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OFCOM CONSULTATION PARTICIPATION TV Rules on the Promotion of Premium Rate Services

Questico Submission

About Questico (www.Questico.com ; www.thecircle.com ; www.astrotv.de)

Questico AG is the leading provider of 1:1 distant psychic advice services in Europe. We have headquarters in Germany (Berlin) and operate in multiple European countries (Germany, Austria, Switzerland, Poland, Spain, UK). Questico AG is the 100 % owner of Stream Live Ltd which operates in the UK with the brand TheCircle. Stream Live Ltd. is probably the largest service provider for 1:1 psychic advice in the UK. With the TV channel Astro-TV (www.astrotv.de) we run a 24-hour (20 hours live) interactive programing reaching more than 20 million households in German speaking Europe. With Kosmica-TV we are broadcasting in Poland and Spain and other Eastern-European markets are in their launch preparation phase. We broadcast through the acquisition of air-time on third-party channels but we also run our own channel in Germany.

Questico AG operates under two editorial TV-licences from the MABB in Berlin. Questico is in the process of launching comparable TV-formats in the UK due to a positive viewers' response to our pilots. It is our intention to launch both an editorial format and a teleshopping format based on European rulings and as practiced and approved by the MABB in Germany.

Our company is focused on 1:1 distant life advice and we do not operate in other genres.

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General:

Questico is represented for the purpose of these consultations through the trade organisation AIME and is in alignment with their submission in principal. However, certain aspects are specifically relevant for us as a new international entrant into the UK TV market. Such a perspective may be helpful in the consideration of Ofcom as their rules have to be in compliance with European law and shall not discriminate against non-UK market participants.

We see that many of the proposed restrictions would discriminate against non-UK companies and do not comply with the freedom of the media, as guaranteed i.a. by Article 10 Sec. 1 of the ECHR.

Questico as the European market leader has taken the responsibility to establish clear standards for its services. These standards do address many of the concerns that are raised in conjunction with the TV genre and the kind of advice service provided. Attached please find our binding rule of conduct. These rules are being applied the UK and address most of the issues that are subject of this consultation. We are confident that most market participants will support the establishment of such rules as a self-imposed industry standard.

Classification of Psychic PTV as teleshopping:

Questico has never been legally challenged for its programme although it does contain PRS based participation options for the viewer. Our format has not been classified as teleshopping in any of the countries we participate in.

We operate under an editorial license and the judgement of the ECJ in the ORF case on 18 October 2007 has had no impact on our operations. Subject of the court decision was the Directive 89/552/EEC as amended by Directive 97/36/EC ("Television without frontiers"). The ECJ judgement held that quiz and call-in TV content is covered by definition of teleshopping of the Directive if it involved "real offer of services". The factors that it identified as relevant were i.a.: (1) the purpose of the broadcast, (2) The significance of the quiz or call-in element in terms of time and (3) the significance of anticipated economics effects in relation to those expected in respect of the broadcast as a whole. Following to this ECJ judgement, which has to be respected by national regulators, a classification on the basis of genre rather than format would not be compliant with European law. Therefore the general classification of a TV content which include PRS services as teleshopping breaches European Law. The classification of a TV content must consider the concrete design of the format.

However, we see that some of the current UK formats represent a "real offer of services" and should be classified as teleshopping. The Ofcom ruling should therefore distinguish between teleshopping formats and editorial formats.

Teleshopping restriction on advertising "occult services"

Under the European Directive 2005/29/EC on Unfair Commercial Practices, advertising may be prohibited in the case that it misleads the average consumer and thereby causes him to take a transactional decision he would not have taken otherwise. The misrepresentation of product claims is already covered by multiple European advertising codes and Psychic services are seen as harmless by the consumers. Teleshopping for Psychic services is not limited in any of the countries Questico operates in (e.g. Spain, Germany) and the current proposed restrictions from the Advertising Standards Authority (ASA) and Code for broadcasting (BCAP) seem not to reflect consumers perception of psychic services. Further, the definition of occult services is not clear.

In order to ensure a non-misleading character of its program, Questico has imposed its own code of conduct and would be happy to contribute to an industry definition of appropriate advertising for "Psychic services". In order to serve the needs of both the industry and the consumer, such self-regulation rather than a general prohibition should be adopted with respect to advertising of "occult services".

