



Conditions regulating Premium Rate Services

This consultation document seeks your comments on a proposal to amend the PRS Condition to capture Internet Dialler Software and to clarify that Mobile Services are regulated under Ofcom's PRS Condition

Consultation

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Section 1

Summary

- 1.1 'Ofcom' (the Office of Communications) exists to further the interests of citizens and consumers through a regulatory regime which, where appropriate, encourages competition. Effective competition delivers choice and lower prices to consumers as well as opportunities for new services and providers. However, consumers may need protection from inappropriate behaviour by certain providers that may undermine confidence in the market as well as causing consumer detriment.
- 1.2 This document invites comments on proposals for modifications to Ofcom's condition regulating the provision, content, promotion and marketing of Premium Rate Services ('PRS') ('the PRS Condition') under section 120 of the Communications Act 2003 ('the Act'). The effect of the PRS Condition is to bind each and every person falling within the definition of 'Communications Provider' therein, to comply with directions given in accordance with an Approved Code by the Enforcement Authority (i.e. ICSTIS) and if there is no Approved Code, the provisions of the order for the time being in force under section 122 of the Act.
- 1.3 The statement and notification of the PRS Condition was published by the Director General of Telecommunications on 23 December 2003, taking effect from 29 December 2003, and is available on the Ofcom website at:

http://www.ofcom.org.uk/telecoms/ioi/nwbnd/prsindex/prs/prs_conditions.pdf
- 1.4 Ofcom is now proposing to modify the PRS Condition in two ways.
- 1.5 First, Ofcom proposes to extend the definition of 'Controlled PRS' ('CPRS') to include 'internet dialler software' ('diallers'), irrespective of the call cost or number. Diallers are a form of software that switch the modem setting of the computer that the dialler programme is running on from one particular internet connection to another. Ofcom's proposals in this document are based on growing evidence of consumer harm arising from 'rogue' dialler services using '08' numbers and, in particular, '087' numbers in an attempt to evade the PRS regulatory regime.
- 1.6 In proposing to extend the definition of CPRS to capture diallers, Ofcom does not want to unintentionally capture pay-as-you-go dial up and unmetered dial up internet services. These services provided by Internet Service Providers provide narrowband access to the internet to end-users using a dial-up connection. Ofcom is therefore proposing to exclude pay-as-you-go dial up and unmetered dial up internet services from the definition of internet dialler software set out in Annex 4.
- 1.7 Second, Ofcom has received representations from stakeholders to the effect that the exclusion of 'Mobile Services' from the CPRS definition means that Ofcom does not currently regulate PRS accessible via mobile telephones. Ofcom is therefore proposing an amendment to the CPRS definition to avoid any doubt that PRS accessible over mobile telephones are regulated under Ofcom's back-stop powers.
- 1.8 Ofcom does not intend to consider the scope, purpose and effectiveness of PRS regulation as part of this consultation but, rather, to restrict the consultation to the two matters outlined above. This is because Ofcom considers that there is a need to address these issues urgently so that consumers are adequately protected from the potential for consumer detriment arising from 'rogue' dialler software on numbers

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other than '09', and from any doubt that PRS accessible over mobile telephones is regulated by Ofcom.

- 1.9 However, in light of representations received from stakeholders, who have raised concerns relating to the appropriateness of regulation to new services, and the need to reflect technological advances, Ofcom intends to consult on a thorough policy review of the scope of the regulation of PRS to commence in 2006. This review will consider the scope of PRS regulation, and how it should be applied to, or removed from, emerging commercial services coming out of the mobile and broadcast sectors, as well as growth in broadband and Voice over Internet Protocol ('VoIP') billing as a possible new route to content
- 1.10 Ofcom is also currently undertaking a review of the regulatory framework for Number Translation Services ('NTS'), and published a further NTS consultation document, *Number Translation Services: a way forward*, on 28 September 2005 (the 'NTS consultation'). That document, which is the second formal stage of Ofcom's re-examination of the regulatory framework for NTS, seeks to address certain policy issues associated with the NTS regime as it applies to '08' number ranges rather than the '09' range, and makes revised proposals for changes to the regulatory regime for '08' numbers. The consultation closes on 6 December 2005 and is available on the Ofcom website at:
http://www.ofcom.org.uk/consult/condocs/nts_forward/
- 1.11 Amongst other proposals set out in the NTS consultation, Ofcom is proposing that adult services currently provided on '08' numbers should be brought within the regulatory framework for PRS regardless of the call cost, and that the National Telephone Numbering Plan ('the Plan') should be amended to clarify that adult services should only be provided on the '0908' and '0909' ranges that are designated for adult services.
- 1.12 Ofcom also proposes in the NTS consultation that '0871' numbers should be brought within the current regulatory framework for PRS which would, in effect, mean that services using the '0871' number range would have the same obligations as those using '09' numbers. This proposal aims to provide a greater level of consumer protection, meaning, among other things, that diallers on '0871' would be subject to the prior permissions regime. In the NTS Consultation, Ofcom is seeking views on the proposal to bring '0871' within the PRS framework, saying that if it decides to proceed following consultation, its intention is to issue a consultation on the proposals during a 12 month interim period commencing next year.
- 1.13 This document proposes to extend the PRS Condition to cover all diallers and should these proposals be taken forward, this would bring diallers on '0871' within the PRS regime. Although the NTS consultation indicates Ofcom's intention not to consult on the issue until next year at the earliest, the growing evidence of consumer harm, which is set out in this document, has led Ofcom to conclude that more immediate action is required, and Ofcom is therefore consulting on the issue now. Any comments made in response to the NTS consultation on the issue of dialler software being brought within the PRS regime will be taken into account by Ofcom in considering whether to take forward its proposals as set out in this document.
- 1.14 In setting out its proposals in this document, Ofcom has considered, and acted in accordance with, its principal duty in section 3 as well as the community requirements in section 4 of the Act. Ofcom has also considered the tests set out in sections 120(5) of the Act which apply to the setting, modification and revocation of a condition.

Consultation

- 1.13 Ofcom is inviting written views and comments by **5pm** on **Monday 22 December 2005**, on the proposed modifications to the PRS Condition, which is set out at Annex 4 to this document.
- 1.14 Details of how to respond on each of these issues can be found in section 5.
- 1.15 Ofcom will give careful consideration to all comments received during the consultation period, and in light of the comments received, may give effect to the proposals set out in this document, with or without modification, by publication of a Notification and explanatory statement. Ofcom expects to publish the Notification and Explanatory Statement early in 2006.

Effective date

- 1.16 Subject to the outcome of consultation, Ofcom proposes that the amendment to the PRS Condition will take effect one month from the date of publication of the Notification and Explanatory Statement. This is to provide a reasonable period of implementation before the new obligations take force.

Section 2

Background

What are Premium Rate Services

- 2.1 PRS offer some form of content, product or service via fixed and mobile telecoms lines. These may be accessed as conventional voice services or using SMS text, line telephone, PC (e-mail, internet, bulletin board), mobile phone or interactive digital TV. Services include TV voting lines, competitions, scratchcards, adult entertainment, chat lines, business information services, technical helplines, mobile phone ringtones and game downloads, horoscopes and interactive TV games.
- 2.2 UK-based PRS are typically prefixed by '09' although similar, and in some cases identical, services are increasingly being offered on numbering ranges outside this range, including numbers starting '08' as well as access codes and, in case of mobile services, short codes (usually starting with an '8' or '6'). Directory enquiry services (on 118xxx) also fall within the definition of premium rate services for the purposes of the Act.
- 2.3 These services vary in cost typically between 10 pence per minute or per call up to £1.50 per minute or per call (for BT customers). In most cases the bulk of the revenue from calls to such services goes to service providers ('SPs') who are responsible for the content, product or services provided or who act as resellers or aggregators on behalf of a number of such providers. The SPs are responsible for compliance with the bulk of the obligations imposed by the ICSTIS Code. The remainder of the revenue is shared by: the consumer's 'originating' telephone company (the Originating Communications Provider ('the OCP')), which receives a small fee for 'origination' of the phone call; and the telephone company that contracts with the SP and 'terminates' the call on behalf of the SP through the provision of network facilities ('the TCP').
- 2.4 PRS are defined in section 120(7) of the Act which provides that a service is a premium rate service, if:
- (a) it is a service falling within subsection (8) ¹
 - (b) there is a charge for the provision of the service;
 - (c) 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

¹ A service falls within this section if its provision consists in:

(a) the provision of the contents of communications transmitted by means of an electronic communications network; or

(b) 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 users of the electronic communications service.

