



Commission for  
**Communications Regulation**

# **Submissions to Consultation 11/51**

## Submissions received from Respondents

### **Submissions to Consultation**

**Reference:** ComReg 12/28s2

**Version:** Final

**Date:** 14/05/2012

**An Coimisiún um Rialáil Cumarsáide**

**Commission for Communications Regulation**

Abbey Court Irish Life Centre Lower Abbey Street Dublin 1 Ireland

Telephone +353 1 804 9600 Fax +353 1 804 9680 Email [info@comreg.ie](mailto:info@comreg.ie) Web [www.comreg.ie](http://www.comreg.ie)

## Submissions Received from Respondents

Document No:	12/28s2
Date:	14 May, 2012

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

# Content

## Section

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

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

## **Further Consultation on Revised Draft Code of Practice 11/51d**

### **Submission from the Office of the Data Protection Commissioner - August 2011**

The Office of the Data Protection Commissioner (ODPC) welcomes the Consultation Paper (11/51), the revised Draft Code of Practice (11/51d) and the opportunity given by ComReg to make submissions.

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

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

In our previous submission, we expressed concerns about the practical implementation of the provisions of then Section 4.2(a) of the draft Code of Practice: “...*All applicable limitations and major conditions must be brought to the attention of end-users, within the Promotional Material, and must include where applicable, the fact that the PRS Provider will link end-user consent to the use of personal data for marketing purposes with the end-user’s use of the PRS and how to opt-out of receiving future Promotional Material and the underlying database...*” We pointed out that while these are critically important elements in the overall concept of informed consent they were not included in the ‘Visual Display Requirements’ or the ‘Spoken Requirements’ sections of the draft Code of Practice. We submitted that both of those Sections be amended accordingly to take account of these critical elements.

We are now pleased to note the content of Sections 4.7, 4.15 and 4.16 in particular which address our previously expressed concerns. We welcome those amendments. In addition, we agree with the draft provisions of Section 4 which when implemented will enhance user experience in relation to premium rate services.

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

In our previous submission, we indicated our full support for the proposal from ComReg that it should consider the introduction of a "double opt-in" requirement for entry into subscription services. In that regard, we now welcome the provisions contained in Sections 5.9 to 5.19 inclusive.

In our previous submission we also stated that “*it would appear essential that a service provider abide by the principle of positive end-user consent in order to be able to defend themselves in any proceedings which may arise for an offence under Regulation 13 of S.I. 535 of 2003 (as amended). In that regard, it should be noted that Regulation 13(9C) of S.I. 535 of 2003 (as amended) places the onus on the defendant of establishing that a subscriber consented to the receipt of an unsolicited communication or call. The double opt-in requirements for Subscription Services*

would be of considerable value to a service provider who found themselves in the position of having to defend themselves in such proceedings.” In the meantime, the Statutory Instrument referred to above has been revoked by the Minister for Communications, Energy and Natural Resources and it has been replaced by S.I. 336 of 2011. Regulation 13(14) of S.I. 336 of 2011 is as follows:

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

The insertion of the word ‘unambiguously’ in the text above in relation to consent has significant consequences. The intention of its inclusion is to ensure that informed consent has been given by the subscriber or user concerned, that a record of that informed consent and how it was obtained has been kept, and that a copy of that informed consent is available if required during prosecution proceedings before a court. In the matter of a prosecution in relation to PRS and the specific issue of whether the subscriber or user had given consent to the service provider concerned, it now appears essential under this Regulation that the service provider produce evidence of a double opt-in in order to demonstrate that the “*subscriber or user concerned unambiguously consented to receipt of the communication.*” The implementation of the provisions contained in Section 5 will assist service providers in that regard. At the same time, they will greatly enhance the user’s experience in relation to premium rate services.

\*\*\*\*\*

Office of the Data Protection Commissioner

25 August, 2011

## **12. Rathúla**

**From:** Paul McKeagney  
**Sent:** 16 September 2011 15:27  
**To:** retailconsult  
**Subject:** Reference: Submission re ComReg 11/51

Hi,

Rathúla wish to endorse the position and views of the Irish Phone Paid Service Association with regard to their submission for consultation on Premium Rate Services.

Regards  
Paul

-----  
Rathúla  
Paul McKeagney



# **13. Realm Communications Ltd.**



**Consultation Submission to ComReg regarding  
Consultation: Premium Rate services – Code of Practice**

**Submitted 16<sup>th</sup> September 2011**

**This submission is made without prejudice**

Contents

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

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

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

**Q. 4. Do you agree with the draft provisions applicable to the operation of other categories of PRS, also set out in Section 5 of the draft Code? Please provide reasons to support your position. .... 6**

**Q. 5. Do you agree with the draft provisions relating to Customer Service as set out in Section 6 of the draft Code? Please provide reasons to support your position. .... 7**

**Q. 6. Do you have any comments on the provisions on the revised draft Code? .... 7**

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

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

Additionally, given the statutory nature of the Code, we are concerned that provisions contained within the headers in section 3 are generally *ultra vires* the powers of ComReg due to restrictions contained within Article 4 and Article 5 of the Unfair Commercial Practices Directive (UCP). Furthermore, it is unclear as to whether those provisions are aspirational or mandatory given their vague nature. We would generally argue that such provisions could not form the basis for a breach of the code, as they are nebulous and lack legal certainty, and therefore should not be contained within a Section 15 Code.

