

Initial Assessment of When to Adopt Self- or Co-Regulation



Response to consultation by the Premium Rate Association for and on behalf of its members.

June 2008

Introduction

The Premium Rate Association thanks Ofcom for this opportunity to add comment to this consultation piece.

As a non profit, membership driven, trade organisation operating in the Premium Rate telephony sector. Our members understand the need for balanced regulation to instil public trust in the premium rate billing mechanism and we supported all relevant and appropriate industry agreed regulatory discussion and appropriate change in this arena.

Q1. Do you agree that there is a need for Ofcom to have a straightforward means of making an initial assessment of when to adopt a self- or co-regulatory approach rather than rely solely on its powers as a statutory regulator?

We believe that any decision on the future of the industry's regulation should be based upon objective criteria and industry consensus. The purpose of any change should be set in advance, be unambiguous in its aims and free from ulterior motive, other than to result in better industry self-regulation and consumer protection.

It is imperative that a balance between industry and consumer needs are struck to ensure that neither one is harmed. Enforced Regulation will enable the industry to develop and deliver products desired by consumers which are fairly promoted and at the advertised price. However, engaging and allowing the industry to develop and implement its own customer service ethos without undue restriction is likely to bring both the consumer protection benefits sought by regulation and the positive user experience that regulation alone is often unable deliver.

Q2. Do you believe that it is possible to define a set of objective criteria for determining co- and self-regulation?

Yes, we do believe if a full impact assessment is carried out it is possible to establish a set of criteria against which co- and self-regulation can be assessed. We believe that a criteria based approach is both sensible and achievable.

Q3. Do you agree with Ofcom's proposed incentives-based approach to co- and self-regulation?

We believe that protecting the market from harm and ensuring its long term prosperity should lie at the forefront of any regulatory solution. Any solution should be equally mindful of both the possible harm caused by inappropriate trading practices and the damage that poorly applied or over zealous regulatory restrictions will have on the industry.

We believe that an approach which is focused upon protecting long term market viability would have at its core a customer service ethos, which would deliver consumer protection.

There is a perception that if an industry has a lion tamer, a lion must also exist. The barrier placed in the way of the industry dealing with its own customers is not cohesive with building consumer trust. Let the industry deal with the consumer so the consumer has clearly defined and effective redress paving the way to self-regulation.

It is our belief that the majority of companies operating in the premium rate industry wish to improve the industry's reputation. These organisations wish to protect the long term viability of the industry sector and recognise that increased consumer confidence will attract new customers to the market place and generate repeat business.

In the first instance complaints should be directed to the company responsible to enable appropriate action to be taken. Only if a company fails to provide redress should regulatory intervention be necessary. This process must be clearly defined and based upon cooperation.

Q4. Do you agree with the subsequent factors Ofcom is proposing to consider for the institutional design of self- or co-regulation?

The regulation of the premium rate billing mechanism should not seek to be more restrictive than those of other billing mechanisms such as MasterCard or Visa. Retailers choosing to bill through the premium rate mechanism should not be at a disadvantage to those billing through a credit/debit card or invoice. We believe that a move to a more uniform set of rules governing all billing methods would benefit both the consumer and industry.

The regulator of the premium rate industry must focus upon regulation that prevents the abuse of the billing mechanism rather than seeking to police or censor a product by placing restrictions on a particular trading channel. Issues about product acceptability or promotion would be best addressed by primary legislation. Content is either acceptable or not under legislation, regardless of its method of purchase. The regulator should not act as an additional filter or moral guardian anymore so than is required by statute.

It is equally our view that it is not the role of the regulator to attribute value to a product or service. Customer satisfaction is a matter best handled through a company's own complaints procedure and complaints should be directed to the company concerned to aid resolution. Unresolved disputes could be addressed through the introduction of an Ombudsman service, or through Trading Standards and the small claims Court.

Q5. Do you have suggestions for possible co- and self-regulatory schemes within the UK Communications sector?

We are aware that as in any industry, or section of society there will be individuals and organisations which seek to operate outside of the rules. We acknowledge the import role that the regulator holds in restricting the operations of rogue traders. It is for this reason that we believe that any deregulation of the industry must be implemented with care, to avoid abuse.

The Premium Rate Association understands the need for an industry regulator and we feel that the immediate move to a self-regulatory framework may be a premature step. As a stepping stone to future self-regulation we would welcome the introduction of a co-regulatory scheme, which provide the industry with a greater degree of autonomy whilst it finds its regulatory feet.

We believe that affective regulation of an industry is based upon true dialogue between the regulator and industry players to ensure that regulation takes account of technical and practical limitations and address real rather than perceived consumer harm. A forum in which the regulator actively listens to and engages with the industry would enable the regulator to make use of commercial experienced to agree proactive solutions to problems.

The Premium Rate Industry is not exempt from legislation governing acceptable advertising and trading practices and is therefore already subject to the same restrictions as other industries. We believe that care must be taken to avoid regulation in area already adequately covered by legislation. Any breaches of the statutory requirements laid down in the Consumer Protection Regulations, Trades Descriptions Act or Sales of Goods Act are already enforceable by the relevant statutory bodies and these bodies should be encouraged to use these existing powers.

The industry needs to be trusted to take ownership of its own complaints and we would suggest a framework where customers are encouraged to submit their complaints directly to the company responsible. In recognition of the fact that not all complaints can be

resolved, the introduction of an Ombudsman service would provide a vehicle for resolving disputed claims and provide backstop consumer protection benefits.

In conclusion, we welcome Ofcom proactively investigating the suitability of current regulatory arrangements governing the industry and the carrying out a criterion based assessment of appropriate future regulatory provision.