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Dear Nathan

Regulation of 0871 Services

This response has been produced by the Numbering Group within the Federation of Communication Services, FCS, the trade association for the communications services industry. A full list of FCS members may be found on the website www.fcs.org.uk.

The Numbering Group was set up in 2006 in response to Ofcom's NTS statement and Numbering Review to provide a collective view from numbering providers, their resellers and others associated with the telephony market. The group's objectives are to ensure that there is a fair open and competitive environment and to promote best practice and standards for number service providers.

We welcome the opportunity to respond to this consultation on proposals for the regulation of 0871.

Our preference remains for a separate code for regulation of 0871. We have on several occasions expressed to you the need for a light touch regime for 0871; especially as the Analysys research carried out for ICSTIS did not identify significant levels of consumer detriment. However, the approach suggested by ICSTIS, involving the application of the existing code in conjunction with a Statement of Application is not easy for those affected to interpret, does not represent light touch regulation and is, therefore, disproportionate.

The Statement of Application, as currently drafted, does not function as a standalone document and requires either significant knowledge of or detailed cross referencing with the main ICSTIS Code of Practice. The ICSTIS code is a lengthy document which many companies who will fall into the scope of 0871 regulation are not familiar with. In the interests of good governance the ICSTIS proposals should recognize this.

It should be noted that a number of our comments are contingent upon clarification of the definition and application of some of the terminology used in the consultation to describe the companies delivering 0871 services. Specifically, the ICSTIS consultation and the draft Statement of Application do not adopt the terms used in Ofcom's NTS statement (i.e. Originating Call Provider and Terminating Call Provider) and do not provide clear guidance on the criteria for who is a "Network Operator" and who is a "Service Provider" within the 0871 supply chain. The term "Information Provider" appears to apply to small businesses such as plumbers, who are using 0871 as a means of routing and managing calls from their customers. The term clearly does not reflect an intuitive description of these companies' use of the numbers. We feel that adopting the terminology used in the ICSTIS code is inappropriate and potentially confusing in the context of 0871.

A very major concern arising from this is that some relatively small companies will be classed as Network Operators and will have to comply in full with the due diligence requirements. This seems unnecessarily onerous and, in the context of 0871, quite disproportionate.

Given the significant differences between 0871 based services and traditional PRS, in terms of the types of service provided, the price point and the capacity for consumer harm, we still have a strong preference for separate branding for the regulation of the 0871 number range and we are disappointed that ICSTIS disregarded the views of industry on this.

Similarly, we believe that the proposal for implementation of a funding regime based on the existing ICSTIS model is not justified.

In general, the proposals smack of expediency - driven by the need to meet an unrealistic timetable for introduction of the new regime.

Our responses to the individual consultation questions are set out below but should be read in the overall context that our position remains that a separate code is the only way forward for the regulation of 0871:

Q1: Do you agree with our proposal to create a Statement of Application for the 0871 number range? If not, please provide your reasons and alternative suggestions.

We believe that this approach will require detailed knowledge of the ICSTIS code of practice or an ongoing need to cross reference the requirements of the Statement of Application against the full code document. Many users and providers of 0871 are not involved with existing PRS and a single standalone document would be preferable.

Our preference is for a completely separate code but at the very least the Statement of Application should function as a standalone document which provides all the necessary guidance in one place. As currently drafted, the Statement of Application falls well short of this.

The adoption of terminology from the current ICSTIS Code of Practice (e.g. Network Operators, Service Providers and Information Providers) rather than the terms used in the NTS statement (e.g. OCP and TCP) makes some of the document unclear in the context of 0871.

The Statement of Application also needs to explain much more comprehensively which types of service are covered or exempted by the various requirements and provide appropriate examples of these.

Q2: Do you agree that the current application of Section 1 of the Code is appropriate to apply to the 0871 number range? If not, please give your reasons.

No specific comments.

Q3: Do you agree that this is a fair and proportionate application of the network operators' due diligence requirements to the 0871 number range? If not, please give your reasons. ICSTIS would welcome further information regarding quantification of costs.

As noted above, the definition of "network operator" is unclear in the context of 0871. However, it seems likely that many smaller companies who do not currently deal with 09 numbers will fall into this category and will be required to develop administrative procedures which they do not currently have.

We understand that the proposal requires network operators to undertake due diligence on all organizations they supply numbers to. Currently, companies will conduct commercial due diligence in proportion to the value of the business. Where there is no significant value or no outpayment the risk and the need for such due diligence is necessarily reduced. In these circumstances, normal commercial due diligence should suffice.

Many companies to whom 0871 numbers are allocated are not "Service Providers" in the sense meant in the ICSTIS Code of Practice and we would question the cost benefit of recording this information.

We believe that to apply the existing provisions for due diligence as they stand would be disproportionate and that the introduction of exemptions or a sliding scale would be appropriate.

In terms of cost, we are advised that a typical charge by Network Operators to Service Providers for due diligence is £100.

Q4: Do you have any further information and evidence regarding usual payment times? Additionally it would be helpful to have responses that indicate to what extent Service providers rely on immediate payments from network operators to cover their operational costs.

No comment

Q5: Do you agree that this is a fair and proportionate application of a delayed payment mechanism to the 0871 number range? If not, please provide your reasons.