- (d) that charge is imposed in the form of a charge made by that person for the use of the electronic communications service.

The regulatory framework and PRS

- 2.5 A new regulatory framework for electronic communications networks and services entered into force on 25 July 2003. The framework is designed to create harmonised regulation across Europe, and is aimed at reducing entry barriers and fostering prospects for effective competition to the benefit of consumers.
- 2.6 Under the new regulatory framework, Ofcom must have regard to its principal duty set out in section 3 and, in particular, section 3(1) of the the Act which states that *“it shall be the principal duty of Ofcom, in carrying out their functions –*
 - (a) to further the interests of citizens in relation to communications matters; and*
 - (b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.”*
- 2.7 Ofcom must also have regard to the community requirements set out in section 4 of the Act.
- 2.8 The relevant statutory provisions governing the regulation of PRS are set out under sections 120 to 124 of the Act. The provisions provide Ofcom with the power to set conditions for the purpose of regulating the provision, content, promotion and marketing of PRS that bind the persons to whom they are applied. Any condition set under section 120 must comply with section 47 of the Act, i.e. it must be objectively justifiable, not unduly discriminatory, proportionate and transparent. It must also comply with the consultation and notification requirements in section 48 of the Act.

How are premium rate services currently regulated in the UK?

- 2.9 The regulatory arrangements for PRS follows a self- and co-regulatory approach, with the primary role of consumer protection falling to ICSTIS. ICSTIS is the industry-funded regulatory body for all premium rate charged telecommunications services, and has responsibility for regulating the content and promotion of services through its Code of Practice.

The role of Ofcom

- 2.10 Ofcom's role in the premium rate regulatory regime is to provide statutory support to the work of ICSTIS. Ofcom has the power under section 120 of the Act to set conditions for the purpose of regulating the provision, content, promotion and marketing of PRS that bind the persons to whom they are applied.
- 2.11 The PRS Condition, which regulates the provision, content, promotion and marketing of PRS, took effect from 29 December 2003. The effect of the PRS Condition is to bind each and every person falling within the definition of 'Communications Provider' as defined in the PRS Condition, to comply with:

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- “(a) directions given in accordance with an Approved Code by the Enforcement Authority and for the purpose of enforcing the provisions of the Approved Code; and
 - (b) if there is no such code, the provisions of the order for the time being in force under section 122.”
- 2.12 Ofcom’s powers, under the PRS Condition, only relate to those services which are defined as CPRS. CPRS are defined more narrowly than PRS, and currently means PRS where the charge or rate for the call is more than 10 pence per minute other than Chatline Services which are automatically included.
- 2.13 In the event of an apparent failure to comply with an ICSTIS Direction amounting to a breach of the PRS Condition, Ofcom’s general powers of enforcement under its powers in sections 94 – 96 of the Act will apply.

The role of ICSTIS

- 2.14 ICSTIS is responsible for the preparation and enforcement of the Approved Code. The current version was approved for the purposes of sections 120 and 121 of the Act on the same date as the PRS Condition came in to force and is available on the ICSTIS website². The Approved Code applies to all PRS which are accessed by a UK consumer or are provided by SPs in the UK.
- 2.15 The ICSTIS Code is primarily targeted at the actions of SPs, and it is their responsibility to ensure that the content and promotion of all their PRS (whether produced by themselves or by their content and information providers) comply with all relevant provisions of the code.
- 2.16 ICSTIS has a range of sanctions that it can impose on SPs that breach the Approved Code according to the seriousness with which it regards the breach. These range from obtaining assurances about future behaviour and instructing refunds to be offered to imposing fines, barring access to services and prohibiting certain 'named' individuals from operating services for a set period.
- 2.17 Although their responsibilities are more limited, the Approved Code also places a number of general requirements and specific obligations on TCPs to assist in the enforcement of ICSTIS’ decisions by carrying out directions given by ICSTIS. These may include directions to cease dealing with particular businesses or individuals, to block access to certain numbers or services and to withhold payments to SPs in respect of particular services. Where there is evidence of non-compliance with an ICSTIS direction by a TCP, this will represent a potential breach of the PRS Condition, and ICSTIS will notify Ofcom that it considers that the relevant provider has contravened the terms of the condition.

² http://www.icstis.org.uk/pdfs/Code_Practice_10_Amended.pdf

- 2.18 Ofcom does not intend to review the scope, purpose and effectiveness of PRS regulation as part of this consultation. This is because Ofcom considers that there is a need to address these issues urgently so that consumers are adequately protected from the potential for consumer detriment arising from 'rogue' dialler software on numbers other than '09', and from any doubt that PRS accessible over mobile telephones is regulated by Ofcom.
- 2.19 However, in light of representations received from stakeholders, who have raised concerns relating to the appropriateness of regulation to new services, and the need to reflect technological advances, Ofcom intends to consult on a thorough policy review of the scope of the regulation of PRS to commence in 2006. This review will consider the scope of PRS regulation, and how it should be applied to, or removed from, emerging commercial services coming out of the mobile and broadcast sectors, as well as growth in broadband and VoIP billing as a possible new route to content.
- 2.20 Also, ICSTIS is currently consulting on a new PRS Code of Practice (the 11th Code Consultation). As part of this consultation, ICSTIS is asking respondents about the correct scope of PRS regulation as administered by ICSTIS through its Code. ICSTIS' conclusions will feed into Ofcom's review of its backstop powers as defined through the PRS Condition.

The NTS regime

What are NTS?

- 2.21 Number Translation Service ('NTS') calls are calls to numbers identified in the National Telephone Numbering Plan as Special Service numbers (broadly, numbers that start with '08' or '09'). In addition, NTS includes calls to the legacy '0500' Freephone numbers, which, whilst still in use, are not listed in the Plan as they are no longer available for new allocations. Calls to '0844 04' numbers for Surftime internet access services and calls to '0808 99' numbers for FRIACO are not included.
- 2.22 NTS (and PRS) numbers are examples of non-geographic numbers in that the number dialled does not relate to a specific geographic location, but instead relates to a particular service. At a technical level, the NTS number dialled by a caller is 'translated' by the network to a geographic number to deliver the call to its destination.
- 2.23 Services offered using NTS numbers are similar to PRS except that prices range from free to caller up to a maximum of 10ppm (from a BT landline). Types of services include information services, some technical helplines, access to telephone banking, sales and customer service lines and dial-up pay-as-you-go internet services.
- 2.24 Because of the lower prices charged for NTS calls generally the scope for consumer detriment from making long calls and from fraudulent activity is generally considered less of an issue. However, there is still potential for consumers to accrue high phone bills over a billing cycle where there may be frequent or long-duration use of lower priced services.

The regulatory framework and NTS

- 2.25 Unlike PRS there are currently no additional regulatory controls on the use of NTS numbers, other than those which apply to all OCPs through the General Conditions.

