



Commission for
Communications Regulation

Submissions to Consultation

Premium Rate Services – Code of Practice

Submissions received from respondents

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**ComReg Draft Code of Practice for Premium Rate Services
Consultation**

RTÉ Response

7th February 2011

General Observations

Based on the definition of a PRS Provider as defined in the Communication Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010, RTÉ considers some questions in the Code of Practice Consultation paper and some elements of the Draft Code of Practice to be unclear as to which party in the Premium Rate Service chain is being referred to where PRS Provider is mentioned. RTÉ considers greater clarification is needed in this regard.

Provisions Applicable to all PRS

Q1. Do you agree with the proposed provisions, applicable to all specified PRS, as set out in Section 3 of the draft Code? If not, please provide reasons to support your view.

RTÉ supports the proposed provisions as set out in Section 3 of the draft Code, but assumes the following:

3.11 On receipt of each and every promotion by electronic means, end-users must be provided with a free or low cost (no more than standard network charge) means of opting-out of receiving further promotions by using the same, or similar, communication methods to that employed to deliver the promotion.

RTÉ assumes an opt-out option is only required where consumers are subscribed to a service or have opted-in to a promotional database. Where no further promotions will be sent by a PRS provider, as a result of participating with an individual promotion, this opt-out option is not required.

3.25 End-users must not be charged at a premium rate in respect of PRS, or parts thereof, that deliver a “busy tone” or “silence” prior to connection to the requested PRS or in respect of a PRS which is unavailable to them. Similarly, end-users must not be charged for the receipt of error messages.

RTÉ assumes that in the event of network failure or a network error, it is the responsibility of the network operator to ensure that the end-user is not charged for a “busy tone”, “silence” or the receipt of error messages.

Promotion of Premium Rate Services

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

RTÉ agrees with some of the proposed provisions relating to the promotion of PRS and disagrees with others.

RTÉ has always sought to be open and transparent in relation to the promotion of its premium rate services and any associated costs relevant to these services. Having operated in the premium rate environment for over 8 years, RTÉ has not received complaints relating to transparency of pricing information.

ComReg’s own data relating to calls to its Customer Care Helpline (with issues around subscription services accounting for 84% of all of the PRS related contacts) supports the view that transparency around subscription service pricing is the core issue, particularly where consumers are attracted to a service via an initial free or low cost interaction, with significantly higher subscription charges subsequently being applied.

RTÉ is restricted in relation to the visual and spoken information which can be communicated whilst promoting a premium rate service for the following reasons:

- **Graphic templates (which vary from full and half screen boards to graphic straps and scrolling graphic straps) limit the amount and size of visual information which can be displayed.**

RTÉ would like to draw attention to the fact that the more visual display requirements there are, the greater the amount of on-screen clutter, (in turn reducing the amount of available space for the required information and thus reducing overall font size). This increases the potential for confusion and miscommunication to the end-user.

With a view to open and honest communication, RTÉ graphics have been developed with a view to maximising legibility of the most important and relevant information for the viewer (including how to participate with the service, call/text costs, calls from mobiles cost warning where appropriate and service provider details). These graphics have been developed by experts in this area and follow layouts used by other national and international broadcasters. RTÉ's view is that to change the established layouts would only serve to confuse the viewer rather than add clarity to the process. RTÉ requests that ComReg allow broadcasters greater flexibility with regard to visual requirements and graphic presentation, subject to specific confines pre-agreed with ComReg, given the limitations which broadcasters are operating within and their overall expertise in graphic presentation. RTÉ agrees that visual information must be legible and prominent, and presented in a manner which does not require close scrutiny to the average viewer.

- **RTÉ notes the proposed change to the Spoken Requirements in relation to verbalising any associated costs. RTÉ is restricted by the amount of time available to promote a premium rate service within a given programme.**

In some cases, it would not be possible to verbalise the spoken requirements since supporting graphics may appear during a performance, discussion or debate (e.g. vote numbers may appear on graphic straps during a live contestant performance on The All Ireland Talent Show or viewers may be invited to vote/comment on an issue by way of a graphic strap during a current affairs show. In both cases the invitation is by graphic only and it would not be possible to interrupt the live show with a price announcement relating to the service promoted on screen).

RTÉ's premium rate competition services are well established at a consistent €1 price point, voting services at 60c and comment line services at 25c. Participant data is not used for further promotional/marketing purposes, nor does RTÉ operate subscription services arising from participation with its competition, voting or comment lines services.

For the reasons outlined above, RTÉ requests that ComReg applies the requirement to speak all costs associated with a PRS only where total cost of the service exceeds €2 (as per RegTel's Code of Practice 2008) and in cases where the total cost of the service is below €2 (including free) but participation may lead to subsequent charges.

4.7 (c) on the landing page for all Internet promotions and be viewable, without scrolling, at a resolution of 1024x768, and

RTÉ considers this overly prescriptive. Depending on the amount of information which needs to be communicated, it may not always be possible to make all visual requirements viewable without scrolling. RTÉ requests that ComReg allow broadcasters greater flexibility with regard to presentation of visual requirements on Internet promotions, subject to specific confines pre-agreed with ComReg.

RTÉ also seeks a clear definition of "Internet Promotions". Does online support material for on-air competitions, voting services etc. qualify as an "Internet Promotion" or is an "Internet Promotion" defined as one which is self-contained on the online platform only?

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

RTÉ supports the concept of communication in a manner which is consistent across all service providers with a view to ease of understanding by the consumer. A full list of terminology which is permitted by ComReg would be welcome. For instance, what can be used to replace SP bearing in mind graphic space restrictions? (RTÉ often has to list 2 service providers: Call Service Provider and Text Service Provider). RTÉ again underlines that the more information required to be displayed, (whether characters or words), the greater the amount of on-screen clutter and the smaller the font size, making it more difficult for the consumer to read and digest the information.

RTÉ would also question the need to list the service provider name and contact phone number on screen, given RTÉ makes this information available on support material on www.rte.ie and on RTÉ Aertel. In some cases (e.g. vote graphic straps / comment line graphic straps) this can lead to confusion resulting in the consumer inadvertently dialling the service provider helpline whilst trying to vote / register a comment with a show etc. RTÉ requests that ComReg give further consideration as to the need for broadcasters to include service provider details on all PRS graphics, especially where the broadcaster's service providers are limited to one or two companies which have been consistent over a number of years. RTÉ asks ComReg to consider whether it may be more efficient to point viewers to individual support material on www.rte.ie and on RTÉ Aertel for service provider details or whether RTÉ could list itself as Promoter of the service on the PRS graphic, encouraging viewers to call RTÉ's helpdesk in the event of problems with the advertised service? This would likely make more sense to the consumer also.

RTÉ does not agree that it is clearer to present a cent amount as €0.XX or EUR 0.XX or Euro 0.XX but considers this to be unnecessarily cluttered requiring closer scrutiny than XX cent.

EXAMPLE – VOTING GRAPHIC STRAP (ROI) - CURRENT

JOE SOAP
call **1513 71 71 01**
text **ACT 1 to 53125**

**Each vote costs 60 cent. Calls from mobiles normally cost more.
Call SP Phonovation 0818 217 100. Text SP Xiam Interactive 01 483 2010.**

EXAMPLE – VOTING GRAPHIC STRAP (ROI) – NEW COMREG VERSION

JOE SOAP
call **1513 71 71 01**
text **ACT 1 to 53125**

**Each vote costs €0.60. Calls from non-eircom networks may vary and from mobiles normally cost more.
Call Service Provider Phonovation 0818 217 100. Text Service Provider Xiam Interactive 01 483 2010.**

EXAMPLE – VOTING GRAPHIC STRAP (ROI) – RTÉ RECOMMENDS

JOE SOAP
call **1513 71 71 01**
text **ACT 1 to 53125**

**Each vote costs 60 cent. Calls from mobiles normally cost more.
Calls from non-eircom networks may vary. Full details on RTÉ Aertel page 197.**

OR

JOE SOAP
call **1513 71 71 01**
text **ACT 1 to 53125**

**Each vote costs 60 cent. Calls from mobiles normally cost more.
Calls from non-eircom networks may vary. RTÉ Helpdesk 01 2083434.**

Price Information

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

5.1 (b) *all published call charges and prices are inclusive of VAT*

(c) *all call charges (inclusive of VAT) are prominently displayed and clearly stated where required*

RTÉ seeks clarification as to whether it needs to be stated in visual/spoken information that prices are inclusive of VAT or is it sufficient to simply promote the total price inclusive of the VAT amount. i.e. Each entry costs €1 or Each entry costs €1 (incl VAT).

