



Ofcom PRS Scope Review

Response from Invomo

July 2009

Introduction and overview

Invomo is a network operator which terminates services for customers on the full range of NTS numbers. In certain, limited, circumstances Invomo operates as a service provider.

Invomo welcomes the opportunity to comment on the PRS Scope Review and, in addition to answering specific questions below, would like to start with the following overview of the document.

Throughout the review, there is constant referral to the issues and concerns surrounding pricing transparency (or lack of it). This is such a central part of the document that it is mentioned on 31 of the 72 pages. Invomo has raised its concerns about poor pricing information, as supplied by the OCPs, and the issues this raises for advertisers of PRS, on numerous occasions with both Ofcom and PhonepayPlus (PPP). The problem is that the issue of marking up of prices by the mobile networks and, to a degree, landline providers other than BT, is largely outside the scope of the PRS review. The regulation bites on TCPs, SP, Aggregators and IPs, but not on OCPs. Until there is some regulation or incentive in place to oblige OCPs to be fairer in their pricing structures, the consumer will always be misled.

Some areas which we may have expected to be picked up by the scope review, but which do not appear to have been covered in detail include: willful harm caused by service providers (although there is mention about some SPs lack of concern with their reputations), the effectiveness of the regulator, regulatory creep (ie taking cases concerning data protection, PECR, the Gambling Act and so on) and the need for proportionate and targeted regulation.

Ofcom seeks to find a definition for "new PRS", but currently the situation is that PRS are as defined in the Communications Act. Whilst we understand that there may be scope for reviewing and amending that in the future, currently the generally agreed characteristics of PRS are that they provide content, are billed to the consumers' telephone bill and include a revenue share element.

Answers to specific questions

Question 4.1: Do you agree with our analysis of the characteristics of the PRS supply side and the possible concerns related to these characteristics?

Whilst Ofcom has identified the full range of supply side scenarios, Invomo feels that the market is not necessarily as complex as is implied. There are not always a “very large number” of suppliers involved, and it is usually possible to follow the money to identify where any harm (if willful) is originating.

Invomo does not agree with the definition of PRS as an “aftermarket”, the comparison does not stand up: the purchaser of a photocopier may be obliged to purchase support, which they hope they will not have to use and pay for, the purchaser of a telephone contract is taking it primarily for the purpose of using the phone and making calls.

Question 4.2: Do you agree with our analysis of the demand characteristics of PRS? Do you think there are additional characteristics which are not included in our analysis?

Invomo has referred to the defining characteristics of PRS above, and Ofcom reflects these in its analysis of the demand side characteristics – experience goods, bill-supply separation and communications provider billed. Invomo agrees with most of the further characteristics set out, such as low expenditure, impulse buy, but does not think that inappropriate content sits correctly here. There have been issues with offensive content in the industry in the past, but this is tightly controlled by current regulation and voluntary measures put in place by mobile operators. Inadvertent access to something that is not required cannot be considered a demand side characteristic.

Question 4.3: Do you agree with our assessment of the potential consumer harm in a situation where PRS regulation is ineffective?

The examples put forward by Ofcom do not necessarily arise as a result of insufficient or ineffective regulation. For example, Ofcom refers to possible harm when paying higher prices for services, but this is a value for money judgment that PPP has generally tried to avoid (assuming the consumer does pay the advertised price). Sometimes it is preferable to pay a premium to get information or content quickly or urgently in a particular situation.

Ofcom has not addressed the issue of poor regulation leading to increased opportunities for scams or rip-off services, perhaps it is considered self-evident that this would be the case. Many of the issues raised in this section relate to pricing transparency concerns, as mentioned previously, not an area on which the current regulation focuses.

Question 4.4: Do you agree with our assessment of the potential and actual consumer harm in respect of PRS?

Generally Invomo agrees with the harms listed but feels that the inclusion of offensive or inappropriate content is slightly out of kilter with the other issues. With the current regulatory framework, it is very unlikely that adults will be inadvertently exposed to advertising for such content and the safeguards against children accessing it are set even higher.

Question 5.1: Do you agree with the application of the characteristics to the services?