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- 2.26 Ofcom is currently undertaking a review of the regulatory framework for Number Translation Services ('NTS'), and published a further NTS consultation document, *Number Translation Services: a way forward*, on 28 September 2005. That document, which is the second formal stage of Ofcom's re-examination of the regulatory framework for NTS, seeks to address certain policy issues associated with the NTS regime as it applies to '08' number ranges rather than the '09' range, and makes revised proposals for changes to the regulatory regime for '08' numbers. It is available on the Ofcom website at:
- http://www.ofcom.org.uk/consult/condocs/nts_forward/
- 2.27 Amongst other proposals set out in that document, Ofcom proposes that '0871' numbers should be brought within the current regulatory framework for PRS which would, in effect, mean that services using the '0871' number range would have the same obligations as those using '09' numbers. This would require ICSTIS' agreement to extend the scope of its regulation to '0871' numbers. Also, as '0871' numbers are usually priced between 5p and 10p per minute (but may be lower), Ofcom would need to extend the definition of those services which are currently defined as CPRS in order to be able to enforce ICSTIS Directions. This measure would provide a greater level of consumer protection. Amongst other things, it would mean that:
- information on call prices would be required to be displayed on advertisements for services using '0871' numbers; and
 - diallers on the '0871' numbers would be subject to the ICSTIS prior permissions regime for internet diallers.
- 2.28 Ofcom is seeking views in the NTS consultation on the proposal to bring '0871' within the PRS framework, saying that if it decides to proceed following consultation, its intention is to issue a consultation on the proposals during a 12 month interim period commencing next year.
- 2.29 This document proposes to extend the PRS Condition to cover all diallers and, should these proposals be taken forward, will bring all diallers on '0871' within the PRS regime. Although the NTS consultation indicates Ofcom's intention not to consult on the issue until next year at the earliest, the growing evidence of consumer harm which is set out in this document has led Ofcom to conclude that more immediate action is required, and Ofcom is therefore consulting on the issue now. Any comments made in response to the NTS consultation on the issue of diallers being brought within the PRS regime will be taken into account by Ofcom in considering whether to take forward its proposals as set out in this document.
- 2.30 Ofcom is also proposing in the NTS consultation that adult services currently provided on '08' numbers should be brought within the regulatory framework for PRS regardless of the call cost, and that the Plan should be amended to clarify that adult services should only be provided on the '0908' and '0909' ranges that are designated for adult services. This would require all adult services currently provided on '08' numbers to move to the '0908' and '0909' ranges. This would enable consumers to bar these services, without losing access to other services provided on '08' numbers. ICSTIS already regulates adult services provided on the '09' range so it would not be necessary for ICSTIS to modify the ICSTIS Code to regulate the adult services previously provided on '08' numbers. However, it would be necessary for Ofcom to extend the definition of CPRS to encompass all adult services regardless of price.

Section 3

The issues and Ofcom's proposals

Diallers and '08' numbers

What are diallers?

- 3.1 Diallers are forms of software that can be transmitted through the internet. Diallers switch the modem setting of the computer that the dialler programme is running on from a particular internet connection to another. The switch has historically been from a local rate ('0845') telephone internet connection to a premium rate ('090' or equivalent) connection.
- 3.2 Diallers can be a legitimate and convenient way of paying for content on the internet – such as sports results, sites for charity contributions, music downloads and adult services – at premium rate rates rather than charging by credit card.
- 3.3 The way that diallers typically work is that upon accessing a website which contains a dialler, a consumer is normally shown a pop up or dialogue box which asks whether they wish to download a dialler programme. The key terms and conditions such as the cost should also be present. If the “yes” box is clicked, the dialler programme installs itself in the consumer's computer and is normally accompanied by an icon in the bottom tool bar. The switch to a premium rate internet connection allows for the charging of a consumer to view/access the website with a dialler feature and be charged for doing so.
- 3.4 In the normal course, the dialler programme should uninstall itself after the content or service has been provided and paid for, and return the customer's modem to its previous setting.

The scale of the dialler problem during 2004

- 3.5 There exists a type of 'rogue' dialler using premium rate ('09'), international and satellite numbering that proved to be a serious virus type problem during 2004 and resulted in substantial levels of consumer harm. This resulted in ICSTIS receiving an unprecedented volume of complaints and enquiries from consumers about this activity. The majority of these cases involved websites simply installing diallers without permission and with stealth, resulting in consumers receiving high bills and subsequently disputing them on the grounds that they had no knowledge these calls were being made. The two most significant problems which emerged were as follows:
 - a failure of diallers to uninstall themselves when commanded to do so by the consumer (after legitimate use), resulting in continued use of the modem being charged at the higher rate; or
 - dialler programmes simply installing themselves surreptitiously where the consumer was simply surfing the web and has not clicked “yes” to any dialler programme being downloaded. This latter scenario typically occurred through the use of pop-ups that triggered the surreptitious installation of a dialler programme despite the consumer taking no action other than attempting to close the pop up box.

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- 3.6 As a consequence, Ofcom was asked by DTI in August 2004 to undertake an urgent review of the regulatory framework for PRS in order to assess whether consumers were adequately protected from the potential for consumer detriment involving PRS.
- 3.7 In assessing the scale of the problem Ofcom received data relating to the volumes of consumer complaints received by ICSTIS (and OCPs), the number of breaches of the ICSTIS Code found and the amounts of money involved.
- 3.8 Ofcom's analysis of the problem showed that ICSTIS had received around 60,000 individual consumer complaints between August 2003 and July 2004 and, of those, approximately two-thirds related to diallers. Call records provided by ICSTIS' TCP confirmed that in April-May 2004, the ICSTIS Helpline received calls from over 5,000 individual callers per day. Over 50% of those were estimated to have related to diallers.
- 3.9 However, from the analysis, it was evident that these figures did not give a full picture of the scale of the consumer detriment. This was partly because some breaches of the ICSTIS Code may have gone unreported or may not have led to the imposition of a fine, and partly because the size of the fines may not have accurately reflected the seriousness of the problems (the fines are currently subject to a £100,000 cap).
- 3.10 The Ofcom report, *The Regulation of Premium Rate Services*, was published on 9 December 2004. It is available on the Ofcom website at:
http://www.ofcom.org.uk/telecoms/ioi/nwbnd/prsindex/ntsprsditi/prs_review.pdf

Addressing the dialler problem

- 3.11 Ofcom's report made a total of eighteen recommendations about how the range of problems surrounding the regulation of PRS could be addressed. These recommendations included, amongst others, greater traffic monitoring and information sharing by telecoms companies, a requirement that no monies should be paid out to service providers for at least 30 days after, increasing the maximum fine which can be imposed by ICSTIS for breaches of the ICSTIS Code and improved provision for consumer refunds. Ofcom expects that the package of measures set out in the report will significantly reduce the potential for consumer detriment in the premium rate industry. Ofcom, together with DTI and ICSTIS, are now looking to implement the recommendations as swiftly as possible.
- 3.12 The process of implementation, however, will inevitably take a number of months to complete, particularly as a number of recommendations will require changes to the ICSTIS Code, a process which typically takes 6-9 months because of the statutory consultation and notification processes involved. ICSTIS published an updated version of its Code of Practice for consultation, taking account of the recommendations made in Ofcom's report, on 28 July 2005. Further details are available on the ICSTIS website at
<http://www.icstis.org.uk/icstis2002/pdf/Draft11thCode280705.pdf>
- 3.13 Alongside the ICSTIS main Code consultation, there has been significant progress on a number of other recommendations from the report including, most recently, approving an emergency amendment to the ICSTIS Code imposing requirements upon all TCPs not to make payments to their SPs for at least 30 days after calls have been made by consumers. Ofcom has also worked closely with the DTI to progress the required consultation in order to increase the maximum fine which can be imposed by ICSTIS for a breach of its code. There are also a range of other recommendations, including working with industry to establish a central database of