5.1 (e) *the required pricing information for voice services states that calls from networks other than eircom may vary and calls from mobiles normally cost more, and*

(f) *values in Euro must include the Euro symbol (€) where possible and where that is not possible must use the word “Eur” or “Euro”. Prices in cent must be presented as €0.XX”, “EUR0.XX” or “Euro 0.XX”*

With regard to 5.1 (e) RTÉ seeks clarification as to whether it is sufficient to communicate the mobile and other networks cost warning visually?

With regard to 5.1 (f) RTÉ does not agree that it is clearer to present a cent amount as €0.XX or EUR 0.XX or Euro 0.XX but considers this to be unnecessarily cluttered requiring closer scrutiny than XX cent.

5.3 *In the case of promotions transmitted on television, on websites, or in other audio-visual format, the pricing information must be spoken as well as visually displayed.*

RTÉ requests that ComReg applies the requirement to speak all costs associated with the PRS only where total cost of the service exceeds €2 (as per RegTel's Code of Practice 2008) and in cases where the total cost of the service is below €2 (including free) but participation may lead to subsequent charges. An assumption is made that only website promotions transmitted in an audio-visual format require pricing information to be spoken as well as visually displayed.

Expenditure Reminders and Limits

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

6.6 *(a) where end-users have spent €20 on a particular PRS, and after each €20 spend interval, thereafter, the end-user is informed of the costs that they have incurred in the service by receiving an expenditure update and, if it is a Subscription Service, the end-user is required to positively confirm that they wish to continue subscribing to the service*

RTÉ considers it is only appropriate to issue end-users with spend reminders where there is a recurring MT (reverse-billed) charge, since consumers may be incurring charges which they are not necessarily aware of. For premium rate services which run on an MO billed short code, where the end-user is taking action to engage in a series of individual purchases, and where the cost to participate has been clearly communicated, in line with ComReg's recognition that "end-users must bear a level of responsibility for their own actions", RTÉ considers that it is the responsibility of the end-user to recognise and decide appropriate spend levels based on their individual circumstances. ComReg's vision is that *end-users of PRS will be as confident and safe as using PRS as in engaging with best practice retail services* however spend reminders when consumers are electively taking action to engage in a series of individual purchases could be regarded as intrusive and inappropriate.

RTÉ seeks greater clarification as to the definition of "a particular PRS".

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

RTÉ has no strong views on this but suggests expenditure reminder levels should be consistent across IVR, SMS and other access methods.

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

The cost of entering a competition should be reasonable relative to the prize on offer. RTÉ considers ComReg's €12 price point per entry to be high and this could be reduced to further protect consumers.

RTÉ considers a limit on the amount that an end-user can spend on entering a competition is only appropriate where there is a recurring MT (reverse-billed) charge, since consumers may be incurring charges which they are not necessarily aware of. For premium rate services which run on an MO billed short code, where the end-user is taking action to engage in a series of individual purchases, and where the cost to participate has been clearly communicated, in line with ComReg's recognition that "end-users must bear a level of responsibility for their own actions", RTÉ considers that it is the

responsibility of the end-user to recognise and decide appropriate spend levels based on their individual circumstances.

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

RTÉ agrees there should be a limit on the expenditure of an individual transaction through the use of a “facility”, but has no strong opinions on what this amount should be.

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

RTÉ considers a daily, weekly or monthly expenditure limit is only appropriate where there is a recurring MT (reverse-billed) charge, since consumers may be incurring charges which they are not necessarily aware of. For premium rate services which run on an MO billed short code, where the end-user is taking action to engage in a series of individual purchases, and where the cost to participate has been clearly communicated, in line with ComReg’s recognition that “end-users must bear a level of responsibility for their own actions”, RTÉ considers that it is the responsibility of the end-user to recognise and decide appropriate spend levels based on their individual circumstances.

RTÉ seeks greater clarification as to the definition of “an individual PRS”.

Purchase Confirmation Messages

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

RTÉ seeks clarification as to the definition of the “once-off” services in question.

RTÉ considers it is not reasonable to provide purchase confirmation receipts for its services. In the interest of minimising unwanted intrusion, RTÉ has adopted a strict policy of not using participant data for further marketing or promotional purposes. For the majority of its services, RTÉ sends 1 reply text acknowledging receipt of the end-user’s text message and briefly outlining any important terms and conditions of the service. To send a further “purchase confirmation receipt” message would be intrusive. Where a consumer makes a number of “once-off” purchases (e.g. 2 x entries to The Late Late Show viewer competition) sending 2 acknowledgement replies and a further 2 purchase receipts is excessive and could be regarded as unwanted junk mail by the end-user.

ComReg should also note that for some high profile RTÉ services it is not possible to send reply messages due to the large volume of messages being received within a limited competition/vote window. In these instances it would not be technically possible to deliver a purchase confirmation receipt message without jeopardising incoming messages and network operator systems. RTÉ considers its standard reply texts appropriate acknowledgement of the PRS purchase and requests that ComReg acknowledge that, for high volume events, it may not always be possible to send such reply texts.

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

Yes, RTÉ supports any measure which will assist in minimising issues around subscription services.

Subscription Services – Sign-up Fees

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

Yes, RTÉ agrees with this.

Subscription Services – Expenditure Update Messages

Q13. Do you agree with the proposal to require end-users to provide positive confirmation of their desire to continue in a Subscription Service after a certain expenditure level? If not, please provide reasons to support your view.

Yes, RTÉ agrees with this, providing this proposal can be facilitated technically by service providers.

Subscription Services – Failed Delivery Messages

Q14. Do you agree with the provisions in the Draft Code that restrict the number of attempts that a PRS Provider may use to send an undelivered message? If not, please provide reasons to support your view.

Yes, RTÉ agrees with this.

Subscription Services – Unsubscribing from Multiple Subscription Services

Q15. Do you agree with ComReg's proposal in relation to unsubscribing from multiple Subscription Services that operate on the same shortcode? If not, please provide reasons to support your view.

Yes, RTÉ agrees with this.

Competition Services

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

It is RTÉ's view that competition services on a subscription basis should not be permitted. RTÉ considers competition services running on a subscription basis to be damaging to consumer confidence in PRS. RTÉ considers these competitions may be misleading to consumers, particularly where a free or low cost entry message is promoted, with subsequent potential higher charges not as transparent.

With the introduction of this model, RTÉ received numerous calls from consumers complaining about these competitions (since the consumer's initial understanding was that they were RTÉ competitions, which was not the case). It is RTÉ's view that this model attempts to closely mirror the established format for broadcaster competitions and in some cases leverages off trusted, credible brands to encourage participation (e.g. competitions branded with popular television series images and logos and appearing in the ad breaks around these programmes, inferring a relationship with the programme/brand which may not be the case).

RTÉ believes that, for competition services, in the interest of open and honest communication to the end-user, submitting an entry should be the end of the process for the end-user and should not trigger entrance into a promotional database or subscription service where further potential charges may be incurred.

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

Yes, RTÉ agrees with these provisions.

Additional Sub-Sections of Section 6 of the Draft Code

Q18. Do you agree with the provisions in the draft Code relating to the services referred to in this Section? If not, please provide reasons to support your view.

