



**Review of Scope of Regulation for Premium Rate Services:
Comparison Study of e-commerce Payment Mechanisms**

**A Study for Ofcom
by Europe Economics**

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1 EXECUTIVE SUMMARY

Introduction

- 1.1 This report has been produced by Europe Economics for Ofcom as part of Ofcom's general review of the role, structure and application of regulation for premium rate services (PRS) and in light of the growing importance of PRS as a micro payment mechanism. The primary objective of this study is to compare the regulation of PRS against that of other e-commerce payment mechanisms and to consider the efficacy of different regimes in preventing and addressing consumer harm.
- 1.2 To conduct this study, Europe Economics collected data from publicly available information sources, including published research, corporate material and media reports, and obtained information and views from industry participants, regulators and industry associations. Work was undertaken in four areas:
- a) Auditing the e-commerce payment mechanisms currently in use in the UK;
 - b) Identifying any new payment mechanisms that might become active in the short to medium term;
 - c) Establishing what legislation and regulation applies to the payment mechanisms identified and what may apply as a consequence of the e-commerce review and Payments Directive; and
 - d) Evaluating the risks that the different payment mechanisms present for consumers and how regulations mitigate these risks.

Conclusions

- 1.3 Having reviewed the different e-commerce payment mechanisms, including PRS, we find that the consumer risks and regulatory issues arising can more clearly be compared for the different payment mechanisms when distinguishing between micro payments and larger payments. There are important differences between the consumer risks and regulatory treatment of payments (and payment systems) designed for small value transactions compared with those established to handle larger value transactions. In particular, we feel that the existing well-established consumer protection measures governing issues related to payment systems transactions are considerably more likely to be well-enforced in the context of more significant larger value payments.
- 1.4 All of the e-commerce payment mechanisms studied in this report face the same or very similar risk issues, particularly as regards consumer protection concerns, such as:
- a) Providing clear information to the consumer as to the nature of the transaction and the consumer's responsibilities;



- b) Providing a clear process whereby the consumer positively authorises a transaction to take place;
 - c) Providing a clear and straightforward process whereby the consumer can cancel ongoing (subscription) services;
 - d) Providing clear and easily accessible billing records; and
 - e) Providing measures for redress and complaint handling in case of problems.
- 1.5 Legislative measures and regulations governing financial prudence are generally clearly set out, well understood and widely enforced. However, the regulation and practical enforcement of consumer protection issues vary considerably for the different e-commerce payment mechanisms. Whereas PRS are regulated under the ICSTIS Code, with specific requirements in terms of the consumer information to be provided and establishing complaint mechanisms, in practice other e-commerce payment mechanisms have no specific regulatory supervision in respect of consumer protection issues. While it is true that, in many cases where there is a potential cause for complaint, general consumer protection legislation could ultimately provide a means for redress, in the context of the e-commerce micro payments market, such forms of redress are unlikely to be effective, not least because the relevant regulatory authorities would tend naturally to prioritise complaints about higher value issues and complaints where evidence of harm can more easily be obtained.
- 1.6 There would clearly be some value in standardising (at least to some extent) the scope and degree of protection offered to consumers when using micro payment mechanisms for e-commerce. Such standardisation would provide consumers with confidence that they enjoy at least the basic levels of consumer protection, regardless of which payment mechanism they select for e-commerce transactions. Moreover, requiring payment mechanism providers all to offer a standardised level of consumer protection would ensure that all of the e-commerce payment systems could compete on a relatively level playing field, with broadly similar compliance costs.

Recommendations

- 1.7 Based on our review of the market, we believe that there is a prima facie case for some form of light touch regulation in the e-commerce micro payments market. While there is a developing competitive market, most of the payment mechanisms are not well developed or very widely used by the majority of consumers. Many of the providers of such payment mechanisms do not have established brands and reputations in the area of payment services. This means that many consumers may not have the level of confidence in e-commerce micro payment mechanisms which is required to encourage more widespread use. Any consumer protection problems that may arise in the future and which are not (or can not be) resolved could give rise to further significant concerns about the robustness of such payment mechanisms and substantially dampen consumer trust and demand.



- 1.8 We do not believe that a company-specific or scheme-specific rules provide sufficient protection for consumers in the absence of a strong brand protection driver and while the e-commerce micro payment market is still in its formative stages. Such rules do not amount to an effective form of “self-regulation” since:
- a) they can be changed at short notice and without consultation;
 - b) there is potential for the rules to be applied arbitrarily or in a fragmented manner (by different providers within the same payment scheme);
 - c) there is a lack of independence and transparency in the manner in which the rules are drawn up and enforced; and
 - d) there is no (or at best very limited) means of enforcement or redress by outside parties against the scheme members.
- 1.9 We believe that it may be disproportionate to apply the full terms of the current ICSTIS Code to e-commerce micro payment mechanisms. Many of the rules of the ICSTIS Code may not be relevant to the payment mechanisms, depending on their individual design. Some of the rules may not be required since many payment mechanism providers remain fully independent of the goods or service being supplied (unlike a traditional PRS). More importantly, the ICSTIS Code may be too slow to adapt to the fast-moving requirements of the sector because of its remit to govern PRS (and not e-commerce payment mechanisms, as such).
- 1.10 We would therefore recommend that an alternative model should be adopted to provide consumer protection for users of e-commerce micro payment systems. The model we recommend would essentially be a self-regulatory model but with important controls to address the concerns listed above with regard to company-specific and scheme-specific rules. The design of this regulatory approach would provide flexibility so that the rules could be amended rapidly to adapt to the fast developing market but would also incorporate independent oversight and transparency to ensure that the rules remained fair and open, and were appropriately enforced.
- 1.11 We agree with the concerns of those payment mechanism providers who argue that it would be unfair to impose regulations on some providers and not on all (or to impose different requirements on different providers). Ideally, all providers of e-commerce micro payment mechanisms should face the same (or very similar) requirements in terms of consumer protection measures. However, we note that achieving a uniform regime may be very difficult.
- 1.12 While it is outside the scope of our terms of reference, we therefore would recommend that there is a need for a cross-sectoral governmental and regulatory review to consider the consumer protection requirements of e-commerce micro payment systems and how such consumer protection measures could be enforced in a uniform manner.



2 INTRODUCTION

- 2.1 This report presents the results of a study carried out by Europe Economics for Ofcom on the subject of e-commerce payment mechanisms.

Context of the report

- 2.2 In light of increasing convergence in the communications sector and the growing importance of premium rate services (PRS) as a micro payment mechanism, Ofcom considers that the time is now right for a first principles examination of the role, structure and application of regulation in this area. The aim of Ofcom's review is to consider whether current PRS regulation meets the needs of consumers whilst supporting an innovative and growing PRS industry.
- 2.3 Specifically, Ofcom will consider: the characteristics of the PRS sector; the consumer experience of PRS; the types of services, including new services, that are subject to current PRS regulation; the extent of protection for consumers from the current rules and, in light of these considerations, whether the current regulations are proportionate.
- 2.4 As part of this wider review into the scope of regulation for PRS, Ofcom has commissioned this report to develop its understanding of the different payment mechanisms that operate for e-commerce, particularly in regard to current and proposed legislation in Europe, and the regulations and redress mechanisms that apply to such payment mechanisms.

Study Objectives

- 2.5 The primary objective of this study is to compare the regulation of PRS against that of other e-commerce payment mechanisms, while discussing the efficacy of different regimes in preventing and addressing consumer harm.
- 2.6 The tender document requests four areas of work:
- a) Auditing the e-commerce payment mechanisms currently in use in the UK;
 - b) Identifying any new payment mechanisms that might become active in the short to medium term;
 - c) Establishing what legislation and regulation applies to the payment mechanisms identified and what may apply as a consequence of the e-commerce review and Payments Directive; and
 - d) Evaluating the risks that the different payment mechanisms present for consumers and how regulations mitigate these risks.



Methodology and Data

- 2.7 This section briefly discusses the methodology employed in gathering the information presented in this study.
- 2.8 Generally, the project team followed two complementary approaches:
- a) Collected data from publicly available sources; and
 - b) Obtained information and views from a range of different stakeholders.

Publicly Available Information

- 2.9 The project team collected data from a range of different publicly available sources, including published research, corporate material and media reports. For example, the websites of payment mechanism providers, such as PayPal and ClickandBuy, supplied some information as to how those payment mechanisms work and views as to how those providers' operations are regulated. Other publicly available sources also provided useful information as to what sort of payment mechanisms are expected to appear in the e-commerce market in the near future.
- 2.10 The use of such publicly available information directed us to the types of payment mechanisms that were relevant for this study and informed us of their key characteristics. We then followed up this information with more detailed discussions with relevant stakeholders, where possible.

Stakeholders' Views

- 2.11 The project team contacted a number of relevant stakeholders. Our contact generally took the form of an initial questionnaire, supplemented by discussions. In cases where stakeholders were available for a discussion, Europe Economics met them, using the questionnaire as a basis for the discussion. In other cases, stakeholders simply completed the questionnaire. The stakeholder discussions took a number of different forms (face-to-face meetings, telephone conferences and email exchanges), reflecting the need to be as efficient as possible given the short timescale of this project.
- 2.12 The stakeholder communications achieved the following:
- a) Provided the project team with information regarding the characteristics of individual payment mechanisms;
 - b) Helped the project team determine which new payment mechanisms are expected to appear in the UK market in the short to medium term;
 - c) Provided views on different relevant forms of regulation for each payment mechanism and how the forthcoming Payment Services Directive may affect the regulation of the different payment mechanisms; and



- d) Informed the project team of the risks that consumers face when using e-commerce payment mechanisms.

2.13 Two types of stakeholders were contacted:

- a) Industry participants; and
- b) Other organisations, such as regulators and industry associations.

2.14 In contacting industry participants, we were primarily attempting to obtain factual information (e.g. how many retailers accept the payment mechanism; how many users use each specific payment mechanisms; and how long has the payment mechanism been operational). In addition, we asked industry participants for their views on issues relevant to consumer protection. While the views of the industry participants were still valuable in this area, we were careful to filter their views in the light of their likely commercial focus. We took similar care to balance the views of other relevant organisations, such as the FSA, ICSTIS, trade associations and consumer representative groups.

List of Stakeholders Contacted

2.15 The project team contacted the following stakeholders:

- a) PayPal and PayPal Mobile;
- b) ClickandBuy;
- c) ICSTIS;
- d) FSA;
- e) Mobile Broadband Group;
- f) Mobile Data Association;
- g) Association of Communication Service Providers;
- h) mblox; and
- i) BT.

2.16 A number of other stakeholders were contacted but, unfortunately, due to the short timescale of the project, not all parties were able either to complete the questionnaire or to arrange discussions with Europe Economics.

About Europe Economics

2.17 Europe Economics is an independent economics consultancy, specialising in economic



regulation, competition policy and the application of economics to public policy and business issues. The firm advises a wide range of clients, including government departments, regulators, international bodies, law firms and private sector companies. It is especially experienced in network industries generally and in the communications sector particularly.

2.18 More details on the firm can be found at www.europe-economics.com.

Structure of the report

2.19 This report is structured along the following lines:

- a) Identification and discussion of the various payment mechanisms;
- b) Description of the regulatory framework currently in operation;
- c) Discussion of the risks to consumers and other users of these payment mechanisms;
and
- d) Conclusions and recommendations.



3 PAYMENT MECHANISMS

Introduction

- 3.1 In this section we describe PRS as a payment mechanism and compare it to other e-commerce payment mechanisms.
- 3.2 There are many payment mechanisms which are used for e-commerce in addition to (or in competition with) PRS. Most of these payment mechanisms operate on a relatively small scale, ie. are currently not extensively used by consumers, although there is increasing customer awareness of some of the payment mechanisms, as shown in the table below.

Table 3.1: Adoption rate of new payment systems in Europe

	Country of origin	Platform	Use system	Aware of system	Adoption rate
GeldKarte	DE	Smartcard	14%	1%	0.21
PayPal	UK	Online	13%	29%	0.45
Postpay	IT	Prepaid card	5%	39%	0.11
Moneo	FR	Smartcard	4%	79%	0.05
PayPal	DE	Online	3%	18%	0.17
FIRSTGATE Click&Buy	DE	Online	2%	8%	0.3
MONETA Online	IT	Online	2%	17%	0.12
PayPal	FR	Prepaid card	1%	5%	0.29
PayPal	IT	Online	1%	6%	0.21
NOCHEX	UK	Online	1%	8%	0.16
BT click&buy	UK	Online	0.7%	10%	0.07
BANKPASS Web	IT	Online	0.6%	6%	0.09
EggPay	UK	Online	0.6%	12%	0.05
Catxa Movil	ES	Mobile	0.5%	21%	0.03
w- HA	FR	Online	0.5%	1%	0.37
FastPay	UK	Online	0.4%	6%	0.07

Source: "Which New Payments Do Europeans Use?", March 2005, FR.