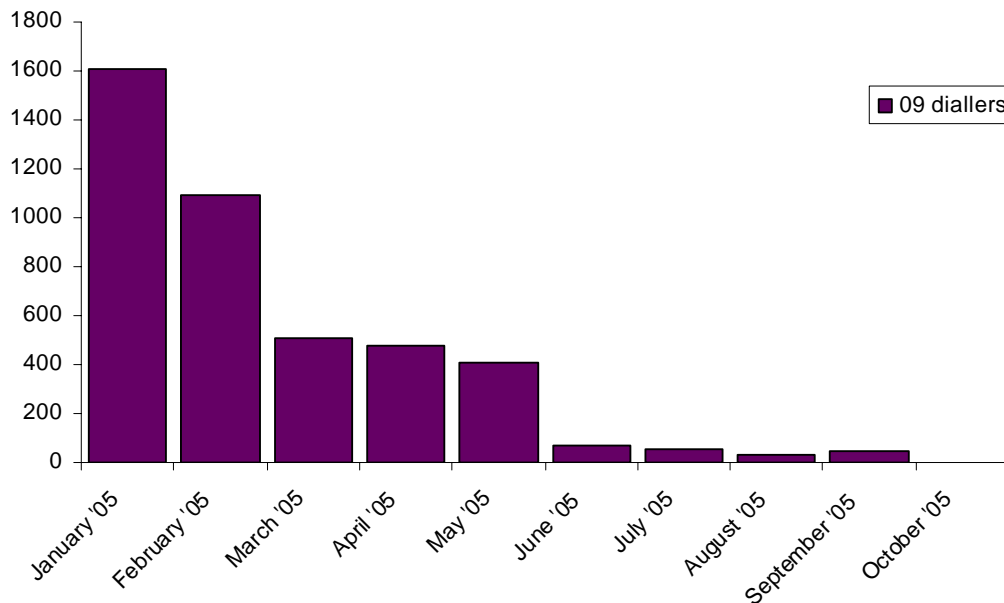
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SP contact information, which can be accessed by OCPs when dealing with customer enquiries. These are being rolled out as soon as practicable.

- 3.14 In addition, ICSTIS instituted a 'prior permissions' regime for dialler software utilising premium rate numbers on 6 August 2004. This, in effect, means that no network should provide numbers for diallers on premium rate numbers unless the SP has a permission certificate from ICSTIS. The conditions which are attached to the certificate, which are in addition to the requirements of the ICSTIS Code, include, amongst others, that:
- terms and conditions of the service utilising the dialler must be clearly displayed on the users' screen, including costs per minute;
 - the user must confirm acceptance of the premium rate charge that will be incurred;
 - an on-screen clock which displays how many minutes the user has been connected to the dialler and/or cumulative costs accrued; and
 - services to be terminated by forced release after a cumulative call spend of £20.
- 3.15 Ofcom supported this approach, and agreed that a robust permissions process would provide additional consumer safeguards by ensuring greater discipline at the network level. While this approach was unlikely by itself to completely eradicate the potential for similar type problems arising in the future, Ofcom saw it as a valuable safeguard to be considered in the context of additional measures set out in the Ofcom review.
- 3.16 The evidence demonstrates that these measures have been largely effective in stamping out the abuse resulting from 'rogue' diallers using premium rate numbering. Figure 1 below shows a substantial decrease in the volume of complaints and enquiries received by ICSTIS about diallers using premium rate numbers following the introduction of ICSTIS' prior permissions regime in August 2004.

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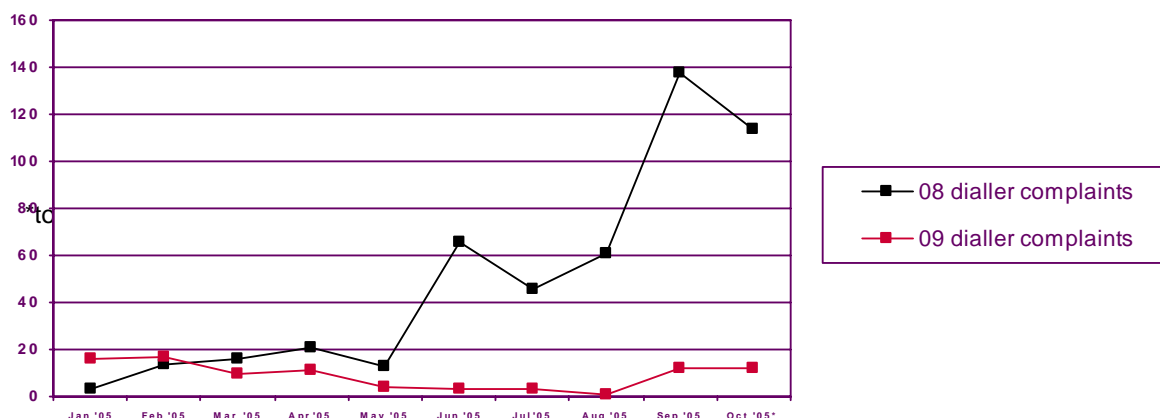
Figure1: Complaints received by ICSTIS on '09' dialler complaints - January to October 2005



Emergence of the dialler problem on '08' numbers

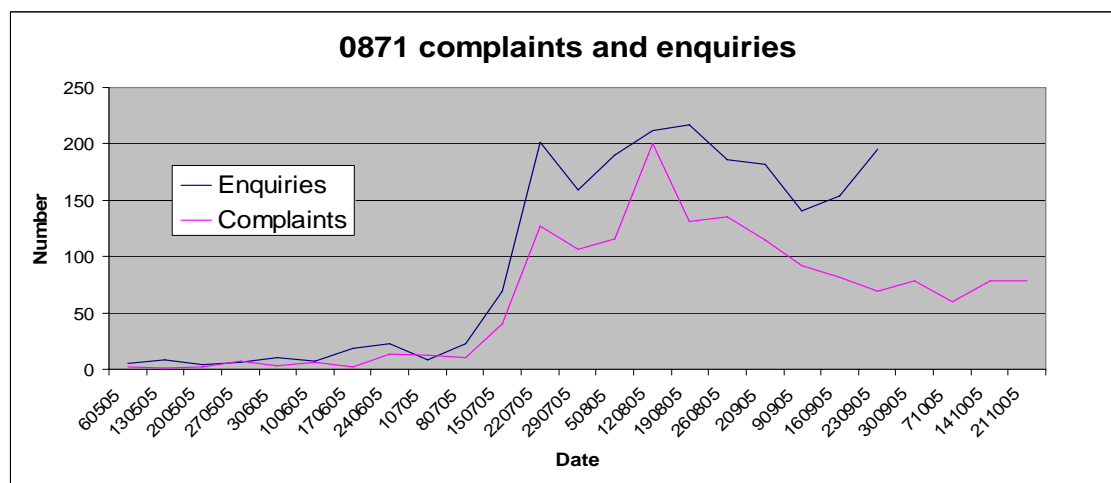
- 3.17 ICSTIS' prior permissions regime did not, however, encompass diallers on '08' numbers given that ICSTIS does not currently regulate services on '08'. The current definition of CPRS means that even if ICSTIS chose to regulate '08' it would be unable to take effective enforcement action without a change to the PRS Condition.
- 3.18 There is now growing evidence of consumer harm arising from 'rogue' diallers using '08' numbers and, in particular, '087' numbers (set out below). Ofcom is concerned that this may be the result of a possible migration of diallers from '09' to '08' in an attempt to circumvent regulation of '09' PRS and, specifically, the requirement to seek prior permission from ICSTIS.
- 3.19 First, as shown in Figure 2, the volume of complaints received by Ofcom relating to diallers on '08' numbers has substantially grown during 2005. This growth in complaints, when viewed against the reduction of complaints relating to '09' diallers, received by Ofcom, would appear to support the notion of a migration of 'rogue' diallers from '09' to '08' to avoid regulation.

Figure 2: complaints received by the Ofcom Contact Centre relating to internet diallers – January to October 2005



3.20 As part of its analysis of the '08' dialler problem, Ofcom has also requested data from BT, currently the largest fixed network operator. The data supplied also shows that there has been rapid growth in complaints and enquiries about '0871' diallers by the operator's customer contact handling team since May 2005, with complaints and enquiries averaging a total of 123 per week. On a weekly basis, volumes peaked in mid August and are now running at approximately just under 80 complaints per week, and approximately 190 enquiries per week. This is illustrated in Figure 3.

