

Draft Determination: Controlled Premium Rate Services

9 August 2002

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Summary

S.1 This document contains a draft Determination relating to the provision of Controlled Premium Rate Services under sub-paragraph 22.5 of Condition 22 of all Public Telecommunications Operator (PTO) licences and under sub-paragraph 26.5 of Condition 26 of the class licences to run branch systems to provide Telecommunications Services (TSL) and to provide International Simple Voice Resale Services (ISVR).

S.2 The effect of the Determination under the above-mentioned sub-paragraph 22.5 and 26.5 will be to recognise a code of practice governing the provision of Controlled Premium Rate Services.

Draft Determination

DRAFT DETERMINATION RELATING TO THE PROVISION OF CONTROLLED PREMIUM RATE SERVICES UNDER SUB-PARAGRAPH 22.5 OF CONDITION 22 OF ALL PUBLIC TELECOMMUNICATIONS OPERATOR (PTO) LICENCES AND UNDER SUB-PARAGRAPH 26.5 OF CONDITION 26 OF THE CLASS LICENCES TO RUN BRANCH SYSTEMS TO PROVIDE TELECOMMUNICATIONS SERVICES (TSL) AND TO PROVIDE INTERNATIONAL SIMPLE VOICE RESALE SERVICES (ISVR)

WHEREAS:

(A) the Secretary of State for Trade and Industry (the “Secretary of State”) has granted under section 7 of the Telecommunications Act 1984 as amended by the Electronic Communications Act 2000 (the “Act”) the following licences:

- (i) all those licences granted to particular persons for the running of telecommunications systems which the Secretary of State has designated by order under section 9 of the Act as public telecommunications systems, which shall be taken to include licences granted to British Telecommunications plc (see S.I. 1999 No. 2453), Kingston Communications (Hull) PLC (see S.I. 1999 No. 2455) and any other persons operating under the fixed voice telephony and international facilities operator licences (see S.I. 1999 No. 2451), the cable and local delivery operator licences (see S.I. 1999 No. 2454), and the mobile licences (see S.I. 1999 No. 2452), and any other such licences granted after the coming into force of this Determination and the aforementioned Regulations and subject to substantially the same terms and conditions as the aforementioned licences (the “PTO licences”);
- (ii) the Class Licence to run Branch Systems to provide Telecommunications Services granted on 8th February 2002;
- (iii) the Class Licence to run Branch Systems to provide International Simple Voice Resale Services granted on 8th February 2002.

(B) Condition 22.1 of the PTO licences provides that the Licensee may only provide a Controlled Premium Rate Service in whole or in part by means of the Applicable Systems where the Relevant Condition is satisfied;

(C) Condition 22.2 of the PTO licences provides that the Licensee may only provide a telecommunication service to another person by means of the Applicable Systems by means of which that person (i.e. the service provider), to the knowledge of the Licensee, provides a Controlled Premium Rate Service where the Relevant Condition is satisfied;

(D) Condition 22.3 of the PTO licences provides that the Relevant Condition is that there is in effect, at the time the Controlled Premium Rate Service concerned is provided, a code of practice governing the provision of such a Service, which has been recognised by the Director General of Telecommunications (the “Director General”) for the purposes of that Condition after certain specified consultation;

(E) Condition 22.4 of the PTO licences provides that a code of practice shall only be recognised for those purposes if the Director General is satisfied that:

- (i) its provisions are capable of properly regulating the provision of the Controlled Premium Rate Services to which it relates and, without prejudice to the generality of the foregoing, which provisions may include adequate provision for compensating those who suffer as a result of the provision of such Services or any description of such Services; and
- (ii) adequate arrangements have been made for the constitution of a body of persons to apply and administer the Code;

(F) pursuant to Conditions 22.6 of the PTO licences, the Director General may recognise a code of practice in relation to any description of Controlled Premium Rate Services or to all Controlled Premium Rate Services;

(G) Condition 26 of Schedule 1 to the TSL and the ISVR licences makes provision in terms identical for the purposes of this determination to those made by Condition 22 of the PTO licences, as set out above;