3.3 As a Service Provider operating in a competitive market, it is essential that the competitive playing pitch is flat and fair and no Service Provider is permitted to operate at an advantage. *ComReg must publish all special/cosy agreements, including any out of court settlements, they reach with individual service providers, such that the market operates in a transparent and non-discriminatory manner.* Additionally, if a particular arrangement is allowed to proceed in a manner, that would otherwise necessitate a change to the Code of Practice, that permission must equally apply across all Service Providers. Moreover, where such practices are being discussed by ComReg, it may be more appropriate for them to be handled through an Industry Working Group as opposed to on a private one-to-one basis.

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

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

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

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

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

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

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

Sections 4.6 to 4.35.

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

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

With regard to 4.10, 4.14, 4.15, 4.22 Realm strongly disagrees with these sections.

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

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

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

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

Realm generally supports ComReg's objectives with regards to the promotion of the interests of the end user.

However given the statutory nature of the Code, we are concerned that provisions contained within the headers in section 5 are generally beyond the scope of ComReg due to restrictions contained within Article 4 and Article 5 of the Unfair Commercial Practices Directive. We believe that practically ComReg might better adopt a less prescriptive approach.

With regards to some of the detailed provisions:

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

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

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

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

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

Realm generally support ComReg's objective to promoting the interest of the end user. However given the statutory nature of the Code, we are concerned that provisions contained with the headers in section 5 are generally beyond the scope of ComReg due to restrictions contained within Article 4 and Article 5 of the Unfair Commercial Practices Directive.

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

However, with regards to some of the detailed provisions

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

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

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

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

5.63 We believe this section is overly prescriptive.

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

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

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

Realm agrees and supports these provisions relating to Customer Service

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

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

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

Articles 4 and 5 of the Unfair Commercial Practices Directive are clear in so far as they do not allow ComReg to bring forward further measure than are provided for in the UCPD itself, when a service is targeted at the average consumer. Furthermore, although it appears clear from reading the definition of ISS that all subscription services are ISS, the code does not make clear which parts of itself won't apply vis-a-vis section 1.6.

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

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

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

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

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



# 14. RTÉ

**REFERENCE: SUBMISSION RE COMREG 11/51**

**COMREG DRAFT CODE OF PRACTICE FOR PREMIUM  
RATE SERVICE PROVIDERS  
CONSULTATION**

**RTÉ RESPONSE**

**16<sup>th</sup> SEPTEMBER 2011**

## **General Observations**

RTÉ welcomes this consultation on the revised draft Code of Practice for Premium Rate Services Providers and the comprehensive analysis and reports which accompany the revised draft Code.

RTÉ stands by the responses in its previous submission in relation to the draft Code consultation.

Some clarifications sought by RTÉ in its previous submission remain outstanding. RTÉ would welcome the opportunity to meet with ComReg post publication of the new Code to ensure RTÉ's interpretation of the Code is as per ComReg's requirements.

It remains that, 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 provisions of the revised draft Code to be unclear as to which party in the Premium Rate Service chain is being referred to where PRS Provider is mentioned. RTÉ would welcome greater clarification in this regard.

## **Provisions Applicable to all PRS**

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

RTÉ agrees with the proposed provisions, applicable to all PRS, as set out in Section 3 of the revised draft Code. RTÉ considers the provisions reasonable given ComReg's singular statutory objective, in accordance with its role as regulator of PRS in Ireland, remains the protection of the interests of end-users (consumers) of PRS. RTÉ welcomes proposed improved measures which aim to protect and grow the trust of consumers of PRS with a view to the long-term survival and growth of the PRS industry in this market.

RTÉ seeks clarification on the following:

*3.18 Without prejudice to Section 13 of the 2010 Act, end-users must not be charged in respect of a PRS, or parts thereof, that were not supplied, for example where the PRS delivers a "busy tone" or "silence" prior to connection to the requested PRS. 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", the receipt of error messages and/or in respect of PRS, or part thereof, that were not supplied.

Is it ComReg's position that it will determine on a case-by-case basis which party in the PRS value chain has ultimate responsibility for taking remedial steps where remedial action is required? RTÉ considers that whilst shared responsibility amongst all parties is fair, one party in the value chain must be identified to action remedial steps where required, otherwise the remedial process could be unnecessarily delayed due to confusion amongst the parties involved as to which party must take the required action.

## **PRS Promotions**

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

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

RTÉ disagrees with the following draft provisions for the reasons outlined below:

*4.8 (c) as appropriate, that prices are presented in the form:*

*(i) numerical price per minute for time based/charged services. or*

*(ii) the total cost to the end-user including the minimum duration of the call necessary to participate, or*

RTÉ considers the requirement to present the minimum duration of the call necessary to participate to be both impractical and unnecessary where the total cost to the end-user is displayed. This would add further clutter to on-screen visual graphics. RTÉ considers the requirement to display the minimum duration of the call necessary to participate should only be required for 4.8 (c) (i) with a view to price transparency for time based/charged services.

RTÉ considers the requirement for visual invitations to purchase to display pricing information as per 4.10 to be overly prescriptive and for the reasons outlined in its previous submission, requests that ComReg allow broadcasters greater flexibility with regard to visual requirements and graphic presentation, subject to specific confines pre-agreed with ComReg. 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 seeks clarification on the following:

Whilst RTÉ understands that all parties in the value chain are defined as PRS Providers (as set out in Section 2 of the PRS Act) RTÉ considers it remains unclear at points within the draft Code as to which party in the value chain is being referred to where an instruction to a PRS Provider and/or appropriate PRS Provider is cited. For example:

*4.11 (d) the identity and contact details of the appropriate PRS Provider to ensure that consumers can contact the PRS Provider directly. Such information to include:*

*(i) company trade or business name, as notified to ComReg, and*

*(ii) a helpline telephone number which does not incur a premium rate charge*

By the definition as set out in Section 2 of the PRS Act, RTÉ (and potentially third party production companies), the relevant IVR and SMS service providers and all network operators are deemed to be the PRS Provider. Which company is considered to be the *appropriate* PRS Provider in this case and can this be pre-defined by ComReg within the Code of Practice for clarity?