Yes, RTÉ agrees with these provisions, with respect to live services, children's services, advice and information services, chatline services and virtual chat services.

Customer Care

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

Yes, RTÉ agrees with these provisions.

Refunds – Requirement for Refunds

Q20. Do you agree that the amount to be refunded to end-users should be the full charge imposed on them, inclusive of VAT, by the non-compliant PRS Provider? If not, please provide reasons to support your view.

Yes, RTÉ agrees, but please note our request for clarification as to the definition of a PRS Provider in this case (listed under General Observations at the top of this document). RTÉ considers that no one party in the PRS chain should benefit from a non-compliant PRS and all parties in the PRS chain should work together to refund their part of the charge.

Q21. Do you consider that ComReg should, in cases where the effect of the PRS is that end-users have been fundamentally misled in breach of the Code, require the PRS Provider to refund all end-users of the services? If not, please provide reasons to support your view.

Yes, RTÉ agrees, but please note our request for clarification as to the definition of a PRS Provider in this case (listed under General Observations at the top of this document). RTÉ considers that no one party in the PRS chain should benefit from a non-compliant PRS and all parties in the PRS chain should work together to refund their part of the charge.

Refunds – How should End-Users be refunded?

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

RTÉ considers re-crediting telephone accounts would be the most efficient and convenient refund option for the consumer.

Q23. Having consideration for the principle of proportionality, should different methods of refunds be utilised, depending on scale of the refunds to be issued? If not, please provide reasons to support your view.

RTÉ has no strong views in this regard but considers refunds should be issued in the most timely and efficient manner available, with convenience for the consumer top-of-mind.

Refunds – Default by a Party responsible for issuing refunds

Q24. Do you agree with ComReg's position that network operators should withhold payments for at least 30 days after the use of the PRS to which the payments relate? If not, why not?

RTÉ does not agree that payments should be withheld for at least 30 days for commercial reasons. RTÉ considers it may be appropriate to impose this condition on PRS Providers whose track record would indicate refunds may be required or who are working with partners who have an unproven track record in this market.

In the event that a minimum period to withhold payments is put in place, a maximum period permitted to withhold payments should also be defined, in the interest of fairness to all parties in the PRS chain.

Q25. In the event that a non-compliant PRS Provider defaults on a requirement to provide refunds, who should be responsible for refunding end-users?

RTÉ seeks clarification as to the definition of a PRS Provider in this case (see our query listed under General Observations at the top of this document).

RTÉ considers that no one party in the PRS chain should benefit from a non-compliant PRS and all parties in the PRS chain should work together to refund their part of the charge. In the event of an error at network operator stage, network operators have the opportunity to readjust statements and issue refunds before revenue reaches service providers and/or content partners. However, it appears if a service provider or content partner promotes a PRS in a non-compliant manner, they are eligible for the full refund debt, despite the fact that the network operator has taken a large percentage of the end-user charge. This does not seem fair. All parties should be obliged to refund their share.

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

RTÉ considers that no one party in the PRS chain should benefit from a non-compliant PRS and all parties in the PRS chain should work together to refund their part of the charge. In the event of an error at network operator stage, network operators have the opportunity to readjust statements and issue refunds before revenue reaches service providers and/or content partners. However, it appears if a service provider or content partner promotes a PRS in a non-compliant manner, they are eligible for the full refund debt, despite the fact that the network operator has taken a large percentage of the end-user charge. This does not seem fair. All parties should be obliged to refund their share.

Q27. How would compliant PRS Providers recoup the cost of administering refunds on behalf of a non-compliant PRS Provider?

It is RTÉ's view that compliant PRS Providers should not be responsible for the cost of administering refunds on behalf of non-compliant PRS Providers. Potential non-compliant PRS providers (identified based on their track record or the fact they have an unproven track record in this market) should be required to register a deposit amount with ComReg sufficient to cover refunds if required.

RTÉ seeks clarification as to the definition of a PRS Provider in this case (reference out query listed under General Observations at the top of this document).

Control of Access to Adult (including Sexual) Entertainment Services

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

RTÉ supports any developments which will assist with protecting the more vulnerable in our society.

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

RTÉ agrees.

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

RTÉ is not in a position to comment on this.

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

RTÉ is not in a position to comment on this.

Numbering – Fundraising for Charitable Organisations

Q32. Do you consider that a designated shortcode range should be made available for the purpose of fundraising for charitable organisations through mobile PRS?

Yes, RTÉ would welcome this initiative and requests that ComReg investigate whether it would be possible to make this Code VAT exempt (i.e. the usual VAT amount is also donated to charity).

Q33. If so, do you have a view on what range should be used?

RTÉ considers this should be a new range to distinguish it from existing activity.

Q34. If a shortcode range is set aside for fundraising through mobile PRS, do you consider that there should be any restriction on the types of organisations that could apply for a shortcode within this range? If so, please state what these restrictions should be.

Yes, only registered charities should be permitted.

30 Stagetimes Ltd.

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

We do not agree with the provisions relating to promotion.

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

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

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

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

Visual Display Requirements

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

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

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

Spoken Requirements

We do not agree that this approach represents best practice across all retail services. There is no requirement for such spoken regulatory information within the ASAI or BAI codes. The effective impact on Television Advertising will be that Premium Rate Providers will be unable to effectively advertise on TV. It could take as long as 15 seconds to voice over the pricing requirements alone.

This combined with the display requirements is totally disproportionate. It is bizarre and in many cases impossible to require website ads to have spoken information.

Use of the Term "FREE"

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

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

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

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

Promotion of Subscription services

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

We do not agree with comregs proposal on subscription services.

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

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

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

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

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

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

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

31 tacuText 53215

From: Mark Dargan
Sent: 07 February 2011 15:48
To: retailconsult
Cc: William Redmond
Subject: Reference: Submission re ComReg 10/92

Ms Michelle O'Donnell
Commission for Communications Regulation

Dear Michelle,

As managing Director of a new Irish company offering a novel and well regarded group text service, tacuText 53215, I wish to make the following response to your proposed changes to the PRS service code of practice.

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

We do not agree with some of the the provisions relating to promotion.

2.5.1 Visual Display Requirements

I think a balance is required here. I agree price should be clearly marked but for our service is it not the most significant factor according to our customers, so our "discussion with customers would be distorted were Price to be "prominent". When a customer subscribes with our dedicated opt in message they are clearly reminded of the cost in our confirmation message.

Promotion of Subscription services

Our service is considered a subscription service, however our customers are subscribing to, say, a school or sports text group from and it is the school that send them billable messages. So it would be confusing for our customers to have the mention of subscription service prominently featured in any advertisement. Again a BALANCE is required here, not a "one size fits all".

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

We think that either abbreviations are understandable to the general public or they are not. Codifying them into a table wil not improved intelligibility, and increases our cost of compliance for not great gain.

The ASAI are the appropriate body to review advertising to ensure it is clear and understandable.

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

We do not agree in an overly prescriptive approach as novel services like ours can have difficulty identifying the future costs of a service which depends on the school or group owner's need to send messages.

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

We have no issue with reminding customers of an aggregate spend which in our case might take tow or three years to each €20 spend. However forcing our subscribers to actively opt to continue subscription requires that consumers continually respond to these reminders in order to continue their use of the service. Consumers are certainly not going respond positively to this

requirement and will cease to use services.

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

Expenditure reminders at €30 euro intervals would seem reasonable in the context of typical ARPUs. However there should be no requirement for the consumer to act on these reminders other than to text STOP.

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

There should not be daily limits set since our service has no control over the frequency of message sends. During uncertain periods of poor weather many messages may need to be sent, in other periods no messages at all will be sent.

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

At our low 20cent price point and given the 3 code words necessary to subscribe to a given school/sports/scout information service a double opt in would be huge over-kill. We have not had one customer complain in three years of operation querying whether they subscribed to a group. In the UK double opt in is only mandated from a higher price point.