(H) the Director General is satisfied that the provisions of a code of practice to be issued by the Independent Committee for the Supervision of Standards of Telephone Information Services (“ICSTIS”), which is annexed to this draft determination, are capable of properly regulating the provision of all Controlled Premium Rate Services, and that adequate arrangements have been made for the constitution of a body of persons to apply and administer the Code (that body being ICSTIS);

(I) in making this determination, the Director General has taken into account representations and observations received as part of the consultation process, and the matters described in the Explanatory Memorandum to this draft Determination; and

NOW, THEREFORE, THE DIRECTOR GENERAL, PURSUANT TO CONDITION 22.5 OF THE PTO LICENCES AND CONDITION 26.5 OF THE TSL AND ISVR LICENCES, HEREBY DETERMINES THAT:

1. the Ninth Edition of the ICSTIS Code of Practice (as amended), which is annexed to this determination, is recognised for the purposes of Condition 22.3 of the PTO licences to govern the provision of all Controlled Premium Rate Services as defined in Condition 22.11(a) of the PTO Licences, and is also recognised for the purposes of Condition 26.3 of the TSL and ISVR licences to govern the provision of all Controlled Premium Rate Services as defined in Condition 26.11(a), with effect from **[time]** today, **[date]**.
 2. the previous determination made under sub-paragraph 22.5 of condition 22 of all PTO licences and under sub-paragraph 26.5 of condition 26 of the TSL and ISVR licences on 8 February 2002 recognising a code of practice governing the provision of all Controlled Premium Rate Services is hereby revoked.
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David Edmonds

Director General of Telecommunications

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Chapter 1 – Explanatory memorandum

1.1 ICSTIS supervises the promotion and content of Premium Rate Services (PRS) on behalf of telephone companies through its code of practice. The ICSTIS code of practice is designed to set and maintain standards for PRS, inter alia:

- (a) provisions aimed at ensuring the legality, decency and honesty of PRS;
- (b) rules on promotional material, advertising and tariff transparency of PRS;
- and
- (c) provisions relating specifically to live services, and other services such as children's services and sexual entertainment services.

1.2 On 8 February 2002, the Director General of Telecommunications (the Director General) made a Determination recognising an ICSTIS code of practice annexed to the determination under sub-paragraphs 22.5 and 26.5 of the PTO licences and the TSL and ISVR licences respectively. The Director General was satisfied that that code of practice was capable of properly regulating the provision of all Controlled Premium Rate Services (CPRS). The matters addressed by the ICSTIS code of practice evolve over time, however. In this regard, amendments to the Code are carried out on a regular basis through a transparent consultative process carried out by ICSTIS whereby network operators, service providers, consumer representative organisations and relevant regulatory authorities are invited to comment.

1.3 ICSTIS has recently completed consultations on provisions within the Code relating to the promotion of telephone and internet sexual entertainment services when these services are paid for by a premium charge to a telephone bill. ICSTIS sought views as to whether the 'top shelf' rule¹ – which is intended to prevent children/and or persons not wishing to view advertisements for sexual entertainment services from being exposed to such material either by choice or inadvertently – should be retained in its present form. In particular, views were sought as to whether the rule, as it stood, failed to reflect changes in the print world, particularly the rise in popularity of 'lifestyle' magazines, with clear editorial and content focus on sexual issues and the growth in internet sex sites using premium rate charging where sites can be found through a search engine rather than any form of print promotion.

1.4 In consulting, ICSTIS recognised that regulations on the promotion of services do not function in isolation from other safeguards applied by ICSTIS, service providers, other agencies, publishers, parents and others. Moreover, ICSTIS was mindful that any restrictions that it places upon the advertising of such services should be justifiable and no more than is required to achieve the stated aims.

1.5 ICSTIS received 50 responses to its consultation document published in October 2001, including network operators, service providers, charitable organisations, consumer bodies, and other associations, publishers and members of the public. ICSTIS issued proposals for further consultation on 22 March 2002, and received 25

¹ For the purposes of the ICSTIS provision, 'top shelf' publications are publications which by reason of their erotic, indecent or sexually entertaining or explicit content, are normally placed on the top shelf by newsagents.

responses to this consultation. Respondents were broadly supportive towards the proposed reforms, although there were some issues raised relating to the application and interpretation of the contextual element of the reforms – particularly in its application to Internet services.

