

Representing the Communication Services Industry



The PRS Scope Review

Response by FCS to Ofcom's consultation Issued on 15 May 2009

FCS Contact:
Jacqui Brookes OBE
CEO
FCS
Burnhill Business Centre
Burrell Row
Beckenham
Kent BR3 1AT

www.fcs.org.uk

Summary

FCS believes that Ofcom has missed an opportunity of taking a fundamental review of the Premium Rate Services sector and setting out a clear framework for similar types of services across delivery platforms. In a declining market, regulation of PRS services needs to be proportionate and focus on the core harms that phone paid services could attract.

Introduction

The Federation of Communication Services is the trade association for companies delivering communications services by means of fixed, IP, wireless and mobile. A full list of our members is on the FCS website-www.fcs.org.uk. We welcome the opportunity of commenting on this important Ofcom review. This response is on behalf of those FCS member companies delivering telephony and numbering services. We have looked at PRS as one of many services delivered to the telephony market and seek to set out where there are specific differences and how proportionate regulation is best applied.

Scope of the review

Ofcom has been considering publication of the scope review for several years under the Terms of Reference issued in December 2006, which said

The issues Ofcom therefore expects to address as part of the review of scope include:

- The clarity of pricing in PRS and impact on consumer trust and confidence;
- The mechanics of consumer redress in the PRS sector;
- The ability of the current regulatory regime to adapt to new and emerging services;
- The effective application of regulation across the PRS value chain;
- The feasibility of a service provider registration scheme and its benefits for regulation; and
- Any overlap between ICSTIS' role and that of other regulators and consumer protection bodies.

Following its analysis, Ofcom may propose some of the following, if any:

- Revisions to the PRS Condition and specifically Controlled PRS, which may extend or alternatively withdraw regulation to a particular service(s), based on, amongst others, considerations of proportionality;
- Recommendations to ICSTIS to amend the ICSTIS Code which may include proposals for sector specific guidance;
- Whether resources in enforcing regulation should be concentrated on those areas where the risk of consumer harm is greatest;
- Recommending to Government changes in the legislative framework for PRS regulation if Ofcom's view is that the current rules are not effective.

The original terms of reference are thorough and offered Ofcom the opportunity of a "drains up" review of a sector that is diminishing in size and how proportionate regulation is best applied. The current consultation 2.5 years later appears less ambitious and looks towards maintaining the status quo of a code of practice maintained by Phonepay Plus [PPP], with an eye to regulatory creep by expanding the remit of PRS to number ranges outside the 09 range.

Ofcom has encouraged stakeholders to provide ideas on the analysis within the consultation. In responding to the review we ask the following questions

1 The core question that review should consider in some depth is "what is PRS"?

2 What is the most effective way to address real harm quickly and effectively- what could be achieved with a real police force focused on fraud?

3 What is the proportionate regulatory framework for the whole sector?

4. Is the Communications Act 2003 fit for purpose in supporting PRS regulation when this legislation does not recognise Internet?

In our response we have used a mixture of terminology for the players in the distribution chain. We encourage Ofcom to set out a common set of definitions for regulated companies that are consistent across the telephony and PRS markets.

What is PRS?

The specific clause in the Communications Act 2003, clause 120 for PRS, arose from specific concerns about the access and sale of controlled PRS and a lack of consumer redress

The revenue share part of controlled PRS has been identified as the core element where consumer harm and lack of redress can occur.

In the two decades since PRS was initially subject to a code of practice significant changes have taken place in the telecommunications market and the industry supporting it.

- The industry delivers communications services over a range of platforms- fixed line, mobile, internet, VOIP, Bluetooth and broadcast
- Telephony services are delivered to customers by hundreds of telephony and internet telephony companies
- Content provision is wide and diverse and welcomed by the majority of the general population
- Customers are much more accustomed to paying for services via their phone bill or other micropayment mechanism

Today 09 numbers and reverse billed SMS, where content is delivered via the chargeable message or call, are PRS. Both are unique consumer experiences and require particular and additional consumer protection measures.

However, the views put forward by some operators have merit as they identify inconsistencies in the current approach:

- A consumer browsing and selecting to purchase, and charging the purchase to a payment mechanism is not unique. It is a retail experience the same as shopping in a supermarket.
- Ofcom currently applies PRS to on demand mobile but not on demand fixed content services, whereas the customer experience and billing are identical. Why is there different regulation?
- Why when mobile on demand portal services were launched in 2003 did PPP consider them to be PRS without looking at the payment mechanism?
- Why does the PPP quarterly return still describe these as short code services?
- Why are not BT Vision, Tiscali, Orange World, Vodafone Live and Virgin Media on demand on portal services regulated as premium rate? If mobile services are similar then all services are either PRS or not PRS

Ofcom has set out a series of demand side characteristics for PRS but as they stand they do not provide a clear definition comprehensively understood by industry or consumers. The most relevant characteristic would appear to be whether the communications provider- in telecoms definitions: an "operator", "Service provider" or "Reseller"- bills the customer directly. Other payment mechanisms do have a consumer redress mechanism and so it could be argued to lie outside PRS regulation.

