years of age) to have unencumbered access to age-restricted services, such as gambling or adult sexual content. In addition to services that are either inappropriate for children or those that are designed for, and marketed, at children, there are other, more general risks that arise

with PRS. The characteristics and associated risks of PRS are described in the IARN Handbook and included in Chapter 3, and may be summarised as services which are;

- Sold-at-a-distance (i.e. there is no direct contact between the seller and the buyer)
- generally for instant use/consumption rather than anything of retained value
- often purchased only through PRS payment and with no “high-street” source of supply or ability for price comparison, and
- often used to address some form of social or psychological need, for example for companionship or excitement.

With such characteristics, there is a need for honesty and fairness in the promotion and operation of services as well as a requirement to;

- provide for, and have respect for, data protection and privacy, and
- ensure services do not offend or fail to comply with laws that relate specifically to them.

Hence, the requirement for regulation of some types of service, irrespective of cost, is apparent because of the obligations it places on the providers to prevent consumer harm.

### 7.2.2 *The Cost of Services*

Cost is the other feature of PRS that can cause significant consumer harm and the requirement for regulation is clear to deliver standards in terms of price transparency, fairness and legality. The issue of cost is also inextricably linked to customer service, including an effective redress/refunds mechanism, which is vital for effective consumer protection, in cases where promotional or delivery standards have not been met.

ComReg must establish the class, or type, of services to be regulated and examine whether the current regulatory provisions may be relaxed for certain services, taking account of the fundamental factors of the nature (type) of the service and its cost.

## **7.3 Determining “Specified PRS” by the Price of the Service**

Premium rate billing (also referred to as phone-payment, as the charge for the services is to the consumer’s phone bill) which is used for charging consumers who use PRS has proven to be a very versatile payment method for a wide range of goods and services. Due to the disparate use of phone payment, ComReg considers that there is a need to establish a form of “universal” criteria that will classify certain PRS as “*Specified PRS*” and, conversely, will exempt other services from licensing as they do not satisfy the criteria.

ComReg considers that “price” provides a base criterion that applies to all PRS and it is, therefore, appropriate to use pricing as the starting point to assist in determining what should, and should not, be categorised as “*Specified PRS*”.

It is important to understand that the new definition of a PRS includes such entities as;

- customer care centres, and
- technical support helplines

provided that the cost to the consumer “*exceeds the cost of attributable to the communications carriage alone*”. The result is that many relatively low-cost information-type helplines are classified as PRS in a similar manner to high-tariff entertainment-type services such as horoscopes, tarot or betting tipster lines. ComReg considers it reasonable to assume that lower-cost customer, or technical support, helplines do not hold the same potential for consumer harm as the higher-cost entertainment services and, therefore, considers that if the issue of cost to consumers is restricted (in the absence of any other obvious potential to cause harm), it is possible to exempt some services from licensing.

This approach of excluding as *Specified PRS* certain services below a specified monetary value is consistent with the principle of proportionate regulation, as the regulatory focus will be on services with greater potential for consumer harm.

To assist in determining an appropriate price (cost) below which some services would not be classified as *Specified PRS*, ComReg has collated the following information<sup>20</sup>;

25c	the per minute price of a local or national call from a public phone
50c	the per minute price of a call to Irish mobiles from a public phone
18c - 35c	the per-minute price range of calls to Irish mobiles and landlines for mobile bill-pay customers (outside bundle-inclusive minutes)
18c – 45c	the per-minute price range of calls to Irish mobiles and landlines for mobile pre-pay customers
6c – 13c	The per text price range for SMS to Irish Mobile Networks for pay monthly customers (outside bundle-inclusive texts)
11c – 13c	The price per text messages (SMS) to Irish Mobile Networks

<sup>20</sup> Information assembled from published price plans – the actual cost within the range is dependent on the consumer’s individual price plan.

for pre-pay customers

16.5c – 65c	The price of a long text or MMS (picture/video message) depending on the data size to Irish Mobile Networks
3.3 c – 7.2c	The average price per minute for a 3 minute national call for an eircom customer (day & time dependent) – outside bundle-inclusive minutes
3.3c – 10.6c	The average price per minute for a 3 minute local call for an eircom customer (day & time dependent) – outside bundle-inclusive minutes
12c – 31c	The average price per minute for a 3 minute call to a mobile network for an eircom customer (day, time and network dependent) – outside bundle-inclusive minutes
Up to 16c	The cost of a “standard-rate” SMS message sent to a shortcode (51XXX) and typically used by users to register interests in marketing campaigns, enter competitions or register views an opinions.

The figures above are based on published price plans in March 2010. The variation in prices is dependent on;

- the various discounts available on the wide range of price plans offered by the network operators
- the time the call is made (e.g. day or night, weekday or weekend)
- whether the call (or text, where applicable) is made from a mobile network to another mobile network or to a fixed network and vice versa.

As set out above, ComReg considers it appropriate to review the base price at which services that are encompassed by the PRS definition should be formally subject to the regulatory framework as “*Specified PRS*”. It will, therefore, be possible to use this base price as a point of reference when considering whether to regulate individual service categories, having due regard, also, for their characteristics. This evaluation of both price and characteristics is considered further in Chapter 7.

In terms of language, the word “premium” should, logically, be reflected in the price level at which mandatory regulation will apply. The definition of PRS, set out in the Act, provides that a defining criterion is that “*there is a charge for the provision of the service which exceeds the cost attributable to communications carriage alone*”.

Before concluding what might be considered “premium-rate”, ComReg considers it practical and reasonable to consider how charges for traditional and new forms of communication have changed. We note that basic voice calls from pre-pay mobiles presently cost 18 cents, or more, and basic voice calls from a landline to a mobile

number presently cost up to 31 cents/minute. A person-to-person text costs around 13 cents and the MMS costs are considerably higher.

These person-to-person calls and messaging are outside the definition of PRS however, they seem to demonstrate that the “routine” and accepted cost of these forms of communication is generally in the 10-20 cent range and, at times, considerably higher. This might suggest that a “premium” pricing is commonly assumed to refer to prices at, or above, these rates.

In attempting to determine a “base price” threshold to define when a PRS becomes a “*Specified PRS*”, there is a need to understand that there are low-priced services that meet the PRS definition, but which do not carry risks or sensitivities or age-control issues. Standard mobile network text charges services fall into this category, for example, and include such services as registering for offers in the print or online media; enter low priced “one-off-cost” competitions; texting opinions to newspapers, magazines, TV or radio shows, or texting to select songs or influence radio playlists. In many of these examples, there are equivalent low-rate fixed-line numbers for those who wish to make a voice call, rather than send a text.

These services have, to date, been the subject of regulation by RegTel, however, there is no evidence of past misconduct, consumer disquiet or a high degree of consumer vulnerability. Generally, the services in question, priced at approximately 15 cents, are intended to enhance, or promote, some more substantive product; for example, a newspaper quiz to boost sales or a radio competition to raise listenership or a competition to promote movies, books or in-store products, where the main purchase is not going to be made by PRS. In such cases, there appear to be adequate existing customer service arrangements and privacy safeguards.

In setting a base price for “*Specified PRS*”, ComReg wishes to be proportionate in its actions and to reflect what the public might reasonably assume to be meant by a “premium” payment. Accordingly, ComReg considers that services below **20 cents**<sup>21</sup> do not carry the potential for consumer harm in terms of price and, therefore, takes the preliminary view that the threshold for “*Specified PRS*” is 20 cents. PRS below this threshold will not, generally, be regarded as “*Specified PRS*”, unless the service has characteristics that carry some other potential for consumer harm.

The proposed 20 cents price threshold is a major, but not the only, factor to be considered when determining what services should be defined as “*Specified PRS*”. In Section 7.4 and 7.5, ComReg considers whether there are identifiable categories of service which have characteristics that would warrant consideration for their inclusion as “*Specified PRS*”, **irrespective of price**, based on a need to provide consumer protection.

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<sup>21</sup> 20 cent per minute/per call/per text (inclusive of VAT). For voice calls, the 20c threshold is relevant to call charges incurred when calling from a standard *eircom* landline.

**Q. 1. Do you agree with ComReg’s preliminary view that twenty cents (€0.20) retail cost per minute/per call/per text is a reasonable price threshold below which certain services may be exempted from licensing?**

#### **7.4 Determining “Specified PRS” by Class or Type of Service**

To assist in formulating a policy on the class or type of services that are required to be licensed, ComReg examines a number of categories of services below and makes recommendations where it considers that the nature of the services requires that it should be regulated. In conclusion, ComReg considers if it may be possible to exempt certain services from licensing where;

- 1 the cost to the consumer is below the suggested “price-point” proposed in Section 7.3, and
- 2 the potential for other forms of consumer harm is minimal.

##### *7.4.1 Live Services*

Live services are those which involve live speech conversations between two, or more, parties. Live services include services such as chatlines, services of a sexual nature and entertainment services, such as tarot or horoscope lines. Live services also include Advice and Information Services, which can vary in range from weather information to betting tipster services to technical support and customer care centres.

Live entertainment services such as tarot, horoscopes and chatline services are, typically, expensive on a per minute basis and/or because of uncertain and potentially lengthy nature of calls. It is ComReg’s view that there is a requirement for regulation of these services to prevent;

- consumers incurring excessively high charges
- exploitation of bill-payers who may be unaware that another person is incurring charges to their account, and
- the services being accessed by children with, or without, parental permission.

Certain advice or information services may already be the subject of legal, or regulatory, restrictions depending on the nature of the service. In general, RegTel requires that all advice and information services should be conveyed in a responsible manner and, where the advice provided is of a professional nature (legal, financial, medical etc), the identity, status and qualifications of the individual or organisation providing the advice should be clearly stated in any promotional material and at the commencement of the service.

While, in general, the requirement to regulate Live Services may not appear obvious, it is, nevertheless, considered reasonable that the rules pertaining to a Live Adult service of a Sexual Nature should not be the same as those that apply to those

services where the sole apparent possibility of consumer harm is from the cost of the call.

**Q. 2. Do you agree with ComReg's intention to regulate live services?**

*(Note: Refer also to Section 7.5 below, where ComReg examines the potential to exempt certain Live Services that cost less than the proposed €0.20 price threshold).*

*7.4.2 Sexual Entertainment Services*

It is considered unacceptable that services of a sexually suggestive nature, a sexually explicit nature or services offering explicit sexual advice should be accessible by all users of telecommunications services. In addition to issues of access by children and the desire to reflect societal concerns, there is a need to protect those who choose to use such services from deception and the risk of high and unmanageable bills. Irrespective of personal sensitivities and tolerances, it is ComReg's view that some restrictions surrounding access to services of a sexual nature should exist. (The issue of content classification is addressed in Chapter 11).

**Q. 3. Do you agree with ComReg's intention to regulate PRS services of a sexual nature, irrespective of cost?**

*7.4.3 Competition Services*

Competition services typically fall into 6 basic categories, as currently defined in RegTel's Code of Practice:

- Lotteries
- Competitions
- Scratch cards or "Letter" type promotions
- Other games or promotions with prizes
- Entry mechanisms into draws, and
- Information about prizes and how to claim them, including details of the claim line number.

Competition services may be the subject of other legal or regulatory restrictions (e.g. Gaming and Lotteries Act, 1956, as amended) and approval from the appropriate authorities may be required before such services are promoted or launched. These competition services are a long-established method of generating revenues, however the data captured (names, addresses and mobile telephone numbers) may be of additional value when it comes to audience profiling. In this respect, providers of such services are required to adhere to the provisions of relevant data protection legislation.