Figure 3: 0871 dialler complaints and enquiry volumes received by BT – May to October 2005



3.21 As part of its analysis, BT also provided evidence into the size of the impact on the customer bill arising from the '0871' dialler complaints. It analysed current complaints awaiting investigation by its Complaints Review Team. In total, it analysed 95 customer issues, including the '0871' number recorded, the number of calls made to that number and the corresponding value noted. The analysis showed that the customer impact ranges from £1.07 to over £1,420 per customer. The average value of the 95 complaints analysed was £161 per customer.

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- 3.22 BT also considered whether there had been any increase in the retentions made by them under the Artificial Inflation of Traffic ('AIT') process as a result of customer complaints on '087' issues. The AIT process was introduced by BT in 2001 at the request of the industry as a new Annex to its Standard Interconnect Agreement ('SIA'). The aim of the AIT provisions is for interconnecting Communications Providers to detect, identify and prevent AIT by notifying other Communications Providers in the revenue chain where they suspect AIT. In such an event, payments will be withheld while the matter is investigated.
- 3.23 This again highlighted a demonstrable increase by the Network Operator of the AIT process. The analysis showed that there have been over 70 retentions already this year and that, since April, the number of such retentions had accelerated, whereas in the previous two years there were only 48 retentions in total.
- 3.24 Ofcom therefore considers that the evidence shows growing consumer harm from diallers using '08' numbers and, in particular, '087' numbers. This, together with Ofcom's experience of the '09' dialler issue that problems of this kind can escalate rapidly, suggests that there is a strong case to urgently extend the current regulatory regime for PRS to ensure that it captures all diallers, irrespective of the call cost or number. In particular Ofcom considers that:
- there is potential for consumers to accrue high phone bills over a billing cycle through the use of diallers where lower priced services are involved. This is because of the potential for frequent or high duration use. In this respect, Ofcom believes that diallers share many of the same characteristics and risks of Chatline Services, which are already CPRS irrespective of the call cost or number; and
 - as already mentioned, Ofcom's data would appear to support the notion of a migration of 'rogue' diallers from '09' to '08' numbers in an attempt to circumvent the PRS regulatory regime and, specifically, the requirement to seek prior permission from ICSTIS. Ofcom is concerned that simply capturing diallers above a certain price threshold, such as 5 pence per minute or call, in order to only capture diallers on '087' numbers, which are typically priced at up to 10 pence per minute or call, may result in a further possible migration of 'rogue' diallers to other number ranges, such as '084' or '070', for example, which are typically priced at less than 5 pence per minute or call.
- 3.25 In proposing to extend the definition of CPRS to capture diallers, Ofcom does not want to unintentionally capture pay-as-you-go dial up and unmetered dial up internet services. These services provided by Internet Service Providers provide narrowband access to the internet to end-users using a dial-up connection. Ofcom is therefore proposing to exclude pay-as-you-go dial up and unmetered dial up internet services from the definition of internet dialler software set out in Annex 4.
- 3.26 This would require ICSTIS' agreement to extend the scope of its regulation through its Code and, in particular, to agree to capture diallers, as defined above, within its prior permissions regime for diallers. ICSTIS have agreed to this in practice.
- 3.27 This measure would provide a greater level of consumer protection from the potential of consumer detriment arising from 'rogue' diallers. First, it would bring these services within ICSTIS' regulation and therefore SPs who provide dialler, irrespective of the call cost or number, would be subject to ICSTIS requirements. Second, it would mean that Ofcom would have the power to enforce breaches of ICSTIS Directions where there was evidence of non-compliance with an ICSTIS Direction.

The definition of Controlled PRS and Mobile Services

- 3.28 In recent discussions with stakeholders, Ofcom has received representations from the industry to the effect that the exclusion of 'Mobile Services' from the CPRS definition means that CPRS cannot be PRS that are also 'Mobile Services', and therefore Ofcom does not currently regulate PRS accessible via mobile telephones.
- 3.29 Ofcom does not consider that PRS accessible via mobile telephones is outside its backstop powers which underpin ICSTIS regulation. As already explained at paragraph 2.10, Ofcom has the power under section 120 of the Act to set conditions for the purpose of regulating PRS and this has been implemented by means of the PRS Condition which took effect on 29 December 2003. PRS is defined widely at section 120(7) and 120(8) of the Act and includes the provision of content of communications transmitted by means of an electronic communications network.
- 3.30 Ofcom took the view that the type of PRS that would be subject to its back-stop powers under the PRS Condition would be limited to those which had the potential to give rise to particular consumer detriment. As is described below, the policy behind the carve-out of 'Mobile Services' from the CPRS definition was to carve-out calls to mobile services that had the characteristics of PRS such as being over a certain price but were not normally considered to be PRS. Ofcom's view is that it has the power to regulate PRS accessible over mobile telephones and that this is caught by the definition of CPRS in the PRS Condition.
- 3.31 In 1999, Oftel and the DTI issued a *Joint Consultation Paper on the Regulation of Premium Rate Services*. At that time, Oftel only had backstop powers in relation to live services. In the consultation, the key problem with PRS was identified as their expense and it was recognised that not only live conversations resulted in high bills. It was therefore proposed to extend the backstop powers to a wider category of PRS by modifying the relevant licence conditions on operators.
- 3.32 In September 2000, Oftel issued a statement in response to the 1999 consultation saying that it would proceed with a licence modification extending its PRS backstop powers. It noted that whilst there was broad support for PRS calls over a certain price to be included in its backstop powers, there was some concern that this threshold could unintentionally capture services which were not PRS. This related to services which might have had shared revenue, such as 'find-me-anywhere services' on '07' (and on services on '08').
- 3.33 Oftel issued a draft licence modification on 24 July 2001. In doing so, it noted that its suggestion for capturing CPRS through reference to price still led to some types of service being captured unintentionally. As far as 07 was concerned, Oftel amended the draft licence condition to remove 'find-me-anywhere services' from the scope of CPRS. Given that a find-me-anywhere service was a service enabling a person to be contacted rather than a service from any location, the policy was that CPRS should not capture calls to mobiles which might not be PRS. Without the carve-out for find-me-anywhere services, Ofcom was concerned that defining CPRS by price alone might unintentionally capture such calls.
- 3.34 On 12 June 2003, Oftel consulted on the setting of the PRS Condition. In its document, *"Conditions Regulating Premium Rate Services"*, Ofcom commented that "It remains the Director's intention not to extend the definition of those persons or services that will be subject to statutory backstop powers beyond those that are the subject of current powers". It was proposed therefore to carve out 'Mobile Services' from the definition of CPRS and this was in order to replicate the 'Find-me-anywhere'

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carve-out from the previous regime. In other words, the 'Mobile Services' carve out was merely to replicate the previous regime which was to ensure that calls to services that were not genuine PRS, but might have been caught by the price threshold, be excluded from the definition of CPRS.

- 3.35 However, in light of representations that Ofcom has received from stakeholders, we are proposing an amendment to the definition of CPRS to avoid any doubt that PRS accessible over mobile telephones are regulated under Ofcom's back-stop powers.
- 3.36 Ofcom has also received representations from stakeholders about the need for a comprehensive review of the scope of PRS regulation to reflect technological developments, particularly in the mobile sector, such as branded portal services. Ofcom agrees that as the PRS sector evolves, it is necessary to review the scope of regulation to make sure that regulation remains appropriate. Accordingly, as already mentioned, Ofcom intends to consult on a thorough policy review of the scope of regulation of PRS to commence in 2006. This review will consider the scope of PRS regulation, and how it should be applied, or removed from, emerging commercial services coming out of the mobile and broadcast sectors, as well as growth in broadband and VoIP billing as a new route to content.