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

We have no issue with reminding customers of an aggregate spend which in our case might take two or three years to each €20 spend. However forcing our subscribers to actively opt to continue subscription requires that consumers continually respond to these reminders in order to continue their use of the service. Consumers are certainly not going to respond positively to this requirement and will cease to use services.

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

The sums involved in our service are very small per subscriber. Over a period of say 30 days the amount might be 20-80 cents. Refunding such small amounts poses a logistical problem. The most appropriate way is to Re-credit Telephone Accounts, but the Operators must agree to this.

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

See previous response.

In summary we are for smart regulation which reduces consumer complaints and improves the confidence of customers in PRS. Every bone fide service provider would surely wish this. However an overly prescriptive approach can hamstring novel consumer benefiting products like tacúText. It is vital that regulation have the flexibility to match the severity of regulation with the cost and nature of the service.

Best Regards,

Mark Dargan
Managing Director

32 Telecom Express Ltd.



TELECOM EXPRESS

Miss Michelle O'Donnell
Commission for Communications Regulation
Irish Life Centre
Abbey Street
Freepost
Dublin 1
Ireland

21st January 2011

Reference: Submission re ComReg 10/92
Response from Telecom Express

Q1 Do you agree with the proposed provisions, applicable to all specified PRS, as set out in Section 3 of the draft Code? If not, please provide reasons to support your view.

No. Data protection points 3.9 and 3.11, assumes that data collected will be used for further marketing and promotion. We find this is not always the case, therefore it would be confusing and dis-concerning for the end user to be offered means of opting out of the service they have just paid to use. Such examples would be a competition where consumer leave data so they can be contacted if they are the winner and for no other reason. Point 3.11 should be revised to reflect that this is only required where data is going to be held for other purposes. Other than this, we agree with the general provisions set out in section 3. It would be useful to have clarity on expectations on due diligence and what would be considered as 'reasonable steps' referred to in point 3.26.

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

We would consider pricing information in section 5 to be key information to promotion of PRS and wonder why this is not detailed in the section. It does not make it easy to follow the code by have this stated separately in the code, with some references to pricing in section 4 and majority in section 5.

Point 4.2b the majority of end users will have to pay network charges in addition to PRS. We would suggest that this point is simplified by stating that the PRS price is followed by, 'plus network charges.

4.4c We would request that providing it is clearly stated in the promotion, that pricing can be stated either exclude or include VAT.

4.13d) iii Providing the consumer if fully aware when they sign up to a free service of the period it is free and the cost there after, and that at the end of the their free trial, a reminder message is sent to them reminding them of these details including how to opt out should they wish, there should be no need for further opt in.

We do not agree with the statement '**Competition Services which are likely to be repeated, or rebroadcast after the competition is closed must clearly state that this is the case and that the entry mechanism is not open to use by end-users or must clearly state the opening and closing**

date and time of the competition and that calling outside those times will incur a charge' We believe it a rebroadcast should include the a closed competition.

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

OK. It would be helpful and retain industry standard to include what would be acceptable in the promotion.

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

Yes agreed.

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

Yes in respect to subscription services and maximum call costs. Point 6.6 should not be a requirement for one off PRS such as competition. If an end user chooses to enter a SMS competition enough times that it amount sums to 20Euro's then they should be allowed to. The consumer will have seen the call to action and be fully aware of the costs they are incurring.

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

Yes we agree.

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

No. People should have the freedom to spend their money as they choose. The pricing information is clear in the promotion. There is no other business would restrict the amount of money a consumer spends with them. Consumer must take responsibility for using and enjoying PRS.

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

No. People should have the freedom to spend their money as the choose. We are offering a service and why should there be an imposed limit to the consumers enjoyment of a PRS. We do agree that when a consumer is charged automatically, such as in subscription service, that they should be reminded at regular monthly intervals or at regular monetary values that they are subscribed to the service and how to unsubscribe. Service charged per response should not have any restrictions dictated to them in the code of practise but we agree on maximum call durations and are happy with the costs out-lined..

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

No. as above.

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

No. The consumer has all the information prior to responding to the call to action. This facility can not be provided to all entry methods. Requirement to provide this will mean each entry will receive

two responses to every one entry, which we believe will be invasive and off putting to the consumer. There is a cost associated with sending a receipt which will have a negative impact on industry.

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

No. Promotional material has all the information, we believe the double opt in will just cause annoyance to the consumer.

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

Yes

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

No. As long as they are full informed on how to opt out in their subscription reminder then we do not see the need for such a requirement.

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

No. We don't see the need to place such a restriction with in the code of practise and to who's benefit this will be. If a consumer has decided to use a PRS service they should receive that service and pay for that service regardless of whether they are in good reception area or have remembered to top up their credit. In circumstances where a consumer thinks it is unfair they have been charged, under these circumstances, then there are customer service and refund policy in place.

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

Yes.

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

N/A

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

N/A

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

Yes

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

Yes

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

reasons to support your view.

Yes. However no one should financially benefit from the call. Network providers should have to return the revenue that they make from the call to the consumer. ComReg should be aware that breaches can occur from technical issues and human error, it is not always an attempt to rip off the consumer but when not everyone in the value chain is expected to return their revenue from the call, refunding can be very costly.

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

Consumers should be refunded, however own-ness should be on the party who breached the code, not necessarily the PRS provider.

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

Ideally the refunds would be paid by the network provider and refund directly to the consumer account. The network provider could then invoice non compliant PRS provider. If this is not possible, it should be acceptable for the refund to be by any means. As technology advances the most practical method for consumer and provider will prevail.

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

No. As above

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

Yes.

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

We would expect that in the majority of cases the network providers will have continue to retain revenue until refunds have been given. If this is not the case, then the person next in line would be the service provider who would take money back from the content provider.

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

Yes

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

Ideally the PRS providers would invoice the non compliant partner for administration of refunds. However, in practice this might not be possible and the PRS provider may incur a financial loss for something which was not of there doing.

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

We agree age verification is important for adult services where technically possible. Age restrictions should be clearly stated in promotions.

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

No don't agree. These services should only be promoted in appropriate environments. Consumers do not want to have to speak to someone in order to gain access to such services. If age verification is in place then there should be no harm.

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

Miss use of a person phone is not PRS provider's responsibility. Otherwise this is open for exploitation. Promotional material states that users should have the bill payers permission. Consumers should take it up with their network provider who should be able to offer the facility to restrict access to such services.

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

As above

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

No we do not consider this a very important requirement. Charitable services are promoted as such, The amount of money being donated and the beneficiary should be stated in the promotion is enough

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

No View

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

If a short code range is set aside then there should not be any restriction on who can apply for such codes as long as it is only used for registered charitable fund-raising. If there is any restriction imposed then a most it should be noted on the ComReg License.

33 Toll Text International Ltd. ("TTI Ltd")

From: kenneth fogarty
Sent: 21 January 2011 10:22
To: retailconsult@comreg.ie; retailconsult
Subject: Submission re ComReg 10/92 by Toll Text International Limited; 5STAR.

Ms Michelle O'Donnell
Commission for Communications Regulation
Irish Life Centre
Abbey Street
Dublin 1
Ireland

Friday 21 January 2011

By post and email (retailconsult@comreg.ie)

Submission re ComReg 10/92

Dear Ms. O'Donnell

I write on behalf of Toll Text International Ltd. (TTI ltd) in relation to the consultation on a Code of Practice for Premium Rate Services.

Background

Toll Text International Ltd (No;481709) is a company which was established to facilitate the making of toll road charge payments by SMS messages. We have successfully operated a fully functional test using shortcode 57827 (5STAR) to demonstrate our concept from March to November 2010 on all the Irish mobile networks. This test was conducted under an agreement dated March 2010 between TTI ltd., and Oxygen8 Communications Ireland Limited.