Competition services are an important category for the PRS industry in Ireland, with services accounting for 14.65% of revenue. Competition services, typically, use the higher-rate PRS numbers and short codes and can, therefore, result in significant charges. There is evidence that by the time some consumers finishes a typical call to a competition line, they may have won nothing at all, or the value of the prize or award could be minimal relative to the cost of the call, made or texts sent.

This is a service category where the issue of fairness is critical. Users (“*players*”) of these services need to understand the cost of participation, the nature of the competition, the key terms and conditions and, by extension, their chances of winning. They also need to be confident that the service is conducted honestly; that prizes and awards exist and that draws, decisions and allocation of prizes are carried out fairly, with all entrants having an equal chance.

#### 7.4.3.1 Subscription or “one-off” cost

Some competition services are conducted on a subscription model where there is a recurring charge for receiving a competition question sent to a mobile handset. If the subscription billing model is to be permitted for Competition Services (see Chapter 9), there is a compelling need for clarity over the recurring cost of participation, the manner in which the service operates and how consumers may exit the service when they so wish.

However, some promotions have a once-off low-cost entry to competitions with prizes as part of a marketing campaign (e.g. where competitions are promoted on the reverse of soft drinks wrapping) and consumers are encouraged to text a reply to free or low-rate shortcode. The chance of consumer harm, in terms of financial loss, is very low in these circumstances. The case for regulating such services as “*Specified PRS*”, irrespective of the price point, lies in the risk of SP's deceiving entrants over the availability of prizes, or being dishonest in the selection of winners.

#### 7.4.3.2 TV Quiz Programmes

The relatively recent emergence in Ireland of TV-Quiz programming, where the entire programme is devoted to promoting competitions rather than a competition being run as a minor element of the programme, has raised issues of gambling, addiction and bad debt.

There is evidence emerging that suggests that some consumers are making multiple calls (entries) to TV Quiz programmes in an attempt to win prizes, thereby, in effect, using their telephone account as a means of obtaining credit. This evidence also suggests that networks may be experiencing high levels of bad debt where these consumers are unable to settle their accounts as a result of running up high bills.

The case for regulation in such circumstances is compelling.

**Q. 4. Do you agree with ComReg's intention to regulate competition services?**

*(Note: Refer also to Section 7.5 below, where ComReg examines the potential to exempt certain competition services that cost less than the proposed €0.20 price threshold).*

**7.4.4 Children's Services**

Services that are aimed at, or would reasonably be expected to be attractive to, children (that is, those under 18 years of age) are a separate category of service that ComReg considers should be regulated, irrespective of the cost. ComReg considers that the promotional material and spend-limits that apply to services aimed at children may have to be different to those services aimed at a wider audience, as;

- Children may be unwilling to study, or unable to understand, complicated terms and conditions
- The possibility that children may not understand the importance of protecting their personal data
- The possibility that children may access services without a bill-payers permission.

ComReg, therefore, considers that Children's Services, irrespective of price, should be subject to regulation.

**Q. 5. Do you agree with ComReg's intention to regulate children's services, irrespective of cost?**

**7.4.5 Fundraising and Charitable Donations**

Making a contribution to charitable organisations through a telephone account is a quick and convenient payment mechanism. In many cases, consumers are requested to call a premium rate number, where the full cost, or a portion of the cost, of the call is donated to the charitable organisation. Alternatively, the consumer may be asked to send a text to a premium rate shortcode and, similarly, the cost, or a portion of the cost, of the text is added to the consumer's telephone bill, or deducted from the consumers call credit, and donated to a charitable organisation.

Public trust in charitable organisations and in phone-payment as a means of making charitable donations must be protected. ComReg considers that, unless regulated effectively, it could be possible for unscrupulous operators to receive donations and not transfer the stated amounts to the charitable organisation used to elicit the phone payment or to misrepresent the charity they claim to serve.

**Q. 6. Do you agree with ComReg’s intention to regulate fundraising and charitable donations made through a PRS?**

*(Note: Refer also to Section 7.5 below, where ComReg examines the potential to exempt certain fundraising and charitable donations that cost less than the proposed €0.20 price threshold).*

**7.4.6 Internet Dialler Software**

Internet dialler software is software that automatically replaces the telephone number used by a consumer’s computer that connects it to the internet, with a different dial-up telephone number, typically at a higher cost to the consumer.

Internet dialler software was rendered obsolete by the advent of “always-on” broadband. Nevertheless, the possibility still exists that some consumers, who receive their internet connection via a dial-up telephone number, may be susceptible to internet dialler scams.

There is a particular risk with any form of “dialler hijacking” as the dialler software may remove any “time-cap” on the duration of Internet sessions. Even at low call tariffs, there is a major risk of consumer loss if a premium number is accessed for long periods of time, without the knowledge of the bill-payer. At its most extreme, it is difficult to describe internet diallers as a “service” and such actions may be construed as fraud, where a criminal sanction is the appropriate response. Such a response is, however, time-consuming and the outcome uncertain. There is, therefore, a case for retaining an explicit duty to regulate the activity as a PRS to minimise both the risk of financial loss to consumers and the damage to trust in phone-payment services.

This ability to deal with “malware” may not be limited in future to landline technology. With the development and proliferation of smart-phones, there is comment in the technology sector, and among consumers, of a similar risk of software hi-jacking a mobile phone and sending costly messages, or otherwise causing consumer loss.

**Q. 7. Do you agree with ComReg’s intention to regulate internet dialler software, irrespective of unit cost?**

**7.4.7 Virtual Chat, Contact and Dating Services**

Virtual chat is a service that enables two, or more, consumers to exchange separate recorded messages while connected to the service. These services do not involve live telephone conversations.

Contact and dating services enable people, who were previously unacquainted, to make initial contact and arrange to meet in person, or to have contact outside the service, should they so wish.

Due to the possibility of children accessing these services, and the requirement for users of these services to take sensible precautions to protect their personal data, there would appear to be a requirement for regulation.

Contact services also raise issues over the privacy of personal data and the possibility – in some cases, the intent – of people meeting in person as a result of phone and text contact. There can be instances of misrepresentation, for example by employees of a SP masquerading as members of the public, to encourage expensive calls and texting.

Many contact services operate in print and online media free of charge or are paid by credit card or other means. These services fall outside the definition of PRS and cannot be regulated by ComReg. However, considering the potential harm that arises when the issues of cost, contact and content are combined through contact and dating services, ComReg believes that those services that use phone-payment should be regulated.

**Q. 8. Do you agree with ComReg's intention to regulate virtual chat, contact and dating services, irrespective of cost?**

#### *7.4.8 Subscription Services*

Where there is a recurring charge to consumers, ComReg considers that regulation is required. The subscription payment model is widely used for mobile services – services access by and/or delivered to a consumer's mobile handset. However, these services can often be open-ended commitments, similar to a direct debit from a bank account. ComReg specifically addresses issues pertaining to subscription services in Chapter 9.

#### *7.4.9 Pay-for-Product Services*

Pay-for-product services are those in which the benefit to the user is either the delivery during, or consequent to, the use of the service of a product or service. (not itself being premium rate content) paid for wholly, or in part, by the user through their telephone bill or prepay account. These do not include products received as part of a subscription service. Examples of these services include travel ticket purchases, parking payments, etc.

These services are typically charged via reverse-billed SMS. Such services are, typically, used for low-value transactions and may be beneficial to users without access to a credit card. In the UK, PhonepayPlus has included conditions for pay-for-product services in its Code of Practice. These conditions specify a maximum transaction charge of £30 and that the promotional material must contain any

additional extra charges that may be incurred (e.g. delivery charges, post and packaging, etc.).

ComReg considers that it is prudent that some conditions are required to protect consumers who make purchases and pay through their phone accounts. In addition to universal issues over the clarity of pricing and honesty in how goods are described and marketed, there are issues around the manner of redress consumers should have access to if the product is faulty, or does not match the description used to promote it or, perhaps, is not delivered.

It is possible that consumers seeking redress when pay-for-product transactions go wrong may be better served by more general consumer rights legislation than PRS legislation affords. ComReg may not be the sole source of redress for consumers and consumers may be better served through other means; for example, where the consumer returns the product, bought through a phone-payment, directly to the retailer and receives a replacement by return.

ComReg, nevertheless, considers that experience from other jurisdictions has shown that many products sold through phone-payment are purchased through third parties, have no high street retailer to which the product may be returned and it is, therefore, a prudent precaution to establish a regulatory framework for these services.

**Q. 9. Do you agree with ComReg's intention to regulate pay-for-product services?**

*(Note: Refer also to Section 7.5 below, where ComReg examines the potential to exempt certain pay-for-product services that cost less than the proposed €0.20 price threshold).*

**7.4.10 MNO "On-Portal" Services**

At the end of the 1990's, with the advent of WAP<sup>22</sup>, many operators embraced a strategy to pursue an all-encompassing role in the content value chain including, in some cases, content creation as well as aggregation, management and delivery<sup>23</sup>. The showcase for these services was an operator-branded, "walled garden" portal, focusing on the operator's own (original or re-branded) offerings and/or branded third party content such as Sky TV or the web-content services of publishers such as Loaded.

MNO's "on-portal" services are not currently regulated by RegTel because they are not included within the definition of a PRS (i.e. they are not services run on a premium rate number). These "on-portal" services are, however, now included

<sup>22</sup> WAP – Wireless Application Protocol (WAP) is an open, international standard for application-layer network communications in a wireless-communication environment. In plain terms, WAP is the technology that brings internet sites to mobile phones.

<sup>23</sup> Ovum Report: The future of the mobile internet – Service challenges and operator positioning – Eden Zoller, Michele Mackenzie - August 2008

within the definition of PRS set out in the Act and, additionally, MNO's are defined as SP's in the PRS Act. It must be decided, therefore, whether there is a persuasive case for exempting on-portal services from the "*Specified PRS*" category.

The MNO charges customers for the services provided and organises premium content revenue settlement with its content partners. From a cost and content perspective there is little, if anything, to differentiate between one-off mobile content purchases from a MNO and from a regulated PRS provider. It is, therefore, reasonable to consider what differentiates MNOs' ringtones, wallpapers and games from those supplied by what are currently defined as SP's, considering that the costs for the services are similar and the cost for both are charged through the user's telephone bill.

#### 7.4.10.1 The UK Experience

In its PRS scope review,<sup>24</sup> Ofcom attempted to determine those characteristics of a PRS that may cause consumer harm and it examined some particular services in detail, including accessing content through a MNO's portal. Ofcom noted that certain on-portal services appear to generate fewer complaints than similar forms of PRS delivered via SMS or MMS (or when there were complaints, they appear to be dealt with by the MNOs in a satisfactory manner).

In its submission<sup>25</sup> to Ofcom's scope review, the Mobile Broadband Group (MBG) (representing all MNO's in the UK and Virgin Media) suggested that;

- on-portal services present a low risk
- should be regulated under general consumer law, like other e-commerce mechanisms, and
- other services, such as 3rd party reverse-billed subscription services and live chat services, continue to present a risk that would justify PRS regulation.

The primary purpose of PRS regulation is to prevent consumer harm and provide effective consumer redress where harm has been encountered. ComReg, therefore, requests respondents to consider the following factors;

- Access to a redress mechanism – Do you believe the consumer would be able to receive a replacement, or a refund, if a game or ringtone ordered from an MNO's portal fails to arrive or play correctly?
- Smartphone applications - smartphone "Apps" are currently paid for by credit card and, therefore, are outside the scope of PRS. However, the possibility exists that mobile Apps may, in the future, be billed to a phone account in a similar fashion to other on-portal services. Do you believe that the consumer will have access to redress if the App is not received or fails to operate?