The Notification

- 3.37 Ofcom therefore proposes to modify the PRS Condition by amending the definition of CPRS in order to:
- (i) include diallers where the purpose is to switch the modem setting of the computer that the dialler programme is running on from a particular internet connection to another, irrespective of the call cost or number. As already mentioned, however, Ofcom proposes to exclude pay-as-you-go dial up and unmetered dial up internet services; and
 - (ii) amend the reference to 'Mobile Services' in order to avoid any doubt that the PRS accessible over mobile telephones are regulated under Ofcom's back-stop powers.
- 3.38 The Notification and proposed modifications can be found at Annex 4. Ofcom is seeking stakeholder comments on these proposals and, in particular, the wording of the new definitions to be used, as set out in the Schedule to the Notification at Annex 4.

Section 4

Consultation on the notification of modifications to the PRS Condition

The purpose of this consultation

- 4.1 The relevant procedures for setting, modifying or revoking the PRS Condition are set out in section 48 of the Act. Under section 48 of the Act, Ofcom is required to publish a notification of the proposed modification ('the 'Notification'), and to consult for a period of not less than one month after the day of publication of the Notification
- 4.2 The Notification and proposed modification is attached at Annex 4.
- 4.3 Ofcom is inviting written views and comments by 5pm on 22 December 2005, on the Notification and proposed modifications to the PRS Condition.
- 4.4 Details of how to respond on each of these issues can be found at Annex 1.
- 4.5 Ofcom will give careful consideration to all comments received during the consultation period (including any relevant responses on internet diallers made in response to the NTS consultation), and in light of the comments received may give effect to the proposals set out in this document, with or without modification, by publication of a Notification and explanatory statement. Ofcom expects to publish this document in early 2006.

Impact assessment

- 4.6 The analysis presented in this section, when read also with the rest of this document, represents an Impact Assessment ('IA'), as defined by section 7 of the Act. You should send any comments on this IA to us by the closing date for this consultation. Ofcom will give careful consideration to all comments received during the consultation period before deciding whether to implement our proposals.
- 4.7 IAs provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making and are commonly used by other regulators. This is reflected in section 7 of the Act, which means generally we have to carry out IAs where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. In accordance with section 7 of the Act, in producing the IA in this document, Ofcom has had regard to such general guidance as it considers appropriate, including related Cabinet Office guidance.

Dialler services

Option 1: maintaining the status quo

- 4.8 Under section 6 of the Act, Ofcom has a duty to ensure that it does not impose or maintain unnecessary regulatory burdens. Accordingly, under option 1, there would

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be no additional consumer protection measures for consumers using diallers on numbers outside the '09' range other than what is currently in place for geographic calls. This would therefore mean that the potential would remain for consumers to suffer detriment or harm from abuse of diallers on these numbers.

- 4.9 Ofcom would consider that the 'no change' option would be the most appropriate course of action to take in the event that there was no clear evidence showing:
- a possible migration of 'rogue' diallers from '09' to '08' numbers to evade the regulatory regime; and
 - genuine consumer harm arising from 'rogue' diallers operating on numbers outside the '09' range.
- 4.10 As set out in section 3 of this document as well as this section, Ofcom considers that the balance of evidence supports the position that current arrangements do not provide an adequate basis for consumer protection, and that further measures are needed. In particular, Ofcom considers that the status quo would fail to adequately address consumer protection concerns arising from the potential for unscrupulous SPs who may seek to avoid the regulatory regime by migrating to unregulated numbers in order to mislead or exploit consumers.
- 4.11 In light of this, Ofcom considers that the risk of not doing anything, including increased negative publicity caused by growing consumer harm arising from the potential growth of 'rogue' diallers on numbers other than '09' would result in a loss of consumer confidence for PRS and NTS, and have a detrimental effect on these sectors. Accordingly, Ofcom does not support the option of 'no change'.

Option 2: Extend PRS regulation to all diallers

- 4.12 Under option 2, Ofcom would extend the PRS regulatory regime to all diallers where the primary purpose is to switch the modem setting of the computer that the dialler programme is running on from a particular internet connection to another, irrespective of the call cost or number. This would be achieved by a modification to the PRS Condition by extending the definition of CPRS to capture diallers. This option would also require ICSTIS' agreement to extend the scope of its regulation through its Code.
- 4.13 Under option 2, therefore, all diallers, as described above, would be brought within the PRS regulatory regime, including ICSTIS' regulation. Diallers would therefore be subject to ICSTIS requirements, including the ICSTIS prior permissions regime, which would ensure that consumers are better protected from the potential of consumer detriment arising from 'rogue' diallers. As already mentioned, Ofcom does not want to unintentionally capture pay-as-you-go dial up and unmetered dial up internet services, and therefore proposes to exclude these from such requirements.
- 4.14 Ofcom would consider that option 2 would be the most appropriate course of action in the event that there was clear evidence showing:
- a possible migration of 'rogue' diallers from '09' to '08' numbers to evade the regulatory regime; and

- genuine consumer harm resulting from 'rogue' diallers operating on numbers outside the '09' range.
- 4.15 As set out in section 3 of this document as well as this section, Ofcom considers that the balance of evidence supports the position that current arrangements do not provide an adequate basis for consumer protection, and that further measures are needed. More specifically, while Ofcom recognises that the current evidence relates primarily to '087' numbers, Ofcom is proposing that the PRS Condition should be drafted in such a way to capture all diallers. This is because of the following:
- Ofcom's data would appear to support the notion of a migration of 'rogue' diallers from '09' to '08' in an attempt to circumvent the PRS regulatory regime. Ofcom is concerned that simply capturing diallers above a certain price threshold, such as 5 pence per minute or call, in order to only capture diallers on '087' numbers, which are typically priced at up to 10 pence per minute or call, may result in a further possible migration of 'rogue' diallers to other number ranges, such as '084' or '070', for example, which are typically priced at less than 5 pence per minute or call;
 - consumer protection concerns relating to diallers are identical to those stemming from Chatline Services and, in particular, the potential for consumers to accrue high phone bills where lower priced services are involved where there is potential for frequent and/or high duration use.
- 4.16 For this reason, option 2 is the preferred option.

Mobile Services

Option 1: maintaining the status quo

- 4.17 Under section 6 of the Act, Ofcom has a duty to ensure that it does not impose or maintain unnecessary regulatory burdens. Accordingly, under option 1, Ofcom would not modify the reference to 'Mobile Services' contained in the PRS Condition.
- 4.18 Ofcom recognises that the premium rate sector was worth in the region of £1 billion per annum in 2004. From an analysis of complaints received from both Ofcom and ICSTIS it is clear that complaints continue to be received relating to PRS where accessible from mobile telephones. Between October 2004 and October 2005 Ofcom received some 706 complaints about PRS accessible from mobile telephones compared to 945 complaints about PRS from a fixed-line. In addition, since the beginning of 2005, ICSTIS received some 7,628 complaints about PRS short codes compared to 10,934 complaints about '09' numbers. ICSTIS' complaints data relating to short codes, however, does not give a full picture of the scale of the complaints about PRS from mobile telephones as the '09' number complaints also captures complaints from mobile telephones as well as fixed.
- 4.19 Accordingly, Ofcom is concerned that perceived uncertainty by stakeholders in respect of the 'Mobile Services' exemption may result in the potential for increasing consumer harm where PRS is accessible from mobile telephones. For this reason, Ofcom does not support this option.

Option 2: amend the current definition of 'Mobile Services'

- 4.20 Under option 2, Ofcom would amend the reference to 'Mobile Services' in order to avoid any doubt that PRS accessible over mobile telephones are regulated under Ofcom's back-stop powers. This would be achieved by a modification to the PRS Condition.
- 4.21 As set out in section 3, Ofcom has received representations from stakeholders to this effect, and is therefore concerned that perceived uncertainty has a potential for increased consumer harm where PRS is accessible via mobile telephones.
- 4.22 As set out above, Ofcom recognises that the premium rate sector was worth in the region of £1 billion per annum in 2004. From an analysis of complaints received from both Ofcom and ICSTIS it is clear that complaints continue to be received relating to PRS where accessible from mobile telephones. Between October 2004 and October 2005 Ofcom received some 706 complaints about PRS accessible from mobile telephones compared to 945 complaints about PRS from a fixed-line. In addition, since the beginning of 2005, ICSTIS received some 7,628 complaints about PRS short codes compared to 10,934 complaints about '09' numbers.
- 4.23 Accordingly, whilst Ofcom considers that PRS over mobile telephones is currently caught under the definition of CPRS, given industry representations on the issue and uncertainty leading to a potential for consumer harm, option 2 is the preferred option.

