

Notification of Contravention of the Premium Rate Services Condition under Section 94 of the Communications Act 2003

Notice served on Allied Telecommunications Ltd

**This is the non-confidential version. Confidential information and data
have been redacted. Redactions are indicated by [X]**

Issued: 15 August 2005

Contents

Section		Page
	Notification to Allied Telecommunications Limited under section 94 of the Communications Act 2003	3
	Explanatory Statement	
1	Summary	6
2	Background	7
3	The investigation	10
Annex 1	Outstanding Directions	18

Notification to Allied Telecommunications Limited under Section 94 of the Communications Act 2003

1. Section 94 of the Communications Act 2003 (the "Act") allows Ofcom to issue a notification to a person where Ofcom has reasonable grounds for believing that a person is contravening, or has contravened a condition set under section 45 of the Act.
2. Section 123(1) of the Act provides that section 94 of the Act applies in relation to a contravention of the PRS Condition as it applies to in relation to a contravention of a condition set under section 45.

Determination made by Ofcom

3. Ofcom hereby determines that there are reasonable grounds for believing that Allied Telecommunications Limited ("Allied") is contravening and has contravened the PRS Condition. Specifically:
 - a. ICSTIS issued directions to Allied pursuant to the ICSTIS Code on 18 February 2005 and 22 February 2005 ("the ICSTIS directions").
 - b. Allied failed to comply with the ICSTIS directions, in that Allied did not provide all of the information and documents specified in the ICSTIS directions and with respect to the information and documents provided, did not do so by the time and date specified by ICSTIS.

The reasons for Ofcom's determination are set out in the explanatory statement accompanying this Notification.

The PRS Condition

4. The PRS Condition requires that:

"The Communications Provider shall comply with:

- (a) directions given in accordance with an Approved Code by the Enforcement Authority and for the purposes of enforcing the provisions of the Approved Code; and*
- (b) if there is no Approved Code, the provisions of the order for the time being in force under section 122 of the Act".*

5. The term “Communications Provider” is defined in the PRS Condition as meaning

“either:

- (i) ... ;
- (ii) ... ; *or*
- (iii) *a person who*

(A) is the provider of an Electronic Communications Network used for the provision of a Controlled Premium Rate Service; and

(B) has concluded an agreement relating to the use of the Electronic Communications Network for the provision of the Controlled Premium Rate Service with a Controlled Premium Rate Service Provider.”

6. The term “Approved Code” is defined in the PRS Condition as meaning “a code approved for the time being under section 121 of the Act”.

7. The term “Enforcement Authority” is defined in the PRS Condition as meaning, in relation to the Approved Code, “the person who under the code has the function of enforcing it”.

8. On 23 December 2003, the Director issued a notification of approval of a code for Premium Rate Services for the purposes of sections 120 and 121 of the Act. This notification approved the Tenth Edition of the code issued by the Independent Committee for the Supervision of standards of Telephone Information Services (“ICSTIS”) (“the ICSTIS Code”).

9. Ofcom has received confirmation that Allied is the provider of an Electronic Communications Network that is used for the provision of a Controlled Premium Rate Service and that it has in place agreements with Controlled Premium Rate Service Providers relating to the use of the Electronic Communications Network for the provision of Controlled Premium Rate Services.

Action required by Allied

10. Allied shall comply with the PRS Condition by **16 September 2005**.

11. Allied shall have until **16 September 2005** to make representations to Ofcom about the matters set out in this Notification and the accompanying explanatory statement.

Interpretation

12. Words or expressions used in the Notification have the same meaning as in the Act or the PRS Condition.

13. “PRS Condition” means the condition set pursuant to section 120 of the Act for the purpose of regulating the provision, content, promotion and marketing of premium rate services, and set out in a notification issued under sections 48(1) and 120(5) of

the Act by the Director General of Telecommunications on 23 December 2003, that took effect on 29 December 2003.