Is it ComReg's position that it will decide which is the *appropriate* party in the PRS Provider chain on a case-by-case basis in respect of PRS Provider requirements and required actions? RTÉ considers that it would be more appropriate to define clear roles and responsibilities of each PRS Provider in the value chain within the Code of Practice.

*4.29 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.*

RTÉ suggest the wording 'not open to use' is confusing since whilst the competition is closed it is still technically possible for an end-user to submit an entry albeit their entry will not be counted and they will be charged for that entry. RTÉ suggests this wording should be revised as follows:

*4.29 Competition services which are likely to be repeated or rebroadcast after the competition is closed, must clearly state that the programme is a replay and that the competition has now closed or must clearly state the opening and closing date and time of the competition, and that calling outside of those times will incur a charge.*

*4.35 Providers of PRS intending to raise funds for charitable organisations must ensure that all promotional material states the following:*

- (a) the identity of the beneficiary, including the registered charity number*
- (b) the total cost of the call to the end-user and the minimum amount to be paid to the beneficiary, and*
- (c) any conditions, restrictions or limitations that are attached to the contribution from the end-user being made to the stated beneficiary*

RTÉ submits that it may not be possible to list the identity of all beneficiaries and their registered charity numbers on ALL promotional material (e.g. where multiple charities are involved in a fundraising campaign and RTÉ is required to list ROI, NI and text voting numbers for multiple contestants along with pricing information, SP details and other T&Cs on a full screen 'recap' graphic, there would not be sufficient space to also list each charity and their registered charity number). However this information could be accommodated on support material published on rte.ie and on RTÉ Aertel. As such, RTÉ requests that ComReg allow broadcasters greater flexibility with regard to these requirements, subject to specific confines pre-agreed with ComReg.

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

Yes, RTÉ strongly supports any measure which aims to assist in minimising issues around subscription services, particularly in light of the quantitative and qualitative research provided by ComReg.

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

RTÉ supports the proposed provisions with one observation:

***Voting Services***

*5.41 Promotions which are likely to be repeated or broadcast after the voting is completed must clearly state that this is the case and that voting is no longer open to use by end-users, and that registering a vote will incur a charge but will not be counted.*

RTÉ suggest the wording ‘not open to use’ is confusing since whilst voting is closed it is still technically possible for an end-user to submit a vote albeit their vote will not be counted and they will be charged for that vote. RTÉ suggests this wording should be revised as follows:

*5.41 Promotions which are likely to be repeated or rebroadcast after the voting is completed must clearly state that the programme is a replay and that the voting has now closed or must clearly state the opening and closing date and time of the voting window, and that calling outside of those times will incur a charge.*

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

RTÉ supports the proposed provisions.

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

RTÉ welcomes proposed measures to increase transparency around subscription service pricing and charges which it considers to be an area of considerable potential consumer harm.

Also, see general observations above.

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

RTÉ welcomes the RIA and quantitative and qualitative research provided by ComReg and holds the view that similar research on an on-going basis would be a valuable tool to assist in

understanding changing consumer issues and needs with a view to growing the PRS industry in Ireland in a positive, fair and transparent manner.

# 15. Spirits Connect



**From:** cassandra  
**Sent:** 16 September 2011 10:27  
**To:** retailconsult  
**Subject:** just to let you know i am happy with all your doing

Jayne Smith [www.spiritsconnect.com](http://www.spiritsconnect.com)

P.s To help me better manage my emails could you always reply to an email rather than composing a new one, this way i can track items better.

# **16. Telecommunications and Internet Federation (“TIF”) - Mobile Payments Forum**

Mr Tom Boyce  
Premium Rate Services  
Commission for Communications Regulation  
Abbey Court  
Irish Life Centre  
Lower Abbey Street  
Dublin 1

16<sup>th</sup> September 2011

Re **Response to Consultation Document No. 10/92a, and further consultation on the Code of Practice for Premium Rate Service Providers (ComReg 11/51)**

Dear Tom,

The members of the Mobile Payments Forum (formerly Mobile Operators Messaging Forum), which represents Vodafone, Meteor, Three and O2, have identified a number of areas in the response to ComReg Document No. 11/51, which they believe require clarification.

#### **Enforcement and Remedies**

The members of MPF have always been committed to uphold the requirements of the code of practice and are committed to support the enforcement of the Code by the Regulator but would highlight that the Act of 2010 identifies it as ComReg's responsibility to ensure compliance by premium rate service providers. Prior to the Act regulation of this sector lacked the necessary legal authority and enforcement powers to sufficiently protect consumers against unscrupulous service providers. As ComReg now has the clear authority to detect, investigate and ultimately decide upon remedies for any breach, there should be no doubt as to ComReg's role in this respect. The MPF consider sections 3.19 and 3.22 of the draft code to cast doubt on ComReg's role. Section 3.19 proposes to mandating service providers to

*"take all reasonable steps, in the context of their roles, to ensure that all of the provisions of the Code are complied with by all PRS providers to whom these provisions apply in respect of any PRS with which they are concerned."*

This immediately gives rise to questions as to what would be considered a reasonable step and the context of each Service Providers role.

Section 3.22 proposes to require service providers upon becoming aware of a breach of the code by a contracting partner to

*"take all reasonable steps to ensure that such a breach is remedied without delay or as soon as possible."*

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

Furthermore, network operators fall under the Service Provider definition, therefore if they were to assume these powers, it could give rise to conflicts of interest whereby a network operator that might carry the premium services of another Service Provider might also be offering similar competing premium services.