Limitation of access to Freeview distribution and no access to TV-windows:


Questico has bought air-time on different editorial TV channels in the UK and will consider establishing an own 24 hour TV-channel in the UK based on the existing editorial "Kosmica-TV" license issued in Germany. A restriction to the Sky distribution platform only would impose a market access restriction and block out potential viewers of our editorial programme. Not only would this discriminate against the Freeview platform but would also force customers to pay a premium to access information. Most markets do not have access to an EPG and Psychic PTV formats are common on general interest channels. There has been no harm caused to any viewers which is supported by the latest Ofcom survey and exclusion from access to general interest channels would not only limit the access to UK viewers but would also discriminate against Freeview viewers who do not have access to a Sky platform. Such a limitation would be unjust for both editorial formats and teleshopping formats.

Payment limitation via PRS numbers only:

The payment via credit card becomes more common for such psychic services in Europe. In Germany Questico bills more than 95% of its volume (60 million Euro p.a.) via alternative payment methods and not PRS. These methods of payments offer much more transparency and protection to the consumer than PRS. Billing through PRS would require Questico to use UK telephone companies to deliver the service and would exclude Questico billing services from access to the UK market.

As a new market entrant, Questico has not actively participated in any hearing, Nevertheless we would be happy to contribute our European perspective to this process. Questico has become very successful by focusing on service quality and transparency and has built its business on a permanent customer base. Although these consultations have the same intent, we are concerned that they may result in a market restriction that conflicts with European law and prevents new international entrants from access to the UK market.

Insofar as Questico does not submit individual comments, we follow the response from our trading organisation AIME.


Sylvius Bardt
CEO Questico
Director Stream Ltd.

Rules of Conduct

Rules for Readers

Function: psychic advisors/readers with pre-specified and pretested competences; specific psychic competences must be displayed by reader with references, testimonial letters and a test-customer-call from TheCircle's Reader's Service

- psychic readings are for entertainment purposes only
- strictly adhere to the Code of Practice prepared by PhonePayPlus as approved by Ofcom
- never have a psychic reading to minors; in the event you suspect a customer to be minor you must immediately query and contact CallCenter/Agents for verification of customer's age
- all readings shall be conducted attentively, efficiently and focused on customer's questions
- treat all customers with respect and sincere kindness
- never protract or temporize
- readings are only to be held on your specific psychic knowledge and competence
- refrain from any readings and/or advise on future life changing questions and actions
- never solicit or press a customer to repeated calls
- refrain from insults, libel and any offence to customers
- never discriminate in particular not based on ethics, race, religion, gender or handicaps
- refrain from any information, activities, advice or readings which violate the sense of honour, ethical views or rights of third parties, or having content which is liable to have an undesirable influence on the moral development of young people or is political extremist, violates applicable laws or is defamatory, deceptive, insulting, threatening, obscene, pornographic, violence-glorifying or offensive or which violate public morals
- never read or advise on topics like black magic or any other psychic activity or content that aims to harm people
- refrain from any readings about health or death of people; any offer of cure or esoteric healing for people is strictly prohibited
- refrain from any misrepresentation
- refrain from any tax, legal any medical advises
- all data and information of customers are strictly confidential

Rules for TV Shows/-Producers

Function: TheCircle's psychic call-In-TV shows intend to present the various kinds and methods of psychic readings true-to-live and interactive; aiming to introduce to the audience the taste and interest for psychic topics, phenomenas and exchange about psychic experiences

- psychic readings are for entertainment purposes only
- strictly adhere to the Code of Practice prepared by PhonePayPlus as approved by Ofcom
- ensure the strict compliance with media and telecommunication rules and regulations in particular display of correct phone numbers, calling costs per minute, mandatory information etc
- ensure that the random generator operates properly at all time
- never solicit or press a customer to repeated calls neither with visual elements nor audio signals
- ensure that no readings of prohibited topics (health, cure, death) occurs during the show
- ensure no misrepresentation occurs in the show
- ensure that no readings and/or advise on future life changing questions and actions occurs in the show
- never protract or temporize
- refrain from any content or element that might press a customer to repeated calls
- in case a customer is in an emergency situation immediately inform the customer about emergency numbers and facilities, further you must immediately inform CallCenter/Agents about the emergency situation

- in case a customer is in an emergency situation immediately inform the customer about emergency numbers and facilities, further you must immediately inform CallCenter/Agents about the emergency situation
- in the event of regular and particular lengthy readings to a customer you must remind customer to reasonable use the service
- refrain from any advertising or displaying of your other commercial activities or services to customers