David Stewart
Director of Investigations

15 August 2005

Explanatory Statement

Section 1

Summary

Introduction

- 1.1 The Independent Committee for the Supervision of Standards of Telephone Information Services (“ICSTIS”) is responsible for the regulation of the provision, content, promotion and marketing of premium rate services (“PRS”). ICSTIS does this through a Code of Practice (“the ICSTIS Code”)¹, which has been approved by Ofcom.
- 1.2 The ICSTIS Code is underpinned by a condition for the regulation of premium rate services (“the PRS Condition”), which was set by Ofcom pursuant to section 120 of the Communications Act 2003 (“the Act”). The PRS Condition requires communications providers to comply with Directions given to them by ICSTIS.
- 1.3 On 1 April 2005, ICSTIS referred a complaint to Ofcom, alleging that Allied Telecommunications Ltd (“Allied”) had failed to comply with Directions given to it by ICSTIS and, as such, had contravened the PRS Condition.
- 1.4 On 5 April 2005, ICSTIS referred a second complaint to Ofcom in relation to Allied, again alleging that Allied had failed to fully comply with ICSTIS Directions and that, as such, it had contravened the PRS Condition.

Decision

- 1.5 Ofcom has determined that there are reasonable grounds for believing that Allied is contravening the PRS Condition. Allied has failed to comply with directions given to it by ICSTIS, pursuant to paragraphs 2.2.2, 2.3.4 and 2.3.5 of the ICSTIS Code.
- 1.6 Pursuant to section 94(3) of the Act, Ofcom therefore requires Allied to comply with the PRS Condition by **16 September 2005**.
- 1.7 If Allied does not comply with the PRS Condition by this date, Ofcom may issue an enforcement notification under section 95 of the Act and/or may impose a penalty on Allied under section 96 of the Act.
- 1.8 Allied has until **16 September 2005** in which to make any representations to Ofcom about matters contained in the Notification accompanying this explanatory statement.

¹ The latest version of the ICSTIS Code is the Tenth Edition. See <http://www.icstis.org.uk/icstis2002/default.asp?node=5>

Section 2

Background

Regulation of Premium Rate Services

- 2.1 The provisions for the regulation of premium rate services are contained in sections 120-124 of the Act.
- 2.2 Section 120 of the Act provides Ofcom with the power to set conditions requiring the persons to whom the condition applies to comply with Directions given in accordance with an approved code by the enforcement authority and for the purpose of enforcing its provisions.
- 2.3 On 23 December 2003, the Director General of Telecommunications (“the Director”) issued a notification under sections 48(1) and 120(5) of the Act setting, pursuant to section 120 of the Act, a condition for the purpose of regulating the provision, content, promotion and marketing of premium rate services (“the PRS Condition”), to take effect from 29 December 2003.
- 2.4 The PRS Condition requires that communications providers comply with Directions given in accordance with an Approved Code by the relevant enforcement authority for the purposes of enforcing the provisions of the Approved Code, or where no code has been approved, the provisions of the order in force under section 122 of the Act.
- 2.5 Section 121 of the Act provides Ofcom with the power to approve a code made for the purposes of regulating the provision, content, promotion and marketing of premium rate services and the facilities made available in the provision of such services.
- 2.6 On 23 December 2003, the Director issued a notification of approval of a code for Premium Rate Services for the purposes of sections 120 and 121 of the Act. This notification approved the Tenth Edition of the code issued by the Independent Committee for the Supervision of standards of Telephone Information Services (“ICSTIS”) (“the ICSTIS Code”).
- 2.7 The ICSTIS Code is therefore the Approved Code for the purposes of the PRS Condition and ICSTIS is responsible for the day-to-day regulation of the provision, content, promotion and marketing of premium rate services. Communications providers are required to comply with Directions given by ICSTIS for the purposes of enforcing the provisions of the ICSTIS Code.
- 2.8 Section 123 of the Act sets out Ofcom’s powers in relation to the enforcement of conditions made under section 120. This requires Ofcom to follow the procedures laid down in sections 94 to 96 of the Act and sets the limit of any penalty that Ofcom can impose under section 96 to a sum not exceeding £100,000.