### **Payment Services and Purchase Confirmation Receipts**

The MPF, while acknowledging that the Act imposes statutory responsibilities on ComReg to regulate premium services that operate as a facility for making a payment for goods or services, also appreciates that the Code of Practice when applied to these services can deliver consumer protection in relation to certain aspects of these services; in particular those relating to promotion, the use of premium numbers and short codes and the application of remedies in the case of large scale breaches. However the MPF considers the requirement for purchase confirmation receipts is unnecessary in the code.

ComReg has expressed the view in section 2.22 of the response to consultation, that

*"any consumer harm that may occur is likely to be related to the goods or services purchased and so fall(s) outside the broad telecommunications area."*

The MPF agrees and would point out that the requirement for purchase confirmation is already catered for in the Distance Selling Regulations and lies outside of premium service regulation. The proposed sections 5.7 and 5.8 of the draft Code overlap with Regulation 5 of the Distance Selling Regulations which has already established the requirement for receipts to be provided in a durable form in addition to specifying in detail what must be provided to end users. Sections 5.7 and 5.8 are, therefore, not required and could undermine consumer protection by confusing the regulatory landscape. Also, such a move could distort the market for payment service. For example, in the case of mobile payments, Mobile Operators are not the only entities with an interest in the Mobile Payments market. Handset manufacturers (e.g. Apple, Google, Nokia etc), web payment providers (e.g. PayPal, Google Checkout etc), and financial institutions (e.g. Banks, Visa, MasterCard etc) are all poised to expand into this area. Therefore, there is a particular onus on ComReg to ensure that the Code of Practice does not introduce unnecessary distortions.

### **Levy**

The MPF is aware that the premium services levy does not feature in the current consultation and that ComReg has committed to consult on this separately, nonetheless MPF is keen to discuss with ComReg the possibility of removing or at least reducing the levy on payment service transactions, relative to other premium services, given the expectation that these services are likely to demand a far smaller proportion of ComReg's resources.

### **Replacement of the Licensing Regulations 2010 (SI 338 2010)**

ComReg 11/51 refers to the information notice that was issued in May (ComReg 11/41), stating that ComReg intends to notify the draft Regulations that are proposed to replace SI338 of 2010. The latest consultation outlines new text that deals with refunds which makes provision for refunds directly to the telephone accounts. MPF urges ComReg to consult with the affected operators before issuing any such directions, as a means of ensuring that the most efficient refund method is selected and in recognition of the administrative burden that this would impose on operators. In every instance MPF would ask ComReg to firstly consider all of the other refund mechanisms with a view to continuing with the current approach whereby operators voluntarily issue refunds directly, where warranted. In light of the far reaching implications of the licensing regulations, confirmation that these are the only changes that are being made to the text would be much appreciated.

We would welcome an opportunity to discuss the aforementioned issues with you and would welcome a meeting with you at your earliest convenience.

Yours sincerely,

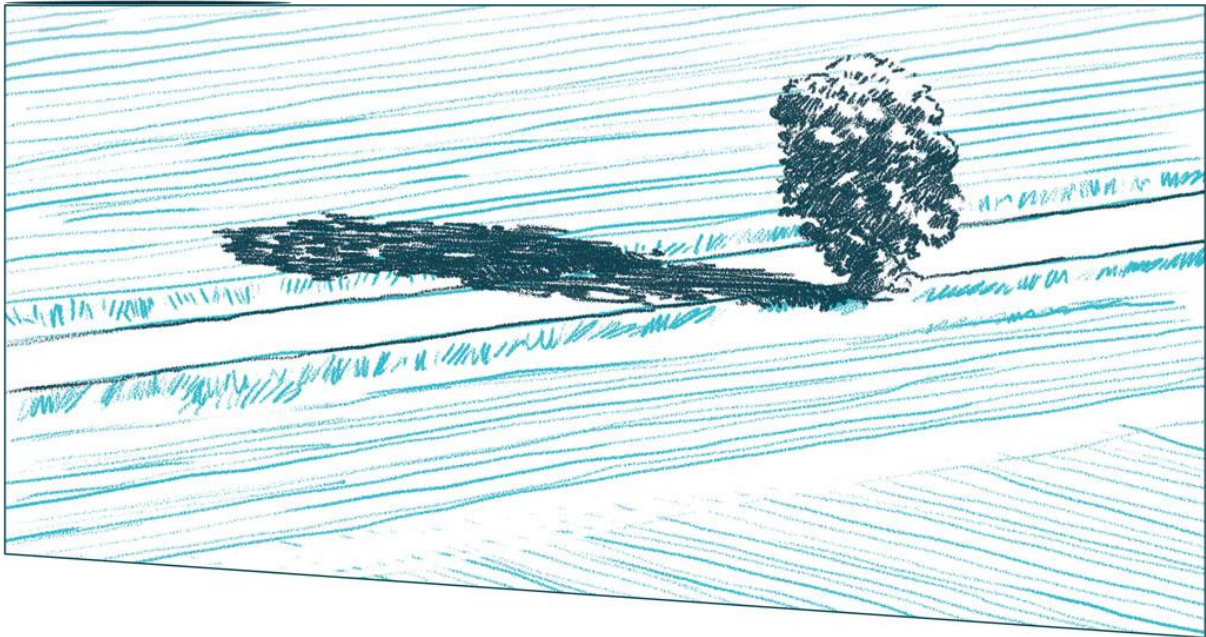


Emer Condon  
Executive  
Mobile Payments Forum

## **17. Telefonica Ireland Ltd. (“O2”)**



*Telefonica*



**Regulatory Affairs: 16<sup>th</sup> September 2011**

**Further Consultation on Revised Draft Code of Practice for Premium Rate  
and Draft RIA**

## **Introduction**

Telefonica Ireland Ltd (O2) welcomes the opportunity to submit comments to ComReg’s, Consultation Document No. 10/92a, and further consultation on the Code of Practice for Premium Rate Service Providers.