- 3.3 These payment mechanisms are mostly offered by electronic money institutions. An electronic money institution is entitled to issue electronic money and is defined in the E-Money Directive (2000/46/EC) as follows:

“‘electronic money institution’ [is] an undertaking or any other legal person, other than a credit institution as defined in Article 1, point 1, first subparagraph (a) of Directive 2000/12/EC which issues means of payment in the form of electronic money;

‘electronic money’ shall mean monetary value as represented by a claim on the issuer which is:



- (i) stored on an electronic device;
 - (ii) issued on receipt of funds of an amount not less in value than the monetary value issued;
 - (iii) accepted as means of payment by undertakings other than the issuer.”
- 3.4 In the UK, an electronic money institution is authorised by and is subject to the regulations of the Financial Services Authority (FSA).
- 3.5 Generally, an electronic money institution has to meet the following FSA requirements:
- a) Strict requirements apply to proof of capital and funds. In addition, an electronic money institution must at all times have sufficient liquid assets available to repay all outstanding electronic money.
 - b) There are also clear requirements regarding the security of investments that define how the capital resulting from outstanding electronic money can be invested.
 - c) Regarding the suitability of the persons responsible for the management of the company, the following applies: at least two independent minds should be applied to both the formulation and implementation of the policies of the firm (the FSA assesses whether at least two individuals effectively direct the business of the firm).
 - d) An electronic money institution is required to provide adequate operating systems and processes in order to protect the company from operating risks.
- 3.6 These, and other regulatory issues, are discussed in more detailed in the following section of this report dealing with the regulatory framework.

Payment Mechanisms Covered

- 3.7 The payment mechanisms covered in this study are the following:
- a) Premium rate services (PRS);
 - b) ClickandBuy;
 - c) LUUP;
 - d) Nochex;
 - e) PayPal and PayPal Mobile;
 - f) EggPay; and
 - g) Payforit.



Premium Rate Services

Description

3.8 PRS are defined formally in section 120 of the Communications Act 2003 and have been described by Ofcom as follows:¹

“PRS are services commonly providing information or entertainment via the telephone, fax, PC (e.g. internet), mobile (e.g. short message services (‘SMS’)), or interactive digital TV. Services range from sports and voting lines to competition, chat and business information services.

The money paid for the telephone call is shared between the various telephone companies carrying the service and the organisation responsible for providing the content, product or service, whether directly or indirectly.”²

3.9 A more comprehensive list of typical premium rate services is provided on the website of the Independent Committee for the Supervision of Standards of the Telephone Information Services (ICSTIS), the industry-funded regulatory body for premium rate services. This list includes:

- a) TV voting lines (for example, Big Brother and The X Factor);
- b) Competitions;
- c) Mobile ringtone and logo downloads;
- d) Technical helplines (for example, for computer or internet problems);
- e) Competition scratchcards;
- f) Phone chatlines;
- g) Horoscopes;
- h) Charitable fund-raising;
- i) Sports results;

¹ As stated in a report by Cullen International SA and WIK Consult GmbH (“Study on pan-European market for premium rate services”, published on 24 June 2005), DG INFOSOC of the European Commission (EC) defines PRS in a slightly different way: “Premium rate services’ refers to services, provided by an Information Service Provider (ISP), that are accessed by the use of a premium rate telephone number in which the caller pays a special premium rate that is above the normal tariff for voice calls. Examples of services are sports information services, games, popular voting (as opposed to electoral voting), chat lines and business information services.”

² Ofcom (26 August 2004), “A Review of Numbering Arrangements for Premium Rate Services.”



- j) Interactive TV games;
 - k) Adult entertainment;
 - l) Information (weather, traffic, etc.); and
 - m) Directory enquiry services.
- 3.10 The definition of PRS includes the concept of revenue sharing between the network operator(s) and service provider(s) in the value chain. It is this feature of PRS which defines it as a payment mechanism. Effectively, the network operator collects money on behalf of the content provider from the consumer (the person making the call) for the service provided.
- 3.11 Thus, the provision of PRS includes a number of different players across the value chain, which are interlinked through a number of complex agreements. Typically, the end user is unaware of such arrangements and only pays one party (the value chain follows the scheme depicted in Figure 3.1). The figure below illustrates:

Figure 3.1: Functional Value chain for PRS



Adapted from Wik Consult and Cullen International Report for the European Commission

- 3.12 Access network provision is the so-called “last mile” connecting the end user to a telecommunications network. The conveyance of calls takes place on the transit network. Platform provision relates to the technical operation of a PRS platform, and content provision means the creation and packaging of content to be accessed via PRS.

Risks

- 3.13 PRS normally consist of instantly consumed services which are delivered over communications networks. Many such communications networks are more easily accessible by young people (ie. not yet adults) than other payment networks (which might typically require a user to hold a credit card or a bank account). As a result of this accessibility to young people, certain additional sensitivities will apply to the provision of PRS. For example, while the price for PRS is typically low value (and would be classed as a micro payment), such prices might nevertheless be expensive for young people. Similarly, content unsuitable for children might become accessible to them.
- 3.14 Problems experienced with PRS include the following:



- a) A company may try to trick the public into calling their PRS numbers when a genuine service does not exist. Such scams can be undertaken using internet dialler software, bogus advertising, missed calls, and SMS messages.
 - b) A company operates a PRS number which they themselves call. The company profits by defaulting on the bills for payment of those calls, by making the calls via arbitrage or by exploiting a weak billing system. There is never any intention of providing a genuine service.
 - c) Services that limit the final offering by deceiving the caller, e.g. by directing all calls to the 'you've been unsuccessful' message in order to ensure that the provider gains sufficient revenues before allowing anyone a chance to win the prize.
 - d) Calls to popular voting platforms which continue to be carried even after votes have ceased to be counted.
 - e) Where companies mislead consumers as to the precise cost of the call.
 - f) Issues surrounding the use of PRS by minors. PRS is a micro payments mechanism which can easily be accessed by minors who can not, for example, obtain credit cards. However, the cost of PRS is higher than normal call rates and, therefore, if such calls are not authorised by the bill payer, could generate problems.
- 3.15 All parties involved in the PRS value chain, not just the customer, are exposed to some degree by these types of problems. For instance, an originating network operator that bills the consumer may face the risk that the customer refuses (or is unable) to pay the bill for certain PRS calls.

Regulation

- 3.16 PRS are subject to a number of regulatory safeguards, aimed primarily at ensuring consumer protection against the fraudulent or unauthorised use of PRS by ensuring that details of advertised services are accurate and charging is transparent, while access by minors to certain types of PRS is prevented. Further details on PRS regulation are given in the next section of this report.

ClickandBuy

Overview

- 3.17 ClickandBuy is an internet payment system, launched in Germany in 2000. The ClickandBuy service is now available in many European countries, the USA and Asia.
- 3.18 ClickandBuy's online platform offers multiple currencies, multiple languages, and multiple payment options. More than 8.65 million consumers have made payments through ClickandBuy and approximately 500,000 customers used the service in 2006.



ClickandBuy continues to expand and has recently secured two strategic investors: 3i and T-Online Venture Fund, a subsidiary of Deutsche Telekom.

- 3.19 In the UK, the ClickandBuy service has been commercially available since September 2002 and is accepted by approximately 1500 merchants. Merchants using ClickandBuy include Apple iTunes, Disney, Skype, AOL Music, Electronic Arts, Kiplinger, and Univision. ClickandBuy plans to offer a new service of money transfers by email during 2007.
- 3.20 ClickandBuy was offered originally by BT as a service licensee but, in December 2006, ClickandBuy announced that it would re-take control of its UK operation. BT continues to be a user of the ClickandBuy service and a reseller for ClickandBuy in the media sector.
- 3.21 Merchants can outsource all or part of their e-commerce activities to ClickandBuy, which manages the payment process and offers live customer support for consumers, credit card fraud detection, monthly invoicing and implementation of various payment methods. ClickandBuy processes, handles and manages digital content for games, songs, movies, streaming video, podcasts, VoIP calls, television, publishing and mobile devices.

Service Description

- 3.22 ClickandBuy offers an e-money account for its customers who wish to purchase online content and services from any one of ClickandBuy's merchants worldwide. There are different types of ClickandBuy Accounts, depending on the consumer's verification status. ClickandBuy also has spending limits for its customers:
 - a) a personal spending limit which the customers can create themselves; and
 - b) an individual spending limit generated by the ClickandBuy system which is dependent upon each customer's account status (verified or not verified).
- 3.23 ClickandBuy uses its discretion to assess the individual spending limit on each account, based on the consumer's chosen payment method and the account status. If the customer exceeds the system-generated spending limit in a transaction, the system automatically offers the customer other ways to increase the spending limit, e.g. by changing the account status or by changing the payment method.
- 3.24 For UK accounts, all fees are charged in pounds sterling. ClickandBuy may debit a customer's ClickandBuy account with any fees, charges or other amounts owing to ClickandBuy and payable by the customer in connection with the service.
- 3.25 The ClickandBuy e-money account can be funded via a number of methods. Payment methods offered include:
 - a) *Telephone bill.* With many products and services, consumers have the option of paying for their purchases on their telephone bill. Consumers' purchases then appear on the bill they receive from their telephone company (this option is currently only



available in the UK to BT subscribers). The cost of the purchase is shown on the BT phone bill not as a telephony charge but under the category “non-telephony related, no-VAT charge”.

- b) *Direct debit.* ClickandBuy account holders can authorise ClickandBuy to withdraw their payment directly from their bank account. As part of the registration process, ClickandBuy may seek to authenticate the details of any bank account selected by the customer as a source of funding by crediting a small amount of money to that bank account.
- c) *Credit Card.* Consumers can register one or more credit cards in their ClickandBuy account and authorise ClickandBuy to withdraw payments from those credit card accounts.

3.26 When the consumer completes a purchase using ClickandBuy, a record is produced, summarising the purchase information, including the identification of the supplier, description of the product, price, date and time of the transaction. Consumers can access their ClickandBuy account online, containing details of the transaction history.

3.27 One of ClickandBuy’s characteristics is that it aggregates charges. For instance, if a customer were to make thirty downloads from iTunes over a period of a few days at £0.79 for each download, ClickandBuy would aggregate the cost (30 x £0.79) and issue a single invoice for £23.70.

Risk

3.28 The risks associated with the use of ClickandBuy are the common risks faced by internet users, such as identity theft. At registration, a confirmation letter is sent to new customers as a check against identity fraud. ClickandBuy use relies on unique usernames and passwords, while account records (and telephone bills in the case of ClickandBuy customers using this means of funding) allow customers to confirm the validity of their transactions.

3.29 Where customers choose to use their BT telephone bill as the means of funding, all that is needed to make a ClickandBuy payment is the customer’s telephone number and account number. According to ClickandBuy, this has proved to be the most secure of all the available payment methods used by ClickandBuy (debit card, credit card, direct debit, BACS money transfer, and BT telephone bill).

3.30 ClickandBuy assured us that any cases of suspected fraudulent activity are investigated thoroughly and can be forwarded to the Serious Organised Crime Agency (SOCA). Steps are also taken to ascertain how fraudulent access to an account could have been obtained. Such investigations provide valuable information as to whether the customer was in any way negligent towards the protection of their personal details or whether any loopholes in security have been found and exploited.



Regulation

- 3.31 ClickandBuy (Europe) Limited is authorised as an electronic money institution by the FSA, and is therefore subject to e-money and money laundering regulations, and falls within the scope of the Financial Ombudsman Service. ClickandBuy also complies with other industry rules, such as those applying for payment cards and BT's taste and decency guidelines. ClickandBuy does not believe that its service falls within the definition of PRS.

LUUP

Overview

- 3.32 LUUP is a payment system for online and mobile payments, offered by Contopronto AS, a company incorporated in Norway. Having originally launched in Norway in 2002, LUUP extended its commercial operations to the UK and Germany in May 2006.
- 3.33 LUUP claims to have around 15,000 customers in the UK although we did not find any data to confirm the number of merchants accepting payments using LUUP. Our review indicated that LUUP may not have as wide support among retailers as some other e-commerce payment mechanisms covered in this study, particularly PayPal and ClickandBuy.
- 3.34 LUUP is used for a range of different transactions, including:
- a) Mobile entertainment, e.g. betting via text message and downloads of ringtones;
 - b) Mobile games;
 - c) Music and movie downloads; and
 - d) Donations to charities.