The PRS Condition

2.9 The PRS Condition requires that:

“The Communications Provider shall comply with:

- (a) directions given in accordance with an Approved Code by the Enforcement Authority and for the purposes of enforcing the provisions of the Approved Code; and*
- (b) if there is no Approved Code, the provisions of the order for the time being in force under section 122 of the Act”.*

2.10 The term “Communications Provider” is defined in the PRS Condition as meaning:

“either:

- (i) ... ;*
- (ii) ... ; or*
- (iii) a person who*

(A) is the provider of an Electronic Communications Network used for the provision of a Controlled Premium Rate Service; and

(B) has concluded an agreement relating to the use of the Electronic Communications Network for the provision of the Controlled Premium Rate Service with a Controlled Premium Rate Service Provider.”

2.11 The term “*Enforcement Authority*” is defined in the PRS Condition as meaning, in relation to the Approved Code, *“the person who under the code has the function of enforcing it”*.

2.12 Under the terms of the ICSTIS Code, ICSTIS is responsible for enforcing the approved code and is therefore the enforcement authority for the purposes of the PRS Condition.

The complaints

2.13 On 1 April 2005, ICSTIS referred a complaint to Ofcom alleging that Allied had failed to comply with Directions given to it on 22 February 2005 in relation to the provision of outpayments and forecasts. ICSTIS imposes a levy on service providers, collected by the network operators, which contributes to ICSTIS’s funding. This levy is based on what operators pay out to service providers in respect of revenue generated by premium rate services. ICSTIS requires that each network operator provide quarterly reports about the actual level of outpayments made and a forecast of the outpayments that it expects to make in

this regard. The Directions given to Allied on 22 February required them to comply with these requirements and provide the outpayment information by 28 February 2005. ICSTIS alleged that Allied had failed to fully comply with the Directions as it had not provided the information until 7 March 2005.

- 2.14 On 5 April 2005, ICSTIS referred a second complaint to Ofcom in relation to the alleged failure by Allied to comply with ICSTIS Directions. On 18 February 2005, ICSTIS issued 15 Directions to Allied in respect of each of 19 different service providers – a total of 285 Directions. These Directions required the provision of specific information and documents in respect of these service providers by 21 February. An extension to this deadline until 25 February was agreed subsequently by ICSTIS. ICSTIS alleged that Allied had failed to comply with the Directions as it had failed to provide some of the information requested and had failed to carry out the other Directions by the revised deadline.
- 2.15 On the basis of these two complaints, Ofcom decided to open an investigation into Allied's conduct as a possible breach of the PRS Condition. This investigation was opened on 20 April 2005 and an entry published in Ofcom's Competition Bulletin setting out the matters under investigation.

Allied Telecommunications

2.16 Allied is a network operator that set up operations in July 2004. Allied has leased switching facilities and interconnect circuits from another network operator and ported some premium rate numbers from the same operator in order that it could begin to offer services. Allied was allocated further premium rate numbers by Ofcom in August 2004. Allied sub-allocates premium rate numbers to service providers to enable them to offer premium rate services to consumers.

2.17 [redacted]

2.18 [redacted]

2.19 [redacted]

2.20 [redacted]