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<sup>24</sup> [http://www.ofcom.org.uk/consult/condocs/prs\\_scope/prs\\_statement/prs.pdf](http://www.ofcom.org.uk/consult/condocs/prs_scope/prs_statement/prs.pdf)

<sup>25</sup> [http://www.ofcom.org.uk/consult/condocs/prs\\_scope/responses/mbg/pt1.pdf](http://www.ofcom.org.uk/consult/condocs/prs_scope/responses/mbg/pt1.pdf)

- Price transparency – consumers with pre-pay phone accounts receive no itemised confirmation of their spending history and, therefore, similar to any regulated PRS purchase, it may be difficult, in hindsight, to identify the exact cost of an on-portal service. Should MNO be under the same mandatory requirements of the Code of Practice as third party suppliers in relation to clear pricing in marketing and related material – or perhaps can this duty be left on a voluntary basis?
- Fair trading – the Code of Practice is mandatory for all “*Specified PRS*”. Is there any basis for exempting network services from the provisions in the Code with respect to;
  - privacy
  - not to operate services or marketing that could cause serious offence
  - respecting the need for particular conduct in relation to services targeting children
  - being bound to the rules with respect to offering adult (sexual) content, and
  - to market services clearly and honestly and to ensure services are delivered as required.
- Network/Consumer relationship – the consumer has a direct contractual relationship with the MNO (whether pre-pay or post-pay) from which it obtains an “on-portal” service. Is it reasonable to expect an MNO to be responsive to the level of after-sales care it provides to its customers?
- Commercial Bias – If MNO’s “on-portal” offerings were to continue to be outside the scope of regulation, would this provide them with a commercial advantage compared to providers of similar (if not identical) goods and services that are regulated?

**Q. 10. Having due regard for the issues raised above, do you consider ComReg should regulate MNO’s “on-portal” services as “*Specified PRS*”?**

*(Note: Refer also to Section 7.5 below, where ComReg examines the potential to exempt certain on-portal services that cost less than the proposed €0.20 price threshold).*

## **7.5 What May be Exempted from Licensing?**

ComReg wishes to reduce, where appropriate, the administrative burden on industry, by exempting from regulation those services where there is no possibility of consumer harm. ComReg also considers it appropriate that it should not unnecessarily devote its resources to administrative tasks, which may only serve to divert from the primary focus of preventing consumer harm.

As outlined earlier in this Chapter, the two fundamental factors that determine if a service should be regulated are the “*nature*” of the service and its “*price*”. ComReg would, therefore, welcome submissions on whether it could be possible to exempt from regulation any class or type of service, **other than those distinct services that ComReg has indicated its intention to regulate**. Specifically, ComReg has stated that it considers that, once these services fall within the definition of PRS, the following classes or types of services should be regulated as *specified* PRS, irrespective of their price;

- Sexual entertainment services
- Children’s services
- Live entertainment services
- Internet dialler software
- Virtual chat, contact and dating services
- Subscription services – services with a recurring cost

ComReg, however, considers that it may be possible to exempt from licensing the following class or types of services **provided** the cost to the consumer is relatively low (for example, the 20 cent (€0.20) per minute or per call or per SMS/MMS price-threshold suggested in Section 7.3 above);

- Competition services
- Fundraising and charitable donations
- Pay-for-product services
- Live information services
- MNO’s “on-portal” services

**Q. 11. Do you agree with ComReg’s proposal that certain categories of services could be exempted from regulation, provided the cost is below the proposed 20 cent (€0.20) price threshold?**



## 8 Directory Enquiry (DQ) Services as “Specified PRS”?

In this Chapter, ComReg examines the specific case of Directory Enquiry (DQ) services, which are included in the definition of PRS contained in the Act, however are not currently regulated by RegTel as they are not provided via a Premium Rate Number, as set out in the National Numbering Conventions.

### 8.1 Background

ComReg’s predecessor, the Office of the Director of Telecommunications Regulation (ODTR), introduced the current directory information (DQ) regime in 1998, with the opening of the numbering range 118XX<sup>26</sup>, in accordance with ODTR Decision Notice D2/98. As part of an overall restructuring of the Irish telephone numbering scheme, this action coincided with a CEPT recommendation on harmonisation of European DQ services around the short code “118” and also with general liberalisation of the Irish telecommunications market. An initial allocation of 118XX codes, following a competitive selection process, represented the first stage of introduction of the new 118XX DQ system.

The preliminary conditions of allocation of 118XX codes were restricted to providing access to directory information services (DQ services), although it was recognised that “*call-completion*<sup>27</sup>” could be included. When the first National Numbering Conventions<sup>28</sup> were published in February 2000, this regulatory position was recorded in a convention that stated “*118XX directory information access codes shall be used only for the provision of directory enquiry services and relevant value added services.*” The word “*relevant*” was, at that time, intended by ODTR (and subsequently by ComReg) to mean services of a telecommunications nature and closely related to the DQ number provision service and ComReg considers that it was generally perceived to be so.

The clear and unambiguous message to consumers that 118XX is a service that provides telephone number information, has undoubtedly fuelled the growth in DQ services in recent times. This fact has been acknowledged by respondents to previous consultations on this matter. While ComReg previously opposed any dilution of the message, it understands why DQ SP’s, in the current economic climate, would wish to maximise their return on their branding investments. At the same time, this must not be to the detriment of consumers, whose interests remain paramount.

In response to representations in more recent times from a major DQ service provider (DQ SP), ComReg rejected a much wider interpretation of the word “relevant” in the above context, which would have resulted in a correspondingly broad range of generic information services being deemed “relevant”. ComReg did, however, commit to consult on the matter. This consultation process, which formed a

<sup>26</sup> ODTR Document 98/53

<sup>27</sup> Call completion – a service of convenience where the DQ provider connects the caller to the requested number at an additional charge

<sup>28</sup> ComReg publication reference number 08/02

[http://www.comreg.ie/publications/national\\_numbering\\_conventions\\_v6\\_0.583.102910.p.html](http://www.comreg.ie/publications/national_numbering_conventions_v6_0.583.102910.p.html)

significant part of the last review<sup>29</sup> of the National Numbering Conventions, concluded that a change of approach was not advisable.

More recently, ComReg has received similar representations from another major DQ SP. While ComReg considers that the original arguments against a change of policy remain, there are now counter arguments as follows;

- Primary legislation is now in place transferring to ComReg powers to regulate premium rate content services, which may include those provided by DQ SP's. Therefore, a strong basis now exists for ensuring an appropriate level of consumer protection is provided, should a broader range of services be permitted on 118XX numbers, and
- DQ SP's have faced deteriorating revenue of late, mainly due to internet-based competition, a decrease in DQ call volumes generally and the current challenging economic conditions. DQ SP's, therefore, wish to further leverage their DQ brands by providing a broader range of services.

On balance, ComReg has decided to open this issue for further public consultation.

## **8.2 Regulate DQ as “specified PRS” or maintain the status quo?**

The new definition of a PRS includes Directory Enquiry (DQ) Services provided on 118XX directory enquiry access codes, based on the following characteristics of these services;

- DQ Services provide content
- consumers incur a premium charge for receiving that content, and
- the cost to the consumer is charged via a telephone bill or prepaid account.

Section 7(1)(a) of the Act states that ComReg shall make regulations specifying “*the class or type of premium rate services which require to be licensed*”. Since DQ meet the criteria for being considered as PRS, and currently exceed the 20 cent price threshold proposed by ComReg in Paragraph 7.3 above, it is worth considering if there are any other factors that should be considered when assessing if DQ services should be categorised as “*specified PRS*”, thereby requiring to be licensed.

Prior to addressing issues other than price, it is important to note that the 20 cent price threshold applies both in relation to calls to the DQ service by a consumer and, separately, to any onward connection service (call-completion) offered to the caller by the DQ SP. This takes account of the possibility that a DQ SP may offer basic DQ information at one price (either per call or per minute) and, subsequently, offer callers the option of onward connection (i.e. call completion) to the requested

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<sup>29</sup> See consultation document ComReg 07/46 and the consultation response document ComReg 08/01

number at a different price set by the DQ SP (that is, the price of the onward connection need not necessarily be the price at which the initial call to the DQ SP was made). ComReg considers it important that consumers are informed where either, or both, prices are at premium rates, particularly where there is a different charge for the initial call to the DQ SP and any subsequent call completion that the consumer may request.

It appears reasonable that DQ providers should be under the same mandatory requirements of the Code of Practice as other PRS suppliers in relation to clear pricing in marketing and related material. Similarly, there is an argument that, in relation to their directory services, DQ providers should, like any *specified PRS* provider, be required to meet all provisions in the Code of Practice in terms of;

- privacy
- not to operate services or marketing that could cause serious offence or harm
- respecting the need for particular conduct in relation to services targeting children, and
- marketing services clearly and honestly and to ensure services are delivered as required

ComReg will decide, after considering responses to this consultation, whether to;

- 1 maintain the current regulatory regime for DQ services, whereby DQ services, within their current remit, would not be considered *specified PRS*, or
- 2 require these services to be licensed as *specified PRS* but, nevertheless, still maintain the current limited remit of services, or
- 3 permit a more liberal interpretation of “relevant value added services” and allow these to be provided, and paid for, through the DQ 118XX number range (see Section 8.3)

**Q. 12. Do you consider that ComReg should regulate Directory Enquiry services, within their current remit, as *specified PRS*?**

**Q. 13. Do you consider that DQ services, within their current remit, could be exempted from regulation, provided their cost is below the recommended price threshold? (Refer to Paragraph 7.5)**

### 8.3 Permit a Wider Range of Services?

Providers of DQ services have, in recent times, made a case to permit expansion of the range of their services beyond those that are currently permitted. This raises additional issues for regulating DQ services.

The risks involved with facilitating a broader scope for more general information-type services using 118XX numbers are of sufficient significance that ComReg considers that they would need to be counter-balanced by requiring such services to be considered as *specified PRS* and, therefore, required to be licensed, subject to any exemptions that may be decided for low-value, low-risk services, as considered in Section 7.5 above. These measures are considered necessary to ensure price transparency and consumer protection and, as a pre-requisite for a more liberalised remit for DQ providers, it is not a matter for public consultation.

In summary, any decision to permit a more liberal interpretation of “relevant value added services” will result in all DQ services being defined as *specified PRS*, requiring DQ SP’s to be licensed.

While some DQ providers have requested a change of regulatory policy on the interpretation of “relevant value added services”, it is not clear that all market players would wish this, or indeed that future emerging services would demand it. ComReg is, therefore, seeking a wide range of views on this issue. If it is decided that a broader range of services may be provided, then these services will be subject to terms and conditions to be agreed for a new DQ Category of Service.

#### 8.3.1 Similar Requirements and Exemptions as “Core” PRS

Chapter 7 sets out the various considerations (including price) that ComReg will evaluate when deciding on the scope of *specified PRS*. PRS regulation offers important protection to consumers and ComReg believes that any protections deemed necessary for “*specified PRS*” must extend to any similar services that might be offered on 118XX DQ short codes.

ComReg also recognises that it may be possible to exempt certain low-cost (less than 20 cents per minute/call/text, as proposed by ComReg in Chapter 7) and low-risk services from formal PRS regulation. If it is decided to permit DQ SP’s to provide a wider range of value-add services, ComReg’s position is that any exemptions from formal regulation would similarly apply for *non-specified PRS* delivered on DQ numbers.