Service Description

- 3.35 LUUP offers users an e-money service, whereby the funds customers pay into their LUUP "wallet" (i.e. their LUUP account) are immediately exchanged for e-money which can then be used to buy goods and services and to transfer e-money to other LUUP users. LUUP is not a credit institution and does not pay interest or other earnings on the funds customers keep on their LUUP wallet.
- 3.36 In order to use LUUP, consumers must have registered to obtain a LUUP account. Once the registration is complete, customers can access the account by using their username and password. Payments to fund the account can be drawn from a variety of sources, including credit and debit cards, bank accounts and from digital cash sent to the LUUP "wallet" by another LUUP user.



- 3.37 Anyone with a mobile phone can register for a LUUP account. Registration is very simple and the process can be completed in a few steps either online or by sending text messages on one's mobile phone. Access to the LUUP wallet and making transactions using LUUP are only possible if the customer has their mobile phone, password and PIN available. LUUP also deploys a security feature of sending a unique verification code by SMS to the user, which then needs to be entered in order to continue with the transaction. This verification code feature is used as part of the registration process and, in some cases, when users are logged in to the LUUP wallet or in the course of making LUUP transactions. When making transactions, consumers' personal information and credit card details are not made visible to the merchant.
- 3.38 There are a number of relatively simple text message commands used to operate the LUUP service. Some examples of these commands are provided below:
- a) PAY [mobile number] [amount] – to make a payment to a mobile number;
 - b) PAY [shopID] [amount] – to make a payment to a merchant (using the merchant's shopID reference);
 - c) STATUS – to check the balance in the LUUP account;
 - d) LAST – to see an overview of the most recent transactions on the account;
 - e) PAY BANK [sort code and full account number] [amount] – to withdraw funds from the LUUP account to the user's bank account; and
 - f) PAY [username] [currency] [amount] – to send money in a different currency to a LUUP user.

Risk

- 3.39 As it is an e-money account, LUUP users face the normal risks of operating such accounts, for example, that the money deposited on the account could be at risk if LUUP should go bankrupt or become insolvent.
- 3.40 Additionally, LUUP users may face a higher than normal risk of making errors when completing transactions via text message, particularly where these may require remembering and correctly keying in transaction commands, account numbers, and payment references, as a result of which payments may inadvertently be sent to the wrong recipient.

Regulation

- 3.41 Contopronto AS is authorised and regulated by the Norwegian Financial Services Authority as an electronic money institution. In accordance with the Banking Consolidation Directive, Contopronto thus also has the right to issue e-money in the UK once it has provided the requisite notification to the FSA, which it has done. Therefore,



e-money and money laundering regulations apply to LUUP.

Nochex

Overview

- 3.42 Nochex is an online payments company, offering a range of payment services targeted at small and medium sized companies. Nochex was established in 1999 and has been providing electronic money payment services since the beginning of 2001. The services offered by Nochex are aimed mainly at processing credit and debit card payments on behalf of small and medium-sized businesses offering goods and services for sale on the internet.
- 3.43 Nochex also offers a “personal account” which allows customers to send e-money payments from their Nochex account. However, such e-money transfers can only operate to send money to another Nochex user (if the intended recipient is not a Nochex account holder, that person must open a Nochex account for the e-money to be successfully transferred).
- 3.44 We were unable to find information regarding the number of companies that use Nochex services or any indication that the Nochex personal account service was used to any significant extent by individual consumers (rather than businesses). Therefore, we concluded that Nochex, while presumably providing a useful payment processing service for online traders, was not a significant e-commerce payment mechanism in the context of this particular study.

PayPal and PayPal Mobile

Overview

- 3.45 PayPal (Europe) Ltd is a private limited company incorporated in the UK and a subsidiary of PayPal Inc. PayPal Inc was acquired by eBay in October 2002, and is based in the USA. PayPal is the 2002 SIIA CODiE Awards winner for "Best eCommerce Solution" and is recognised by PC Magazine as one of "The Top 100 Web Sites".
- 3.46 PayPal operates an account based online payments system which launched in 1998 and which is now available to users in 103 countries. PayPal had approximately 100 million accounts worldwide, including 15 million accounts in the UK. PayPal is a preferred payment method for the online auction site eBay and is also widely accepted as a means of payment by online merchants (PayPal states that it is accepted by several thousands of e-commerce websites in the UK).

Service Description

- 3.47 PayPal offers three different types of accounts, as described in the table below.

**Table 3.2: PayPal account types**

Account Benefits	Personal	Premier	Business
Send money	✓	✓	✓
24-hour fraud surveillance	✓	✓	✓
Customer Service availability	✓	✓	✓
eBay Tools	Limited	✓	✓
Merchant Services	Limited	✓	✓
Accept credit or debit cards	Limited	✓	✓
PayPal ATM/Debit Card		✓	✓
Multi-user access			✓

Source: www.paypal.com

- 3.48 PayPal's account registration process requires new users to provide PayPal with their name, address, phone number and email address. The user's email address serves as the unique account identifier. Users must be 18 or over, and must have a UK bank account, debit card or credit card (these are used as funding sources for the PayPal account).
- 3.49 PayPal users make payments mainly in two ways:
- At the PayPal website or where the seller has chosen to integrate PayPal's "instant purchase" feature, the user logs in to their PayPal account, enters the recipient's email address and the amount of the payment; or
 - At the websites of merchants that have integrated PayPal's "website payments" feature, the user selects an item for purchase, confirms the payment information, and enters their email address and password in order to authorise the payment.
- 3.50 PayPal debits the money from the user's PayPal account balance and credits it to the recipient's PayPal account.
- 3.51 PayPal also offers customers who sell goods and services the ability to accept credit card payments from buyers without requiring the buyer to open a PayPal account. A seller or merchant can open a PayPal account and begin accepting credit card payments within a very short time. Merchants are approved instantly for a PayPal account, and do not need to provide a personal guarantee, acquire any specialised hardware, or comply with any complicated processes. The essential simplicity and ease of use of PayPal's payment receipt services explains much of its success, as this has proven to be a particularly attractive means by which individual sellers and small businesses can complete e-commerce transactions.
- 3.52 PayPal Mobile extends PayPal's service so that users can buy goods and send money



from their PayPal account using their mobile phone. Consumers must first have (or must register for) a PayPal account and then may activate their mobile phone for PayPal Mobile use. All of the major UK mobile networks support PayPal Mobile.

3.53 There are several measures that PayPal adopts in order to ensure that its transactions are secure for its customers. These include:

- a) Verification of PayPal's users through a random deposit technique (whereby small sums of random values are deposited in a PayPal user's nominated bank account to ensure the bona fides of that account);
- b) Email confirmation of every PayPal transaction;
- c) An online dispute resolution policy that describes the process by which buyers can file a dispute against sellers and which requires that disputes are closed within 20 days;
- d) A "buyer complaint policy" that covers fulfilment problems (goods ordered which are not delivered or which are significantly different to the original description); the policy requires buyers to exhaust the PayPal dispute resolution process before PayPal will intermediate to resolve the claim;
- e) A "buyer protection" policy that covers fulfilment problems in respect of certain purchases from eBay; the protection is only offered for qualifying eBay sellers (generally, those which have previously enjoyed a good record of customer satisfaction); and
- f) An internal fraud investigation team, which focuses on identifying and preventing fraud before it occurs, detecting fraud in process, mitigating loss if fraud does occur and delivering information to law enforcement agencies.

Risks

3.54 The risks for PayPal users are similar to those for customers of other account-based online payment systems. In particular, concerns about fraud, privacy, and other problems may discourage consumers from adopting or expanding their use of e-commerce. Major risk areas include:

- a) merchant fraud and other disputes over the quality of goods and services;
- b) unauthorised use of credit card and bank account information and identity theft;
- c) the need to provide effective customer support to process disputes between senders and recipients;
- d) potential breaches of system security;
- e) potential employee fraud; and



- f) use of PayPal's system by customers to make or accept payment for illegal or improper purposes.
- 3.55 Set against these risks, the PayPal system (whereby users only need to disclose their email address to sellers) enables buyers to store their sensitive financial information online and therefore to pay merchants without sharing this sensitive information with them and without having constantly to re-enter their information onto a website each time they make a purchase.
- 3.56 Nevertheless, despite the inherent benefits of this kind of payment mechanism and the internal protection measures instituted by PayPal, not all PayPal users feel that their interests are sufficiently well safeguarded. There is, for example, a website established specifically to allow dissatisfied PayPal users to air their grievances and to share their (bad) experiences of using the PayPal service.³

Regulation

- 3.57 PayPal (Europe) Ltd operates as an authorised electronic money institution in the UK and uses this UK authorisation to “passport” itself into other EU countries. Therefore the e-money and money laundering regulations apply to PayPal and it falls within the scope of the Financial Ombudsman Service.

Egg Pay

Overview

- 3.58 Egg plc is a financial services company primarily offering online banking products and services. Egg is one of the world's largest on-line banks with approximately 3.7 million customers. Egg plc is wholly owned by Prudential plc.

Service Description

- 3.59 Egg Pay is an accounts-based online payments system, which allows users to send payments by email. Only holders of online Egg Pay accounts can send an Egg Pay email payment. In order to qualify for an Egg Pay account, consumers must be 18 or over and have a UK bank account.
- 3.60 Sending a payment from an Egg Pay account is relatively simple and can be done in three steps:
- a) The Egg Pay user sets up the email payment;

³ www.paypalsucks.com – which contains a “UK only” forum for grievances from UK PayPal users



- b) The recipient (who does not need to have an Egg Pay account) receives an email advising them of the proposed payment, accesses the Egg website using the link provided, and enters their bank account details; and
 - c) Egg then transfers the money from the Egg Pay user's account to the recipient's account.
- 3.61 To ensure security for money transfers, the Egg Pay user and the payment recipient agree on a security question. When the recipient receives the email informing them of the proposed payment, the recipient must answer the security question (as well as providing their bank account details).
- 3.62 Access to the Egg Pay account for the user is protected by passwords and details of other personal information chosen by the user.
- 3.63 Egg has a dedicated security team to investigate new technologies, to monitor account activity and to respond promptly to any security issues.

Risks

- 3.64 Egg Pay faces similar risks to those faced by any account-based online payment system.

Regulation

- 3.65 Egg Banking plc is a bank, authorised and regulated by the Financial Services Authority. Egg Banking plc is also a member of the Financial Ombudsman Service, and the Financial Services Compensation Scheme.

Payforit

Overview

- 3.66 Payforit is a UK mobile network operator initiative which will enable mobile phone users to purchase goods and services from the mobile internet and charge these purchases directly to their mobile accounts.
- 3.67 Payforit is being promoted by the mobile network operators as a means of providing a safe and trustworthy environment for consumers buying mobile content. Initially, Payforit will apply only in respect of the purchase of digital goods and services initiated during direct to consumer or off-portal WAP sessions. However, the mobile network operators also wish to consider extending the Payforit mechanism in the future to apply also to internet purchases.
- 3.68 The Payforit scheme has been developed by the mobile network operators as a means of addressing what are seen as shortcomings in the existing processes for purchasing mobile content, in particular the problems experienced with premium rate SMS services:



- a) Misleading advertisements, eg. which promoted downloads of ringtones as “free” without clearly indicating that agreeing to the initial free download would register the user as a subscriber to a paid service;
- b) Promotions which seemed to take advantage of more vulnerable consumer groups, especially young people who might not appreciate that an ongoing financial commitment was being incurred (or be able to afford such a financial commitment); and
- c) Failure to implement a clear and simple mechanism by which consumers could end such subscription services, ie. an unambiguous “stop” command.

Service Description

- 3.69 Payforit, therefore, adds an additional layer of safeguards to ensure that consumers are clearly shown on their mobile screens prior to making the purchase:
- a) What it is that they are about to purchase;
 - b) Who is selling the product, including a customer service contact number in case of any problems;
 - c) Terms and conditions of sale, including the price of the product;
 - d) Positive confirmation that they wish to purchase the product; and
 - e) A clear confirmation that the purchase has been successfully completed.
- 3.70 The Payforit scheme is governed by a set of rules, “The Trusted Mobile Payment Framework”, which outlines how participants (merchants, accredited payment intermediaries and operators) should implement the Payforit scheme. The key aspect of the scheme’s operation is that all merchants participating in the scheme must operate through an “accredited payment intermediary”. The accredited payment intermediary is the person responsible for complying with the Payforit scheme rules, in particular to provide WAP pages which are compliant in format and content with the scheme rules and which therefore ensure that all relevant information is provided to the consumer during the purchasing process.
- 3.71 The mobile network operators intend to show the charge for the product / download purchased through the Payforit scheme separately on the mobile account, ie. not aggregated with the price for the communications service deployed and not listed as a communication service charge.
- 3.72 The mobile operators intend to operate an enforcement scheme for Payforit, under which parties which fail to comply with the scheme rules will be warned (“yellow carded”) and, if problems persist or are not resolved appropriately, those parties will have their accreditation removed or access to their services barred (“red carded”).