1.6 Following consultations, ICSTIS have proposed to introduce the following provisions:

- promotions for sexual entertainment services must not appear in publications targeted at persons under the age of 18;
- promotions for sexual entertainment services must be within the context of the publication in which they appear;
- providers of premium rate internet services must ensure that all of their websites are content rated with the Internet Content Rating Association (ICRA) in addition to providing users with guidance on filter settings;
- providers of premium rate internet services must ensure that advertisements for the website and the advertisements featured on the homepage are in context with the editorial content of the publication;
- all sexual entertainment services must provide an introductory warning at the start of the service stating that the caller must be over the age of 18, and that the caller should be the bill-payer or have the bill-payer's permission; and
- all sexual entertainment PRS must state on connection to the service that call details may appear on the telephone bill.

1.7 The Director General has given consideration to the revised code of practice and, in particular, the proposed package of reforms relating to the promotion of telephone and internet sexual entertainment services when these services are paid for by a premium charge to a telephone bill. The Director General considers that it is right that the 'top shelf' principle be retained. However, the Director General is persuaded that the application of a contextual approach to non top-shelf publications would better reflect societal changes yet still address public concerns over sexual material and children. In particular, the proposed changes will provide ICSTIS with a satisfactory basis to focus on the absolute prohibitions and enforcement action on those services and promotions most likely to cause offence. The Director General notes that the amendments referred to above are the only amendments to the code of practice which was recognised on 8 February 2002.

1.8 In the light of this, the Director General is satisfied that the provisions of ICSTIS' Ninth Edition of the ICSTIS Code of Practice (as amended), which is annexed to this draft determination, are capable of properly regulating the provision of all Controlled Premium Rate Services, and that adequate arrangements have been made for the constitution of a body of persons to apply and administer the Code (that body being ICSTIS).

1.9 Accordingly, the Director General proposes to recognise the Code for the purposes of Condition 22.3 and 26.3.

1.10 The Ninth Edition of the ICSTIS Code of Practice (as amended), annexed to this draft Determination, supersedes the Ninth Edition of the ICSTIS Code of Practice, last recognised by the Director General on 8 February 2002, and effective from 25 March 2002.

Chapter 2 – Consultation

2.1 The draft Determination relating to the provision of Controlled Premium Rate Services under sub-paragraph 22.5 of Condition 22 of the PTO licences, and sub-paragraph 26.5 of Condition 26 of the TSL and ISVR licences are being made available in this document to all licensees and interested parties, together with the Director General's reasons, so that they may have a reasonable opportunity to make representations. Having considered any such representations, the Director General will, if appropriate, make the determination and will notify the licensees and interested parties of that Determination and his reasons for making it. Any representations should be sent to:

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2.2 Further copies of this consultation document can be printed from OfTel's website. Paper copies may also be obtained from OfTel's Research and Information Unit. OfTel has arrangements in place with organisations providing transcription services, and large print, Braille and audio cassettes can be made available on request. Copies are also available on computer disc so that stakeholders without Internet access may create their own large print copies.

2.3 Representations must arrive at OfTel no later than **6 September 2002**. All non-confidential representations will be published. If any part of your representation is confidential, and not for publication, please include this in a separate annex and ensure that it is clearly marked as confidential. In the interests of transparency, please avoid confidentiality markings wherever possible. It would be helpful if representations could be delivered by e-mail. However, copies may also be posted or faxed to the address above. If any stakeholders are unable to supply their comments in one of these ways they should contact Gavin Daykin to discuss alternatives.

2.4 OfTel does not plan on this occasion to allow a further period during which observations may be made on the representations made by others. Nevertheless, in the interests of transparency, all non-confidential representations will be published.

2.5 Representations will be accessible via a link created on the title page of the electronic text of this document. This can be found in the Publications section of OfTel's website under the classification Licensing and Enforcement Actions. Paper

copies of representations will also be made publicly available in Ofcom's Research and Information Unit. Appointments to view written comments in this way, which must be made in advance, may be arranged by phoning: 020 7634 8761 (fax: 020 7634 8946).

Annex A – ICSTIS Code of Practice, Ninth Edition (as amended)

Please see separate pdf file.