### 8.4 Issues to be Considered

Permitting DQ SP’s to provide a broader range of services raises a number of issues that must be considered prior to adopting such a policy, as follows;

#### 8.4.1 Dilution of Public DQ Services and Basic DQ Service Standards

The current DQ services are generally considered to be of a high standard. In part, at least, the public’s trust in DQ services may be based on the fact that they deliver a

quality service in providing basic telephone number information. It is not be in the interests of any stakeholder to see this trust diluted; therefore, any possible changes of scope should be addressed with care.

Any expansion of the core DQ service into the realm of general information provision will be of interest to generic SP's and it would seem to be an obvious response by such SP's to consider becoming DQ SP's themselves. Ostensibly at least, this additional competition may be welcomed by consumers.

However, a serious risk could arise from the creation of inferior DQ services, offered only to gain entry to the 118XX numbering range and benefit from the considerable promotion undertaken by the existing DQ SP's.

**Potential Solution:** To counter the concerns about dilution of the quality of DQ SP's in a more liberal market, ComReg would consider setting a new condition of use of the 118XX short code range, which could involve passing a Primary Purpose Test (PPT). The use of a PPT in this context is described in Appendix C and is a concept employed successfully in the UK. This test would, in effect, verify that a genuine and credible telephone directory service lies at the core of all 118XX offerings.

As a further safeguard, for example, ComReg could carry out Quality of Service (QoS) monitoring. Such monitoring could include a requirement on all DQ SP's to provide quarterly performance reports to ComReg on call volumes, average speed of answer, abandoned call rate, etc. Such QoS monitoring could also be used to verify that DQ SP's continue to fulfil their obligation by providing a quality core DQ service offering.

#### 8.4.2 Competition Issues

In response to previous consultations, ComReg has set out its concerns that the provision of general information services over a well-recognised short code restricted to DQ SP's could offer an unfair advantage over other general information SP's. The latter are obliged to use 10-digit numbers<sup>30</sup> or, in the case of text messaging services, 5XXXX codes that are individually less-well known. It might also be argued that DQ SP's could have an advantage in being able to promote their general information services to consumers making DQ enquiries.

Numbering Convention 6-2(vii) states that ComReg will take into account, when deciding whether to allocate a short code, the criterion that "*No competitive imbalances should be created by the allocation*". This would, of course, apply equally to proposals to extend the usage of codes already allocated.

In previous consultations, those who considered that unfair competition would arise have, *inter alia*, indicated that DQ SP's are already free to use the same numbers and codes as other SP's; whereas the converse - using 118XX - is not available to those

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<sup>30</sup> Depending on associated tariff etc, the range may commence with 15XX, 1850, 1890 or 0818

not providing DQ services. The DQ SP's have countered by stating that any entity can install the infrastructure to provide a full DQ service on equal terms.

#### 8.4.3 The Nature of "Relevant Value Added Services"

ComReg has concerns about the range and nature of services that may be offered on DQ numbers, if a more liberal approach to the use of these numbers is permitted. Some of the services that DQ SP's may provide in a more liberalised market would merely be an extension of data they already hold (e.g. basic entertainment and information services such as theatre and cinema listings, store opening hours, football venues etc.), although some DQ SP's may choose to sub-contract service provision to third parties if they were unable to provide information from within their own resources. However, by involving the support of third-party commercial partners it seems, in theory, that DQ services could possibly be extended to services that currently fall far from DQ (e.g. professional counselling, tarot/horoscope services, chat and dating services and competitions promoted through print and broadcast media).

The possible extension of "*relevant value-add services*" via DQ numbers, raises the question of where any boundaries to these services may be drawn. ComReg is interested in seeking views as to what might or might not be considered "relevant" or, perhaps more precisely, what might be considered "appropriate, acceptable and safe", if it were to decide to permit DQ providers to offer other PRS on their numbers. Chapter 7 highlights a range of existing and potential PRS and the varying risks that might be associated with their use. ComReg also highlights some valuable safeguards, including consumer awareness of numbering and the availability of call-barring. There is currently no call-barring on offer in relation to DQ numbers, and this merits consideration in relation to consumer access to inappropriate content and unauthorised calls from homes and places of work.

In this context, ComReg has identified a number of service categories that might be considered inappropriate, or unsuitable, for provision by DQ SP's. ComReg considers that the following types, or classes, of services should not be provided on the 118XX number range, if it is decided to extend the current remit of DQ SP's;

- Live entertainment – general chat and tarot services
- Any form of adult/sex entertainment service (live or otherwise)
- Competitions and services based on gaming and some element of chance
- Services targeting children
- Services costing more than €5.00 – these are regarded as PRS and managed on the appropriate numbering, with the supporting call barring and billing safeguards

While it is possible to identify service categories that ComReg considers should not be allowed on 118XX numbers, it is considerably more difficult to prescribe every conceivable form of PRS that may be appropriate to offer as a relevant "*value-added*" service within a DQ service.

*8.4.4 Prior permission for additional generic information services*

The issue that arises with information service provision is the risk of unacceptable content (for example, adult sexual entertainment, abusive or gambling services) being promoted on 118XX numbers. In a previous consultation on this issue, it was agreed that such content was not acceptable. Some respondents, however, suggested that ComReg might delineate the types of additional 'general information' services that would be acceptable and/or that individual prior approval by ComReg on a case-by-case basis would be required. ComReg previously rejected that suggestion, as it was beyond its remit at that time. However, ComReg now has the necessary legislative powers and considers that this suggestion may now be an appropriate course of action and if, subsequently adopted, DQ SP's would be required to seek prior approval for new services. ComReg would then evaluate the type, and class, of these services on a case-by-case in relation to criteria developed by ComReg, including;

- Whether there is some demonstrable relevance between the new service and the core DQ activity. A willingness to consider some relaxation in what a DQ provider can offer does not indicate a willingness to permit the generality of PRS to migrate to 118XX numbers and ComReg considers it a benefit to the consumer that premium rate number ranges and DQ number ranges remain distinct
- Whether a service should be age-restricted to prevent access by children
- Whether a service might more generally incite, or prompt, unauthorised use of other people's telephones
- Whether the service had a high per use charge
- Whether the service raises significant issues in relation to the vulnerability of those that it targets
- Whether the use of 118XX numbers appears to provide unfair competition by circumventing call-barring that is available on other PRS ranges, or for any other reasons.

**Q. 14. Do you consider that it is preferable to maintain the current clear focus of 118XX on strictly telecommunications directory services or should it be permitted to expand to allow a diverse range of “general information services<sup>31</sup>” and, therefore, become subject to PRS regulation?**

**Q. 15. Do you consider that the provision of general information services by DQ SP’s would be unfair to ‘ordinary’ SP’s of similar services or does the option for them to provide DQ services mitigate this?**

**Q. 16. Do you consider it appropriate to delineate the additional “general information” services that would be acceptable on 118XX short codes where prior approval by ComReg would be required on a case-by-case basis?**

#### 8.4.5 Next update of the National Numbering Conventions

The National Numbering Conventions sets out the eligibility criteria and usage conditions associated with the 118XX number range. Details of the current conditions are provided in Appendix B. Any decisions ComReg may take on changing the scope of services allowed on 118XX numbers may subsequently result in a change to these criteria and conditions which will be addressed at the next review of the National Numbering Conventions.

## 8.5 Summary

The need for PRS regulation for DQ services should not be seen as weighing against a move to a more liberal interpretation of “relevant value added services”, which will be judged on its merits in the light of consultation responses. It is, indeed, a necessary precaution as the services actually move closer in character to traditional PRS. It is also not unreasonable, from a tariff perspective, considering that extant DQ services charge rates that are already of a premium rate, in excess of ComReg’s proposed 20 cent threshold. A similar regulatory approach prevails in other countries, such as the UK and France, where a broader scope for DQ services is already permitted.

A summary of the main issues raised in this Chapter is contained in Table below;

**Table 1: Issues arising from a possible wider scope for 118XX Services**

<sup>31</sup> General information services – refers to a wide range of information and sales (e.g. ticketing, sports results, weather, trivia) services that are unrelated, or not closely related to, telecommunications directory information. Such services would be offered to callers in addition to a full DQ service.

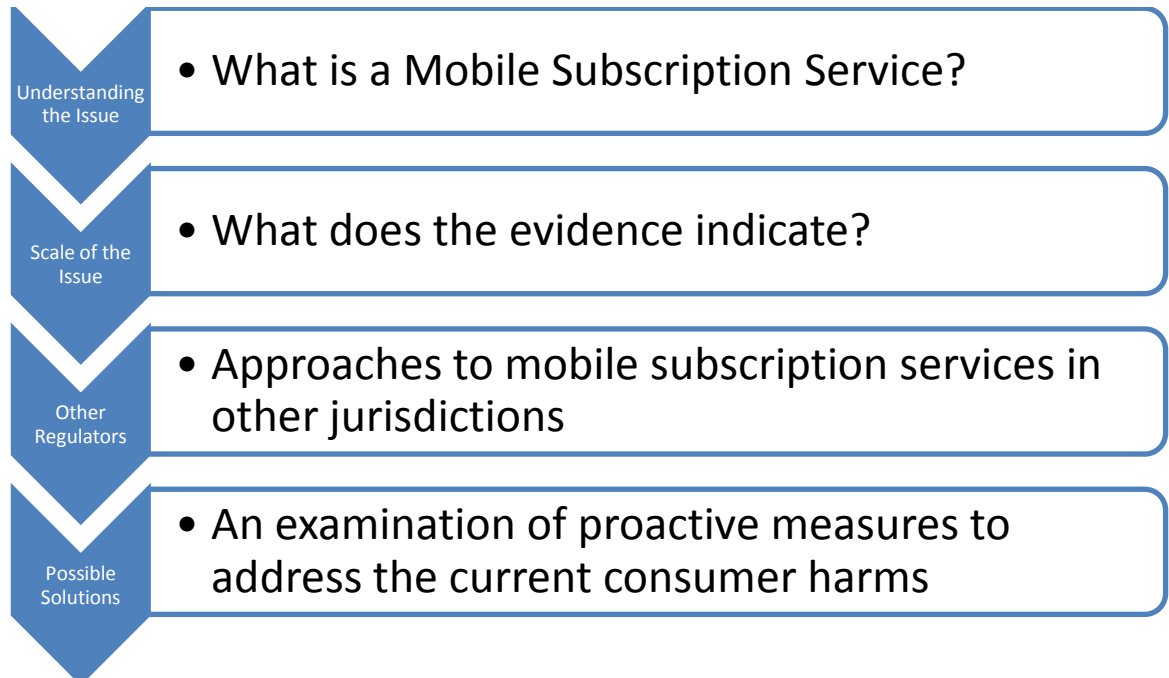


Issue	Arguments in Favour of the DQ status quo	Arguments in Favour of a Wider Info Service	ComReg Comments
<b>Consumer perception of the purpose of 118XX numbers</b>	Irish consumers have a clear understanding that 118XX signifies directory enquiries only	Consumers are capable of distinguishing between the various services that may be offered to them and will welcome the additional services	Consumers must have a clear understanding of the service on offer and, equally, must be clear about what they are paying for
<b>The strong market recognition of 118XX should be exploited</b>	The strong branding is closely linked to the current clear focus on telecoms DQ. This should not be eroded	DQ providers have invested in their brand recognition. They wish to leverage this investment	ComReg recognises the investments made. However, consumers must be well informed regarding the services they are purchasing and the associated costs must be transparent.
<b>The proposed new information services would compete directly, and maybe unfairly, with non-DQ providers who cannot avail of 118XX short codes</b>	DQ providers are already free to use the same 15XX/1890/1850 or 5XXXX number ranges that non-DQ SP's are obliged to use. The converse would not be true (without disproportionate investment) if DQ SP's were allowed to expand their service offerings on 118XX	Other SP's could qualify for a 118XX number if they invest in a full DQ service	That question of fair competition may arise. ComReg is interested in receiving views that address this matter
<b>There is a risk of 'true' DQ provision being subverted in favour of general information provision on 118XX</b>	General information providers may seek to exploit the advantage of a unique short code for general information provision, while providing an inferior quality core DQ service.	DQ providers have made too significant an investment in their services to let this happen	ComReg could impose a "primary purpose" test and commence Quality of Service monitoring.
<b>Info services of the type now proposed for DQ are (mostly) currently subject to PRS regulation</b>	PRS Regulation may not be welcomed by existing DQ SP's.	Existing DQ services are charged at a Premium Rate at present and should, therefore, be subject to PRS regulation	ComReg considers that any broadening of DQ scope to cover info services <u>shall require PRS regulation</u>