Risks

3.73 For consumers, the Payforit scheme should offer considerable benefits because it should ensure that the future purchase of mobile content will follow a clear process, with safeguards against misinformation, inadequate information, and problems with advertising. However, some fears were expressed to us during interviews with industry stakeholders concerning the future governance of the Payforit scheme, in particular whether it is appropriate for the scheme rules to be devised, reviewed (in the future), and enforced by the mobile network operators alone and not by some wider industry grouping or by an independent body.

Regulation

3.74 Ofcom regards Payforit as PRS and, as a result, Payforit will be regulated by ICSTIS under the ICSTIS Code. The mobile network operators have expressed disagreement with this assessment, arguing that Payforit falls outside the legal definition of PRS in the Communications Act and that many of the elements of the ICSTIS Code would be irrelevant to Payforit or duplicative of the inherent safeguards of the Payforit scheme rules.

Future Payment Mechanisms

3.75 In this section, we briefly discuss two other payment mechanisms: mobile couponing and mobile ticketing.

Mobile Coupons

3.76 Mobile coupons are emerging as a popular alternative to traditional direct marketing strategies. Mobile coupons are used in a number of different ways, including to increase customer loyalty or to create an extra interactive communication moment with clients, and for sales promotions, gift vouchers or other loyalty programmes. Clients can show their interest in a certain product or retail chain by opting in to the coupon programme (a one-off transaction). Subsequently, they would receive a text message with a unique numerical code, which entitles them to a discount for that product or at that store. The mobile coupon can be redeemed directly at the store concerned. As well as discount coupons, mobile coupons can also be used to give away extra premiums for a selected group of loyal clients, eg. night club members might receive a free drink in exchange for their mobile coupon.

Mobile Ticketing

3.77 Mobile ticketing allows mobile phone users to purchase tickets for events, transportation, and parking. Customers are able to order and receive tickets using their mobile phone. Such ticketing services have been widely adopted, with applications including the use of mobile phones to transact with parking meters, and to obtain cinema and train tickets.



3.78 Generally, these applications have involved users providing their credit card or bank details in order to pay for the tickets in question and thus, in these cases, the mobile is used as a communications and delivery medium and not as a payment mechanism. However, in future, it is possible that such ticketing services could also be provided using a mobile “wallet”, whereby transactional capabilities are added to mobile phones so that funds stored “on” the mobile phone can be used to make payments. This can be done physically by adding a small device on mobile phones which can then be read by a wireless scanner when it comes into close proximity with it or by extending the use (by software downloads) of the existing capabilities of mobile devices.

Summary

3.79 Reviewing the different e-commerce payment mechanism, we note that there are some distinct features which differ in importance and relevance for the different kinds of mechanisms available:

- a) Account-based systems, such as PayPal, normally require that their users be adults (18 or over) and have an existing credit card or UK bank account;
- b) Account-based systems are also subject to financial regulations, such as the e-money and money laundering regulations;
- c) Systems based purely or predominantly on mobile phones have fewer access restrictions because the operation of prepaid mobile phone accounts are designed to remove the problem of credit risk and therefore allow access to consumers who are under 18 and adults who may not have a good credit rating;
- d) For mobile phone systems, there has historically been a close link between the payment system provider (the mobile phone network) and the provider of services and goods; this being reflected in the Communications Act definition of PRS;
- e) As a result of this link, mobile phone networks have become more closely involved in providing safeguards for consumers in respect of the promotion of and the sales process for e-commerce goods and services delivered using their networks; and
- f) Consumers of all e-commerce payment mechanisms face similar risks in respect of the protection of their personal data, and the need for adequate complaint and redress mechanisms.

3.80 The extent to which the different e-commerce payment mechanisms studied in this report are captured by regulations addressing consumer protection issues varies. Where a service is designated as PRS, the ICSTIS Code applies, setting out detailed rules on the interaction between service providers and consumers. For other payment mechanisms, such interaction is governed by general consumer legislation and, in some cases, by individual proprietary customer protection policies.

3.81 The e-commerce payment mechanisms studied in this report are designed to be



particularly suitable for small value or micro payments. For such payment mechanisms to be successful, the average cost associated with transactions needs to be very low otherwise there is a risk that the total transaction cost becomes expensive relative to the value of the good or service purchased. As the e-commerce market develops, one can expect significant competition between the providers of different e-commerce micro payment mechanisms. It is therefore increasingly important to strike the appropriate balance between:

- a) The need for increased regulation to protect consumers (which will generate increased transaction costs);
- b) The need to develop and maintain a level playing field between the providers of different e-commerce micro payment mechanisms; and
- c) The need to maintain consumer confidence in e-commerce micro payment mechanisms.



4 REGULATORY FRAMEWORK

Introduction

- 4.1 In this section, we describe the various forms of legislation and regulation which govern e-commerce payment mechanisms, including PRS. We summarise relevant general consumer protection legislation, rules on advertising, the specific regulations for PRS established by ICSTIS (and emanating ultimately from the Communications Act), and financial regulation, including the forthcoming Payments Directive.
- 4.2 For the sake of clarity, it is important to confirm that the legislative and regulatory measures that we consider in this study are those that target the protection of consumers in a collective sense. We do not directly consider the rights of redress for individual consumers, ie. the redress that might be sought by an individual consumer through court action or some alternative means of dispute resolution (eg. through arbitration proceedings or a complaint to a sector Ombudsman).

General Consumer Protection

- 4.3 Consumer protection legislation and its enforcement was significantly reformed by the provisions of the Enterprise Act 2002, which granted general enforcement powers to the OFT and Trading Standards, as well as sector-specific enforcement powers to a number of industry regulators, including Ofcom. The powers to enforce consumer protection legislation are designed to prevent businesses from breaching consumer legislation where this would result in harm to the collective interests of consumers, ie. the purpose of the enforcement action is to prevent harm from occurring or continuing and not specifically to provide redress for individual consumers.
- 4.4 There is a very large amount of relevant consumer legislation to which the enforcement powers introduced by the Enterprise Act apply (section 211 of the Act lists 52 pieces of UK consumer legislation, while section 212 of the Act lists a further 12 areas of UK consumer legislation derived from European Community Directives), including:
- a) **Business Names Act:** The Act requires businesses which trade under a name other than the proprietor's true name to prominently display the names and addresses of the proprietor or proprietors at business premises, to clearly state them on business stationery and documentation and to provide them in writing to any person dealing with the business who asks for them.
 - b) **Consumer Credit Act:** The Act regulates the full scope of consumer credit activities and includes detailed requirements on a range of matters such as documentation, advertising, and the calculation of the cost of credit and rebates which apply on early settlement of credit agreements. The Act also includes a licensing regime under which the OFT licenses those who are fit to engage in a credit business; a licence is required to engage in a range of credit activities. The Act sets out rules, not just for credit providers, but also for others involved in the credit industry.



- c) **Consumer Protection Act:** Part III of the Act prohibits misleading price indications in relation to any goods, services, accommodation or facilities. A trader commits an offence if, in the course of any business, he gives (by any means whatever) to any consumers an indication which is misleading as to the price at which any goods, services, accommodation or facilities are available (whether generally or from particular persons).

- d) **Consumer Protection (Distance Selling) Regulations:** The Regulations implement Directive 97/7/EC. Subject to some exceptions, they apply to all contracts for goods and services supplied to consumers where the contract is made exclusively by means of distance communication and pursuant to an organised distance supply scheme. Under the Regulations, consumers are entitled to specified information before entering a contract, they are also entitled to confirmation of certain information together with additional information in a durable form, and to a cancellation period of seven working days beginning with the day after that on which the goods are received or the service contract is concluded. The business must perform the contract within 30 days beginning with the day following that on which the consumer sent the order to the business, or within such other period as the parties agree. If the business is unable to do so owing to unavailability of the goods or services, it must inform the consumer of that fact and provide a full refund of all charges. If the consumer exercises his right of cancellation, the business must reimburse the cost of the goods or services together with most other charges payable in connection with the contract as soon as possible and in any case within 30 days of the day of notice of cancellation. Notice of cancellation has the effect of also cancelling any related credit agreement as defined under the Regulations. Provided that the consumer repays the credit within a month of cancellation or before the first instalment is due, no interest is payable. The Regulations also provide the consumer with extra protection from unauthorised use of his payment card in connection with a distance contract in that he is entitled to cancel such payments or be re-credited or repaid the sum in question. In defined circumstances where a consumer is sent unsolicited goods, he may treat them as an unconditional gift. It is an offence for any business to demand payment from a consumer in respect of unsolicited goods or services or to otherwise threaten or take certain enforcement action against him.

- e) **Control of Misleading Advertisements Regulations:** The Regulations provide protection against misleading and unacceptable comparative advertisements.

- f) **Electronic Commerce Regulations:** These Regulations implement the main requirements of Directive 2000/31/EC on electronic commerce. The Regulations govern the provision of Information Society Services, a term that covers any service normally provided for payment, at a distance, by means of electronic equipment at the individual request of a recipient of a service. This means any business which: sells goods or services to consumers (and business) on the internet, by email or text message (the goods and/or services do not have to be provided electronically); advertises on the internet, by email or text message; or conveys or stores electronic information for customers or provides access to a communications network. The



Regulations do not apply to: online activities which are not of a commercial nature; to the goods themselves, or the delivery of the goods or services not provided online; or the offline elements (e.g. the conclusion of a hardcopy contract) of any transaction that began online (e.g. in response to an advert on a website). Regulation 6 states that, where a business refers to prices of goods and/or services, these have to be clearly shown, including whether this is inclusive of any tax and/or delivery costs. In addition, a business has to clearly identify itself to consumers. Obviously, some forms of communication (text messages for example) have limited space. The criteria may be regarded as met if the information is provided by alternative means, such as referring to a website. Regulations 7 & 8 govern commercial communications or advertising. Such communications of goods and/or services have to be clearly identifiable as such, indicating the business they have come from and stating any promotional offers and the terms clearly. Regulations 9 & 11 state that, when concluding a contract online, the business has to inform the consumer of the technical steps needed to conclude the contract; whether the contract will be filed (and if it will be accessible); how the consumer can correct input errors; and what language the contract will be in. This information must be provided clearly and prior to the placing of the order. The business must also state any codes of conduct they adhere to; if they provide terms and conditions, to do so in a way that allows the consumers to store and reproduce them; and acknowledge receipt of orders without undue delay.

- g) **Lotteries and Amusements Act:** The Act provides that all lotteries and raffles, except as authorized by the Act itself or the National Lottery Act 1993, are unlawful and involvement in any such lottery in any of a number of specified ways is prohibited.
- h) **Malicious Communications Act:** The Act creates an offence for anyone to send to another person a letter, electronic communication or article of any description which conveys a message which is indecent, grossly offensive (or of an indecent or grossly offensive nature), a threat or containing information which is false and known or believed to be false by the sender. A person is guilty of an offence under the Act if their purpose, or one of their purposes, in sending the communication was to cause distress or anxiety to the recipient or to any other person to whom it is intended that its contents or nature should be communicated.
- i) **Misrepresentation Act:** The Act extends the legal remedies to which consumers are entitled where they have entered into a contract after a misrepresentation has been made. The Act widens the circumstances in which a consumer may cancel a contract for an innocent or negligent misrepresentation and provides the remedy of damages where a consumer enters a contract following a negligent misrepresentation. Under the Act, the consumer has a damages claim for loss caused by any misstatement inducing him to enter a contract, unless the maker of the statement is able to prove that he had reasonable grounds to believe, and did believe up to the time the contract was made, that the facts represented were true.
- j) **Prices Act:** Under the Prices Act, the Secretary of State has the power to make Orders to control the display of pricing information of goods and services. Price



Marking Orders made under the Act can require how and where the prices of products, from tins of food to cars, and of food and drink bought in pubs and restaurants should be displayed.