Section 3

The investigation

- 3.1 ICSTIS has submitted two separate complaints to Ofcom regarding the alleged failure of Allied to comply with Directions given to it by ICSTIS.
- 3.2 The first complaint relates to Directions given to Allied on 18 February 2005, under paragraphs 2.3.4 and 2.3.5 of the ICSTIS Code, regarding Allied's dealings with 19 service providers². The Directions directed that 15 different pieces of information be provided for each of the service providers by 21 February. However, following discussions between ICSTIS and Allied regarding the deadline for provision of the information, during which Allied was invited to provide a date when it would be in a position to comply with the Directions, a revised date of 25 February was agreed for provision of the information. It is against this deadline that Ofcom has carried out its assessment of the complaint.
- 3.3 The second complaint relates to Directions given to Allied on 22 February 2005, under paragraph 2.2.2 of the Code, in relation to outpayments that Allied had made to service providers during 2004 and its forecasts for outpayments for 2005. Allied was directed to provide this information by 28 February.
- 3.4 Ofcom is satisfied that in both cases ICSTIS has followed the procedures laid out in Part 8 of the ICSTIS Code before referring the complaints to Ofcom. ICSTIS has contacted Allied both informally and formally following the passing of the deadlines, giving Allied a further opportunity to respond. ICSTIS has then reconsidered the matter and affirmed its opinion that Allied has not complied with the Directions and set out the steps necessary for Allied to comply with the Directions. Only once Allied failed to take these steps did ICSTIS refer the complaints to Ofcom.
- 3.5 ICSTIS supplied supporting information with its complaints, detailing the circumstances that required it to make Directions to Allied and the discussions that took place with Allied regarding those Directions.
- 3.6 On 27 April 2005, Ofcom used its statutory information gathering powers under section 135 of the Act to obtain from Allied details of the information that it had provided to ICSTIS in response to the Directions and the date that each piece of information had been provided.

Contravention of the PRS Condition

- 3.7 On the basis of the information provided by ICSTIS and Allied, Ofcom has determined that Allied has been and is acting in breach of the PRS Condition in

² The 19 service providers are: Heldo Proms, Telecom Branch SPA, Declaro Global Limited, Iberian Holdings, Fosta Ltd, Ozeano International, Tower Cell LLC, Nexus Ltd, Stamford Project Ltd, Sky Promotions, Voice Priority, Back to Back, Voice International, Voice Complete, Touch Tone, Belmont Haulage Services Ltd, Zanado, Simon Fletching, Perfect Telecom.

that Allied has failed to fully comply with directions given to it by ICSTIS pursuant to the ICSTIS Code in the following respects.

(a) Failure to provide evidence that Allied made payments to service providers

- 3.8 The Directions issued to Allied on 18 February included a requirement to “supply evidence that Allied made payments to [the service providers listed in the direction] during the period in which you have been contracted with them”.
- 3.9 Allied suggested in its response to ICSTIS of 28 February that the copies of contracts that it had provided to ICSTIS outlined the rates and payment terms for each of the service providers and that the spreadsheet it had provided to ICSTIS outlined the payments made to the service providers. Allied advised that information on payment processes and details of which service providers had received payments would be included in a statement that Allied had requested from the third party factoring company that it uses to handle such payments. This statement has yet to be received by ICSTIS.
- 3.10 Having analysed the information provided by Allied to ICSTIS, Ofcom has been provided with no evidence that Allied did, in fact, make payments to the listed service providers. The spreadsheet and contracts simply outline the amounts that would have been due to the service providers, rather than evidencing that payments had actually been made. Additionally, the spreadsheet and contracts only related to 14 of the 19 service providers, meaning that no information has been provided in connection with five of the service providers.
- 3.11 Ofcom has therefore concluded that Allied has failed to comply with this Direction in respect of all 19 service providers.

(b) Failure to provide a summary breakdown of all payments that Allied made to each service provider

- 3.12 The Directions issued to Allied on 18 February included a requirement to “provide a summary of all payments Allied have made to each service provider, detailing, but not limited to, the dates on which those payments were made, and the amounts of each payment”.
- 3.13 Allied’s response to ICSTIS of 28 February advised that the copies of the contracts that it had provided to ICSTIS outline the rates and payment terms for each service provider and that the spreadsheet outlined the payments made for each service provider. Allied additionally referred to information that was due to be included in the statement from the factoring company, which has yet to be received by ICSTIS.
- 3.14 Having assessed the information provided by Allied, Ofcom observes that neither the spreadsheet or contracts provide information as to the dates that payments were made, only the amounts that were due to each service provider on a weekly basis. Although the contracts refer to the payment periods for service providers (i.e. weekly or monthly) but this does not identify the specific dates that the payments were made, as was requested in the Directions. Additionally, as the spreadsheet and contracts only relate to 14 of the 19 service providers, no

information has been provided at all for the payments made to five service providers.