As referred to in our response to Document 10/27, O2 understand that some of ComReg’s concerns in relation to PRS stem from the wide and varying reports throughout media and via complaints to The Regulator of Premium Rate Telecommunications Services (RegTel) about abuse of subscription services and consumers inability to opt-out of these.

The Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010 (the Act) has now provided ComReg with the ability perform functions which it previously did not have namely ‘ensuring compliance by premium rate service providers with their obligations in relation to the provision, content and promotion of premium rate services’.

Adopting a Code of Practice in PSMS sector of the industry, should ensure that the end users of PSMS are treated fairly when purchasing, availing or using Premium Rate based services. However O2 believes that it is likely that further consultation is required with respect to adopting of the provisions of the Code and ComReg should give consider to the establishment of an industry working group to focus on specific elements of the Code and ensure that the full scope and impact of proposals are considered from all perspectives.

## **Response to questions**

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

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

O2 broadly welcomes the provisions as laid out in Section 3 of the revised draft Code. They should promote transparency & fairness where it wasn’t always visible previously. It will also hopefully provide a framework for where a set of

## “Reference: Submission re ComReg 11/51”

standards will be adhered to by all concerned in the PRS value chain. It is likely to be of benefit to the consumer if all concerned adhere to the Code.

However, O2 does have concerns about the requirements regarding Due Diligence as laid out in the Draft Code.

O2 believes that provisions 3.19 to 3.22, the way they are drafted, are quite onerous from a Mobile operator perspective. O2 believes that it is onerous to require Operators to fulfil ComReg’s role of policing this area. O2 envisages that this would pose problems around inconsistency and fairness. It is not the place of the mobile operator to actually monitor and enforce in this area when there is a breach of the code found. It should not be up to the operator to make a contractual partner to aware of their obligations in the PRS space and also to inform them that ComReg regulates this space. Surely that should be a duty of the regulating entity. Further it should not be up to the PRS provider to take all reasonable steps to ensure a breach is remedied as suggested in 3.22. It is not the role of the PRS provider to police this area but that of the Regulator.

Enforcement powers have been granted to ComReg via the Act including powers to take immediate action where necessary to protect end users and the authority to investigate and decide upon remedies. O2 believes that for Service Providers to undertake the role of the regulator in this manner, would lead to confusion. The legislation provides for ComReg to intervene in such matters where there is a breach. As O2 could be defined as a Service Provider, it is arguable that there could be conflicts of interest. O2 believes this function should be carried out by ComReg to insure fairness, appropriateness and consistency.

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

O2 agrees with the draft provisions as outlined in Section 4 of the draft code. Again, O2 recognises that the provisions outlined in this section should introduce transparency and also a fair and reasonable framework for all PRS providers to operate in and will ultimately benefit the customer or end user of such services.



There is some concern around the use of 50xxx as a free point of entry into subscription services. This model generates a lot of calls into Customer Care. It is misleading and maybe an alternative should be considered.

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

Historically these types of services have been based on SMS technology and to an extent there are still many who will subscribe to PRS via SMS in the future but for how long? As the penetration of mobile smart phones/devices into the Irish market increases, there will come a time, probably sooner rather than later where sms will no longer be the chosen methodology of subscription. The code still seems to be drafted with the typical SMS type services in mind.

O2 would have concerns that as premium services move more and more towards app based services, the need for SMS diminishes. Customers will sign up to services via apps and they will cancel services via apps. The requirement to still support SMS should not be applicable (e.g. STOP to a short code for unsubscribing). This will introduce a cost for services to support SMS functionality that is not needed and this cost will not be applicable to competing services. For example, customers signed up to Sky’s mobile TV service do not cancel via a STOP command to a short code (nor should they).

O2 believes Sections 5.7 & 5.8 are unnecessary as there is already existing legislation which covers this i.e. Reg. 5 of the Distance Selling Directive. Including them could undermine consumer protection by confusing the regulatory landscape. Also, such a move could distort the market for payment services. For instance, in the case of mobile payments, Mobile Operators are not the only entities with an interest in the Mobile Payments market. Handset manufacturers (e.g. Apple, Google), web payment providers (e.g. PayPal etc), and financial institutions (e.g. Credit Card vendors, Banks) are looking to enter this sphere. O2 believes that ComReg should ensure that the code of Practice doesn’t introduce unnecessary distortion.

## **“Reference: Submission re ComReg 11/51”**

With regards to 5.13, 5.14, 5.15, 5.16, and 5.17: Services that require the customer to subscribe that do not use SMS should not be forced to use the Subscription Request Message. For example, signing up to subscription service via an app. It adds an unnecessary burden on the operator.

In relation to 5.20, 5.22: Regulatory Updates for Subscription Services, these are fine for traditional SMS premium services. However, with the evolution of apps, service providers that do not typically have SMS capabilities are now forced to implement these adding complexity and cost to their service.

In addition, these messages put services adhering to the code at a competitive disadvantage to those companies not obliged to follow the code e.g. Sky, Apple

Unsubscribing also does not take into account the current situation. If you look at the STOP command referred to in 5.26; it would surely be a lot more efficient if cancelling app based services came from within the app. It would make a lot more sense than using a STOP command via SMS.

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

O2 are happy with the content and proposals for the other services outlined in Section 5 of the draft code.