- k) **Sale of Goods Act:** The Act sets out the law governing contracts for the sale of goods and governs a wide range of matters such as formation of contract, implied terms, the parties' rights including remedies for breach of implied terms and other breaches of contract, transfer of ownership in the goods, and performance of the contract. The following conditions are implied into such contracts: that the goods will correspond with the description; that the goods are reasonably fit for purpose; in a contract for sale by sample, that the bulk will correspond with the sample in quality; and that the goods will be of satisfactory quality, taking account of all relevant circumstances. Relevant circumstances include the price of the goods, any description and, in a consumer sale, any public statements on the specific characteristics of the goods made by the seller, producer or his representative, particularly in advertising or on labelling. Where goods are supplied to a consumer in breach of an implied term, he is entitled to reject them and claim a refund of the price, if he acts before he is deemed to have accepted them. Where a consumer has lost his right to reject goods, he may claim damages in respect of the non-conformity of the goods with the implied terms. The Act provides additional remedies to consumers where goods do not conform to the contract of sale at the time of delivery. This occurs when there is a breach of an express contractual term or of one of the implied terms listed above. In most circumstances, goods which do not conform to the contract at any time up to six months after delivery will be presumed not to have conformed to it on the delivery date, unless the seller can show otherwise. The additional remedies are that the consumer has a right to require the seller to repair or replace the goods. Where that would be impossible or disproportionate in comparison to the other remedies, the seller must give a full or appropriate partial refund. Where the consumer requests repair or replacement, the seller must comply within a reasonable time and without causing significant inconvenience to the buyer. The seller bears any costs incurred in doing so. If the seller fails to do so, the consumer is entitled to a full or appropriate partial refund.
- l) **Supply of Goods and Services Act:** This Act requires a supplier of a service acting in the course of a business to carry out that service with reasonable care and skill and, unless agreed otherwise, within a reasonable time and for a reasonable charge;
- m) **Trade Descriptions Act:** This Act makes it an offence for a trader to: apply a false trade description to any goods; or supply or offer to supply any goods to which a false trade description is applied; and knowingly or recklessly make a false statement about certain aspects of any services, accommodation or facilities provided in the course of a business.
- n) **Unfair Contract Terms Act:** Under the Act, certain contract clauses and other notices excluding or restricting liability are made unenforceable whilst others are subject to a reasonableness test. A trader dealing with a consumer cannot exclude or



restrict his liability for breach of contract or allow himself to provide a substantially different service or to not provide full service unless he can show that the clause satisfies the test of reasonableness. Nor can a trader require a consumer to indemnify him or any other party against any loss that he or the other party may incur through their negligence or breach of contract unless the trader can show that the clause satisfies the same test.

- o) **Unfair Terms in Consumer Contracts Regulations:** These Regulations implement Council Directive 93/13/EEC. They apply, with certain exceptions, to terms which have not been individually negotiated in any contract concluded between a consumer and a person who is acting for purposes relating to his trade, business or profession. They therefore apply in particular to standard form contracts used with consumers but may also apply to verbal terms which have not been individually negotiated. An unfair term is one which, contrary to the requirement of good faith, causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer. No assessment of fairness is to be made in relation to any term insofar as it defines the main subject matter of the contract, nor as to the adequacy of the price or remuneration payable for the goods or services supplied. Any term that is found to be unfair is not binding on the consumer. This means that a consumer may himself allege that a term is unfair and therefore not binding on him. If the business disagrees and enforces the term against the consumer, the consumer may raise the issue for determination by the Court in any proceedings involving the term, whether instituted by the consumer or the business. The remainder of the contract, however, shall continue to bind the parties if it is capable of continuing in existence without the unfair term. In contracts to which they apply, the Regulations additionally impose an obligation on businesses to express any written contract terms in plain and intelligible language.

4.5 From the above, one can see that there is no shortage of consumer protection legislation. While there may be areas where gaps still exist (for example, because of technological developments), most of the general consumer concerns likely to arise from e-commerce payment transactions are covered, including issues such as:

- a) Providing clear information to the consumer as to the nature and costs of the transaction and the consumer's responsibilities;
- b) Providing a clear process whereby the consumer positively authorises a transaction to take place;
- c) Providing a clear and straightforward process whereby the consumer can cancel ongoing (subscription) services;
- d) Providing clear and easily accessible billing records; and
- e) Providing measures for redress and complaint handling in case of problems.



- 4.6 However, from a practical perspective, one must also consider that the remit for the OFT and for Trading Standards is an extremely broad one and stretches the resources of these regulatory authorities. Inevitably, these authorities must prioritise the issues that they deal with actively and the types of complaints that they choose to handle, focusing rightly on those areas where there is the most consumer harm.⁴ In terms of payment mechanisms, this is likely to mean that regulatory attention and enforcement action will tend to focus much more on those payment mechanisms used for larger value payments and much less so on systems designed for micro payments.
- 4.7 In conclusion, while there may be no (or few) legislative gaps in terms of the consumer protection afforded by general consumer legislation in respect of e-commerce payment mechanisms, there is likely to be a very significant difference between the practical enforcement of those consumer protection measures between systems catering for larger value payments and those schemes designed for micro payments.

Advertising

- 4.8 Given certain features of e-commerce transactions, notably the instant consumption of many electronic products and services, the provision of information about the available goods and services is a particularly critical part of the transaction and thus an important element of consumer protection. While some aspects of the information provided to consumers is governed by general consumer legislation, eg. the Distance Selling Regulations, advertising is also regulated in the UK by the Advertising Standards Authority (ASA).
- 4.9 The ASA is an independent body established by the advertising industry to enforce the rules set down in the Advertising Codes. There are three Codes, governing: TV commercials; radio commercials; and advertisements, sales promotions and direct marketing in all other media. The basic principles of the Advertising Codes are that advertisements should be:
- a) Legal;
 - b) Decent;
 - c) Honest;
 - d) Truthful;
 - e) Socially responsible; and
 - f) Respectful of the principles of fair competition.

⁴ This is highlighted by the first objective listed in the OFT's draft 2007-08 Annual Plan: "We want to make the most effective use of all of our resources by focusing on those areas of work which will achieve the highest gains, either directly or indirectly."



- 4.10 In our interviews with stakeholders, we were told that the ASA does not often intervene in PRS or other areas relevant to e-commerce payment mechanisms. However, we did find an online advice statement from the Committee of Advertising Practice, an industry body responsible for the Advertising Codes, on PRS. This advice statement noted that the public is not always fully aware of the costs of PRS via telephony and, as a result, problems of cost are often brought to the attention of the ASA. Accordingly, the following general advice is offered to marketers on PRS:
- a) To be transparent when advertising and bring to the attention of consumers the common pitfalls in PRS;
 - b) Advertising should not be misleading by omission;
 - c) Make apparent the distinction between a one-off PRS service and a subscription based service;
 - d) Particular care must be taken in advertising PRS to children;
 - e) PRS mechanisms should not be used to access services or promotions advertised as “free”; and
 - f) Where a prize draw is advertised as “no purchase necessary”, the only entrance to the draw should not solely be via PRS (ie. non-PRS mechanisms must also be advertised), and the prize value should not be overstated in relation to the cost of the PRS.

PRS

- 4.11 The Communications Act defines PRS and sets out certain roles and responsibilities of the telecommunications sector regulator, Ofcom, in respect of PRS in sections 120 to 124 of the Act. Under the Communications Act, Ofcom has the responsibility and power to regulate the provision, content, promotion and marketing of PRS and may do so through the approval of a code for premium rate services. Ofcom has approved the ICSTIS Code for the regulation of premium rate services in the UK.
- 4.12 The Independent Committee for the Supervision of Standards of the Telephone Information Services (ICSTIS) is the industry-funded regulatory body for PRS and publishes and enforces the ICSTIS Code. The relationship between Ofcom and ICSTIS is formalised in a Memorandum of Understanding which was signed in August 2005. Ofcom’s role is to provide statutory support to the work of ICSTIS, underpinning ICSTIS’ regulatory regime for all services that meet the definition of Controlled PRS (CPRS).⁵ As

⁵ The definition of Controlled PRS is narrower than that of PRS. Controlled PRS refers to premium rate services which, by costing over a certain amount determined by Ofcom (currently 10 pence per call or per minute), are regulated, i.e. services which cost less than the specified amount are not included in the definition of Controlled PRS.



CPRS providers are required under the conditions of the Communication Act to comply with directions given by ICSTIS under its Code of Practice, Ofcom acts in essence as a backstop regulator (e.g. having the ability to fine a network operator which fails to comply with the ICSTIS Code).

- 4.13 The definition of PRS is set out in sub-sections (7) and (8) of section 120 of the Act (relevant extracts from the Act are included in Appendix A of this report). The wording of these sub-sections is somewhat opaque and therefore agreement on a single clear definition of PRS can be difficult to achieve. Nevertheless, the Act's definition of PRS can be seen to possess four key features:
- a) The service is delivered or accessed by means of an electronic communications service;
 - b) There is a charge for the service;
 - c) The charge appears on the electronic communications service bill; and
 - d) The charge appears on the bill as a charge for an electronic communications service.
- 4.14 As the PRS market and the market for value-added communications services has developed, ICSTIS' remit, framed by the definition of PRS in the Act, has expanded beyond the traditional view of PRS as 09xxx information services and chatlines. PRS now encompass services accessed on different number ranges (such as 08xxx and short codes) and include a very wide range of different service types, including fund raising, voting, competitions and downloads. However, as the communications market continues to develop and to extend its reach into an even wider range of services, there is a growing tension between the role of ICSTIS, based on the Act's definition of PRS, and the desire of communications providers to expand their service range rapidly and without the level of regulatory oversight that is imposed by the ICSTIS Code.

The ICSTIS Code

- 4.15 The eleventh edition of the ICSTIS Code of Practice was published in November 2006 and is supplemented by a set of help-notes and Statements of Expectations. The Code sets out the regulatory framework for CPRS, setting out the rules governing the content and promotion of premium rate services. The Code seeks to adhere to the principles of good regulation (transparency, accountability, proportionality, consistency and targeting).
- 4.16 The Code's geographic scope applies to all CPRS which are accessed by a user in the UK or are provided by a service provider located within the UK. The Code also applies to providers of Information Society Services (ISS) when the service provider for such services is:
- a) Established in the UK;
 - b) Established in the European Economic Area, but only where the services are being



- accessed or may be accessed from within the UK; and
- c) The conditions set out in Article 3.4 of the E-commerce Directive are satisfied (these relate to instances of derogation such as the protection of public health, minors, public security and consumers).
- 4.17 The Code contains a section detailing network operators' due diligence requirements, in particular requiring network operators, before they make their networks and services available to service providers for PRS, to:
- a) Collect and maintain such information as ICSTIS may require in respect of their service providers in order to ensure effective identification of and communication with service providers, including some minimum information requirements;
 - b) Obtain satisfactory evidence that their service providers have sufficient financial and other resources necessary to discharge their obligations under the Code in the light of their intended PRS;
 - c) Make sufficient inquiries to satisfy themselves that the information supplied to them by service providers is accurate;
 - d) Retain the information collected and any associated records, and to make these available to ICSTIS;
 - e) Bring the Code of Practice to the attention of service providers; and
 - f) Satisfy themselves that the service providers have in place adequate customer service and refund mechanisms, including a non-premium rate UK customer service line.
- 4.18 Service providers are obligated to ensure that all users of PRS are “fully informed, clearly and straightforwardly” of the costs of accessing PRS, including any prior charges.
- 4.19 The Code sets out the process that will be followed by ICSTIS in the event of an investigation caused by a complaint. Throughout these procedures, ICSTIS deals directly with the service providers and network operators and, in some cases, also with the relevant information providers.
- 4.20 Sanctions for breaches of the Code can include:
- a) Requiring the service provider to remedy the breach;
 - b) Issuing a formal reprimand;
 - c) Requiring the service provider to submit certain or all categories of service and / or promotional material to ICSTIS for copy advice and / or prior permission for a defined period;



- d) Imposing an appropriate fine on the service provider to be collected by ICSTIS;
 - e) Requiring that access to some or all of the service provider's services and / or numbers be barred for a defined period and directing the relevant network operator(s) accordingly;
 - f) Prohibiting a service provider, information provider and / or any associated individual found to have been knowingly involved in a serious breach or series of breaches of the Code from involvement in or contracting for the provision of a particular type of service for a defined period; and
 - g) Requiring, in circumstances where there has been a serious breach of the Code and / or where an intent to mislead or defraud has been demonstrated, that the service provider pays all claims made by users for refunds of the full amount spent by them for the relevant service, save where there is good cause to believe that such claims are not valid.
- 4.21 ICSTIS investigates all complaints received about premium rate services, including complaints about:
- a) The promotion of PRS;
 - b) The content of PRS; and
 - c) The overall operation of PRS.
- 4.22 ICSTIS does not investigate complaints about:
- a) Why companies use premium rate numbers as opposed to other numbers; and
 - b) The revenue share arrangements that exist between telephone companies and service providers.
- 4.23 Many of the issues dealt with by the ICSTIS Code will also be covered by existing general consumer protection legislation, as discussed above. However, ICSTIS' role is justified by important concerns about the practicalities of enforcement in the context of PRS and the desire to ensure continuing consumer confidence in PRS services.
- 4.24 ICSTIS' role is important because it deals with transactions which typically involve relatively small amounts of money (per transaction). In such cases, consumers may be less concerned with recovering the money paid than with ensuring that the problem does not recur and that the perpetrator is reprimanded. The ICSTIS Code is primarily designed to handle these kinds of issues, ie. to resolve the service problem rather than to provide refunds to customers. As discussed above, other cross-sector regulators, such as the OFT, are much less likely to become involved in such lower value consumer transactions because of the small sums of money involved.