Tests set out under the Communications Act 2003

- 4.24 In modifying conditions, Ofcom is required to meet various tests set out in the Act. These tests, and Ofcom's assessment of how these are met in connection with the proposed modification to the PRS Condition, are set out below.

Section 3 – Ofcom's general duties

- 4.25 Section 3(1) of the Act sets out the principal duty of Ofcom. Ofcom is required by this section to carry out its functions in line with this duty. That duty is:
- (a) to further the interests of citizens in relation to communications matters; and
 - (b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- 4.26 Ofcom considers that the proposals to extend the PRS regulatory regime to capture diallers and to avoid any doubt that PRS accessible over mobile telephones are regulated under the PRS Condition are in line with section 3 of the Act.
- 4.27 This is because, as explained in this document, there is growing evidence of consumer harm arising from 'rogue' diallers on '08' numbers and, in particular, '087' numbers, and the possibility of future migration to other number ranges to evade the regulatory regime. In addition, as explained in this document, Ofcom is concerned that perceived uncertainty has a potential for increasing consumer harm where PRS is accessible via mobile telephones.
- 4.28 Ofcom has also considered when carrying out its functions, amongst other things, the requirements in section 3 (2) of the Act to secure the availability throughout the UK of

a wide range of electronic communications services, and section 3 (4) of the Act, namely that in performing its duties Ofcom must also have regard to such of the following as appears to be relevant in the circumstances, in particular:

- the desirability of promoting competition in relevant markets;
- the desirability of encouraging investment and innovation in relevant markets;
- the needs of persons with disabilities, of the elderly and of those on low incomes; and
- the opinions of consumers in relevant markets and of members of the public generally.

4.29 Ofcom considers that the proposals set out in this document are in line with the above duties and that, in particular, and as set out above, extending PRS regulation to capture diallers and removing any doubt about the regulation of PRS over mobile telephones would be beneficial to the PRS and NTS sectors. As already stated, this would build consumer confidence and satisfaction in the relevant sectors which, in turn, would have a beneficial effect to the long term viability of the sector.

Section 4 – European Community requirements for regulation

4.30 Section 4 of the Act sets out the Community duties on Ofcom which flow from Article 8 of the Framework Directive. Ofcom considers that its proposals outlined above promote the interests of all persons who are citizens of the European Union by ensuring that consumers are adequately protected from the potential of consumer harm arising from 'rogue' diallers or from any perceived uncertainty as regards whether PRS accessible via mobile telephones is subject to Ofcom backstop powers. In Ofcom's view, as already stated, this would build consumer confidence and satisfaction in the PRS and NTS sectors, which, in turn, would be beneficial to the sectors.

Section 47 – Test for setting or modifying conditions

4.31 As set out under section 47(1) of the Act, in modifying a condition, Ofcom must be satisfied that the test set out under section 47(2) has been met. The test is that the modification of the condition is:

- (a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
- (b) not unduly discriminatory against particular persons or against a particular description of persons;
- (c) proportionate to what it is intended to achieve; and
- (d) transparent in relation to what it is intended to achieve.

4.32 Ofcom considers that the proposals to extend PRS regulation to diallers and to remove any doubt about the regulation of PRS accessible via mobile telephones is objectively justifiable. As regards the former, Ofcom considers its proposals are objectively justifiable in light of the evidence of growing consumer complaints about 'rogue' diallers on numbers outside the '09' number range. As regards the latter, Ofcom considers that its proposals are objectively justifiable in light of industry

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representations on the issue and given perceived uncertainty has a potential for increasing consumer harm.

- 4.33 Ofcom considers that the proposals to extend the PRS regulatory regime to diallers and to remove any doubt about the regulation of PRS accessible via mobile telephones, is not unduly discriminatory because the proposed requirement does not benefit particular undertakings, and will be applied uniformly to all TCP's and SPs.
- 4.34 Ofcom considers that the proposals to extend PRS regulation to diallers and to remove any doubt about the regulation of PRS accessible via mobile telephones is proportionate on the grounds that the proposals seeks to target regulation at those providers who seek to circumvent the PRS regulatory regime. There should be little additional burden on those responsible providers who already follow industry best practice in this area.
- 4.35 Ofcom considers that the proposals to extend PRS regulation to diallers and to remove any doubt about the regulation of PRS accessible via mobile telephones is transparent insofar as the nature and obligations are clearly set out in this document which is being consulted upon.
- 4.36 Accordingly Ofcom is today inviting written views and comments on the Notification and proposed modifications to the PRS Condition under sections 48(1) and 120(5) of the Act.

Annex 1

Responding to this consultation

How to respond

Ofcom invites written views and comments on the issues raised in this document, to be made by **5pm on 22 December 2005**. Ofcom is consulting over a shorter period of time because of the need to address these issues urgently so that consumers are adequately protected from the potential for consumer detriment arising from 'rogue' dialler services on numbers other than '09' and from any doubt that PRS accessible over mobile telephones is regulated by Ofcom.

Ofcom strongly prefers to receive responses as e-mail attachments, in Microsoft Word format, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 2), among other things to indicate whether or not there are confidentiality issues. The cover sheet can be downloaded from the 'Consultations' section of our website.

Please can you send your response to gavin.daykin@ofcom.org.uk.

Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.

Gavin Daykin
Floor 6
Strategy & Market Development
Riverside House
2A Southwark Bridge Road
London SE1 9HA

Fax: 020 7981 3406

Note that we do not need a hard copy in addition to an electronic version. Also note that Ofcom will not routinely acknowledge receipt of responses.

It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 3. It would also help if you can explain why you hold your views, and how Ofcom's proposals would impact on you.

Further information

If you have any want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Gavin Daykin on 020 8686 6411.

Confidentiality

Ofcom thinks it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt (when respondents confirm on their response cover sheer that this is acceptable).

All comments will be treated as non-confidential unless respondents specify that part or all of the response is confidential and should not be disclosed. Please place any confidential parts

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of a response in a separate annex, so that non-confidential parts may be published along with the respondent's identity.

Ofcom reserves its power to disclose any information it receives where this is required to carry out its legal requirements. Ofcom will exercise due regard to the confidentiality of information supplied.

Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use, to meet its legal requirements. Ofcom's approach on intellectual property rights is explained further on its website, at www.ofcom.org.uk/about_ofcom/gov_accountability/disclaimer.

Next steps

Following the end of the consultation period, Ofcom intends to publish a Notification and explanatory statement early in 2006.

Please note that you can register to get automatic notifications of when Ofcom documents are published, at http://www.ofcom.org.uk/static/subscribe/select_list.htm.

Ofcom's consultation processes

Ofcom is keen to make responding to consultations easy, and has published some consultation principles (see Annex 1) which it seeks to follow, including on the length of consultations.

If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk. We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, whose views are less likely to be obtained in a formal consultation.

If you would like to discuss these issues, or Ofcom's consultation processes more generally, you can alternatively contact Vicki Nash, Director, Scotland, who is Ofcom's consultation champion:

Vicki Nash
Ofcom (Scotland)
Sutherland House
149 St. Vincent Street
Glasgow G2 5NW
Tel: 0141 229 7401
Fax: 0141 229 7433
E-mail: vicki.nash@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will normally allow ten weeks for responses to consultations on issues of general interest.