<b>Issue</b>	<b>Arguments in Favour of the DQ status quo</b>	<b>Arguments in Favour of a Wider Info Service</b>	<b>ComReg Comments</b>
<b>Content regulation in the context of a wider DQ scope is likely to lead to erosion of defined borders</b>	No matter what boundaries are set, the potential for high revenue generation (as for PRS) may lead to over-stepping. The status quo avoids this	DQ providers have shown a high level of compliance in past years	Categorisation of content for pricing and consumer (e.g. children's) protection is a feature of PRS requiring vigilance
<b>Pricing transparency assumes much greater importance in a PRS context</b>	DQ SP's may prefer the current limited pricing transparency obligations	PRS regulation would ensure greater transparency on pricing	ComReg considers that the improved tariff transparency of a PRS context is a major benefit for consumers
<b>Evidence from the PRS sector indicates there is a potential risk that abusive practices may occur and information content may broaden into unacceptable material</b>	If the reputation of 118XX services is damaged, this will impact on compliant SP's, as well as on regulators and government.	It is not in the interests of existing DQ providers, who have invested heavily, to damage their brands	The potentially large returns from PRS abuse, even during the course of compliance actions, have led to boundaries being overstepped in the past.

## 9 Mobile Subscription Services

The promotion and operation of mobile subscription services are the predominant issues currently affecting regulation of the PRS market. ComReg wishes, therefore, to elicit opinions on certain aspects of these services and has adopted the following approach to consider the issue of mobile subscriptions services;



### 9.1 What is a Premium Rate Mobile Subscription Service?

A mobile subscription service is a service for which a recurring charge is imposed on a consumer who has subscribed and, thereby, agrees to receive and pay for such a service.

*A typical example of a subscription service is where a consumer wishes to receive football score alerts for his, or her, favourite team. Generally these services are based on a model in which the subscriber, once subscribed, pays for each SMS alert received. Other examples of subscription services include weather or stock market alerts. Other services which are provided using a subscription or recurring model include competitions or ringtones.*

It is clear that there is a demand for services that involve a form of weekly, or monthly, payment or for pay-per-alert services, where consumers wish to be updated on the latest news, football scores, or share price information, for example. It is less clear that those who buy a mobile ringtone or enter a competition have a wish to do so several times each week or several times a month. The frequency with which consumers claim not to have knowingly entered subscriptions of this kind, added to concerns over the ability to opt-out of the service, suggests that this may be a preferred sales model, rather than a preferred way of purchasing.

The key feature of a mobile subscription service is that the consumer is charged for **receiving** the information or service. The subscription (or recurring charge) model is ideally suited for use with mobile, rather than fixed-line, phones as the consumer does not have to be asked, each time, if they wish to accept the charges associated with receiving the information, and is billed automatically when they receive the SMS (MMS).

*Consumers intuitively expect to be billed for sending a text message. This form of billing is known as Mobile Originating (MO) payment. However, mobile subscription services almost exclusively use Mobile Terminated (MT) payments – where the cost of the text is charged to the consumer when the consumer receives an SMS/MMS from the Service Provider. The Service Provider would normally send an SMS/MMS in response to the consumer placing an order through an original low/standard rate text to the service.*

**A mobile subscription service on your mobile phone account using MT payment is, therefore, analogous to a direct debit on your bank account.**

The MT-payment features of a mobile subscription service, which make it an efficient and convenient payment method for both suppliers and consumers, also provides opportunities for unscrupulous “out-of-schedule” payments, where the consumer is billed for receiving more alerts than they should or, in more extreme cases, where the consumer is billed without ever having subscribed to the service. Prohibiting MT-payments would address many of the consumer harm issues that exist in the Irish market at present and this option is considered later in this Chapter.

RegTel’s Code of Practice requires providers of mobile subscription services to make the following information clear to consumers;

- Advice that the consumer is signing up to a service that has a recurring cost
- Details of the costs involved (per message-received costs or weekly costs), and
- How to unsubscribe from the service.

However, with over 9,500 consumers (35% of all callers to RegTel’s Helpline) contesting that they had ever signed up to a subscription service, it would appear that the cost, and other important terms and conditions, are either being overlooked, or misunderstood, by consumers.

Another area of concern to ComReg is the concept of “Web Opt-In”, where it is possible for SP’s to promote their services via the internet and to acquire mobile subscribers through this medium. Some consumers inadvertently subscribe via the internet when, for example, they provide their mobile phone number to enter a quiz or receive the results of an IQ Test. With MT billing, it is possible, in theory, for those who have “captured” these mobile account numbers to send MT premium text messages and charge these consumers, without the consumer having signed-on for any service. This form of “opt-in” is also open to further abuse in circumstances

whereby a person could provide a mobile phone number, which is not their own, thereby subscribing another person to a service without their knowledge or consent.

## 9.2 Scale of the Issue?

In 2009, “RegTel dealt with approximately 28,600 queries and complaints from consumers. Most of the calls received were seeking information and advice, particularly about Subscription Services.<sup>32</sup>” RegTel also reports that; “. . . 15,698, or 56.5% of calls received, sought advice/information on how to unsubscribe from Premium Rate Services”.

RegTel also noted a significant increase (125%) in the total number of written complaints that it received in 2009. Issues surrounding subscription services represented 88% of these written complaints, representing an increase of 149% on the previous year.

It is also noteworthy that a substantial number of consumers - 9,500 or 35% of complainants - who contacted RegTel’s Helpline contesting that they had ever entered into a subscription service. While RegTel’s investigations demonstrated that, in the majority of cases, a valid subscription had been effected, it is unclear why so many consumers failed to understand what they were entering. This raises the issues of transparency, simplicity and prominence of the terms and conditions. This is a concern that is magnified by two further factors:

- 78%<sup>33</sup> of all mobile consumers have pre-pay telephone accounts and, therefore, receive no regular billing information and may have limited access to customer service support, and
- the extent to which the most popular mobile subscription services – ringtones are services that are popular with, and often bought by, children. 96% of all 15-17 year olds, who have mobile phones, have pre-pay accounts. They, therefore, have limited access to billing information and may, when compared to an adult, be less inclined to lodge a complaint, whether through lack of knowledge on how to progress a complaint, or out of embarrassment, at the rapid and inexplicable decline in their call credit.

In addition, the Office of the Data Protection Commissioner (ODPC) considered it necessary to prosecute several Aggregators and Content Providers who were responsible for sending unsolicited (out-of-schedule) chargeable SMS to consumers. Again, it is noted that, unlike the case of premium rate voice services, it is possible to be charged for receiving a premium SMS (or MMS) with, or without, the recipient’s consent.

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<sup>32</sup> RegTel’s Annual Report 2008/09 available at [http://www.regtel.ie/annual\\_report\\_2009.pdf](http://www.regtel.ie/annual_report_2009.pdf)

<sup>33</sup> Source: ComReg Millward Brown Lansdowne Consumer ICT Survey Q2 2009

### 9.3 International Experience

The international experience is similar to that in Ireland where the vast majority of SP's adhere to the prevailing laws and codes, however a small, but determined, group of unscrupulous operators have the potential to cause consumer harm, which undermines confidence in the entire PRS sector, thereby penalising the legitimate providers who abide by the rules.

ComReg has engaged with other national regulators of PRS, through the International Audiotex Regulators Network (IARN<sup>34</sup>), and has considered the rules that apply to mobile subscription services in the various jurisdictions. It is clear that there is not a consistent approach to PRS regulation due to differing national laws, regulatory structures and cultures. It is evident, however, that the issues surrounding mobile subscription services are similar and recurring

ComReg considers that a key priority, on assuming regulatory responsibility for PRS, should be to address any abuses of mobile subscription services and has examined the regulatory regimes in a number of countries to ascertain if issues associated with mobile subscription services have arisen and to identify the measures that have been taken to prevent consumer harm.

#### 9.3.1 The United Kingdom

In the United Kingdom, PhonepayPlus, reports<sup>35</sup> that;

*“2008/09 saw a sharp rise in complaints, which doubles from the previous year to 23,278. A staggering 92% of these complaints concerned mobile services, and we saw common themes concerning lack of clarity around the cost of a service, often made worse through the addition of costly, and sometimes hidden, subscription and joining fees.”*

PhonepayPlus also reports that the main drivers of complaints in the mobile sectors were subscription services (65% of all consumer complaints), unsolicited text messages (8% of all consumer complaints) and failure by SP's to act on the “STOP” command from consumers.

#### 9.3.2 The United States

In April 2008, the Florida State Attorney settled legal proceedings<sup>36</sup> against AT&T Wireless, an MNO, after it agreed to pay \$2.5 million to the State of Florida and provide rebates up to an estimated \$10 million to resolve an investigation by the State Attorney General into deceptive web ads for “free” ringtones. In this case, the Florida authorities alleged that companies, who were operating in conjunction with

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<sup>34</sup> <http://www.iarn.org/>

<sup>35</sup> PhonepayPlus Annual Report 2008/2009 available at <http://www.phonepayplus.org.uk/upload/Annual-Report-08-09-for-web.pdf>

<sup>36</sup> <http://wirelessfederation.com/news/10838-att-florida-strike-ringtone-ads-deal-other-telecoms-may-follow-usa/>

the MNO, misled consumers into providing their mobile phone numbers in exchange for supposedly free mobile content, however later start billing these consumers for subscription services.

In a similar case in late-2009, in the State of Illinois, a class action law suit<sup>37</sup> against an MNO, an Aggregator and several Content Providers was settled after the defendants agreed to pay up to \$63 million to the plaintiffs who pursued claims for damages stemming from alleged unauthorized sales and billing for mobile content, such as ringtones, news and information alerts, horoscopes, and other digital electronic media. As part of the settlement, the defendants consented to remain in compliance with the Consumer Best Practices Guidelines established by the Mobile Marketing Association.

### 9.3.3 Australia

In October 2009, the Federal Court in Brisbane imposed a total of \$15.75 million in penalties on two companies and three individuals for contraventions of the Spam Act 2003 (the Spam Act), following the Australian Communications and Media Authority's (AMCA) first court action<sup>38</sup> taken against unsolicited SMS messages. The ACMA alleged that the respondents were engaged in a complex scheme to obtain mobile phone numbers from members of dating websites, using false member profiles, to send commercial electronic messages by SMS.

## 9.4 Options with respect to Preventative Measures

In 2009, Irish consumers received 76 million chargeable premium texts costing over €62 million, or an average of 82 cents each. With such significant revenues at stake, the propensity for consumer harm exists and close regulatory scrutiny of this area is necessary.