Financial

4.25 This section discusses financial regulations in the UK and the likely impact of the proposed European Payments Services Directive, currently being negotiated in Brussels.

Financial Services Authority

4.26 The current framework for financial regulation in the UK was set out in the Financial Services and Markets Act, which established the industry regulator, the Financial Services Authority (FSA). The four statutory objectives of the FSA are:

- a) Maintaining market confidence in the financial system;
- b) Promoting public understanding of the financial system;
- c) Securing the appropriate degree of protection for consumers; and
- d) Reducing the extent to which it is possible to use a regulated business for a purpose connected with financial crime.

4.27 The FSA's regulatory approach is "risk-based" and "principles-based". Under the risk-based approach, the FSA seeks to assess the risks that a firm or a particular issue arising in the financial sector poses to the four statutory objectives (listed above), including the impact of the problem (if it were to occur) and the probability of the risk occurring. Firms and issues are ranked in order of importance (ie. risk level) so that the FSA can prioritise any required regulatory intervention and ensure that such intervention is at the appropriate level. Under the principles-based approach, the FSA seeks to provide firms in the financial sector with the flexibility to decide for themselves what business processes and controls they should operate, whilst continuing to meet regulatory requirements. Thus, the focus of the principles-based approach is not on the means but the end, with the intention being to create incentives for firms to do the right thing in return for less regulatory supervision.

4.28 The FSA has a particularly wide remit, covering many different financial products and services, including banking, investments, insurance and mortgages. As regards payment mechanisms, the FSA has focused on ensuring the prudential soundness of firms' systems, protecting customers against excessive financial exposure, and compliance with money laundering rules. Therefore, in regard to e-commerce payment mechanisms used predominantly for micro payments, the FSA does not play a major role since it is not in the nature of such payment mechanisms (for low value transactions) to give rise to major risks in any of the areas of significant concern for the FSA.

4.29 The FSA's role in respect of e-commerce is based on the EU Directives on E-money and on E-commerce. These EU Directives were transposed into UK law in 2002.



E-commerce

- 4.30 The purpose of the E-commerce Directive is to remove specific legal barriers to the free movement of “information society services” across the European Community and to encourage greater use of e-commerce by improving legal certainty for businesses and consumers, thereby boosting consumer confidence and trust. “Information society services” are defined, broadly, as services provided for remuneration, at a distance, by electronic means and at the individual request of the recipient. They are primarily services provided over the internet. Under the Directive, information society services benefit from the internal market principles of free movement of services and freedom of establishment, in particular through the principle that they can trade throughout the European Community unrestricted or what is known as the “Country of Origin” rule:
- a) Online selling and advertising is subject to the laws of the UK, if the trader is established in the UK, and online services provided from other Member States may not be restricted (there are exceptions, particularly for contracts with consumers and the freedom of parties to choose the applicable law);
 - b) Recipients of online services must be given clearly defined information about the trader, the nature of commercial communications (i.e. e-mails) and how to complete an online transaction.
 - c) Online service providers are exempt from liability for the content that they convey or store in specified circumstances; and
 - d) In relation to financial services, the territorial scope of the FSA’s regulation is extended to cover outgoing information society services so that a person carrying on an activity consisting of the provision of an information society service from an establishment in the UK to a person in another EU Member State will be regarded as carrying on that activity in the UK.
- 4.31 Virtually all websites are covered by the E-commerce Regulations since the Regulations do not apply specifically to e-commerce but to websites offering online information or commercial communications (e.g. advertisements), or providing search and data gathering tools.
- 4.32 While the Regulations are primarily based on the country of origin principle, this is subject to a number of derogations. Most significantly, the country of origin principle does not apply to the terms of consumer contracts. Practically, this means that a UK based e-commerce site’s terms and conditions should comply with each and every EU Member State in which consumers can purchase products. Other exceptions to the country of origin principle include copyright and intellectual property rights.
- 4.33 Service providers (whether involved in e-commerce or not) must also provide minimum information details, as well as complying with any relevant provisions of the Distance Selling Directive.



E-money

- 4.34 The E-money Directive mandated the establishment of a new prudential supervisory regime for electronic money institutions (EMIs). The main objectives of the Directive are:
- a) to create a regulatory framework to ensure the stability and soundness of EMIs in order to increase business and consumer confidence in this developing means of payment;
 - b) to eliminate legal uncertainty created by the lack of harmonisation in this field; and
 - c) to facilitate access by EMIs from one EU Member State into another.
- 4.35 Under the UK transposition of the E-money Directive, the issuing of e-money became an activity regulated by the FSA. This ensures that persons not authorised by the FSA to carry on the business of issuing e-money are prohibited from doing so (unless they have been granted a waiver). In addition, the FSA imposes the other requirements of the Directive on authorised EMIs.
- 4.36 “E-money” is defined as monetary value, which is stored on an electronic device, issued on receipt of funds and is accepted as means of payment by undertakings other than the issuer. The FSA is responsible for interpreting this definition of e-money and for producing guidelines on how it will be applied in practice, although the definition is considered to include both e-money schemes in which value is stored on a card that is used by the bearer to make purchases, and account-based e-money schemes where value is stored in an electronic account that the user can access remotely.
- 4.37 The FSA regime seeks to ensure that there is a level playing field between prospective issuers of e-money, whether it is the traditional banks or new firms. The regulatory framework revolves around e-money issues being financially sound:
- a) E-money issuers must only undertake e-money issuance or closely related activities;
 - b) Issuers will need to "ring fence" their e-money activities from other areas of business risk;
 - c) Funds held in exchange for the issue of e-money must be invested in high quality liquid assets;
 - d) E-money issuers must have sound and prudent systems and adequate internal control mechanisms;
 - e) E-money issuers must comply with the FSA's money laundering requirements;
 - f) There will be a minimum capital requirement for issuers' at least 2 per cent of outstanding e-money liabilities or €1 million (whichever is higher); and



- g) The FSA will be empowered to grant waivers from regulation to small or locally based firms, although these will still have to submit periodic information about their businesses.
- 4.38 It should be noted that e-money issuers are not covered in the Financial Services Compensation Scheme. Consequently, customers of such institutions will have no access to compensation should an e-money issuer become insolvent.
- 4.39 Nonetheless, the e-money regime includes a number of features to help protect consumers:
- a) E-money issuers must set a limit on the amounts of money that may be held in individual e-money “purses” in order to protect holders of e-money by restricting their individual loss should they lose their purses or should the issuer fail;
 - b) Customers must have access to relevant and comprehensible information and guidance on information about redemption rights including any fees payable on redemption;
 - c) Full disclosure of the risks associated with the product must also be made, including the liability of holders for any loss arising from misuse, loss, malfunction, theft of, or damage to, their e-money purses or any electronic device on which e-money may be held; and
 - d) E-money issuers will be included within the scope of the Financial Ombudsman Service and must also have their own procedures for dealing with customer complaints.

PRS and e-money

- 4.40 During the transposition of the E-money Directive in 2002, there was much discussion about whether mobile prepaid PRS constituted e-money. In its Consultation Paper (CP172), the FSA adopted a pragmatic view which argued that only under very special circumstances would PRS constitute e-money. This view was further clarified by the European Commission in 2005 in a guidance note, the effect of which is now incorporated within the FSA Handbook.⁶

“In January 2005, the European Commission issued a guidance note explaining how, in their view; the Electronic Money Directive (2000/46/EC) should be applied to Premium Rate Services (PRS) delivered by Mobile Network Operators (MNOs) to customers’ prepaid phones. An increasing range of goods and services (known as “content”) is now supplied by the MNOs by way of PRS to their customers’ phones, of which we understand more than two-thirds are now prepaid. The Commission noted that the

⁶ FSA (18 November 2005), “Handbook Notice 49”



primary purpose of e-money is to be used “as legal tender in a payment transaction with a third party”. So when considering whether the MNO is issuing e-money, Member States’ competent authorities should consider whether there is a direct payment relationship between the MNO’s prepaid customer and the third party content vendor. Such a relationship would indicate the use of e-money and might be established where either:

- (1) there is a direct transfer of electronic value between MNO customer and third party merchant; or
- (2) the MNO acts as a facilitator or intermediary in the payment mechanism in such a way that customer and merchant would also have a direct debtor-creditor relationship.

The Commission believes that at present there are few instances where the e-money directive would apply to PRS transactions.”

4.41 The FSA further notes in its guidance on e-money that prepaid airtime that may only be used to buy services provided by the telephone company which issues the airtime does not constitute e-money. This is because it does not satisfy a critical part of the e-money definition.⁷ It also believes that prepaid airtime used to call PRS numbers does not constitute e-money where:

- a) The supply of telecoms services by the phone operator and the supply of services by the PRS provider can be seen as a single service; and
- b) The supply of the airtime and the supply of the PRS takes place in the same action.

Payments Directive

4.42 On 1 December 2005, the Commission issued a proposed EU Directive on payment services in the internal market. It was introduced for the purpose of creating a Single European Payments Area (SEPA) where “improved economies of scale and competition would help to reduce the cost of the payment system”.⁸ A key step towards the creation of SEPA is transitioning away from a cash-based economy.⁹ Given that the proposal defines payment services as “business activities...consisting in the execution of payment transactions on behalf of a natural or legal person,” if implemented, it would apply to e-commerce payment services. Moreover, the Annex to the Directive specifically cites “execution of payment transactions by any means of communication at a distance such as mobile telephones or other digital or IT devices” as included within the definition of a

⁷ E-money is defined in UK law as “monetary value...which is (a) stored on an electronic device, (b) issued on receipt of funds, and (c) accepted as a means of payment by persons other than the issuer”.

⁸ Commission of the European Communities (2005) “Implementing the Lisbon programme: proposal for a directive of the European Parliament and of the council on payment services in the internal market and amending directives 97/7/EC and 2002/65/EC” Brussels: European Commission.

⁹ According to the European Community, if the use of cash were reduced to the level of countries with the lowest usage, this would generate a surplus of €5.3 billion.



payment service.

- 4.43 The three fundamental objectives of the proposed Directive are:
- a) to enhance competition between national markets;
 - b) to increase market transparency; and
 - c) to harmonise the regulations on the rights of users and providers of payment services.
- 4.44 The new legal framework that would assist the EU to achieve these objectives operates in three areas: the depth of the market; transparency measures; and legal certainty and the liability regime. Ideally, the legal framework would enable the EU to realise the goal of SEPA and thus achieve the objectives of the Directive.
- 4.45 Legislation relating to the “depth of the market” provides for the creation of “payment institutions,” which are defined as authorised payment service firms other than authorised credit institutions, electronic money institutions or post offices. The proposed Directive mandates that there should be no minimum capital requirement for such institutions, which should (in theory) reduce barriers to market entry and enhance competition. Furthermore, once payment institutions are created, they may be “passported” into any other Member State (in a manner analogous to bank mobility under the Banking Consolidation Directive).
- 4.46 The transparency provisions of the Directive seek to protect the user of payment services by establishing minimum levels of transaction information to facilitate the user’s active choice of the least costly service offered; thereby minimising market failures caused by asymmetric information. The Directive distinguishes the “one-off” transaction from a framework contract, eg. a subscription service. The Directive includes provisions setting out the terms and conditions for both types of exchanges, related to payer and payee rights, transaction time limits, termination fees, and exchange rates (where the Euro is not the unique currency).
- 4.47 The regulations governing legal certainty and the relevant liability regime are designed to enable true harmonisation of payment services, covering issues such as: parties’ rights and obligations; disputed transactions; unauthorised transactions; liability; and refunds.
- 4.48 It should be noted that the draft Directive contains an exemption in Article 3(j) for certain types of mobile transactions which would therefore not fall within the remit of Directive. However, the wording of the exemption is such that it does not exactly match the definition of PRS used in the UK, seeming to exclude some forms of PRS but not all:
- “payment transactions executed by means of a mobile telephone or any other digital or IT device, where all the following conditions are met:
- (i) the service provider operating the telecommunication or IT system or network is closely involved in the development of the digital goods or electronic communication service provided;



- (ii) the goods and services cannot be delivered in the absence of the service provider;
- (iii) there is no alternative for remuneration.”

4.49 The Directive is currently being considered by the European Parliament and the Council as part of the European inter-institutional co-decision procedure.

4.50 In the UK, the Treasury has taken the lead role in considering the impact of the Payments Directive. As noted in its partial regulatory impact assessment on the Directive, the provisions of the Directive will apply to the regulation of e-commerce payment mechanisms (including PRS) and will require an extension of regulators’ powers and resources. However, it is not clear at present how this requirement will be managed, ie. whether the powers of a number of existing regulators (eg. FSA, ICSTIS, Ofcom and Revenue and Customs) will be extended, whether there would be some consolidation of powers to one or more of the existing regulators, or whether an entirely new institution would be created. Therefore, the enforcement of the new regulations created by the Directive is not yet known, either in respect of who the enforcement body will be or the extent to which that responsible body will be resourced to implement future enforcement action.