A2.6 There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. This individual (who we call the consultation champion) will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

After the consultation

A2.8 We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency, we will publish all consultation responses in full on our website, www.ofcom.org.uk, unless a respondent specifies that all or part of their response is confidential. We will also refer to the contents of a response when explaining our decision, without disclosing the specific information that you wish to remain confidential.
- A3.2 We have produced a cover sheet for responses (see below) and would be very grateful if you could send one with your response. This will speed up our processing of responses, and help to maintain confidentiality by allowing you to state very clearly what you don't want to be published. We will keep your completed cover sheets confidential.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their cover sheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses in the form of a Microsoft Word attachment to an email. Our website therefore includes an electronic copy of this cover sheet, which you can download from the 'Consultations' section of our website.
- A3.5 Please put any confidential parts of your response in a separate annex to your response, so that they are clearly identified. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title: Conditions regulating Premium Rate Services

To (Ofcom contact): Gavin Daykin

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

What do you want Ofcom to keep confidential?

Nothing

☐

Name/contact details/job title

☐

Whole response

☐

Organisation

☐

Part of the response

☐

If there is no separate annex, which parts?

If you want part of your response, your name or your organisation to be confidential, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response. It can be published in full on Ofcom's website, unless otherwise specified on this cover sheet, and I authorise Ofcom to make use of the information in this response to meet its legal requirements. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

☐

Name

Signed (if hard copy)

Annex 4

Notification of proposed modification to the PRS Condition

Notification of a proposed modification under section 48(2) of the Act

Proposal for modification of a condition under section 120 of the Act which is set out in the Notification under Section 48(1) and 120(5) of the Act published by the Director General on 23 December 2003 at Annex B of the Statement; Conditions Regulating Premium Rate Services dated 23 December 2003

1. OFCOM in accordance with section 48(2) of the Act hereby make the following proposal for the modification of the PRS Condition.
2. The draft modification is set out in the Schedule to this Notification.
3. The effect of, and OFCOM's reasons for making, the proposal referred to in paragraph 1 above is set out at sections 3 and 4 of the accompanying explanatory statement.
4. OFCOM consider that the proposed modification referred to in paragraph 1 above complies with the requirements of section 120(5) of the Act, as appropriate and relevant to each of the proposals.
5. In making the proposal set out in this Notification, OFCOM has considered and acted in accordance with their general duties in section 3 of the Act and the six Community requirements in section 4 of the Act.
6. Representations may be made to OFCOM about the proposal set out in this Notification and the accompanying statement by **22 December 2005**.
7. Copies of this Notification and the accompanying statement have been sent to the Secretary of State in accordance with section 50(1)(a) of the Act and to the European Commission in accordance with section 50(6) of the Act.
8. In this Notification:
 - (i) "the Act" means the Communications Act 2003;
 - (iii) "the Director General" means the Director General of Telecommunications;
 - (ii) "OFCOM" means the Office of Communications;
 - (iv) "the PRS Condition" means a condition under section 120 of the Act which is set out in the Notification under Section 48(1) and 120(5) of the Act published by the Director General on 23 December 2003"
9. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification and otherwise any word or expression shall have the same meaning as it has in the Act.

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10. For the purpose of interpreting this Notification:

(i) headings and titles shall be disregarded; and

(ii) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.

11. The Schedule to this Notification shall form part of this Notification

Signed by

**A person authorised by Ofcom under paragraph 18 of the Schedule to the
Office of Communications Act 2003**

21 November 2005

Schedule

Proposal for modification to a condition under section 120 of the Act which is set out in the Notification under Section 48(1) and 120(5) of the Act published by the Director General on 23 December 2003 at Annex B of the Statement; Conditions Regulating Premium Rate Services dated 23 December 2003

The PRS Condition shall be modified as set out below (the deleted text has been struck through and added text underlined, both highlighted in yellow for ease of reference):

1. The Communications Provider shall comply with:

- (a) directions given in accordance with an Approved Code by the Enforcement Authority and for the purposes of enforcing the provisions of the Approved Code; and
- (b) if there is no Approved Code, the provisions of the order for the time being in force under section 122 of the Act.

2. In this Condition,

- (a) "Act" means the Communications Act 2003;
- (b) "Approved Code" means a code approved for the time being under section 121 of the Act;

(c) "Communications Provider" means either:

(i) a person who:

(A) is the provider of an Electronic Communications Service or an Electronic Communications Network used for the provision of a Controlled Premium Rate Service; and

(B) is a Controlled Premium Rate Service Provider in respect of that Controlled Premium Rate Service;

(ii) a person who:

(A) is the provider of an Electronic Communications Service used for the provision of a Controlled Premium Rate Service; and

(B) under arrangements made with a Controlled Premium Rate Service Provider, is entitled to retain some or all of the charges received by him in respect of the provision of the Controlled Premium Rate Service or of the use of his Electronic Communications Service for the purposes of the Controlled Premium Rate Service;
or

(iii) a person who:

(A) is the provider of an Electronic Communications Network used for the provision of a Controlled Premium Rate Service; and

(B) has concluded an agreement relating to the use of the Electronic

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Communications Network for the provision of that Controlled Premium Rate Service with a Controlled Premium Rate Service Provider;

- (d) "Chatline Service" means a service which consists of or includes the enabling of more than two persons (the participants) to simultaneously conduct a telephone conversation with one another without either:
- (i) each of them having agreed with each other; or
 - (ii) one or more of them having agreed with the person enabling such a telephone conversation to be conducted, in advance of making the call enabling them to engage in the conversation, the respective identities of the other intended participants or the telephone numbers on which they can be called. For the avoidance of any doubt, a service by which one or more additional persons who are known (by name or telephone number) to one or more of the parties conducting an established telephone conversation can be added to that conversation by means of being called by one or more of such parties is not on that account a Chatline Service, if it would not otherwise be regarded as such a service;
- (e) "Controlled Premium Rate Service" means a Premium Rate Service (other than **calls to a Mobile Service, a Personal Numbering Service or a Radiopaging Service, or a service which is only accessed via an International Call**) in respect of which **either:**
- (i) the charge for the call by means of which the service is obtained or the rate according to which such call is charged is a charge or rate which exceeds 10 pence per minute; or
 - (ii) the service is a Chatline Service; or
 - (iii) Internet Dialler Software is operated;**
- (f) "Controlled Premium Rate Service Provider" means a person who:
- (i) provides the contents of a Controlled Premium Rate Service;
 - (ii) exercises editorial control over the contents of a Controlled Premium Rate Service;
 - (iii) packages together the contents of a Controlled Premium Rate Service for the purpose of facilitating its provision; or
 - (iv) makes available a facility comprised in a Controlled Premium Rate Service;
- (g) "Dial-up Telephone Number" means the telephone number used by an end-user's computer that connects it to the Internet**
- (h) "Enforcement Authority" means, in relation to an Approved Code, the person who under the code has the function of enforcing it;
- (i) "Facility" includes reference to those things set out in section 120(14) of the Act;
- (j) "International Call" means a call which terminates on an Electronic Communications Network outside the United Kingdom;

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- (k) "Internet Dialler Software" is software that replaces a Dial-up Telephone Number with a different Dial-up Telephone Number;

other than where it is used so that:

a) an end-user's existing Internet Service Provider replaces the Dial-up Telephone Number;

b) an end-user moves from his existing Internet Service Provider to another Internet Service Provider or is so moved with his consent.

- (l) "Internet Service Provider" means a person who provides end-users, by means of a Dial-up Telephone Number, with connection to the Internet in the ordinary course of its business.

- (m) "Mobile Service" shall have the meaning ascribed to it in the National Telephone Numbering Plan;
- (n) "National Telephone Numbering Plan" means a document published by Ofcom from time to time pursuant to sections 56 and 60 of the Act;
- (o) "Personal Numbering Service" shall have the meaning ascribed to it in the National Telephone Numbering Plan;
- (p) "Premium Rate Service" shall have the meaning ascribed to it by section 120(7) of the Act;
- (q) "Radiopaging Service" shall have the meaning ascribed to it in the National Telephone Numbering Plan;

3. For the purposes of interpreting this Condition, except in so far as the context otherwise requires, words or expressions shall have the same meaning as ascribed to them in paragraph 2 above and otherwise any word or expression shall have the same meaning as it has been ascribed in the Act.