As a general point on this section, Invomo feels that the five services identified are not representative of the whole range of premium rate services. We assume that the first, “premium voice-call from a mobile services to an 09 number offering horoscope services” is a recorded horoscope line, rather than a live one-to-one tarot service (which have an extremely tight set of rules and safeguards in place). It seems immaterial whether the call is made from a mobile or a landline.

Ring tone subscription services are common and relevant. We do not have a view on how common the purchase of games via payforit or the purchase of Champions League goals on-portal are, but these do not seem typical examples of premium rate. Finally the mumdad service is, whilst useful, again not a representative example of a premium rate service.

Having said this, the supply and demand side characteristics identified do appear to be applied correctly to these service types. Again, however, the aspect of offensive content seems out of place.

Question 5.2: Do you agree with our assessment of potential harm for each of the services?

Invomo does not feel that a recorded horoscope service is likely to be judged in-depth on its quality. Most users of horoscopes realize that they are for fun or a guide only and would not rely on them to be fully accurate, therefore it is difficult to assess their quality. It is unlikely that consumers will “over-consume” such services, although the scenario with a live tarot service could be different.

Other than this, Invomo agrees with the potential harms set out.

Question 5.3: Do you agree with our assessment of alternative means of protection for the new services in our analysis?

Many areas that are currently regulated by PPP have an overlap with other regulators, such as the ICO, the ASA, the FSA and so on. What sets services apart for PPP’s regulation is simply the fact that a premium rate phone call is involved. As Ofcom observes, ADR is not relevant to all aspects of the premium rate industry as it is only consumer/OCP facing.

As it is a requirement of the PPP Code that all advertising for PRS carries a customer services phone number, and that there are in place ways to submit a complaint and get a refund, it appears that PPP already has the tools in place to address failure to offer consumers good service and appropriate protection.

Question 5.4: Do you agree with our analysis of the appropriateness of self-regulatory initiatives in the context of PRS?

Whilst Invomo would support the growth of self-regulatory initiatives it appears that, unfortunately, the whole industry is not ready for this level of responsibility at present. As a fourth point to consider in paragraph 5.67, there is the issue of prior permissions and what would happen to that area should self-regulation come to the fore.

Question 5.5: Do you consider self-regulatory initiatives could be implemented for (certain) PRS? If so, please set out for which services, and what such an initiative would look like.

In the same way in which many new service types are initially considered appropriate for the prior permission regime by PPP and then, after time, are moved into “standard” regulation, there may be scope for “downgrading” certain service types over time. It would seem that many traditional prs that are non-problematic, such as consumer advice and helplines, could be moved into this sort of category.

Question 6.1: Do you consider there is a consumer benefit (in) requiring all OCPs to offer the same retail price to a PRS number?

There would be an undoubted consumer benefit to this option and it would remove the vast majority of the issues raised in this consultation. Pricing stated by service providers, as required by the Code, would become accurate overnight, and the consumer avoidance of using services due to concerns about costs would be wiped out.

Question 6.2: If you do believe there is a consumer benefit, do you have suggestions as to how this option could be implemented?

Unfortunately it appears from previous discussions that, due to competition issues, this is not something that Ofcom can impose on OCPs. If there was any scope for price capping this may work to limit some of the current excessive charging.

Question 6.3: Do you consider this option could have any negative side-effects? If so, which ones?

The only apparent negative side-effect would be for those OCPs who recoup the cost of their cheap call packages by increasing the cost of calls to specialist services.

Question 6.4: Do you consider PCAs would improve price transparency in the PRS market?

Where an OCP offers calls to premium rate numbers at a price higher than the advertised rate, then a PCA would certainly increase price transparency.

Question 6.5: Do you consider Ofcom should carry out such a study? If so, which aspects should such a study cover?

Invomo believes that a study would be worthwhile and could consider, apart from the stated cost and complexity issues claimed by OCPs, the likelihood of costs being brought into line (lowered) if there were a requirement to let consumers know when services were being charged above the advertised rate.

Question 6.6: Do you consider including BT’s tariff and a maximum tariff for the PRS in PRS advertisements would improve price transparency in the PRS market?