5 RISKS

Introduction

- 5.1 We have identified the following possible consumer risks when using the e-commerce payment mechanisms covered in this study:
- a) Loss of deposit;
 - b) Fraud and security risks;
 - c) Problems with advertisements and promotional material;
 - d) Inaccurate or inadequate information; and
 - e) Unclear or inadequate redress and complaint process.
- 5.2 For all of these risk areas, different issues and forms of regulation apply, including prudential risk requiring financial regulation, general consumer protection regulation, and sector-specific regulation (eg. PRS regulation or the Advertising Codes).
- 5.3 These risks can only be adequately managed and controlled if there is both a means of regulation (ie. the appropriate legislative measures are in place) and if there is an effective means of enforcement of that regulation (ie. a regulatory authority with sufficient focus on the relevant issue). As discussed above, the very wide scope of responsibilities placed on certain of the authorities responsible for enforcement of relevant regulations, perhaps particularly in the general consumer protection areas, may mean that the practical enforcement of such regulations in the context of e-commerce micro payments is necessarily reduced in effectiveness. As a result, there may be an increased need for sector-specific controls in some form to protect customers and to provide continued consumer confidence in the micro payments sector.
- 5.4 A further point to note is that the risks described in this section only cover the impact on consumers. We do not assess the impact of reputational or commercial risk on industry players. However, such factors could be highly relevant in considering any proposed revision to or extension of the current regulatory regime. There might be strong incentives for industry participants to introduce controls and consumer protection to prevent problems if these problems were to impact their corporate reputation significantly (and if this then had a substantial effect on their future profitability). In these cases, there might not be such a strong case to introduce formal regulation at all or one might prefer an alternative lighter touch approach to regulation.

Loss of Deposit

- 5.5 There are two types of deposit risks:
- a) Where funds or e-money stored in an account are lost because of an administrative



error or because of the failure of the payment mechanism provider; and

- b) Where there is a failure of fulfilment, ie. where a payment or part-payment is made but the correct goods or services are not supplied.
- 5.6 With regard to the loss of funds stored in an account, where there has been an administrative error, the funds should be recoverable under normal contractual obligations between the payment provider and the consumer. E-money issuers are required under financial regulations to have their own procedures in place to resolve customer complaints. In the case of any unresolved disputes, consumer will also be able to seek the assistance of the Financial Ombudsman Service, which covers e-money issuers and offers an alternative dispute resolution service for individual disputes between businesses providing financial services and their customers.
- 5.7 Where the payment mechanism provider fails and this results in a loss of deposit for individual customers of that provider, there is no specific regulation to compensate customers. The Financial Services Compensation Scheme¹⁰, which is able to provide some compensation for lost bank deposits, does not extend to cover e-money institutions. However, one must bear in mind that the financial regulations governing e-money institutions have been designed carefully to manage and reduce the risk of such failures, including restricting how deposited funds can be invested by the e-money institution.
- 5.8 Cases of failure of fulfilment are covered by general consumer protection legislation, in particular the Distance Selling Directive, as well as by the ICSTIS Code in the case of PRS. However, there may be practical issues for consumers in relying on the general consumer protection legislation where the transactions in question are for very low values and where, as a result, enforcement action may not be prioritised.

Fraud and Security

- 5.9 Fraud risks extend beyond the e-commerce payment mechanisms analysed in this report. However, such risks are of particular concern to e-commerce payment mechanisms because of the relative novelty of these systems and the general fragility of consumer confidence around using the internet and wireless technologies as a medium for commercial transactions. For example, an OECD report in 2006 identified continuing consumer concerns over the fraud risks associated with online payments as one of the

¹⁰ The FSCS is an independent body, set up under the Financial Services and Markets Act 2000 (FSMA). FSCS is the UK's statutory fund of last resort for customers of authorised financial services firms that take deposits, such as banks, building societies and credit unions. Deposits covered by the scheme are the following:

- UK banks authorised by the FSA, including their branches in the European Economic Area (EEA);
- EEA banks if they have joined the UK scheme in order to top up the cover available from their home state compensation scheme for deposits taken by their UK branches;
- Non-EEA banks for deposits taken by their UK branches;
- Building societies; and
- Credit unions (but not in Northern Ireland).



main reasons for consumers not buying online.¹¹

- 5.10 Some of the more significant risks due to fraud and security issues include:
- a) Unauthorised use of credit card and bank account information, and (in the case of PRS) unauthorised use of the phone;
 - b) Identity theft;
 - c) Potential breaches of system security (including hacker attacks);
 - d) Potential employee fraud; and
 - e) Use of payment systems by customers to make or accept payment for illegal or improper purposes.
- 5.11 While payment systems providers have introduced numerous safeguards to protect consumers against fraud (and continue to do so), there are also significant formal legislative and regulatory measures in place to counter fraud.

Fraud Act 2006

- 5.12 In criminal law, the UK had no specific offence of “fraud” until 2006. Cases involving fraud were therefore prosecuted using the common law crime of conspiracy to defraud or relying upon specific statutory offences involving fraud, most of which are set out in the Theft Acts 1968-96. However, prompted by a number of high-profile and costly fraud prosecutions, the Government introduced the Fraud Act in 2006, which modernises the existing statutory offences of deception (which had often been used in the past to tackle fraud) and which is particularly important in the light of developments in modern technology and electronic commerce.
- 5.13 The Act creates a new general offence of fraud which is committed by:
- a) the making of false representations;
 - b) abuse of a position; or
 - c) failing to disclose information.
- 5.14 The Act also creates new offences, such as fraudulent trading by non corporate traders.

¹¹ Online Payment Systems for E-Commerce, 18 April 2006, DSTI/ICCP/IE(2004)18/FINAL



PRS Fraud

- 5.15 In the context of PRS, ICSTIS states that there are three specific types of fraud risk of particular concern for consumers. These are:
- a) premium rate scams;
 - b) rogue dialers; and
 - c) content standards issues.
- 5.16 Fraudulent behaviour from PRS providers is a very significant problem and had previously seen worryingly high growth rates (ICSTIS registered just under 80,000 complaints in 2004/05). The issue was serious enough to have been raised as the subject of a Parliamentary debate in early 2005. However, subsequent action by ICSTIS and the PRS industry has resulted in a 75 per cent reduction in complaints being registered in 2005/06.
- 5.17 The threat of rogue dialling is likely to diminish in the future as this is an issue which is more related to dial-up internet connections and can be expected to reduce in importance as levels of broadband connection increase. However, risks of involuntary dialling will continue to exist for mobile handsets, digital television set-top boxes and VOIP services.

Advertisements and Promotional Material

- 5.18 As e-commerce is a new and developing market, there is a significant level of advertising to attract consumers:
- a) to consider the new types of goods and services on offer;
 - b) to consider new means of access to those goods and services; and
 - c) to consider new e-commerce payment mechanisms.
- 5.19 Advertising for e-commerce products and services is now also delivered in many different forms, including traditional advertisements in the print and broadcasting media and internet-based approaches, such as banner advertisements and pop-ups.
- 5.20 The risks to consumers arising from advertisements and promotional material include:
- a) Where the advertising material over-promotes a product or service, eg. states that it will be of a certain quality when it is not;
 - b) Where key contractual terms and conditions or qualifications are not stated (or are stated in a form which is practically illegible);
 - c) Where it is not made clear that content is not recommended or is unsuitable for children;



- d) Where users can incur costs simply by opening the website advertisements;
 - e) Where the level of unsolicited advertisements becomes a nuisance to consumers (spam);
 - f) Where advertisements mislead consumers, eg. in respect of “free” offers or price promotions; and
 - g) Where advertisements are used fraudulently, eg. to encourage consumers to call a number to win a prize or enter a competition, without making clear what costs will be incurred.
- 5.21 The primary source of regulation in respect of advertising is the Advertising Standards Authority (ASA) and its three Codes of Practice. The basic principles underlying the ASA's Codes are that advertisements must be legal, truthful, decent and honest.
- 5.22 For direct marketing and for advertisements in newspapers, magazines, posters, and the internet, the relevant ASA Code is the British Code of Advertising, Sales Promotion and Direct Marketing. Separate Codes exist for radio and broadcasting advertisements, for which the ultimate regulatory authority is Ofcom. However, in practice, the enforcement of all three ASA Codes is performed by the Committee of Advertising Practice (CAP) which is the self-regulatory body, established by the advertising industry.
- 5.23 For PRS, the ICSTIS Code also covers issues related to the promotion of PRS. The Code, for example, sets out rules governing inappropriate promotion, the use of the word “free” in promotional material, and the need for service providers to be able to substantiate any factual claims which they might make in promotional material. While to a large extent, these rules merely mirror those set out in the ASA Codes, their inclusion in the ICSTIS Code may be useful both in bringing these rules to the attention specifically of PRS providers and also in providing a means of enforcement (through ICSTIS) which, by being closer to the PRS industry, may prove to be more immediately effective than the more general remit of the CAP.
- 5.24 Beyond the ICSTIS and ASA Codes of Practice, there is also backstop legislation which applies to advertisements. The Trade Descriptions Act, which is enforced by Trading Standards, prohibits the use of false or misleading description of goods. In addition, under the Control of Misleading Advertisements Regulations, the OFT has powers to prevent advertisements which either mislead or which make unacceptable comparisons. In its own guidance, however, the OFT states that the bulk of complaints about advertising will continue to be handled by the existing channels (ie. the ASA, ICSTIS and Trading Standards).

Inaccurate or Inadequate Information

- 5.25 There are a range of risks for consumers arising from the failure to provide them with accurate and adequate information in relation to an e-commerce transaction, including:



- a) Failure to understand clearly the full terms and conditions of the agreement (and therefore the consumer's rights and responsibilities), for example:
- Lack of clarity as to the precise moment when the transaction is completed so that there is risk of an unintended commitment;
 - Unclear pricing information;
 - Not being informed whether or how to terminate a subscription service, eg. by texting "stop" to a PRS provider; or
 - Not understanding how one's personal data could be used;
- b) Failure to understand the nature of the service purchased, for example:
- Unintentionally signing up for a subscription service when the consumer believes they are buying a one-off service or product; or
 - Being unsure of the duration of the subscription or the precise number of texts or downloads one is entitled to;
- c) Failure to understand the level of commitment or financial exposure involved, such that the consumer could incur unaffordably high bills;
- d) Failure to appreciate the exact content of a service, for example, where this content might contain harmful or offensive content without a clear warning; and
- e) Not receiving clear and detailed records of any transactions made so that these can be tracked and (potentially) disputed.
- 5.26 In general, these different risk areas arising from the provision of inaccurate or inadequate information are governed by general consumer protection legislation, such as the Consumer Protection Act, the Sale of Goods Act, the Distance Selling Directive and the E-commerce Directive.
- 5.27 In the case of PRS, general consumer legislation is supplemented by the provisions of the ICSTIS Code and certain relevant Ofcom regulations, notably in the area of numbering. The ICSTIS Code contains specific conditions governing information provision, including information on pricing and how it should be presented, the inclusion of a "stop" command for subscription services, and the clear description of certain types of services which either might generate significant costs for consumers or which might be considered harmful or offensive. Ofcom's numbering plan is designed to provide consumers with some degree of information about both the kinds of services and the level of pricing applicable to different PRS, and similar information is provided to consumers by the self-UK Code of Practice for Common Mobile Short Codes (developed by the mobile industry).



Redress and Complaint Procedures

- 5.28 With any transaction involving a number of different parties, there is a concern that aggrieved customers may suffer from a lack of clarity as to the appropriate process for raising complaints or even as to whom they should address their complaints. In the case of e-commerce payment mechanisms, the consumer could feasibly address a complaint to the merchant (or information provider in the PRS context) or to the payment provider (originating network), and there may also be other parties involved. As commonly occurs in complaint situations, there may be a tendency to “pass the buck” between the different parties involved, with the result that the consumer’s complaint is not resolved and no-one takes responsibility for the issue. Thus, it is important that there should be a clear means of escalating such problem complaints, providing reassurance to consumers that there is an effective process in place to resolve any complaints and to provide redress, if necessary.
- 5.29 As can be observed from the analysis in this report, there is a significant level of legislation and regulation in place to protect individuals both against financial risks and against general consumer protection concerns. However, it has also been noted that the enforcement burden on the authorities charged with the responsibility for these regulations is such that they must prioritise their resources very carefully, with the risk that problems arising from very low value transactions could be neglected. Moreover, from a consumer perspective, the benefits to be gained from pursuing a complaint concerning a very low value transaction may not be justified by the cost of the complaint process (which is generally designed for more significant larger value transactions). Nevertheless, the development of the e-commerce market, even for low value transactions, is very important and providing reassurance to consumers that there is a simple rapid means by which any problems and complaints can be resolved is critical for continued consumer confidence in the sector.
- 5.30 In the PRS market, ICSTIS provides a single point of contact, and a simple and rapid means by which consumer complaints can be resolved. While many of the rules in the ICSTIS Code duplicate or supplement those contained in general consumer protection legislation, there seems to be considerable value both for consumers and for the PRS industry in having an independent regulatory process, designed specifically to manage the kinds of issues that are particular to the PRS sector.