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

O2 welcomes the provisions listed in Section 6, Customer Service, in the draft code. Again, if all PRS providers adhere to this it should make it easier for customers to be able to resolve any issues or complaints they might have.

It has been observed that the PRS providers have changed their customer service details on numerous occasions without updating other entities including mobile operators. It is important that this point be considered by ComReg and O2 believes it would also be useful to make sure that PRS providers when they change customer service details inform all mobile operators and ComReg, immediately. This will then allow Mobile operators and ComReg; to provide

correct contact details to members of the public should they contact them in relation to PRS queries.

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

O2 notes that there is no mention or reference to the Levy in the Draft Code. O2 notes that ComReg has previously mentioned that it intends to consult on this separately. O2 believes now would be a good time to review the Levy with a view to either removing or reducing the levy on payment service transactions, relative to other premium services.

As previously stated in our response to 10/27 the levy should be applied only to those services which are required to obtain a licence to operate as Premium Service Providers. Services such as ‘on-portal’ or ‘pay-for-product’ which are not a source of Consumer harm and should not require regulatory oversight should be exempt from the licensing requirement and imposition of a levy.

Further consideration should also be paid to the current levy model whereby the levy payment is equally split between the MNO and service provider. The mandating of this split should be removed allowing for the levy payment to be attributed to those actions which cause the costs to be incurred in the first place. If a greater range of services subsequently become subject to a levy payment this should result in administration efficiencies providing for a reduction in the levy as a percentage of overall premium traffic revenue.

As stated above, O2 would like to point out that the code has been very much drafted with a view to traditional based SMS premium services but the market has change and the increased penetration of smart phones into the market means that the code is not future proof for app based premium rate services. O2 believe consideration should be given to this. The code does not give consideration to the providers of apps such as can be purchased from Apple via I-Phone or Google Android. This could prove to be problematic as more and more apps are developed with PRS in mind.

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

O2 has no comments in relation to the Regulatory Impact Assessment.

# 18. Terry Hurrell

## Michelle O'Donnell

---

**From:** Terry Hurrell  
**Sent:** 02 August 2011 21:03  
**To:** retailconsult  
**Cc:**  
**Subject:** Submission re ComReg 11/51

**For Attention of: Ms Michelle O'Donnell**

I make this submission as a member of the public and on foot of a PRS event involving my son who has an intellectual disability.

The above event incurred a charge of over twenty euro within a few hours. I am currently pursuing a refund from the PRS company involved.

My submission concerns the necessity for an opt-out mechanism for those who are not intellectually equipped to make a judgement when solicited by a PRS company by whatever means (In my sons case by a text message). I believe there is a need for a register of numbers of those who are not do be targeted by PRS. I can see no other way to protect people like my son from incurring very high charges rapidly, when he does not have the capability to manage this service. The issue is that the PRS service presented can seem very attractive and the individual does not have sufficient awareness to realise the costs involved. They are also unlikely to be in a position to pay such costs from there own resources. I believe that to target the intellectually disabled for PRS, although done in the ordinary course of business, would be exploitative and an opt-out for them is a basic essential of any business of integrity. A register created and maintained centrally, perhaps by ComReg would be one way to obviate this situation arising although perhaps another mechanism can be suggested.

Thank you, in advance, for considering this submission,

Regards

-----  
Terry Hurrell

## **19. Vodafone Ireland Ltd.**



## Vodafone Ireland Consultation Response 11/55

16/09/2011

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

Vodafone Ireland welcomes Comreg's further consultation on the important issue of premium rate service regulation. Yes, Vodafone agrees with the provisions that are applicable to services set out in section 3 of the revised Code of Practice. Vodafone understands that the scope of the services to be covered is for telephony services that utilise SMS or a telephone number as the delivery of a service.

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

Vodafone fully agrees with all provisions listed in section 4 of the draft Code of Practice. We particularly welcome the introduction of measure in relation to clear advertising and promotion obligations that are required to be upheld by service providers.

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

Vodafone agrees that there needs to be strict advertising requirements for subscriptions services that purport as competition services. It is clear that there is no harm in recurring subscription services that serve a purpose. Again this would relate often to non-handset consumed services like a 'lotto subscription' for example. In essence, Vodafone believes that there is only a need to have strict regulation in the promotion of competition subscription services.

Within the consultation document, Comreg States: "Comreg considers that the revised draft proposals for Subscription Service initiation will also enable Comreg to obtain verifiable evidence to determine whether an end-user did in fact subscribe to a service. With a substantial proportion of end-users alleging that they did not subscribe to a PRS, enhanced provisions in this area will benefit PRS providers as well as end users".

Vodafone would comment that 'Double opt-in' cannot produce any more evidence of opt-in than the current model. Technically nothing different happens from a technology perspective or auditing perspective. Proof of consent is provided today for any complaint raised or investigated by Comreg or other statutory authority and this same report is all that is possible in either scenario. The user experience though is compromised as double opt in requires a second page. This additional wait time will impact demand, usage and take up of services. 'Click-rate' rule based on statistical evidence is that each click/page leads to a 50% drop off, particularly Mobile as is a service used on the go. Vodafone is very concerned at the impact that 'double opt-in' could have on the premium rate service industry.

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

Vodafone welcome Comreg's acknowledgment that it is not practical to have purchase confirmation receipts for all services where payment is made through a mobile handset. Vodafone would view that in the case of micro-payments, these regulations fall outside that of the telecommunications area because there will always be a receipt associated with such non-handset consumed purchases and, therefore, micropayments will not be regulated by Comreg.