ComReg aims to devise effective deterrents and implement effective remedial measures to protect consumers and, thereby, restore confidence in the PRS industry.

ComReg has examined a number of measures that would result in greater consumer protection than exists at present, in accordance with the statutory powers conferred by the Act. The options considered below provide for enhanced consumer protection, to varying degrees, if implemented.

### 9.4.1 Double Opt-In

The terms and conditions of competitions, quizzes and ringtone downloads, for example, that involve recurring charges for the consumer should make it clear that, by responding to the promotion, the consumer is entering a subscription service. Typically, when the consumer replies to the promotion by sending an SMS to a

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<sup>37</sup> Paluzzi v. Cellco Partnership d/b/a Verizon Wireless and mBlox, Inc.  
<http://www.mobilecontentsettlement.com/faq.html#Q1#Q1>

<sup>38</sup> [http://www.acma.gov.au/WEB/STANDARD/pc=PC\\_311937](http://www.acma.gov.au/WEB/STANDARD/pc=PC_311937)

shortcode (5XXXX), they are providing their mobile phone number, thereby confirming their agreement to the stated recurring payment schedule.

As previously noted, with over 9,500 consumers contesting that they had entered a subscription service, it would appear that, in some instances, the terms and conditions are either overlooked, or misunderstood, by consumers. Additionally, it is possible that a consumer may have been entered into a subscription service by another person using a “web opt-in” facility.

In the more extreme cases investigated in other jurisdictions, it transpired that unprincipled SP’s initiated services primarily to capture active mobile phone numbers, only to then commence charging consumers by sending MT-billed messages disguised as either network/routine, or free, messages. There have also been instances where SP’s send additional messages/alerts over and above the advertised frequency. The intention of the additional messages is to raise revenues without raising the suspicions of the consumer or the regulatory authorities – a consumer may find it difficult to notice an additional €2.50 if the total weekly bill is €20, particularly if the consumer has a pre-pay account and, therefore, no readily available billing record.

Given the ease with which a person may enter into a mobile subscription service, it is worth considering if some additional measure should be introduced, similar to a “cooling-off” period employed by financial institutions for Direct Debit arrangements and other financial products.

“Double opt-in” or “Active Confirmation” is an effective method of ensuring that consumers do not unwittingly opt in to a subscription service. With this measure, any consumer who responds to a promotion for a subscription service would first receive a free confirmation text message detailing the cost and conditions of the service. The consumer cannot be charged until he/she has confirmed the subscription by replying to this text message. The consumer must, therefore, send two texts (the first responding to the promotion and the second responding to the terms and conditions) before being subscribed to a service.

A review of a number of other PRS regulatory regimes shows that “double opt-in” has been introduced in Australia, Austria, Belgium, Germany, and South Africa. The approach was also introduced in the UK in 2009, although a majority of industry respondents were sceptical of the need for active consumer confirmation, on the grounds that this could cause consumer confusion and adversely affect sales.

The success of the “double opt-in” approach is evident one year later, with<sup>39</sup>;

- total complaints regarding mobile services reduced by 57%
- consumer complaints regarding mobile subscription services reduced by 50% since the introduction of the new rules, and

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<sup>39</sup> <http://www.phonepayplus.org.uk/output/news/phonepayplus-mobile-review-one-year-on.aspx>



- consumer complaints regarding unsolicited text messages reduced by 85%.

In addition, “double-opt” in also addresses the issue of SP’s using expressions such as “FREE”, “BONUS” or “NO CHARGE” to promote subscription services that may have a free of charge opt-in however, subsequently, impose charges on consumers, once they have entered the service.

**Q. 17. Should ComReg introduce a “double opt-in” requirement for entry into a mobile subscription service?**

*9.4.2 Eliminating or Restricting Reverse-Billed SMS*

A double-opt in regime would seem likely to significantly reduce the scope for consumer misunderstanding of the terms of what might be considered legitimate marketing of subscription services. It does not, however, prevent SP’s from taking advantage of the direct debit characteristics of MT-billing, that is, the ability of the SP to send unwanted premium messages to consumers.

The action taken in the UK to address abuses of subscription services has significantly reduced complaint levels attributable to mobile subscription offerings. The action does not, however, appear to have addressed all serious incidents of consumer abuse. In the second half of 2009, PhonepayPlus reached over 20 substantive adjudications on services using MT billing. Many of these related to subscription jokes, competitions or contact/dating services. PPP found it necessary to impose over €1.5 million in fines for these services in this period.

Mobile subscription services are generally charged using “MT–Billing” or “Reverse-Billed” SMS, whereby the consumer is billed for receiving a premium rate SMS. MT-Billing compliments many premium rate services, if used correctly, as it enables the consumer to make a quick and relatively inexpensive purchase or to cast a vote or make a donation.

However, MT-billing has the potential to cause widespread consumer harm as it provides the incentive to an unscrupulous PRS provider to send unsolicited, or “extra”, messages on the basis that they may only be noticed by a vigilant consumer. The charge to the consumer’s account, pre-pay or post-pay, is made once the SMS has been delivered, irrespective of whether the consumer opens and reads the message or not. Even if a consumer notices additional, or unexplained, charges on his/her phone bill or, in the case of pre-pay customers, an unexplained reduction in call credit, the consumer may not choose to take the time, effort and expense to recover a relatively small amount of money.

MT-billing, therefore, makes it possible for a SP, perhaps based in another jurisdiction, to send unsolicited chargeable SMS to Irish consumers. The number of messages sent by the SP may be determined by the desire to increase its revenues but

not to draw the attention of unsuspecting consumers or the regulatory authorities. The deterrents to such behaviour are the possibility of prosecution by the ODPC, or by ComReg under the powers conferred by the Act, or to have a license suspended or revoked by ComReg.

The experience from the UK would seem to indicate, however, that the behaviour of some SP's is not within acceptable standards, despite the high level of fines imposed. While a SP may be required to refund those consumers who lodged a complaint, such a provider may still profit on the exercise, on the basis that some consumers may not notice the deduction from their accounts.

### **An alternative to MT-payments**

Giving SP's the capacity to make MT charges for content delivered under a subscription has some logic where the timing and volume of content (e.g. sports data) is uncertain. However, the absence of MT-payments as a billing option need not obstruct or prevent the provision of any services. It is arguable if consumers have a need or preference for buying ringtones, music downloads, jokes or competitions on a long-term subscription basis. If there is such a demand, then it could still be met by some form of regular payment based on MO-payment (where the consumer is charged for sending a text).

There is no reason, in principle, why MO-payments should not work equally well with those services that are traditionally considered as longer-term or on-going purchases. Those wanting to buy football, or other, alerts could do so for an initial period through a MO payment and would then have the option of renewing their arrangement through further MO payments, when their initial purchase amount had expired. Those providing such services would have the commercial incentive to keep consumers satisfied and informed when their payment was due to expire and offer the option to renew their subscription through another MO payment.

The MT payment mechanism carries inherent risks since the consumer does not have full control over their payments to SP's. ComReg believes that placing a bar on all MT payments, or limiting its application to categories of service, which appear in all other respects to pose a low risk to consumers, merits consideration. ComReg has considered the following factors in its deliberations;

- The attractiveness of many mobile services to children
- Children are less informed consumers and less likely to pursue a complaint
- A high proportion of mobile phone users, who have pre-paid accounts, have no ready access to billing information
- Service can be provided using MO-payment
- MT-payments may be appropriate for "*information-type*" services, however, "*entertainment*" services (ringtones, competitions, games, etc.) may attract vulnerable consumers, or make consumers vulnerable

because of the loss of control over payments and, therefore, MT payments are not suitable.

**Q. 18. Should ComReg prohibit the use MT billing (reverse-billed SMS) by PRS providers? Should MT billing be permitted only for certain types of services?**

#### 9.4.3 "Invisible" SMS

Through their remote connections to the mobile networks messaging centres, SP's have the capability to send SMS as "invisible" messages, whereby consumers would be unaware that they have received a message. In such cases, no message is displayed in the consumer's phone "Inbox" and the consumer's phone does not emit a message alert tone.

While this facility may not seem significant, it should be borne in mind that a PRS provider could decide to make the "invisible" SMS a chargeable one (i.e. an "MT-billed invisible SMS"). In such an event, the consumer to whom the messages are sent will be unaware that he/she has received a message and, consequently, unaware that he/she has been charged for the delivery. Consumers will only be aware of the charges incurred when they receive their telephone bill or notice that their call credit has inexplicably reduced.

ComReg is interested in the views of both industry and consumers about the use of "invisible" MT-billed premium SMS, and, in particular, if there is any application of "invisible" MT-billed SMS that would justify ComReg permitting its use.

**Q. 19. Should ComReg prohibit the use of "invisible" reverse billed (MT) SMS by PRS providers?**

#### 9.4.4 Pre-Pay Customers (PPC)

SP's are required to provide consumers with "unsubscribe" facilities for all subscription services. Consumers must be allowed to unsubscribe by replying with the word "STOP" to the short code (5XXXX) from which they received the content. When a consumer "unsubscribes", the PRS Provider must cease providing the services and charging the consumer with immediate effect. However, there is a cost to sending a "STOP" text and those consumers with pre-pay accounts must, therefore, have sufficient call credit to unsubscribe from a service.

However, such "pre-pay" consumers, who are unable to unsubscribe because of insufficient call-credit, are particularly vulnerable as messages from a subscription service will "queue" up until the account is topped-up. When the account is topped-up, these "queued" messages will be delivered in quick succession and the

subscription charges will be immediately deducted from the consumer's account before they have had the opportunity to reply "STOP" to the service, or services that they are subscribed to.

This feature is particularly relevant to children, who may be unable to maintain their phone accounts in credit. ComReg is keen to receive views as to whether it should introduce a provision preventing chargeable messages being sent to prepaid customers when their accounts are out of credit. This would involve the introduction of a procedure that prohibits a second message being sent after a "fail notification" is received for the first message, if the fail reason is "no credit".

**Q. 20. Should ComReg prohibit chargeable messages being "stored-up" for delayed sending, when a pre-pay account is out of credit?**

This proposal, however, raises additional issues which have relevance in the context of answering the question above. Specifically, ComReg draws attention to,

- How MNO's and SP's can improve the real-time awareness of the credit that remains in an account, when the account holder attempts to purchase a service
- Whether a purchase should be voided, with no charges being levied if there is insufficient credit in the account
- Permitting only MO billing at higher, and more flexible, price-points may address the issue of "stored", non-delivered premium SMS, and
- Could consumers consistently, and successfully, order content/make purchases in the knowledge that there is insufficient credit in their account?

#### 9.4.5 *Barring Access to Premium SMS*

In Australia, the ACMA issued a public consultation document in October 2009 in which it asked if MNOs should be required to implement a capability of barring premium SMS/MMS services across all of their pre-paid and post-paid customers. The ACMA further asked if consumers should be offered "opt-out" barring of premium SMS (*PSMS*) or having PSMS barred by default, thereby requiring those who want to use PSMS to "opt -in".

Barring access to premium SMS/MMS, whether by default or by "opt-in" is consistent with the provisions of Regulation 9 of the European Communities (Electronic Communications Networks and Services)(Universal Service and Users Rights) Regulations, 2003<sup>40</sup>, which requires that a consumer can request his/her telephone service provider to bar outgoing calls of defined types in order to assist in the control of expenditure.