A key element of the Toll Text International system is that it facilitates customers in making variable payments such as those for tolls, where the amount varies according to factors such as toll road and vehicle class. Specifically, a customer will send to our shortcode their car registration number, followed by a space and the Toll Code, for example M50 N(for north) or M50 S (for south), followed by a space and the vehicle class (2 for a car). Our service will then pay their toll fee and deduct the cost from their phone account by mobile terminated billing.

As the toll will vary, so will the amount to be paid by the customer. Consequently the payment method operates by sending a number of lower value reverse billed SMS messages to the customer until the full toll amount is reached. For example, six messages at 50 cent each might be sent where the total toll amount is three euro. One such message will be a receipt specifying the sum paid by the customer. Further messages may be visible, but ideally (to avoid unnecessary messages causing alerts for the customer and possible confusion) would be "invisible" messages. This only arises by reason of the absence of flexible value fixed tariffs within the existing infrastructure which has no apparent technical basis in the companies view.

In light of this model, Toll Text International has the following comments about the Draft Code.

Item 3.6

As the Toll Text International business model is different from that of many other premium rate services, it will be important to ensure that rules which may have drafted with those other services in mind do not restrict the development of this new and innovative service. Consequently this provision should be amended to provide:

"Where a Premium Rate Service Provider can satisfy ComReg in respect of a particular Service that any requirement of the Code can be adequately met by alternative means, ComReg shall give prior written permission for the use of such alternative means."

Items 4.4 and 4.9

The reference in these provision to notifying the customer in advance of the "minimum number of messages required to complete the transaction" does not make sense where the cost of the transaction - and therefore the number of reverse billed messages - is determined by the customer. The aim of protecting the customer is adequately met in this situation by virtue of the fact that the customer is responsible for choosing the amount to be paid and the number of messages to be sent. It would be preferable to amend these provisions so that they do not apply where the number of messages to be sent varies according to the amount to be charged, where that amount is determined by the customer. This again only arises by reason of the absence of flexible value fixed tariffs within the existing infrastructure which has no apparent technical basis in the companies view. The establishment of a pre approved table of agreed values related to a transparent ,understandable code to which charges apply would benefit the industry by informing consumers and maximizing efficiency within the network traffic infrastructure at no extra cost.

Yours sincerely

Kenneth C Fogarty SC

For; Toll Text International Limited

34 TV3 Television Network (“TV3”)

**COMREG CONSULTATION 10/92A -
PREMIUM RATE SERVICES CODE OF PRACTICE
TV3 RESPONSE**

TV3 would like to thank ComReg for initiating the Consultation process in respect of Premium Rate Services Code of Practice. TV3 also welcomes any further clarification of these Regulations, to ensure that end-users are aware of any costs they may incur through the use of PRS. However, we believe it appropriate to highlight to ComReg that there is a fine line between the protection of consumers and interference with their right to acquire, or make use of services, as they wish. We would submit that it would be constructive if ComReg were to initiate a campaign to educate PRS users as to the operation of Premium Rate Services, so that they will be better aware of when availing of these services as to the charges they will incur and the steps required if they wish to unsubscribe from subscription services.

Whilst it is not TV3's intent to comment on all of these questions, TV3 does nonetheless, as set out below, answer the ones most relevant to its business.

Question 1:

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

TV3 has no difficulties with these proposed general provisions that are applicable to all specified PRS.

Question 2:

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

TV3 believes that most of the requirements as set out above are appropriate and reasonable. In respect of the spoken requirement, TV3 notes that currently only entry costs over €2 need to be voiced. To alter this to mandate that all calls to be both spoken and on-screen, would be inappropriate and impractical. If the costs of all calls were to be voiced, end-users may become accustomed to hearing these messages and as such may be less likely to pay attention to them. If services over €2 only were voiced, it is probable that end-users would concentrate on the message and as a result be fully aware of the charges they would incur. Further, TV3 believes that this proposed change would simply lead to confusing graphics on-screen. If ComReg were to put in place a campaign to educate the public on the use of PRS, such stringent measures would not be required on each advertisement.

The other revisions above would provide substantially more clarity in relation to these services generally and we would suggest that that these specific amendments be allowed to take effect and then be reviewed at a later date, to see whether such a general alteration, such as the provision of spoken information, is also then deemed necessary.

Further, we believe ComReg should be cognisant of the need to ensure that the cost of the voiceover required is proportionate to the cost of the call.

Question 3:

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

TV3 agrees with the proposed table of abbreviations.

Question 4:

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

TV3 believes that, at the moment written information only is sufficient, and the need for spoken information can be reviewed at a later date.

We would again suggest that it would be more practical and constructive to require only those services over €2 to be voiced as this would draw the public's attention to the higher cost of the calls.

For the purposes of clarity and transparency we would request that ComReg give a clear definition of "prominence" with respect to the online graphics required.

Question 5:

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

TV3 would question the value of this requirement, as it is currently extremely difficult to send expenditure reminders to IVRs. If an IVR is withheld, the Service Provider will not be in a position to give expenditure reminders. Additionally, as there are already procedures in place to whereby PRS providers must allocate a percentage of revenue for the bad debt of network providers, we would suggest that it be for network operators to send expenditure reminders to consumers and to set limits, not the SP.

Question 6:

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

TV3 believes that, given the cost of calls, (i.e. anywhere from 30c to in excess of €2.50) it would be inappropriate to set a limit at a particularly low level. We would point out that there must be some level of personal responsibility taken into account here for the end-user, particularly in relation to non-subscription services where it requires positive action on the part of the end-user to make the calls. We believe that an

expenditure reminder after €45-50 has been spent, should be sufficient to allow the end-user to decide whether they wish to continue with the service.

Question 7:

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

TV3 does believe it entirely appropriate to notify end users of their use of these services. However, we would suggest that a distinction be made between subscription and non-subscription services in this regard.

In the case of a subscription service, an end-user could ostensibly spend more money than they had intended without being entirely conscious of it, and, as such, perhaps a forced release mechanic should come into play once €60 has been spent. On the other hand, with non-subscription services, we would reiterate the fact that it requires a conscious act on the part of the end-user to enter the competition as many times as they do and as such they will be much more aware of how much money they exhaust on the service. This, again, comes down to personal responsibility on the part of the end-user and we believe that once they are aware of the cost of the competition entry, they should be entitled to spend their money as they wish.

Question 8:

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

TV3 believe that if the facility is used to purchase a good/service, a text should be received after €20 is expended. We do not believe that there should be any further restriction on this as a good/service may cost above the €20 and, once the end-user is aware of how much money is being spent, they should not be limited. However, if the service is a per minute facility, we believe this should be dealt with by forced release mechanism once €60 has been spent.

Question 9:

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

TV3 would respond that the main network provider in the Republic, Eircom, currently has provisions on limitations and this should continue to be the case. In the case of TV services, i.e. particularly in relation to voting, TV3 would suggest that limitations should be put in place via notifications rather than impose limits. As outlined in Section 6 of the draft Code, end-users will be notified of whenever they have spent €20, with all calls being terminated after €60 has been spent. We believe this to be sufficient notification per call for end-users in order to

allow them to keep track of the amount of money they have spent and that any further notifications or restrictions would confuse end-users and amount to over-regulation of the services.

Further, unlike in subscription services or per-minute services, these services actually need an individual to physically decide that they wish to avail of a service and as such it is unlikely that an end-user could unwittingly overspend on such a service.

Again, we would suggest that a programme to educate the public on the use of PRS would be the most effective option in order to ensure that end-users were fully aware of the charges they would incur and the methods of opting out of such services.

Question 10:

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

TV3 is of the view, particularly with regard to competitions, that the cost per call is already made very clear, and again, requires an individual to make an active assumption of the costs, by virtue of the fact that they must make the call. However, if an end-user is purchasing a good through the use of a facility, we believe purchase confirmation receipts would be in order, to allow for returns if required.