We have no problem with the proposal to apply the existing 30-day payment rule,

Q6: Do you agree that the current application of Section 3 of the Code is appropriate to apply to the 0871 number range? If not, please provide your reasons.

We do not agree with the statement that “there is nothing unique about the 0871 number range that would suggest that service providers should be subject to a different set of requirements in this respect”. We believe that many of the companies who will be deemed to be “Service Providers” will be communications companies allocating numbers to end-user customers for managing calls from their own customers (e.g. providing small business with time of day call routing etc.)

As the regulation is currently drafted, Service Providers are liable for any misuse of these numbers and this does not seem appropriate. We believe that ICSTIS need to consider how these requirements should be interpreted and applied in the context of the 0871 supply chain.

The Analysys research and ICSTIS’ own feedback to us indicates that the main problem area is call centre management rather than misuse of phone numbers.

Q7: Do you agree that the current application of Section 4 of the Code is appropriate to apply to the 0871 number range? If not, please provide your reasons.

See response to Q6.

Q8: Do you agree that it is fair and proportionate to apply ICSTIS’ current application of the prior permission regime under Section 5.1 of the Code to the 0871 number range? If not, please provide your reasons.

We believe that it would be more helpful for ICSTIS to provide specific examples of services currently offered via 0871 which would require prior permission.

Q9: Do you agree that Option D is a fair and proportionate application of the undue delay requirements in paragraph 5.4.2 of the Code to the 0871 number range? If not, please provide your reasons and alternative preferred option. Additionally, please provide details of any other options you feel may be appropriate for ICSTIS to consider.

In general, we agree that the proposal on undue delay which is set out under Option D is the best approach. We agree that delay in this context is likely to be caused by customer service issues and this option provides an appropriate framework for managing complaints in this spirit.

Q10: Do you agree that this is a fair and proportionate application of the pricing information requirements under Section 5.7 of the Code to the 0871 number range? If not, please provide your reasons.

We believe that clearer and more comprehensive guidelines on where pricing information should be provided would be helpful, e.g. business cards, pens, directory listings, vehicle livery. Guidance on the wording to be used would also be useful.

Q11: Do you agree that it is appropriate to allow a three-month implementation period, as outlined above?

We believe that 3 months is too short as an implementation period. We would suggest that 18 months would be more appropriate.

Q12: Do you agree that this is a fair and proportionate application of ICSTIS' scope of regulation in respect to content of services provided on the 0871 number range? If not, please provide your reasons.

We agree that investigations should be restricted to telephony issues (i.e. cases where the type of number used was intrinsic to the substance of the complaint).

Q13: Do you agree that the current application of Section 6 of the Code is appropriate to apply to the 0871 number range? If not, please provide your reasons.

We feel that it would be much more helpful to specify the types of "live" service provided via 0871 which would require prior permission.

Q14: Do you agree that the current application of Section 7 of the Code is appropriate to apply to the 0871 number range? If not, please provide your reasons.

For the services specified in section 7, it seems logical to apply the same rules where these are provided via 0871.

Q15: Do you agree that the current application of Sections 8 to 11 of the Code is appropriate to apply to the 0871 number range? If not, please provide your reasons.

Subject to the points previously raised about clarifying terminology and the responsibilities of “network operators”, “service providers” etc., it seems reasonable to operate the same procedures for investigation and adjudication of complaints.

Q16: Do you agree that this is a fair and proportionate application of the funding model in Annex 1 of the Code to apply to the 0871 number range? If not, please provide your reasons.

We strongly disagree that the current funding model is appropriate for the 0871 range. We believe that there should be much greater emphasis on fines (on the principle of “polluter pays”).

We understand that the levy will be collected via the Network Operator who will recover, as necessary from Service Providers but would welcome clarification of this.

Q17: Do you agree that this is a fair and proportionate method of collection of the funding levy to apply to the 0871 number range? If not, please provide your reasons.

See response to Q16

Q18: Do you agree that a minimum payment amount from each network operator should be £500 per annum? If not, please provide your reasons.

We do not agree that £500 is an appropriate amount for a minimum payment. This equates to 3.25 million minutes of traffic. We would suggest that £50 is a more appropriate figure.

We would like to clarify whether the threshold for levy payments on 0871 will be calculated separately or consolidated with payments due for other areas of PRS.

Q19: Do you agree that it is not appropriate for ICSTIS to create and promote a separate brand for regulation of the 0871 number range? If not, please provide your reasons.

We believe that 0871 is significantly different to more mainstream PRS and we wish to see a separate branding for this number range.

Q20: Is there any other way in which ICSTIS’ regulatory framework should be amended or otherwise so as to regulate the 0871 number range in a way that is fair and proportionate?

No comment

Q21: Do you agree that this is an appropriate wording for a Statement of Application based on ICSTIS' proposals? If not, please provide your reasons and alternative wording.

As noted above, we believe that the Statement of Application should function as a standalone document. We believe that it needs to contain much clearer and more explicit information about the requirements for providers and users of 0871 numbers, which does not require cross referencing and interpretation of the ICSTIS Code of Practice.

In conclusion, we would ask ICSTIS to reconsider and modify these proposals. In its current form the new regime will be expensive to implement and onerous and confusing to operate for many involved in delivering services based on 0871.

We also recommend that Ofcom reconsiders the timetable imposed on ICSTIS.

We would welcome the opportunity to discuss any of these issues further with you.

Yours sincerely

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