- 3.15 Ofcom has therefore concluded that Allied has failed to comply with this Direction in respect of all 19 service providers.

(c) Failure to provide copies of bank statements

- 3.16 The Directions issued to Allied on 18 February included a requirement to “provide copies of bank statements showing those payments being drawn on Allied’s bank accounts”.
- 3.17 Allied’s response again referred to the spreadsheet and contracts that it had previously provided to ICSTIS and to the statement from the factoring company.
- 3.18 Ofcom notes that Allied has not provided copies of any bank statements and has therefore concluded that Allied has failed to comply with this Direction in respect of all 19 service providers.

(d) Failure to provide documentation relating to payment instructions

- 3.19 The Directions issued to Allied on 18 February included a requirement to “provide documentation demonstrating what payment instructions were given to Allied by any party in respect of payments to be made to each service provider. For avoidance of doubt, this should include copies of correspondence or documentation where the service provider had advised Allied how they wished to be paid, in terms of timing and physical receipt of monies”.
- 3.20 Allied’s response to ICSTIS in relation to this Direction again made reference to the spreadsheet and contracts that it previously provided to ICSTIS and to the statement that its third party factoring company was due to provide.
- 3.21 Having analysed the documents provided by Allied, Ofcom has concluded that they do not contain details of how each service provider has requested to be paid. No details of who service providers requested that cheques be made payable to or the bank account details that service providers requested money be paid into were provided by Allied. Ofcom considers that Allied should have had such information as without it Allied would have been unable to make outpayments to the service providers. The contracts are silent as to how payments should be made, giving only the details of the frequency that payments should be made. Even were this information to be considered adequate, contracts are only available for 14 of the 19 service providers.
- 3.22 Ofcom has therefore concluded that Allied has failed to comply with this Direction in respect of all 19 service providers.

(e) Failure to provide documentation relating to payment details

- 3.23 Two of the Directions issued to Allied on 18 February required it to provide details of (i) who payments were made to at each service provider, including details of who cheques were made payable to where the payment was by cheque; and (ii)

the bank account name, number and address where the payment was by bank transfer. Where service providers were paid by any other means, Allied was directed to specify what those means were.

3.24 Allied's response to ICSTIS in relation to these Directions again made reference to the spreadsheet and contracts that it previously provided to ICSTIS and to the statement that its third party factoring company was due to provide.

3.25 As discussed above, the contracts provide no details of how payments were to be made to service providers and Allied has provided no other information in respect of who cheques were made payable to or the bank accounts that payments were supposed to be deposited in. Ofcom has therefore concluded that Allied has failed to comply with these Directions in respect of all 19 service providers.

(f) Failure to provide details of how service providers approached Allied within deadline

3.26 The Directions issued to Allied on 18 February directed it to "detail how each service provider approached Allied (or vice versa) in order to contract for these numbers/services".

3.27 Allied responded to ICSTIS on 28 February advising that all of the service providers had contacted it by telephone.

3.28 Although the information provided by Allied adequately addresses the Direction issued by ICSTIS, it was provided after the deadline of 25 February that had been agreed by ICSTIS and Allied. As such, Ofcom considers that Allied has failed to comply with these Directions in respect of all 19 service providers.

(g) Failure to provide details of who negotiated service provider contracts

3.29 The Directions issued to Allied on 18 February included a requirement to provide "details of names, addresses, phone numbers, fax numbers and email addresses of the people who handled the day-to-day negotiation of these contracts".