Another important point to make is that Mobile Operators are no longer the only entities involved in Mobile Payments. Handset Manufacturers and mobile software platform providers, Web Payment Providers and Financial Institutions like banks and credit card providers have all entered the Mobile Payments space.

Implementing aspects of this code, without enforcing the same practices on other entities, is detrimental to our competitiveness against these companies who have no such limitations imposed.

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

Vodafone is in agreement with the consumer protection measures listed in section 6 of the draft Code of Practice.

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

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

Please refer to cover letter



## **20. Zamano**

**Q1. Section 3 of Revised Draft Code**

- 3.3 This is very difficult to contemplate. In agreement with Comreg, an SP can break the Code, and rely upon confidentiality clauses to ensure that the means by which it has broken the code will be held secret if Comreg so desires. This is completely contrary to good regulation practices and should not be permitted under any circumstances.
- 3.9 Data to be shared with Comreg should be restricted to necessary data only. Zamano contends that it is only necessary to prove that texts were sent to and from its system at particular times, and does not consider the content of the texts to be of any importance to an investigation, unless the use of particular keywords is relevant
- 3.11 – 3.13 zamano considers these clauses to be unnecessary, in the light of the existence of the Unfair Commercial Practices Directive, and the guidelines of the Advertising Standards Authority
- 3.22 Reporting perceived or suspected breaches of the Code by a contracting partner would appear to open up the possibility of the reporting party facing sanction and/or claims for damages if the breach is not upheld, and financial or reputational harm ensued. Zamano would contend that if a Code is introduced, that it is the role of Comreg to police it.

**Q 2. Section 4 of Revised Draft Code**

- 4.2 We note with interest that Comreg refers to an average consumer, yet in the following sections requests levels of information and opt-in standards that are appreciably beyond serving the information needs of an average consumer.
- 4.6 – 4.20 Full implementation of the information-providing requirements listed in these sections is complete overkill and will serve only to confuse consumers and render advertising almost impossible. Devoting the amount of space and time required to provide information in this detail will leave little or no possibility to get a marketing message across, rendering it unviable. A particular example is 4.8 b iii. Zamano has no issue with confirming that data charges may apply, but providing details of the size of the file and the extent of the charges is technically and commercially impossible. The industry has moved on from 2005 as has the technology. No longer is a pixel background image and polytone with a “one filesize fits all” the standard. With Smartphones: Android, Iphone, Blackberry & Windows all supporting different file formats of the same piece of content there is no longer a single file in the background. It would also put at us at a competitive disadvantage to the app stores that don’t charge with PSMS. People access these stores over network operator data and download apps. They pay for the app or get it for ‘free’. At no time are they told that data charges apply to the cost of the download. Also we believe that this is very much a very dated way of looking at data charges from the operators. Most smartphone packages now come with a massive amount of data included in the package (over 1GB). If a consumer is on pre pay then the most he/she pays now for accessing date is €0.79 or less per day as long as it’s under a very high limit ceiling. So no longer are people now charged a huge amount for downloading a ringtone, game or app. People also can use wi-fi on their phones and are using this to download files. This also refuses to take into account how people are using their phone today. People are now constantly on their phones accessing the internet or apps using data. When they access these apps and mobile sites they don’t know the amount of data they are using and yet the amount of internet access on phones continues to increase.

### Q 3. Subscription Services - Section 5

- 5.15 The double opt-in methodology proposed is obsolete as it takes no account of the user flows and information provided by the most common forms of sign-up at this point, namely via the fixed and mobile web. To sign up a consumer for a subscription via web advertising, most SPs use a PIN sign-up mechanism which involves people entering their phone number on a landing page, and then receiving a PIN sent to their phone. Only upon entering this PIN into the box on the landing page does a subscription start. The consumer will have seen the terms and conditions on the page, ticked a tick box and then, upon receiving a PIN, entered it into the necessary box. At that point, a subscription confirmation will be received, allowing people to unsubscribe immediately if they so wish. Adding a further requirement for another affirmation at this point is confusing and does not serve the consumer well. A similar logic prevails when signing up on a mobile phone, except that the need for an affirmation text is completely contrary to good user experience. A consumer signs up inside an application, and then has to leave the app and open a text message to respond and then go back in to consume the service. This is completely at odds with the experience most people are now used to when purchasing applications within app stores.
- 5.18 The wording of this text is completely confusing and will lead people to believe they've signed up for the same service twice.
- 5.22 Zamano believe that sending monthly spend reminders in addition to €20 reminders is overkill and again will serve only to confuse consumers. Reading the text as it stands at this point would certainly make people think that they have signed up for additional services. Coming out the blue as it does, it will lead to confusion and to a higher level of people unsubscribing from services they are perfectly content to continue with
- 5.28 This is an unrealistic requirement. Considerable investment over the years has gone into implementing very simple and straightforward means of unsubscribing, namely through the sending of the keyword STOP to the shortcode. This message is repeated in all subscription confirmation and spend reminder messages. We see no need to have to invest significant technical resources in implementing a solution which no other country in which we operate requests.
- 5.31 The PR SMS industry in Ireland is based upon using a small number of shortcodes shared between multiple users. This is necessary as the cost of setting up and renting shortcodes is extremely high, particularly in comparison with other countries, and in proportion to the size of the addressable market. (It is 70% cheaper to set up a shortcode in the UK to address 60M mobile consumers, effectively equating to a 45 fold price differential) The practice therefore is for multiple SPs to share shortcodes. Taking account of this, a very practical solution for handling STOPs was put in place, with the full approval of Regtel in 2007. This solution assigns a STOP request received from a consumer to the last message received and organises the stopping of that subscription or removal from a marketing database. Zamano has experienced no consumer issues relating to any shortcomings associated with this solution. Implementing the new solution proposed by Comreg is technically extremely challenging, and is not warranted by any evidence of consumer harm

**Q4 Other categories of PRS – Section 5**

- 5.64 This clause takes no account of how many chat services operate. “All you can eat” chat services afford consumers the capability to engage in as many conversations as possible, without worrying about the cost of each message. Enforcing such a restriction makes this very popular cost model impossible, thereby reducing consumer choice.