Question 11:

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

TV3 accept that ComReg must ensure that at all times there is sufficient clarity and transparency with respect to charges relating to PRS. However, there is evidence from other jurisdictions that end-users do not tend to reply to the second text in an opt-in scheme, due to apathy and consequently the suggested educational campaign would ensure better awareness and clarity for end-users.

TV3 believe that the current rules offer sufficient protection, as all Service Providers are required to send texts confirming to end-users that they have subscribed to a service, so that end-users will be aware that they will be charged. Should ComReg believe that there ought to be clarity in relation to the nature of these texts, TV3 has no issue with this. With respect to the current situation, service providers are also required to carry out spot checks to ensure that these confirmation texts are being received by end-users.

Question 12:

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

In general, the first amount billed is the subscription fee for the first period. It is unusual for a SP in Ireland to charge a sign-up fee and a subscription fee. As such we agree that any sign-up fees should be considered to be the subscription charges for the first billing period.

Question 13:

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

We agree that end-users may be required to provide positive confirmation of their desire to continue with a subscription service after a certain expenditure level.

We would submit that perhaps a scheme whereby the network providers would provide an online system where end-users can log on and view the services to which they are subscribed, would be extremely valuable and effective. This would allow end-users to monitor their use of these services personally.

Question 14:

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

We would recognise that the number of texts waiting to be delivered should not stack up beyond the subscription period, for example if an end-user is subscribed to a service for one week, the messages should not stack up beyond this duration and should simply be used to deliver the message required. However, with this in mind, we see no reason in the case of shorter subscription periods why a SP should not attempt once a day to deliver the message in question. This will not result in high charges for the end-user and they will receive the service to which they are subscribed.

Question 15:

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

As it is unlikely that end-users will respond to a message asking which service they wish to unsubscribe from after sending the STOP message, we think that it would be appropriate to follow the UK model of sending NO INFO in order to unsubscribe from information messages and STOP to unsubscribe from the database. This will

prevent people from unwittingly unsubscribing to many services that they may wish to remain subscribed to.

Question 17:

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

On the whole we would agree with the provisions relating to Quiz TV in the draft Code. However, as there are a number of Quiz TV shows from other territories that are shown in this territory, we feel it would be appropriate to ensure we have uniform regulations for all Quiz TV Services and as such that the OfCom Regulations in this area should be considered. We would also like to reiterate that end-users must take some personal responsibility for the calls they make in respect of Quiz TV Services. The cost per call is clearly outlined at regular intervals and they must take positive action to call the service.

Question 18:

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

We believe that there should be clear definitions given in respect of these services as Chatline and Contact and Dating Services appear to overlap somewhat in the Code.

Question 32:

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

In the past, Ireland AM producers have wanted to use SMS services for viewers to donate to charity. This can prove difficult because all Network Operators have to individually agree to waive their costs. This provision should make it easier for charities to use SMS as a fundraising tool. We believe that a designated shortcode would also make charity numbers more easily recognisable to the public, and, as such, may result in a higher level of donations being made.

Question 34:

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

TV3 believes that this will be sufficiently regulated through the Charities Register, ensuring that only registered charities will be able to apply for a shortcode.

In the event of any queries please contact the undersigned

David McMunn

Director of Government, Regulatory and Legal Affairs

35 Vodafone Ireland Ltd.



Vodafone Ireland Consultation response on the proposed 'Code of Practice' for the regulation of Premium Rate Services.

Introduction:

Vodafone welcomes this opportunity to respond to ComReg's Code of Practice for the regulation of Premium Rate Services.

While in general Vodafone considers the proposals by ComReg to be reasonable, there are some areas of concern where Vodafone believes the draft CoP to be unduly restrictive and which may **[Redacted]**. In drafting a new CoP, ComReg must also consider imminent developments and innovations in PRS (e.g. mobile micro-payments) and strive to be as regulatory light-handed as possible. Overly intrusive regulation at this early stage of development could potentially risk the viability of these new services and would serve neither the industry nor its customers well.

It is Vodafone's view that ComReg must take account of **[Redacted]**.

Vodafone is currently of the view that the majority of premium rate services operate in compliance with Premium Rate Services legislation and that it is significantly more difficult and less rewarding for service providers, who previously flouted the rules in the voluntary code of practice, to engage in questionable behaviour. Vodafone's own modus operandi is to engage with respected and trusted service providers with a clear objective of developing innovative and 'ground-breaking' services as a part of its consumer portfolio.

In summary, it is critical that the changes adopted in the new Code of Practice are done in a manner which both protects the consumer and avoids over regulation and unnecessary costs. This approach will result in an improved operating environment for customers and players, it will add to economic growth and ensure Ireland's place in the development of E-money services being championed by EU Directives.

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

Vodafone agrees with ComReg's view that the Code of Practice should encompass core data protection principles and is in agreement with the general provisions set down by ComReg. We would consider that no content deemed illegal would ever be permitted by ComReg.

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

Yes, Vodafone agrees with ComReg's provisions in relation to the promotion of PRS.

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

Yes, Vodafone agrees.

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

Vodafone agree with the provisions except where they relate to data charges. It is impossible for a Service Provider to accurately state the data charges for all operators when advertising a service as each network operator will have various data charges depending on the type of customer. Some customers will have data included, others will have a per day rate, promotional rate etc. Stating "Data charges will apply" should be sufficient in informing customers that they may incur a charge.

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

Vodafone agrees that expenditure reminders are appropriate for subscription based services but are not an appropriate restriction for transactional SMS services. For example, if a customer makes a once off purchase of 25 euro which is paid for via a number of SMS, the customer cannot receive a reminder message after 20 euro since this would likely cause confusion. Vodafone believes that ComReg should allow an exception for this type of once-off transactional services which are going to be a key growth area for future services.

Expenditure reminders are also inappropriate for mobile originating services; e.g. if a customer enters a competition every week such as a Friday night television show at 1 euro per entry, receiving a message 5 months later to say they have spent 20 euro is of no additional benefit to the customer as each event was a single transaction.

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

Vodafone does not understand ComReg's proposal with reference to forced release of a "call or session" via "Internet Dialler Software" and we would ask that this be clarified in the code.

In relation to the expenditure, Vodafone believe reminders are appropriate for subscription services but we do not think the customer should have to provide a positive confirmation in order to continue. Once the SMS contains the STOP to unsubscribe information, this should be sufficient protection.

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

Vodafone believes that 12 Euro is an acceptable limit on competition entries, however we do not believe a limit on the number of competition entries per person is required or desirable. Consumers should be allowed to enter a competition as many times as they wish as they would do for other (non-PRSMS based) competitions. It is important to note that most customers have a prepay account and therefore are unlikely to build up excessive charges entering competitions unless they choose to do so. However, it can and should be made clear to the customer that they will be charged for each entry.

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

Yes we believe that there should be a spend limit, however this should be determined by each network operator. It is also important to note that it may be very difficult to monitor limits per transaction because of different operator's billing systems and this must be taken into consideration if enforceable spend limits are envisaged.

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

There should be a limit per transaction due to the difficulties of monitoring individual spends across a number of services. The limit should be left up to an operator to manage in the best interests of its customers when markets change and services evolve. **[Redacted.]** (Vodafone UK have made this limit £30 Sterling).

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

Vodafone believes that purchase confirmation receipts should be implemented for subscription services – with the receipt detailing the service, costs and how to unsubscribe using STOP. If this information is contained in the receipt, the customer should not have to further confirm that they want to proceed with the transaction. Vodafone believe that while it may be appropriate for some mobile originating services, there are cases e.g. in high volume TV voting services where it may not be required. Vodafone currently request that Service Provider partners do not send confirmation receipts for TV voting services because of the impact on the network and the potential negative customer impact if they receive a receipt some hours after sending the original message.