<sup>40</sup> SI 308 of 2003 which is the transposition into Irish law of Universal Services Directive 2002/22/EC of the European Parliament and the Council

ComReg considers that,

- Barring access to premium SMS/PMMS is equivalent to call barring under the Universal Services and Users Rights Regulations (Universal Services Directive) and is an important measure to empower consumer to control their expenditure
- Most consumers are satisfied to use their mobile phones to cast a vote on a TV show, enter a competition or make an inexpensive purchase, such as a ringtone. The vast majority of these transactions occur without any consumer harm
- Premium Rate Services are likely to continue to attract a significant section of the population due to technological developments in the methods of their delivery
- The Act places regulation of premium rate services on a statutory footing and contains enhanced consumer protections
- Access to sensitive services (sexual entertainment services, for example) will continue to be restricted.

Accordingly, it is ComReg's preliminary view that there may be a demand from consumers to have the option to "opt-out" of premium text payment however the situation, at present, does not warrant the introduction of measures which require that consumers must "opt-in" for the generality of premium rate services.

**Q. 21. Should MNOs in Ireland be required to provide all customers with the option of barring premium calls and/or barring consumer access to Premium SMS/MMS, whether on an outgoing (MO) or incoming (MT) basis?**

#### 9.4.6 *Limiting the Use of the Subscription Payment Model*

Some information-type services, such as football goal alerts or weather alerts, are particularly suited to a subscription billing model. It could be argued that for other PRS such as competitions or ringtones, a single "one-off" charge is more appropriate (i.e. the consumer only wants one ringtone and not several per week).

ComReg is, therefore, considering if the subscription billing model should be reserved for certain classes, or types, of services and should not be widely available for all services. ComReg is interested in receiving views on whether it should restrict the class, or type, of service that can operate a subscription payment model.

ComReg is aware that certain "*information-type*" services, such as goal alerts or stock market updates, occur at irregular intervals and may be suited to a subscription payment model. However, with other "*entertainment-type*" services, such as ringtones, competitions, games, etc., it is unclear why these services must be

provided by subscription service and not a “once-off” purchase, whether MT or MO-billed.

**Q. 22. Should ComReg restrict the class, or type, of service that can operate a subscription payment model?**

## 10 Numbering Issues

### 10.1 Premium Rate Services and Premium Rate Numbers

Under the current regulatory regime, PRS are regulated by RegTel (in respect of their content and promotion) and by ComReg (in respect of numbering aspects and aspects of consumer protection). In the past, such services were limited to voice communications on the 15xx number range and premium SMS on the 5xxxx number range.

In recent years, the emergence of new bearer mechanisms like MMS, WAP and Internet (particularly mobile internet) has raised issues related to the appropriate scope and extent of premium rate regulation.

ComReg stated, in its consultation<sup>41</sup> on the Numbering Conventions that it considered that Information-Society services not using numbers did not fall within the remit of the conventions. They may, nevertheless, be classified by RegTel as PRS and any abuse of such facilities could be addressed in the context of more general consumer protection legislation. The new definition of a PRS broadens the scope of regulation to cover Information Society services, where there is a premium charge that appears on a user's telephone bill or prepaid account.

In general, some further clarity may also be necessary in the context of PRS where service ordering and delivery occur as separate communications events, often using different network capabilities or, indeed, different networks. For services that require numbering resources, premium rate numbering should be used as the basis for initial contact, to ensure transparency for consumers. In such circumstances, a cascaded chain of communications should not result in evasion of obligations to meet current rules regarding Premium Rate Services.

### 10.2 Marketing Opt-ins, Subscription Services and Quarantine of Numbers

In its last review of the Numbering Conventions, ComReg extended the minimum quarantine period for recovered numbers (including mobile numbers) from 12 to 13 months. This unusual figure was selected to overcome the risk of a previous user's acceptance of marketing opt-ins still being in place when a new customer activates an ex-quarantine number<sup>42</sup>.

Situations have occurred where the same issue has applied to subscription services set up by the previous user of a number. Issues arose when the new user activated his/her number and immediately received, and was charged for, subscription content intended for the previous user of the number. In some cases, the issue was

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<sup>41</sup> <http://www.comreg.ie/fileupload/publications/ComReg0801.pdf>

<sup>42</sup> Note: The Data Protection Commissioner requires de-activation of such opt-ins after 12 months of non-use of the number.

exacerbated by the fact that adult content was delivered to a new user of the number who was a minor.

To protect against this sort of activity, ComReg has raised questions in this document relating to the new PRS Code of Practice, cancellation of subscription services and marketing opt-ins where there has been no successful delivery attempt to that number within a timeframe to be established.

ComReg will require that subscription services or marketing opt-ins associated with a particular number are automatically annulled upon cancellation, or expiry, of the account or at the point where the number is quarantined.

**Q. 23. Do you agree with ComReg’s recommendation in relation to cancellation of subscription services and marketing opt-ins when an account expires or the number is quarantined?**

### **10.3 Price regulation through numbering powers**

The National Numbering Conventions designate certain number ranges for PRS. At present, there are ten numbering ranges for per-minute charged Premium Rate Services, eight ranges for per-call charged services and 5 ranges of short codes for messaging services. Each of these is specifically designated for use within its own permitted price-band<sup>43</sup> whose maximum tariff to the caller may not exceed the relevant limit. (The full details of the premium per minute, per call and short code number ranges are set out in Chapter 6 above). These numbering ranges are identified by distinctive 15XX access codes for voice and 5xxxx for messaging, as shown in the Tables, to assist recognition by consumers and to enhance pricing transparency. Adult-type services shall only be provided using the access codes 1598, 1599, 58XXX and 59XXX, with adult services of a sexual nature being restricted to the latter.

Setting a price ceiling on these number ranges is a useful tool for ComReg to enhance pricing transparency. It is not an attempt to set specific prices although, typically, prices tend to gravitate towards the maximum permitted price within a particular range.

ComReg considers that using a price ceiling is an approach that should be used cautiously as it represents a retail price control on PRS. Such controls, if not used carefully, can have far-reaching consequences, such as competitive distortions within the market. However, given the propensity for consumer harm and, bearing in mind that providers remain free to transfer services across price ranges, ComReg considers that this approach provides a necessary level of consumer protection and is, therefore, justifiable.

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<sup>43</sup> Specific industry agreed price-points that do not exceed these price-band limits are typically used to implement actual PRS services.



## 10.4 Revenue Sharing on 0818 Universal Access Numbers

The National Numbering Conventions designate 0818 as a range for Universal Access. Universal Access Services allow calls to be made to a central (typically, corporate) number, for re-routing to the most appropriate response point. The ultimate destination number for the call – decided by the called party – can depend on cost-related parameters set by the called party (e.g. those related to the time the call is made, the location of the caller, locations of local corporate offices, etc). The caller, who may well be unaware of the termination point, is charged for the cost of the call at a rate not exceeding the national tariff rate of the operator concerned, and the called party is charged any additional retail charges involved in providing the universal access service. The 0818 access code may be used only for the provision of Universal Access Services, however, services corresponding to these could be legitimately offered using other number ranges.

The use of 0818 numbers has grown in popularity with businesses as an alternative to 1850 and 1890 shared-cost numbers. It has recently come to ComReg's attention that, in the past, *eircom* offered discounts to holders of 0818 numbers, based on call volumes to those numbers. These volume discounts are the equivalent of revenue sharing between the network operator, *eircom*, and the provider of the services on the 0818 number. Revenue sharing is a characteristic of a PRS and in cases where service providers avail of volume discounts, the result is that the charges paid by the consumer must exceed the cost of the carriage alone and, consequently, the service provided meets the definition of a PRS. ComReg must then decide if the services provided on 0818 numbers should be classified as *specified PRS* and be subject to PRS licensing.

In view of the change of PRS framework and the imminence of revised telecoms legislation, ComReg will consider revised wording on this matter in the next review of the National Numbering Conventions, due to take place in the second half of 2010. In the meantime, operators and service providers should be aware that the introduction of revenue sharing on any number ranges, on which calling parties would normally not expect that their payments would be used for non-carriage purposes, is likely to mean that those numbers will be deemed to be de-facto Premium Rate Numbers and, potentially, be subject to licensing requirements.

## 10.5 Voice and Video Short Codes

The National Numbering Conventions restricts the use of PRS 5 digit short codes, beginning 5xxxx, to messaging services only. Representations have been made to ComReg from MNOs to amend the relevant conventions to allow these codes to be used for voice services.

In the UK, voice short codes are compatible with SMS short codes and are considered by mobile operators to be an effective marketing vehicle to combine voice and data components of any campaign, or application, as there is transparent cross-network pricing for PRS calls.

The same 5-digit short code number can be used in the UK for both voice calls and SMS messaging. The major advantage that MNOs see for voice short codes over other types of customer engagement and billing types is that, with a voice short code, users only have to call a 5-digit number, which is more memorable than a standard phone number or premium rate number.

In Ireland, the 5xxxx range is part of the National Numbering Scheme whereas, in the UK, the pool of short codes has traditionally been managed, on a co-operative basis, by the MNOs themselves. There are two potentially serious issues with introducing voice short codes on 5xxxx in Ireland.

#### *10.5.1 Potential mis-dialling*

5xxxx voice short codes would only be feasible on mobile networks as there could be potential mis-dialling issues in the many local areas where 5-digit subscriber numbers beginning with '5' already exist.

#### *10.5.2 Competitive imbalances*

Numbering Convention 6-2(vii) states that a criterion that ComReg will take into account when deciding whether to allocate a short code is that "*No competitive imbalances should be created by the allocation*". This would, of course, apply equally to proposals to extend the usage of codes already allocated. As this service could only work on the mobile networks, ComReg would need to consider any competitive imbalances created for fixed-line service providers who must provide competing services on longer, less memorable, PRS numbers. The fixed-line providers have expressed opposition to the extension of 5xxxx services to include voice.

#### *10.5.3 Numbering Advisory Panel*

ComReg maintains an Industry Forum on numbering issues, called the Numbering Advisory Panel (NAP). This issue of voice shortcodes was discussed at the December 2009 meeting and further consideration is to be given to proposals at the next meeting in May 2010. A separate public consultation may be required to gain feedback from industry and other interested parties if the proposal to extend the use of 5xxxx to voice services proceeds further.

Depending on the outcome of NAP discussions, ComReg may need to consult on the implications of opening the 5xxxx range to voice services as part of the next update of the National Numbering Conventions, due to take place in the second half of 2010.

### **10.6 Use of International Numbers for Premium Rate Services**

Some services, particularly where the content is of an adult nature, are promoted in Ireland using international numbers of other countries. These countries are, typically, expensive to call. One recent example is a service, of a sexual nature, provided on the telephone numbers of the island of St. Helena in the South Atlantic. St. Helena is a high-cost destination, where call costs could be upward of €2.50 per min.

Regardless of the country from which services are operated, the guiding principles are consistent in that the promotion and operation of PRS must be legal, decent and honest. ComReg will work closely with operators to ensure that all services are compliant, noting that all services provided to Irish consumers involve payment extracted, in the first instance, via an Irish provider. The new licensing framework, which will aim to capture all parties in the value chain, will ensure that all providers of such services are licensed accordingly, regardless of their location.

## **11 Statements of Intention**

In this Chapter, ComReg set out its position in respect of two issues that are of concern to both consumers and members of industry.

### **11.1 Geographic reach of regulation and cross border issues**

Regulating PRS is challenging, given the number of entities in the PRS value chain. This challenge is much greater when entities in the value chain are resident outside of Ireland and jurisdiction becomes a factor in seeking redress when consumer harm occurs. Regardless of the country from which services are operated, the guiding principles are consistent, in that the promotion and operation of PRS services to Irish consumers must be legal, decent and honest.