6 CONCLUSIONS AND RECOMMENDATIONS

6.1 This section summarises our main findings and presents our recommendations.

Conclusions

6.2 Having reviewed the different e-commerce payment mechanisms, including PRS, we find that the consumer risks and regulatory issues arising can more clearly be compared for the different payment mechanisms when distinguishing between micro payments and larger payments. While there is no universally accepted definition of the dividing line between micro payments and larger payments (we note, for example, that Article 38 of the draft Payments Directive sets the threshold level for micro payments as €50 while a response from the European Parliament suggests a threshold level of only €10), in the context of this study, we feel that there are important differences between the consumer risks and regulatory treatment of payments (and payment systems) designed for small value transactions compared with those established to handle larger value transactions. In particular, we feel that the existing well-established consumer protection measures governing issues related to payment systems transactions are considerably more likely to be well-enforced in the context of more significant larger value payments.

6.3 There are many different e-commerce payment mechanisms available for micro payments. The payment mechanisms we have studied for the purposes of this report are all designed specifically to handle micro payments (even if some of the payment mechanisms can also be used for larger payments). In addition, we anticipate that more e-commerce payment mechanisms will emerge, as the market for micro payments and for digital goods and services continues to expand.

6.4 All of the e-commerce payment mechanisms studied in this report face the same or very similar risk issues, particularly as regards consumer protection concerns. While the design and nature of the payment mechanism creates some important differences (for instance, a deposit based scheme, such as PayPal, will need to consider e-money related issues), all of the payment scheme providers need to consider consumer issues, such as:

- a) Providing clear information to the consumer as to the nature and cost of the transaction and the consumer's responsibilities;
- b) Providing a clear process whereby the consumer positively authorises a transaction to take place;
- c) Providing a clear and straightforward process whereby the consumer can cancel ongoing (subscription) services;
- d) Providing clear and easily accessible billing records; and
- e) Providing measures for redress and complaint handling in case of problems.

6.5 Legislative measures and regulations governing financial prudence are generally clearly



set out, well understood and widely enforced. The FSA framework for e-money issuers includes the following key characteristics:

- a) Issuers must ring fence their e-money activities from other areas of business risk;
- b) Funds held in exchange for the issue of e-money must be invested in high quality liquid assets;
- c) There is a minimum capital requirement for issuers of at least 2% of outstanding e-money liabilities or €1 million, whichever is the higher; and
- d) E-money issuers must have sound and prudent systems and adequate internal control mechanisms and must comply with the FSA's money laundering requirements.

6.6 However, the regulation and practical enforcement of consumer protection issues vary considerably for the different e-commerce payment mechanisms. Whereas PRS are regulated under the ICSTIS Code, with specific requirements in terms of the consumer information to be provided and establishing complaint mechanisms, in practice other e-commerce payment mechanisms have no specific regulatory supervision in respect of consumer protection issues. While it is true that, in many cases where there is a potential cause for complaint, general consumer protection legislation could ultimately provide a means for redress, in the context of the e-commerce micro payments market, such forms of redress are unlikely to be effective, not least because the relevant regulatory authorities would tend naturally to prioritise complaints about higher value issues and complaints where evidence of harm can more easily be obtained.

6.7 The current lack of consistency in the different regulatory requirements applying to different e-commerce micro payment systems may provide cause for concern in a number of areas:

- a) There may be gaps in the consumer protection measures which exist, either because there are no consumer protection measures covering a certain situation or because, even when there are such measures, they may not be enforced in practice;
- b) There are disputes about the remit of some regulators to apply consumer protection measures in certain situations;
- c) Some payment mechanism providers feel that some regulations are disproportionate, particularly where they feel that they have already addressed consumer protection issues adequately in their system design;
- d) Some payment mechanism providers may face more regulation and higher compliance costs than other providers, thus placing them at an unfair competitive disadvantage; and
- e) Consumers can not be clear of the areas where they enjoy regulatory protection and where they do not, nor is it always clear to which regulatory authority (if any) they can



address complaints.

- 6.8 There would clearly be some value in standardising (at least to some extent) the scope and degree of protection offered to consumers when using micro payment mechanisms for e-commerce. Such standardisation would provide consumers with confidence that they enjoy at least the basic levels of consumer protection, regardless of which payment mechanism they select for e-commerce transactions (higher levels of protection may of course be offered to consumers by individual providers as a means of competitive advantage). Moreover, requiring payment mechanism providers all to offer a standardised level of consumer protection would ensure that all of the e-commerce payment systems could compete on a relatively level playing field, with broadly similar compliance costs.
- 6.9 If there is value to be derived from standardising consumer protection measures for e-commerce micro payment mechanisms, one must consider which approach to regulation is most appropriate. Clearly, as one increases the formality of consumer protection measures in order to provide the strongest possible protection and the most stringent enforcement, one also increases compliance costs and reduces operational flexibility for the industry. We also note that the nature of the e-commerce micro payments market should be an important consideration: because transactions are relatively low value, the need for intrusive measures should be harder to justify; and because the market is in the early stages of development, one should be careful not to take any steps which might stifle future innovation and growth.
- 6.10 We note that the future transposition and implementation of the EU Payments Directive may compel a rationalisation of consumer protection regulation in this area, although it is not clear how the UK Government will implement the Directive, particularly which regulatory authority (or authorities) the Government will choose to enforce the Directive's provisions. We also note that the current Commission draft of the Directive includes certain derogations for transactions for digital content and services, and for micro payments.

Recommendations

- 6.11 We believe that there are good reasons to distinguish between the type and level of protection offered to consumers for content and services delivered electronically. Such content and services have particular features which are important when considering the need for and implementation of regulatory protection, notably, the fact that such content and services tend to be instantly consumed and intangible in nature
- 6.12 Any regulations to be imposed should also take account of practical considerations, such as the remote nature of the transaction (ie. there is no face to face contact) and issues such as screen size (for transactions over mobile phones and PDAs).
- 6.13 The approach to consumer protection regulation for e-commerce micro payments must also consider market factors, which include the extent and effectiveness of competition in



the market, and the importance of brands and brand reputation in the market.

- 6.14 Based on our review of the market, we believe that there is a prima facie case for some form of light touch regulation in the e-commerce micro payments market. While there is a developing competitive market, most of the payment mechanisms are not well developed or very widely used by the majority of consumers. Many of the providers of such payment mechanisms do not have established brands and reputations in the area of payment services. This means that many consumers may not have the level of confidence in e-commerce micro payment mechanisms which is required to encourage more widespread use. Any consumer protection problems that may arise in the future and which are not (or can not be) resolved could give rise to further significant concerns about the robustness of such payment mechanisms and substantially dampen consumer trust and demand. We note that PRS, which is the most widely used e-commerce micro payment mechanism, is subject to regulation via the co-regulatory approach of the ICSTIS Code.
- 6.15 We do not believe that company-specific or scheme-specific rules provide sufficient protection for consumers in the absence of a strong brand protection driver and while the e-commerce micro payment market is still in its formative stages. Such rules do not amount to an effective form of “self-regulation” since:
- a) they can be changed at short notice and without consultation;
 - b) there is potential for the rules to be applied arbitrarily or in a fragmented manner (by different providers within the same payment scheme);
 - c) there is a lack of independence and transparency in the manner in which the rules are drawn up and enforced; and
 - d) there is no (or at best very limited) means of enforcement or redress by outside parties against the scheme members.
- 6.16 We believe that it may be disproportionate to apply the full terms of the current ICSTIS Code to e-commerce micro payment mechanisms. Many of the rules of the ICSTIS Code may not be relevant to the payment mechanisms, depending on their individual design. Some of the rules may not be required since many payment mechanism providers remain fully independent of the goods or service being supplied (unlike a traditional PRS). More importantly, the ICSTIS Code may be too slow to adapt to the fast-moving requirements of the sector because of its remit to govern PRS (and not e-commerce payment mechanisms, as such).
- 6.17 We would therefore recommend that an alternative model should be adopted to provide consumer protection for users of e-commerce micro payment systems. The model we recommend would essentially be a self-regulatory model but with important controls to address the concerns listed above with regard to company-specific and scheme-specific rules. The design of this regulatory approach would provide flexibility so that the rules could be amended rapidly to adapt to the fast developing market but would also



incorporate independent oversight and transparency to ensure that the rules remained fair and open, and were appropriately enforced. We note that a similar self-regulatory approach has been taken with regard to the Banking Code, where the Banking Code Standards Board's (BCSB) role is to ensure banks' compliance with the Banking Code. The BCSB has a majority of independent directors and the Banking Code is published and reviewed regularly, after public consultation.

- 6.18 We agree with the concerns of those payment mechanism providers who argue that it would be unfair to impose regulations on some providers and not on all (or to impose different requirements on different providers). Ideally, all providers of e-commerce micro payment mechanisms should face the same (or very similar) requirements in terms of consumer protection measures. However, we note that achieving a uniform regime may be very difficult, given that:
- a) The only authority currently regulating such consumer protection issues in detail for the e-commerce micro payments market is ICSTIS but that ICSTIS' remit is derived from the Communications Act and is clearly linked to the definition of PRS contained within the Act;
 - b) Other regulatory authorities which could address such consumer protection issues are either not resourced to do so and / or are focused on other issues more central to their remit; and
 - c) The possibility of devising and implementing a uniform regime offered by the transposition of the Payments Directive may be a number of years away.
- 6.19 While it is outside the scope of our terms of reference, we therefore would recommend that there is a need for a cross-sectoral governmental and regulatory review to consider the consumer protection requirements of e-commerce micro payment systems and how such consumer protection measures could be enforced in a uniform manner.



APPENDIX A: DEFINITION OF PRS

Extract from Section 120 of Communications Act 2003

Conditions regulating premium rate services

- (7) A service is a premium rate service for the purposes of this Chapter if-
- it is a service falling within subsection (8);
 - there is a charge for the provision of the service;
 - the charge is required to be paid to a person providing an electronic communications service by means of which the service in question is provided; and
 - that charge is imposed in the form of a charge made by that person for the use of the electronic communications service.
- (8) A service falls within this subsection if its provision consists in-
- the provision of the contents of communications transmitted by means of an electronic communications network; or
 - allowing the user of an electronic communications service to make use, by the making of a transmission by means of that service, of a facility made available to the users of the electronic communications service.
- (9) For the purposes of this Chapter a person provides a premium rate service ("the relevant service") if-
- (a) he provides the contents of the relevant service;
 - (b) he exercises editorial control over the contents of the relevant service;
 - (c) he is a person who packages together the contents of the relevant service for the purpose of facilitating its provision;
 - (d) he makes available a facility comprised in the relevant service; or
 - (e) he falls within subsection (10), (11) or (12).
- (10) A person falls within this subsection if-
- (a) he is the provider of an electronic communications service used for the provision of the relevant service; and
 - (b) under arrangements made with a person who is a provider of the relevant service falling within subsection (9)(a) to (d), he is entitled to retain some or all of the charges received by him in respect of the provision of the relevant



service or of the use of his electronic communications service for the purposes of the relevant service.

- (11) A person falls within this subsection if-
- (a) he is the provider of an electronic communications network used for the provision of the relevant service; and
 - (b) an agreement relating to the use of the network for the provision of that service subsists between the provider of the network and a person who is a provider of the relevant service falling within subsection (9)(a) to (d).
- (12) A person falls within this subsection if-
- (a) he is the provider of an electronic communications network used for the provision of the relevant service; and
 - (b) the use of that network for the provision of premium rate services, or of services that include or may include premium rate services, is authorised by an agreement subsisting between that person and either an intermediary service provider or a person who is a provider of the relevant service by virtue of subsection (10) or (11).
- (13) Where one or more persons are employed or engaged under the direction of another to do any of the things mentioned in subsection (9)(a) to (d), only that other person shall be a provider of the relevant service for the purposes of this Chapter.
- (14) References in this section to a facility include, in particular, references to-
- (a) a facility for making a payment for goods or services;
 - (b) a facility for entering a competition or claiming a prize; and
 - (c) a facility for registering a vote or recording a preference.