Invomo thinks that a requirement to state a maximum tariff is too onerous on service providers (who are not causing the issue to arise). Due to shelf life of advertising for certain service the maximum price could become out of date and the subsequent breach of the Code would lie with the service provider.

Question 6.7: Do you consider the name of the OCP with the highest tariff should be included?

No, as above, this is onerous on the SP and, once the advertisement is in the market, there is nothing to stop un-named OCPs from upping their prices, thus circumventing the suggestion in 6.6 above and not being named as the most expensive OCP. Again the SP would be liable for the Code breach in this situation.

Question 6.8: Do you consider there are any additional implications linked to this option, apart from the ones we have set out above?

The up-side of “naming and shaming” the most expensive OCPs could lead to a pushing down of costs in order to avoid public scrutiny.

Question 6.9: Could you provide us with an estimate of cost information regarding the collection and updating of tariff information (for SPs and OCPs)? Do you believe there are there any other costs involved under this option?

Invomo has no input here.

Question 6.10: Do you agree with our proposal to expand the PhonepayPlus number checker?

It is not entirely clear what sort of expansion is intended here or how it will be achieved. Ofcom states that PPP claims the number checker is 85% accurate now, so to data fill the remaining 15% of numbers enquired about should not be onerous.

Question 6.11: Which criteria should be used regarding numbers to be included in the number checker (e.g. revenues, complaints over the last X weeks etc)?

Presumably the 85% of successful checks relate to numbers that have been the subject of complaint or enquiry to PPP. It would be impractical, if not impossible, to date-fill all current premium rate services. PPP would be in the best position to suggest the criteria on which numbers should be added, but those causing the highest level of enquiry should be prime candidates.

Question 6.12: What information should be included per number in the number checker?

The consumer would need to have the service provider contact details, including the customer services helpline number. The TCP name and details could be included as a back-up in the event that the service provider is unhelpful.

Question 6.13: Do you agree PhonepayPlus should carry out an analysis into the benefits of requiring SP/IPs to adopt a formal complaints procedure?

This may be worthwhile. Service providers are already obliged to show a customer services helpline in advertisements and have an “effective mechanism” for dealing with complaints in place. Invomo would suggest that anything required by PPP should be set at high-level, best-practice conditions, as companies will have different resources and different views on how they handle their customers.

Question 6.14: Do you consider that in light of developments in the PRS market, IPs should be targeted as a point of regulation, in addition to SPs or on their own? If so, what kind of rules should be applied to IPs and/or SPs?

Unless there is a change to the Communications Act, Invomo understands that SPs are the regulated parties, therefore the current “pass through” approach adopted by PPP seems adequate to capture IPs as required.

Question 6.15: Do you consider there are other options for a registration scheme / reputational database which have not been included in these studies?

No, all feasible options appear to have been covered.

Question 6.16: Which is your preferred option, and what are the reasons for this?

Invomo would be happy with the F1 option as, with some manipulation of existing data, this is currently available on the PPP website (number checker, plus adjudications search facility). Obviously with all due diligence checks carried out on potential new service providers, a network should be aware of past history, but this can only be a guide to how service providers will operate going forward.

Question 6.17: Do you agree with our analysis that PhonepayPlus should run a registration scheme / reputational database?

In the event that Ofcom chooses an option involving registration (exists currently) or a reputational database, PPP would appear best placed to administer this.

Question 6.18: Do you agree with the options identified regarding call barring facilities?

Whilst Invomo accepts that there are no strong arguments for requiring selective call barring, it is a shame that OCPs cannot be encouraged to offer this. A consumer may wish to bar adult services only, for example, but with the all or nothing approach available now, could bar all services, to the detriment of all parties in the chain.

Conclusion

Invomo appreciates that Ofcom has made an effort to stand back from the world of premium rate and take a long term overview of the situation. Whilst this is undoubtedly helpful it is important to remember that many of today’s problems are rooted in the decision of OCPs (and mainly mobiles) to overcharge their customers for calls to these services, which has helped lead to the current levels of consumer mistrust and concern about premium rate services.