## Q 6. Provisions of the Code – Overall, and Sections 1 & 2

Zamano's attitude to Comreg's proposed new Code of Practice is informed by the following;

- The trend for consumers to purchase goods and services using mobile and fixed line telephones will continue to increase dramatically in the next 10 years
- This trend is increasingly multi-national, involving very complex value chains, spanning phone manufacturers, mobile network operators, search providers, advertising networks and billing companies, amongst others.
- The winning technologies and businesses will be those that provide good value, and easy-to-use consumer experiences to support the sale of goods and services.

Against this backdrop, the proposed Comreg Code of Practice is a narrow, overly prescriptive set of rules which will fatally undermine the ability of companies operating within only one sector of this burgeoning market (those using Premium Rate Billing) to compete with those offering similar services, but who somehow do not come under the remit of Comreg (Apple, Google/Motorola, Paypal, Visa etc).

Comreg's actions are supposedly justified by a very questionable piece of quantitative research, (IPSOS Survey) and a set of issues which occurred up to 2007, but which all industry participants now know to be resolved. This fact is indeed backed up by the trends highlighted within Comreg's and Regtel's reports.

Taking figures directly from the IPSOS study used as a justification for Comreg's new CoP, shows the absurdity of the proposed set of rules.

- 33% of respondents were aware of having used PRS services
- Of these, only 11% stated that they have not used them in the last 6 months (meaning that 89% of people actually did knowingly use services, implying a level of trust and satisfaction)
- Of the 11% who did not use the services, a total of 10% stated that they did not do so, either because they didn't trust the service, or because they experienced a problem.
- Translating this into real numbers of people, just over 3 people per 1,000 stated that they did not use PRS because they experienced a problem or did not trust the service. Only 1 person per thousand does not trust the service.
- If this number is amplified to take account of the entire population, The Comreg Code of Practice is therefore based upon protecting the interests of a total of 12,000 people in the country.

Consumers are ever more willing to consume services and order and pay for goods using mobile phones, with the payment methods to be used increasingly diverse. The fact that less than a quarter of people know that there is an Industry Code of Practice regulating Premium Rate services demonstrates a level of irrelevance which is further compounded by the lack of knowledge as to overall amounts spent on purchasing goods and services

on mobile phones in Ireland, be it via Apple, Google, Paypal et al. Premium Rate is a part of the mobile payments landscape. Over-regulating it, and applying a levy for the privilege, will seriously disadvantage indigenous and other European companies who are not in a position to take advantage of other payment solutions, and will fatally undermine Premium Rate's ability to take advantage of growth within the market.

The overall approach being taken by Comreg is in direct contrast by that being implemented by the UK regulator, PhonePayPlus, with whom zamano is in regular contact. The recently published 12<sup>th</sup> code's introductory paragraph states that it is "*based upon twenty years' experience of regulating this market and we have refined the code to focus on the underlying principles of consumer protection to achieve a regime that gives greater clarity and more flexibility to promoters*".

In summary, the slow pace of enacting legislation means that Comreg is focusing on a technology and consumer-issue landscape which is now four years out of date. The draft Code of practice is completely out of synch with the realities of a new marketplace now predominantly populated by businesses which will not be subject to regulation.

### **Response to individual points from Draft Code of Practice, Sections 1 & 2**

- 1.1. Zamano can find no justification in the grounding acts to justify Comreg purporting its goal to be that of ensuring that PRS users equate its usage with best practice retail services. Comreg's role is to protect end users only, not to find ways of improving user experiences. Zamano would also contend that Comreg is not in a position to provide confidence to end users in relation to their usage of new and innovative services, as its remit is limited to PRS only, and will not cover the majority of application purchase possibilities via iPhone and Android appstores.
- 1.6 zamano contends that all the services it provides to end users are Information Society Services (ISS). ISS are defined, in Directive 98/48/EC as "*any service, normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services*". This clause fatally undermines zamano's ability to compete with other European companies operating in Ireland, as their services will not be subject to the CoP. It also begs the question as to whether these companies' revenues should be subject to the levy. Not only does this then become a logistical nightmare for the operators in deciding which premium services should have the levy deducted and which should not, it also renders the competition even more unfair as these competitors will benefit from greater outpayments.
- 1.7 This clause is confusing. It states that the CoP is to be interpreted in the light of the Unfair Commercial Practices Directive, and yet throughout the rest of the Code there are numerous instances where it is directly in breach thereof. The most significant instance of this is in the Code's complete disregard for the UCP's definition of the "average consumer".
- 2.3 The Code should actually reprint the definition of "the average consumer" from the Unfair Commercial Practices Directive (2005/29/EC). This states that the average consumer is "*reasonably well-informed and observant and circumspect*". It is zamano's contention that based upon the findings of the IPCOS survey, the new CoP is targeted at protecting a tiny minority of people who never read any

instructions or texts and are careless in their mobile phone usage. This is contrary to the requirements of the UCP.

- 2.30 Does Premium Rate Service cover the new Direct to Bill offerings being introduced by the MNOs in Ireland, which will allow consumers to purchase items for up to €30 with the payment following through their mobile phone bills.? If so, it will render them uneconomic, as the levy will impact negatively on the margin, making it impossible to compete with credit card services