3.30 Allied responded to ICSTIS on the basis that the contracts provided contact details for all service providers.

3.31 Having assessed the contracts provided to ICSTIS by Allied, Ofcom is of the view that they only provide limited details as to who signed them, rather than who was responsible for negotiating the contract. Even where the person who signed the contract is the same person who negotiated it, the details contained in the contract are insufficient to meet the requirements of the ICSTIS Direction. No phone or fax numbers are provided in any of the contracts, neither are e-mail addresses. Further, it is not possible to identify the name of the person who signed the contracts in a number of cases as the signatures are illegible. Contract details were only provided for 14 of the 19 service providers, though further information was provided for one of the remaining five service providers two weeks after the revised deadline for provision of such information.

3.32 Ofcom is therefore of the view that Allied has failed to comply with this Direction in respect of all 19 of the service providers.

(h) Failure to provide details of any agents/resellers that brought Allied service provider accounts within deadline

- 3.33 The Directions issued to Allied on 18 February included a requirement to supply “the names, addresses, phone numbers, fax numbers and email addresses” of any resellers or agents that brought Allied any of the service provider accounts, specifying which agents/resellers brought which accounts.
- 3.34 Allied advised in its response of 28 February that no agents or resellers were used to bring service provider contracts.
- 3.35 Although the information provided by Allied adequately addresses the Direction issued by ICSTIS, it was provided after the deadline of 25 February that had been agreed by ICSTIS and Allied. As such, Ofcom considers that Allied has failed to comply with these Directions in respect of all 19 service providers.

(i) Failure to provide details of the contacts that Allied had with the service providers within deadline

- 3.36 The Directions of 18 February required that Allied “specify the number of times and occasions on which Allied had direct contact with those you identify as service providers, specifying the nature and content of each meeting/contact”.
- 3.37 Allied advised in its response to ICSTIS that all contracts were negotiated by telephone and post and that no meetings took place with the service providers. Allied has advised Ofcom that it did not keep records of the telephone conversations that took place with the service providers so has no information that it could provide to ICSTIS.
- 3.38 Ofcom is of the view that Allied could have made clearer to ICSTIS the fact that it had no records of the contact that it had with each service provider to be able to pass on but does not consider that this, in itself, amounts to a breach of the Directions given by ICSTIS.
- 3.39 Although the information provided by Allied adequately addresses the Direction issued by ICSTIS, it was provided after the deadline of 25 February that had been agreed by ICSTIS and Allied. As such, Ofcom considers that Allied has failed to comply with these Directions in respect of all 19 service providers.

(j) Failure to detail checks made to determine the services being offered by each service provider within deadline

- 3.40 The Directions of 18 February required that Allied “detail what checks Allied made to determine what type of service” would be operated by each of the service providers. Allied was requested to provide this information with particular reference to Perfect Telecom.
- 3.41 Allied advised ICSTIS that it checks each service prior to it going live, to ensure that the content meets the ICSTIS Code, and includes a term in its contracts

requiring service providers to comply with the ICSTIS Code. Allied claimed that it had fully complied with all ICSTIS emergency procedures.

- 3.42 Although failing to make specific reference to the checks that it carried out as regards Perfect Telecom, Allied's response does list the checks that it makes as regards service providers. The implication of this is that as Perfect Telecom is a service provider, these checks would/should have been carried out. Whether or not Allied did carry out these checks is a different matter, and not one which is the subject of this ICSTIS Direction.
- 3.43 Although the information provided by Allied adequately addresses the Direction issued by ICSTIS, it was provided after the deadline of 25 February that had been agreed by ICSTIS and Allied. As such, Ofcom considers that Allied has failed to comply with these Directions in respect of all 19 service providers.

