

## 15/001 Findings of Non-Compliance with the Premium Rate Services (“PRS”) Licence Conditions

### Context and Background

1. Following a review of information gathered during compliance monitoring and following a review of consumer complaints received by ComReg in relation to Infaze Service Ltd (“Infaze”) Yaboo premium rate service (“PRS”), ComReg commenced an investigation into the provision of Yaboo PRS in accordance with Section 9 of the Communications Regulations (Premium Rate Services and Electronic Communications Infrastructure) Act, 2010<sup>1</sup> (“the Act of 2010”) and Sections 10(1)(d)(ii) and 12(1)(d) of the Communications Regulation Act, 2002, as amended<sup>2</sup> (“the Act of 2002”).
2. Yaboo PRS is a service operated on a subscription basis, whereby end users are primarily offered the chance to win various different prizes, such as, vouchers, cash and an iPhone. The subscriber can also claim rewards, play games or send web texts. The service is charged €4 per week through two reverse-billed<sup>3</sup> SMS at a cost of €2 per message received. The subscriber is granted virtual currency which can then be used to enter the competitions or to avail of other content.
3. On 8 September 2012, subscribers to Inkred’s<sup>4</sup> PrizeClub and Sassio PRS were informed by SMS that they had been “migrated from Prizeclub / Sassio to Yaboo”, which is Infaze’s PRS.
4. ComReg engaged in correspondence with Infaze detailing the alleged breaches of the Code of Practice<sup>5</sup> (“the Code”) and the Communications Regulation (Licensing of Premium Rate Services) Regulations, 2012<sup>6</sup> (“the Regulations of 2012”).
5. In this case, ComReg followed the process outlined in the European Communities (Directive 2000/31/EC) Regulations 2003, (the “E-Commerce Regulations”) (S.I. No. 68/2003), which transposes Article 3(4) of the E-Commerce Directive.

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<sup>1</sup> <http://www.oireachtas.ie/documents/bills28/acts/2010/a0210.pdf>

<sup>2</sup> <http://www.irishstatutebook.ie/pdf/2002/en.act.2002.0020.pdf>

<sup>3</sup> “Reverse-billed” SMS, sometimes referred to as “mobile terminated” or “MT”-billed SMS are SMS for which the recipient incurs a charge when receiving an SMS.

<sup>4</sup> Inkred was an Irish PRS provider which operated a number of subscription PRS.

<sup>5</sup> [http://www.comreg.ie/\\_fileupload/publications/ComReg1229.pdf](http://www.comreg.ie/_fileupload/publications/ComReg1229.pdf). Note this Code was replaced in 2014 by ComReg Document 14/45 [http://www.comreg.ie/\\_fileupload/publications/ComReg1445.pdf](http://www.comreg.ie/_fileupload/publications/ComReg1445.pdf) though the provisions relevant to this investigation did not change with the introduction of the new Code.

<sup>6</sup> [http://www.comreg.ie/\\_fileupload/publications/SI\\_111\\_of\\_2012.pdf](http://www.comreg.ie/_fileupload/publications/SI_111_of_2012.pdf)

6. Accordingly, ComReg forwarded its request for measures to be taken in relation to Infaze by the competent authority in the United Kingdom, where Infaze is established. ComReg recently received notification that the competent authority in the United Kingdom was not in a position, in this instance, to take any action in relation to Infaze and, therefore, having observed the steps required to derogate from the requirements of the E-Commerce Directive, ComReg has now exercised the powers conferred on it by the Act of 2010.

## **Findings of non-compliance**

7. Following its investigation, ComReg found that the Yaboo PRS was not compliant with certain requirement of the Code as detailed below.
8. Accordingly, on 28 May 2015<sup>7</sup>, ComReg notified Infaze of the findings<sup>8</sup> that it had not complied with the Code for PRS providers and, therefore, was in breach of a condition of its PRS licence<sup>9</sup>.

### **Sections 5.13, 5.14 and 5.15 of the Code**

- ComReg found that Infaze did not operate the “double opt-in” mechanism, as required by Sections 5.13, 5.14 and 5.15 of the Code, for its Yaboo PRS, which would have afforded end users the opportunity review their decision to subscribe to the PRS and also have provided verifiable evidence that the end users did, in fact, subscribe.
- In accordance with Sections 5.13, 5.14 and 5.15 of the Code, a PRS provider is required to send the end user, by SMS, a “subscription request message” outlining the main terms of the service and requesting the end user to send a plain, dedicated SMS, with a keyword, to a particular short code in order to subscribe. The purpose of requiring end users to send an SMS to confirm their intention to subscribe and to create an independent verifiable record that the end user has provided their consent to be charged for the PRS.

### **Sections 5.16, 5.17, 5.18 and 5.20 of the Code**

9. ComReg found that the manner in which the material information of the service is provided to consumers by Infaze contravenes the requirements of Sections 5.16, 5.17, 5.18 and 5.20 of the Code.

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<sup>7</sup> In accordance with Section 17(1) of the Act of 2010

<sup>8</sup> In accordance with its powers at Section 9 of the Act of 2010

<sup>9</sup> Infaze is a licensed PRS provider in Ireland, in accordance with Section 6(1) of the Act of 2010 and Regulation 4 of the Communications Regulation (Licensing of Premium Rate Services) Regulations, 2012

- The Code requires that following a consumer's confirmation of his / her intention to subscribe, the PRS provider must confirm the commencement of the subscription by sending an SMS, which is considered a durable medium that can be accessed by all end users regardless of the make/model of their handset, outlining the main terms of the service, such as cost, and providing details how to unsubscribe from the service.
- While the Code requires that all regulatory information messages are sent as standard SMS, ComReg found that Infaze sends some messages, which contain material information related to the PRS are provided in a WAP formatted message (as opposed to a standard SMS that can be received and accessed by all mobile handsets). As a result, end users whose mobile handsets are not WAP-enabled or WAP-capable will not receive this information. For example, all models iPhones do not support WAP and therefore WAP messages, although delivered to the end users mobile handset, will not be visible or accessible by end users with these handsets.

## **Conclusion**

10. Infaze is required to remedy the non-compliance in respect of the breach of the Code by 29 June 2015 and to make refunds to end users connected to the non-compliance by date to be specified by ComReg.