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

Vodafone believe that the double opt-in is totally unnecessary if Service Providers adhere to the promotional guidelines. Clear promotional pricing, combined with the confirmation message which will outline how to unsubscribe using STOP is adequate. Double opt-in has a significant detrimental impact on the PRSMS industry as has been experienced in the UK and therefore clarity of pricing at the point of purchase and clear instructions to the customer on how to unsubscribe is sufficient.

PRS related calls to Vodafone customer care have **[Redacted]** over the past 18 months due to a number of our own customer care initiatives such as reminding customers of STOP to unsubscribe, and very clear pricing details for on-portal content reinforcing the position that double opt-in is not required as a measure to improve customer experience. **[Redacted]** Too many overly constrictive constraints will make the PRSMS industry inefficient and unworkable and will lead to the adoption of a financially regulated product. Regulation must be balanced to also encourage growth and not just restrict it.

Vodafone believe enhanced customer care and transparency will ensure the Mobile Payments industry provides an excellent customer experience. In addition, Vodafone is committed to giving its customers an exceptional billing experience. **[Redacted]**

[Redacted]

Through the use of such innovation Vodafone and the wider industry can achieve the same goal of customer protection without over- regulation and limitation on services.

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

Yes, Vodafone agree.

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

No. If the reminder SMS contains STOP details then customers do not need to confirm that they wish to continue. If it is a subscription service, the customer will have received notification of how to unsubscribe within both the confirmation message and the reminder message, and this is sufficient information for the customer to make the decision that they no longer wish to continue with the service. (The comparison could be made to bank services where for example Direct Debits do not have such restrictions). Vodafone believe that full compliance with the existing code of practice is sufficient.

In Vodafone's view, automatic un-subscription will make the PRSMS billing enablers unviable and prevent the Mobile Payments industry from succeeding. Ireland will then be clearly competitively disadvantaged and seriously hindered in fulfilling the EU E-money directive objectives. This will prove counter-productive to Ireland's intention to be an innovation hub and a strong digital economy. Mobile Payments are critical to the success of such initiatives.

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

Yes.

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

The service provider should provide the customer with details of the services to which they are currently subscribed. However, it is a bad customer experience to unsubscribe customers from all services if they haven't responded within a certain timeframe. Service Providers should be allowed to send a reminder SMS requesting a response from the customer before they are unsubscribed from all services.

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

Competition subscription services are very popular proving there is an obvious demand for them. With clear pricing and clear information on how to unsubscribe, there is no reason why competitions cannot remain as a subscription service.

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

Yes, Vodafone agrees with the provisions proposed regarding Quiz TV services.

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

Yes

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

Yes

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

Yes. In addition, any refunds should have an additional % charge imposed to fund the network operator resources required to implement the refund. This should be set at a level that will act as an incentive to service providers to implement good customer experiences but not so high as to be prohibitive to service providers.

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

This would only be appropriate if it is a very blatant breach of the Code of Practice and is not based on a very low volume of customer complaints or an issue that is subject to interpretation of the code. ComReg's current powers should be sufficient if implemented in such cases of breaches.

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

If it is a one off event, then Service Provider will refund the customer. If however a large number of customers has been affected, the operator should withhold payment to the Service Provider and apply credit to the customer bills, or add credit in the case of prepay customers. This method of refund works well at the moment.

This is sufficient for Premium SMS. However for Mobile Payments, Vodafone believes it should be possible and desirable to implement a better solution.

[Redacted]

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

No, all refunds should be executed in the same way for consistency. A variety of methods will cause confusion with additional calls to customer care and potentially to ComReg. Refunds as per above should be applied at the end of month. This is in line with the Credit Card model for example which works perfectly for all transaction values today.

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

End of month is sufficient- meaning anything up to 31 days.

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

In the above case, the Mobile Operator would withhold payment to the Service Provider and provide a refund to the customer. This is an established process which Vodafone already has in place with its Service Provider partners.

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

Vodafone believes that due care needs to be taken in triggering a refund. Merchants for the services purchased also need to be protected from fraudulent refund transactions.

A. Existing Premium SMS refund triggers:

Refunds should always be made if a customer,

- i. Has not received content or service.
- ii. Did not opt in to the specific service.

Vodafone believe that in the normal course of events, refunds should not be made if a customer has received content and has a confirmed opt in for the service.

B. New Mobile Payments Services in Transactional SMS or Charge 2 Bill:

Refund rules for digital content should be lighter than Premium SMS. However, refund rules for physical product services should be similar to purchases using credit card companies in order to protect merchants against fraud where a customer buys for e.g. Pizza, DVD, Movie Tickets, etc.

Refunds for **Physical Products** should always be made if a customer:

- i. Has not received delivery within allotted time
- ii. Did purchase item on their mobile

Vodafone believe that in the normal course of events, refunds should not be made if a customer has service, did purchase the item and did receive delivery of goods.

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

Vodafone has already established a practical method of reconciling payments between itself and its Service Providers. This should be dealt with in the contract between the two or more parties.

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

Vodafone believes that an independent Age Verification Framework is a necessity and will be of great value to both network operators and Premium Rate services providers. Such a framework could provide clarity as to what can and cannot be provided as a service. We would view that with the correct implementation, the industry can promote the responsible management of access to such services. If established, such a framework should be maintained in order to keep pace with not only rapidly-evolving services, but also the attitudes of the public which it is clear are very fluid in recent times. Vodafone and other operators have looked at establishing a 'Content Standards' code of conduct that can classify material and support 'age verification' in the past. Such an authority would need to be more than an assessor of adult content, as it can be more difficult to gauge the impact of contact-type services with large developments in web 2.0 style media and experiences through social networking, often involving user-generated content.

Any potential Framework needs to relate to existing content guidelines in other media like TV, film, etc, but not necessarily mirror or overlap them. We have seen a massive advancement in the convergence of PC and Mobile interfaces and usability, with this in mind we believe any Framework needs to be more stringent and its implementation more active than anything that applies to the fixed line internet at the moment.

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

It is not possible to bar some services within 5XXXX ranges and not others. This is a technical limitation.

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

Vodafone believe that there is a public expectation that Network Operators should be responsible for controlling access to adult services, although the reality is more complex and requires a more co-operative relationship between parents and access providers.

Vodafone is of the view that it is not reasonable to expect PRS providers to be able to control access. They certainly must be held accountable for breaches of any code of practice in this area. It is possible that some will seek to test the boundaries of acceptability once regulation allows for the provision of adult services. Should this be the case, voluntary constraints may no longer suffice and need to be replaced with formal sanctions.

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

Vodafone believe this is a worthwhile idea which should be given consideration. There may also be a need to determine if provision should be made for the potential damage to affected end-users' reputation or to compensate for any embarrassment caused.

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

Yes.

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

Two ranges should be used. One for VAT exempt charities and one for non VAT exempt charities.

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

Proof of VAT exemption must be provided from the Revenue Commissioners on anyone requiring VAT exempt short codes. It is important that access to short code ranges is strictly monitored.