(k) Failure to demonstrate checks made to satisfy itself that Allied did not contract with service providers using automatic calling equipment ("ACE") within deadline

- 3.44 The Directions of 18 February required Allied to demonstrate the checks it made to satisfy itself that "Allied never knowingly contracted with SPs using ACE as a marketing tool".
- 3.45 Allied questioned in its response to ICSTIS how, other than making it a contractual requirement not to use ACE, it could monitor and prevent service providers from using ACE as a marketing tool. Allied advised that it had only been made aware of the need to have in place stringent checks at a meeting with ICSTIS on 9 December 2004. ICSTIS queried whether this response was consistent with the due diligence procedures proposed by Allied's solicitors.
- 3.46 Ofcom notes that Allied recognises that from 9 December it was aware of the need to have in place stringent checks to ensure that its service providers did not use ACE. As such, Allied should have had in place procedures to check whether service providers used ACE for marketing purposes at the time of the Direction from ICSTIS. On the basis of the response from Allied, it would appear that such checking procedures were not in place.
- 3.47 Ofcom, however, considers that the existence or lack of checking procedures is not the relevant issue for its assessment of whether Allied has complied with the ICSTIS Direction. The Direction requires Allied to demonstrate the checking procedures that it does have in place, rather than those that it should have in place. Allied's response effectively indicates that the checking procedures in place are limited to a contractual requirement not to use ACE for marketing purposes. This appears to be sufficient to address the information requested by the Direction.
- 3.48 Nevertheless, Ofcom considers that Allied has failed to comply with these Directions in respect of all 19 service providers as Allied failed to provide its response by the deadline of 25 February.

(l) Failure to demonstrate the checks Allied made to ensure that marketing methods used by SPs were lawful

3.49 The Directions of 18 February required Allied to demonstrate the checks it made “to ensure that the marketing methods adopted to promote the services were lawful and complied with the ICSTIS Code of Practice, with particular reference to Perfect Telecom”.

3.50 On the basis of the information supplied by Allied to Ofcom, it would appear that Allied did not provide a response to ICSTIS in relation to this Direction. Ofcom is therefore of the view that Allied has failed to comply with this Direction in respect of all 19 service providers.

(m) Failure to provide details of pre-contract checks made

3.51 The Directions of 18 February required Allied to “specify what pre-contract checks” were made to satisfy itself and ICSTIS that the service providers had valid and known contact details and that Allied could determine these to be true. The Direction was made in respect of all the service providers in the list but with particular reference to Perfect Telecom.

3.52 On the basis of the information supplied by Allied to Ofcom, it would appear that Allied did not provide a response to ICSTIS in relation to this Direction. Ofcom is therefore of the view that Allied has failed to comply with this Direction in respect of all 19 service providers.

(n) Failure to demonstrate what pre-contract checks were made to ensure that offshore service providers were operating lawfully

3.53 The Directions of 18 February required Allied to “demonstrate what pre-contract checks you made to satisfy yourself and ICSTIS that service providers based in offshore jurisdictions were operating lawfully”.

3.54 On the basis of the information supplied by Allied to Ofcom, it would appear that Allied did not provide a response to ICSTIS in relation to this Direction. Ofcom is therefore of the view that Allied has failed to comply with this Direction in respect of all 19 service providers.

(o) Failure to provide a breakdown of payments made to service providers within deadline

3.55 The Directions of 22 February required Allied to “provide a breakdown of all payments made to service providers during the period 1 January to 31 December 2004”. A deadline of 28 February was set for the provision of the information.

3.56 Allied responded to ICSTIS on 3 March advising that Greg Rudd, to whom the Directions had been sent, was on holiday and that a response would not be able to be provided until 7 March. This information was provided on 7 March.

- 3.57 ICSTIS advised that the Directions had been sent prior to Mr Rudd going on holiday and that, as such, this was no justification for late provision of the information as it could have been dealt with before Mr Rudd went on holiday.
- 3.58 On the basis of evidence provided by ICSTIS, in particular e-mail discussions between ICSTIS and Greg Rudd, it would appear that Mr Rudd was not on holiday in the period from ICSTIS issuing the Direction on 22 February and the deadline for the provision of information on 28 February. Mr Rudd was therefore in a position to provide the information by the ICSTIS deadline, or to at least delegate responsibility for the provision of the information to someone else at Allied. Ofcom does not, therefore, consider that the fact that Mr Rudd was on holiday on 3 March to be justification for missing the deadline of 28 February for provision of the requested information. Ofcom is therefore of the view that Allied failed to comply with this Direction by not providing the requested information by the deadline imposed by ICSTIS.