ComReg intends that its licensing regime extends to all parties (Aggregators, Network Operators and Content Providers) that market and deliver PRS to Irish customers. For the licensing scheme to operate effectively, ComReg will introduce a licence condition prohibiting licensed PRS providers from entering into commercial arrangements with another PRS provider unless that other party is also licensed by ComReg.

This approach will ensure that all PRS providers, wherever based, are subject to consistent legislation and regulation governing the provision of PRS in Ireland.

### **11.2 Protection of Minors and Classification of Adult Content**

Section 8.1 of RegTel's Code of Practice contains provisions specific to services that may be directly targeted at persons under 18 years of age, or services that could be attractive to persons within that age group. Ringtones and games, for example, are particularly popular with younger consumers. These provisions are important and it is ComReg's intention that they will be retained in ComReg's Code of Practice.

With the majority of children now owning a mobile phone, there is a risk that they may access inappropriate and potentially offensive content, or that they may be specifically targeted by such services. For certain types of PRS, the consumer is actively required to confirm that he/she is over 18 by providing age, or date of birth, verification. In spite of these precautions, occasions still arise where children manage to access, or subscribe, to services that are not marketed at, or intended for, their use.

It is ComReg's intention to engage with industry, particularly the MNOs, to develop a robust content classification framework that SP's will be required to adhere to. This classification framework should ensure that a consistent standard is applied, regardless of whether the content is accessible over fixed telephony, mobile telephony or the internet. PRS Content Providers will be required to classify their content in accordance with the classification framework.

## 12 Submitting Comments

The consultation period will run from Thursday, 01 April 2010 to Friday, 30<sup>th</sup> April 2010, during which the Commission welcomes written comments on any of the issues raised in this paper. It is requested that comments be referenced to the relevant question numbers from this document.

Having analysed and considered the comments received, ComReg will review the scope of PRS regulation and publish a response to consultation and decision in June 2010.

In order to promote further openness and transparency, ComReg will publish all respondents' submissions to this consultation, subject to the provisions of ComReg's Guidelines on the treatment of confidential information – ComReg 05/24. We would request that electronic submissions be submitted in an-unprotected format so that they can be appended into the ComReg submissions document for publishing electronically.

### **Please note**

ComReg appreciates that many of the issues raised in this paper may require respondents to provide confidential information if their comments are to be meaningful.

As it is ComReg's policy to make all responses available on its web-site and for inspection generally, respondents to consultations are requested to clearly identify confidential material and place confidential material in a separate annex to their response

Such Information will be treated subject to the provisions of ComReg's Guidelines on the treatment of confidential information – ComReg 05/24

## Appendix A – Overview of New Legislative Provisions

### ***A New Definition for PRS***

Section 3 of the Act provides a new definition for PRS which is different to that currently provided in RegTel's Code of Practice. Further consideration of what constitutes a PRS is given in Section 7 when the primary issue of what class, or type, of PRS should be regulated is considered.

### ***An additional function for ComReg***

Section 5 amends Section 10 of the Communications Act 2002 (*the Principal Act*) to provide for ComReg to have the additional function of regulating the provision, content and promotion of PRS, which is the primary purpose of the Act.

### ***Licensing of Services***

Sections 6 and 7 provide for the licensing of services, the terms and conditions that may be attached to a licence and the information that PRS providers shall provide to ComReg upon request. This new licensing regime requires ComReg to prescribe, in Regulations, the class, or type, of service that will require a licence and will enable ComReg to vary the conditions that will apply to particular types of PRS, as appropriate, given the various roles of the different parties within the PRS value chain.

By defining what classes, or types, of service are required to be licensed, this also means that ComReg may exempt a premium rate service from licensing even if it falls within the definition of a PRS. ComReg will consider exempting certain classes or types of PRS where there is supporting evidence of no potential consumer harm.

### ***Scope of services covered***

The scope of regulation is covered in greater detail in Chapters 6-8 of this consultation. However, certain types of PRS will be subject to tighter regulation than others. For example, information-type services, such as weather forecasts and traffic and travel information, do not pose the same potential for consumer harm as mobile subscription services or chat services that may involve substantial charges on a phone bill or prepaid account. Accordingly, some services will be subject to less stringent conditions than others and, while some conditions will apply to all classes or types of service, ComReg will be able to specify different conditions for different categories of service in an objective and proportionate manner.

### ***Enforcement powers***

Sections 8 to 10 provide the enforcement measures that ComReg may apply when it encounters non-compliant PRS services. Under Section 8, ComReg may make an application to the High Court for the immediate suspension of a licence, where it considers such suspension is necessary to protect users or potential users of PRS. This is an important provision as swift action by ComReg may be necessary to prevent the continuation of an offending service until further investigations can occur.

Section 9 provides that if ComReg finds, following an investigation, that a PRS provider has not complied with, or has breached, a condition of a licence, it shall notify the provider of its finding and require the provider to remedy any non-compliance within a specified period. The remedy can include a refund by the provider to affected consumers.

The legislation also provides that ComReg may make regulations specifying conditions (including the basis and circumstances upon which refunds may be made to end users) to be attached to licenses. This provision is helpful in situations where ComReg may be unable to contact the offending party and may, therefore, require the assistance of other parties in the value chain to assist with any refunds process.

Sections 12 and 13 provide for offences relating to the provision of specified PRS without a licence and for overcharging for services or charging for services not supplied. It also provides for the Court, on ComReg's application, following a conviction, to make an order revoking the licence and prohibiting the licensee from re-applying for a new licence, either permanently or for a fixed time.

These licensing and enforcement provisions provide ComReg with several options to deter non-compliant PRS providers from operating in the Irish market. The requirement that each PRS provider must apply for, and hold, a licence covering the services it provides is significant. It permits ComReg to refuse to grant a licence under specific circumstances or, if granted, to specify the conditions that attach to any particular licence.

Section 19 provides that any legal proceedings involving RegTel before the enactment will be continued post-enactment by ComReg. This provision ensures that there will be no regulatory or legal *lacuna* as ComReg assumes regulatory control.

#### ***Right of Appeal***

Section 11 provides that a PRS provider who is aggrieved by a decision by ComReg to refuse, suspend, amend or revoke a licence has the right of appeal to the Circuit Court against the decision within seven days of notification of the decision.

#### ***A New Code of Practice (CoP)***

Section 15 provides for the preparation and publication of a Code of Practice by ComReg, following consultation with PRS providers, other interested persons and, as it considers relevant, other regulatory bodies within the State. In this way, a consistent approach by the relevant statutory bodies in both consumer protection and content-related regulation is ensured. Until this process is completed, the provisions of RegTel's current CoP will, where not superseded by the Act or by subsequent Regulations, remain in force.

Section 15 also provides that compliance with the Code of Practice is a requirement on PRS providers and, consequently, non-compliance with the provisions of the Code of Practice may result in a sanction being imposed.

## Appendix B - The Current Numbering Requirements for DQ

The National Numbering Conventions (currently ComReg 08/02) is ComReg's main vehicle for setting out the framework for management and use of numbering resources and for making its procedures open and transparent. Section A6.5.5 of ComReg 08/02 describes the designated use of the 118XX DQ code, as follows: -

### **A6.5.5 Telecommunications Directory Enquiry Access Codes**

These are 5-digit short codes in the range 118XX that allow subscribers to gain access to their preferred directory service providers. The codes may only be used for the provision of the actual directory service and for supporting services that are directly associated with this, such as call completion. While providers of pure directory enquiry services are not considered to be electronic communications service providers and therefore need not be authorised, the addition of call completion services requires notification and authorisation by ComReg. Telecommunications Directory Access services in Ireland are not currently deemed to be Premium Rate Services.

Section A1.6 sets out the (current) eligibility criteria for applicants for an 118XX directory short code, as follows: -

### **A1.6 Telecommunications Directory Information Access Code Criteria**

- (3) Undertakings providing access to telephone directory information using the National Directory Database (NDD) shall be eligible to apply for telecommunications Directory Information Access Codes;
- (4) Note: Only Authorised Persons who have made a notification to ComReg showing they are providers of a publicly available Electronic Communications Network or Service may add a call completion service to a directory service.
- (5) Applicants for allocation or reservation of telecommunications directory information access codes shall justify their requests as specified in ComReg's numbering applications procedure (currently ComReg 08/03). Specifically, supporting information shall be provided by the applicants as described in the Numbering Application Form, which will be evaluated by ComReg;
- (6) Allocations will only be made where the provided information is complete and confirms the applicant has a genuine and sufficient need to be provided with a share of the finite numbering resource.

Section 11.4.1 lists the numbering conventions (conditions of use) that must be followed by holders of 118XX numbers, as follows: -

### **11.4.1 Telecommunications Directory Access Codes Usage**

- (7) 118XX directory information access codes shall be used only for the provision of telecommunications directory enquiry services and relevant value added services e.g. call completion services;



- (8) Directory information access codes may be allocated to eligible telecommunications directory information service providers offering national only, or national and international telecommunications directory information services; up to six codes will be allocated as appropriate and subject to justification of need;
- (9) Provision has been made in the Irish numbering scheme to access geographic telephone numbers in Northern Ireland by dialling 048. All national telecommunications directory information services shall include full support for accessing Northern Ireland geographic numbers using this method. *Note: International telecommunications directory information services may also provide support for Northern Ireland numbers;*
- (10) Directory information service providers to whom access codes are allocated are expected to provide a comprehensive telecommunications directory inquiry service. Failure to do so may result in recovery of the allocated code;
- (11) Text-based calls (e.g. SMS) to and from an 118XX number are permitted.

Finally, Section 11.1 of the conventions lists some general conditions of use that apply to all number holders.

## Appendix C - ComReg's Primary Purpose Test for DQ Services

A Directory Enquiry Service ("DQ Service") is a service which provides information on telephone numbers of subscribers who have consented to being included in such a service, and is otherwise in conformance with Data Protection requirements. For a service to be considered a DQ service, its main purpose must be to provide a 'white pages' service<sup>44</sup>.

A classified directory service is considered to be ancillary to the primary purpose of a DQ service if the service only provides information relating to a particular restricted geographic location or a specific topic. Such a limited service will not on its own be considered to be a DQ service.

There are two types of DQ service recognised by ComReg for the purpose of allocating 118XX dialling codes, as follows:

### 1. National DQ Service

A national directory service is one which provides information on allocations of numbers to subscribers from the Irish numbering scheme to callers located throughout the Republic of Ireland. A national directory service may also include geographic numbers allocated to subscribers in Northern Ireland.

### 2. International DQ Service

An international directory service is one which provides information on allocations of numbers to subscribers from the numbering schemes of other countries.

Directory information access codes will be allocated to eligible directory information service providers offering national only, or national and international directory information services. Provision has been made in the Irish numbering scheme to access geographic telephone numbers in Northern Ireland (by dialling 048). All national directory information services shall include full support for accessing Northern Ireland geographic numbers using this method. International directory information services may also provide support for Northern Ireland numbers.

### 3. Minimum Service Level

In order to ensure that allocated directory information access codes are used to provide comprehensive directory enquiry services, it is ComReg's intention that each recipient of code(s) provides a full national directory information service, which is capable of providing information on all numbers allocated from the National Numbering Scheme.

### 4. Eligibility

Eligibility Criteria for 118XX directory information access codes will be set out in the National Numbering Conventions.

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<sup>44</sup> White Pages - a directory searched by business and name, or name and residential address.

## Appendix D – Consultation Questions

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