36 Xiam Interactive Ltd.



**Response to Consultation of Premium Rate Services regulation –
ComReg 10/92**

Submitted 2 August 2011

Introductory Comment

Throughout the Draft Code of Practice and the Consultation Paper, reference is made to PRS Provider(s). The definition of PRS Provider in the Draft Code of Practice refers back to the definition of premium rate service provider provided under the COMMUNICATIONS REGULATION (PREMIUM RATE SERVICES AND ELECTRONIC COMMUNICATIONS INFRASTRUCTURE) ACT 2010. The definition in the Act of 2010 reads thus:

“ premium rate service provider ” means a person who does any or all of the following, for gain:

(a) provides the contents of a premium rate service,

(b) exercises editorial control over the contents of a premium rate service,

(c) packages together the contents of a premium rate service for the purpose of facilitating its provision,

(d) makes available a facility as part of a premium rate service,

(e) transfers a premium rate service from a content provider to one or more electronic communications networks, or

(f) provides the electronic communications service over which a premium rate service is provided, or provides the electronic communications network over which a premium rate service is transmitted;

As you will be aware, due to the nature of PRS more than one party is involved in the provision of PRS and each of these parties is potentially a PRS Provider. This can result in there being more than one PRS provider in each case. However, it is unclear from reading through both the draft Code of Practice and the Consultation paper which party/parties are being referred to when mention is made of “the PRS Provider”. For example, from reading Q21 of this consultation paper “*Do you consider that ComReg should, in cases where the effect of the PRS is that end-users have been fundamentally misled in breach of the Code, require the PRS Provider to refund all end-users of the services?*” it is not clear to which potential PRS Provider party you are referring. Is it the party “that provides the contents of a premium rate service” (e.g. the Content Provider), the party that “transfers a premium rate service from a content provider to one or more electronic communications networks” (e.g. the Aggregator Provider) or indeed the party that “provides the electronic communications service over which a premium rate service is provided, or provides the electronic communications network over which a premium rate service is transmitted” (e.g. the Network Operator)?

The resultant ambiguity creates difficulties in interpreting the Draft Code of Practice and we believe further endeavor is required to remove ambiguity from the use of the “PRS Provider” term throughout both the Draft Code of Practice and the questions within this Consultation Paper so as to provide clear unambiguous direction to all parties.

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

The proposed obligation in paragraph 3.8 of the draft Code of Practice not to give “any undertaking which could preclude any information being given to ComReg in confidence” is too broad and overstates ComReg’s right to receive information. The information covered by the obligation should be limited to the information that the Act of 2010 states has to be provided to ComReg. Paragraph 3.8 should be redrafted to refer to information required to be provided by the Act of 2010.

Paragraph 3.8 as drafted will result in anyone following industry practice regarding confidentiality undertaking breaching the proposed obligation in paragraph 3.8. The practice in confidentiality undertakings is to permit disclosure of confidential information where there is a legal obligation subject to limiting the disclosure to that portion of confidential information that is legally necessary. As you will appreciate this is more restrictive than

ComReg's proposed wording. The existing practice has been developed over time to address the concerns and the interests of both regulators and parties. We believe that this practice should remain as is.

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

With the exception of paragraphs 4.7, 4.9 and 4.10 of the draft Code of Practice, we agree with the provisions of Section 4 Promotion of Premium Rate Services.

We believe that the obligations contained in paragraph 4.7 are too prescriptive and lack flexibility to deal with product and technological developments. We believe objective criteria relating to readability would be better.

Whilst we agree with the intent of paragraphs 4.9 and 4.10, however, not all the information required is relevant in all instances. There should be a distinction made between Subscription Services where pricing is often unclear and the potential for significant consumer harm exists and one-off competition entries. For example the pricing structure and number of messages may vary significantly between subscription services and one-off competitions.

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

No. The development and acceptance of abbreviations is part of the constant development of a language. We believe that the Code should impose no restriction on the use of generally understood abbreviations. Where there are two similar abbreviations and confusion is likely to arise, ComReg should indicate which abbreviation should be used.

We believe that SMS and visual promotions should be treated the same.

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

Yes, with one reservation regarding the requirement for pricing information to be spoken on websites. Promotions on websites can be run in a number of ways: written, audiovisual or a combination of audiovisual. Paragraph 5.3 of the draft Code of Practice should make it clear that this obligation only applies to audio visual promotions on websites.

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

Yes, however, we have a number of concerns about how such a requirement would be implemented in practice.

Our principle concern is how the trigger for the reminder would be calculated. We believe a distinction needs to be made between subscription services (MT billed and high consumer risk) and one off mobile originated (MO) PRS services. E.g. is the intention of the proposal that for a particular PRS recurring competition service at €1 a consumer needs to be notified when they've voluntarily entered different competitions 20 times?

The form of any notification needs to be carefully considered to avoid creating consumer confusion. By way of example, suppose a consumer enters a daily competition on the radio on a particular short code charged at €1 MO. After 4 weeks of entering, under the current proposed wording of the draft Code of Practice, they would receive a message informing them of having spent €20. This is likely to cause shock and concern on the basis that the consumer is of the opinion that they have spent €1 on the most recent entry. It is our proposal that one-off MO billed, non-subscription entries should be exempt from such a proposal.

Practical issues also arise where a short code is shared.

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

No. As we have outlined above in our answer to Q5 we have concerns about how the trigger level is calculated. Spending €20 in a day is very different to spending it over a 20 week period. We believe further thought and guidance needs to be given to how the trigger level is calculated, and in what instances it is appropriate.

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

We agree in part. We believe any introduction of a limit should tackle areas of high consumer risk such as subscription services and protect vulnerable groups (e.g. children). We also make the same points with regard to the calculation of the limit as made in response to Q.5 above.

We do not believe that MO originated and one-off competition services should be subject to a spend limit. These services require a positive act by the consumer and the proposed spend notification would alert them to the cost that they have incurred.

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

See answer to Q.7

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

See answer to Q.7

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

We agree in principal to confirmation reply messages. However, for low consumer risk events we do not see the necessity to include a price in the message when prices are properly highlighted with the call to action. It should also be noted that for certain events (such as high volume voting events) a need may exist to remove reply MT’s due to the inability of MNO’s to handle high volumes of inbound and outbound messages within a very short timeframe. On such occasions and in the customer interest, the Service Provider should reserve the right to apply judgement here.

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

Yes.

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

Yes.

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

No. The introduction of such a requirement will create substantive technical difficulties in providing a solution to meet this requirement.

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

No. No charge is made to a subscriber for undelivered messages, and the introduction of such a requirement will create substantive technical difficulties in providing a solution to meet this requirement.

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

No. We believe that should users STOP from a service they should be opted out of all services as default from that code as to include another layer of selective opting out will increase the likelihood of customer confusion.

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

No. We believe competition services on a subscription basis are at high risk of being misleading and have a high risk for customer harm.

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

Yes.

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

Yes.

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

Yes

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

See comment regarding the definition of PRS Provider at the start.

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

See comment regarding the definition of PRS Provider at the start.

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

MNOs have the billing relationship with the consumer and should be compelled to provide a means of allowing Service Providers to provide reverse Premium credits. This is currently the position in the United States market whereby certain MNOs will accept a negative billed MT message which returns the credit to a user in the most efficient means for that consumer. This also provides for the situation whereby thousands of consumers can be refunded quickly if such a need occurs.

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

As indicated in the response to Q22 a direct mechanism, allowing the Service Providers to action this via the SMSC binds currently in place, would provide a single method of refund for all potential cases.

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

Yes in part. If MNOs are made responsible for making refunds it would make sense for them to have a pot of money from which to make such refunds. The ability to withhold payment should not be in respect of the whole amount but rather an agreed percentage. It is worth noting that it is our experience that MNOs are frequently withholding payment for longer than 90 days. If a minimum period of time is being proposed, equally it is reasonable to enforce a maximum period of time that the MNO retains such revenues.

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

Network Operator should be responsible. They have the billing relationship with the end-users. See also answer to Q.22.

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

See comment regarding the definition of PRS Provider at the start.

There are two issues: who bears the cost of the refund and the mechanism for making the refund. If it is the partner's breach of its agreement with the PRS Provider that gives rise to the obligation to refund, the PRS Provider will be able to recover the amount of the refund from its partner under contract law. Regarding the payment mechanism, we believe that the network operator should make the refund because the network operator has the direct billing relationship with the customer. See also answer to Q.22.

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

It is our view that any such cost should be borne by the network operator.

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

We agree with this proposal.

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

We agree.

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

See comment regarding the definition of PRS Provider at the start.

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

We are not in a position to comment on this.

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

Yes but it should not impact current short code ranges and services

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

See answer to Q.32.

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

We believe it should be limited to registered charities only. Broadening the types of organisations beyond this will potential create confusion in the mind of end-users.