(p) Failure to provide a forecast of outpayment values for the forthcoming year within deadline

- 3.59 Paragraph 4.1 of Annexe 3 to the ICSTIS Code requires that network operators provide ICSTIS with a forecast of the value of outpayments that each network operator anticipates making during the forthcoming year. The Directions of 22 February required Allied to provide ICSTIS with this information by 28 February.
- 3.60 As discussed in paragraph 3.56 above, Allied advised that it was unable to provide the information until 7 March due to the relevant director being on holiday. This information was provided on 7 March.
- 3.61 On the basis of its assessment in paragraph 3.58 above, Ofcom is of the view that Allied failed to comply with this Direction by not providing the requested information by the deadline imposed by ICSTIS.

Conclusions

- 3.62 Allied has failed to comply with the PRS Condition by failing to comply with Directions given to it by ICSTIS under the ICSTIS Code.

Action required by Allied

- 3.63 Ofcom requires that Allied comply with the PRS Condition by **16 September 2005**. That is to say, Allied must fully comply with the requirements of all Directions given to it by ICSTIS that remain outstanding. Details of the Directions that Ofcom considers remain outstanding can be found in Annex 1.
- 3.64 Allied shall have until **16 September 2005** to make representations to Ofcom about the matters set out in the Notification above and this explanatory statement.

Annex 1

Outstanding Directions

Directions issued on 18 February 2005

References below to service providers are to the service providers listed in the Directions issued to Allied on 18 February 2005 by ICSTIS.

1. You are directed to supply evidence that Allied made payments to these service providers during the period in which you have been contracted with them.
2. You are being directed to provide a summary breakdown of all payments Allied have made to each service provider detailing, but not limited to, the dates on which those payments were made, and the amounts of each payment.
3. You are being directed to provide copies of bank statements showing those payments being drawn on Allied's bank accounts.
4. You are being directed to provide documentation demonstrating what payment instructions were given to Allied by any party in respect of payments to be made to each service provider.

For the avoidance of doubt, this should include copies of correspondence or documentation where the service provider has advised Allied how they wish to be paid, in terms of timing and in terms of physical receipt of monies.

5. If service providers were paid by cheque, you are being directed to provide documentation demonstrating to whom Allied made the cheques payable. If service providers were paid by any other means, you are being directed to specify what those means were.
6. If service providers were paid by bank transfer, you are being directed to provide documentation of the bank account name, number and address into which revenues were paid. For the avoidance of doubt, copies of your remittance advice notes are required.
7. [Information provided]
8. You are being directed to provide details of the names, addresses, phone numbers, fax numbers and e-mail addresses of the people who handled the day-to-day negotiation of these contracts.
9. [Information provided]
10. [Information provided]
11. [Information provided]
12. [Information provided]

13. You are being directed to demonstrate what checks Allied made to ensure that the marketing methods adopted to promote the services were lawful and complied with the ICSTIS Code of Practice, with particular reference to Perfect Telecom.

14. You are being directed to specify what pre-contract checks you made to satisfy yourself and ICSTIS that:

- (i) service providers had valid and known working/existing telephone numbers, fax numbers, e-mail addresses, postal addresses and contact persons, and
- (ii) you could determine their true existence.

This direction is made in relation to all service providers listed, but with particular reference to Perfect Telecom.

15. You are being directed to demonstrate what pre-contract checks you made to satisfy yourself and ICSTIS that service providers based in offshore jurisdictions were operating lawfully.

Directions issued on 22 February 2005

Ofcom considers that all information requested in the Directions of 22 February has now been provided.