Before moving forward we ask Ofcom to consider these aspects in more detail and consult further with industry. We are concerned that Ofcom has assumed the status quo and assumed that there would be few changes to the current regime and so is consulting in parallel on the PPP 12th code. There should have been a clear time difference between the two so that the strategic issues associated with the definition of PRS could have been cleared before considering implementation of regulation going forward.

Real consumer harm

Real consumer harm arises from the ability of fraudulent organisations to create scams to claw back outpayments. Good work has already been done to address this. Many instances have been tackled in the past two years by delayed outpayment and proposals, from AIME and others, for registration of parties in the distribution chain will help to identify companies delivering services.

Whatever regulatory structure is put in place the vast majority of industry players will conform and this should be recognised and supported by Ofcom and Phonepay Plus. However, focus must be addressed on detecting and swiftly neutralising the criminal element. While Ofcom says little about this aspect, this may become the greatest value that Phonepay Plus could offer to the sector. A rapid response police force based on market intelligence, if applied proportionately, may be a significant deterrent to major harm from “PRS” services.

FCS members report that if they do offer intelligence, they themselves become embroiled in a Phonepay Plus investigation, which can be a deterrent to future co-operation. Surely an effective policing agency should be able to support whistle blowers and not deter them as well as recognising the difference between compliant organisations and criminals.

Where companies have made minor errors in compliance, the penalties applied should be proportionate on a transparent sliding scale. Schemes such as red and yellow cards should be considered.

Decline in the PRS market

The current definitions of PRS are referenced in many of Ofcom's documents. In this context PRS is acknowledged as representing a declining market. For example in the NTS consultation, Ref: <http://www.ofcom.org.uk/consult/condocs/nts/ntscondoc.pdf> issued on 28 July Ofcom says,

“The biggest fall is expected in freephone and PRS traffic, both of which are expected to continue to decline in line with recent trends both falling at an average rate of 7% year on year to 2014;”

Cost of PRS regulation

If this predicted market decline prevails then the cost to industry of regulation of a diminishing market should also reduce in proportion and this funding may more appropriately be derived from the telecoms administrative charges set by Ofcom rather than a separate fee to PPP. This should reduce administrative duplication and costs overall.

So what is different about PRS? And why is specific and potentially onerous regulation required?

We would like to see Ofcom consider how as a light touch regulator it can set rules and rapidly act if rules are broken, while keeping industry charges to a minimum. The estimated value of the phone paid service market is £920 million; the cost of running PPP is £4.8 million [0.52%]

Ofcom in comparison regulates a £51 billion market [2008] with a £132 million operating income [2008-09] [0.26%] and is reducing its costs by around 5% year on year. This demonstrates that proportionately PPP

costs are too high and should be reduced to the Ofcom level. As the market is declining the cost of regulation of this sector should also reduce in proportion. Regulation needs to focus on the core activity and how it can be delivered most cost effectively.

As we note above funding may be more appropriately derived from the telecoms administrative charges set by Ofcom rather than a separate fee to PPP. Ofcom might like to think about extending the role of telephony ADR schemes [CISAS and Otelco] to ensure adequate consumer redress; these current telephony schemes have sliding scales of fees with an emphasis on polluter pays.

If the current regulatory arrangements prevail industry's preferred option would be for any company that is a service promoter to be subject to the levy and it should be collected directly. This then provides better opportunities for direct communications and relationships between regulatory code enforcer and the industry they engage with and regulate.

Industry does incur costs to support the current PPP funding mechanism and if the following points could be addressed then industry may well get better value for money out of its regulator. For example:

- PPP [or Ofcom] manage or administer all the levy collection directly
- PPP disclose all revenue and income information in its budget statements including fines and levy forecasts (for transparency and accountability)
- Networks are removed from the levy collection process
- All companies that are service or content promoters, should pay the levy
- Removal of Technical Service Providers from being levied, unless they are actually providing and promoting services directly
- Define a common terminology for industry players in common with the telephony definitions set out by Ofcom in the General Conditions

Appropriate regulation

We propose that Ofcom considers setting out a core set of regulatory activities focussing on consumer harm in concert with similar Ofcom activities, such as pirate radio and access to 999, as the proportionate outcome. Fitting PRS and a code of practice that is technology and service neutral into a General Condition would ensure a common approach to other telecoms services delivery with ADR schemes in place for consumer complaints.

Apparent regulatory overlap with other regulators should be addressed to clarify the roles of each and in the principle of good governance any duplication should be stripped out or, if appropriate, mergers should take place. Regulatory certainty is crucial for every type of company in a market. Examples of regulatory overlap in this context include PPP and the ASA, Gambling Commission, and the ICO. The overlap of the ICO and PPP is a major concern since PPP has its own interpretation of what constitutes a break in the law under 5.2 of its current 11th code, but it does not state which actions constitute a break. Industry, and of course consumers as well, must have certainty and a single super regulator may be the most cost effective and efficient mechanism for this industry.

The next revision of the Communications Act should consider whether a separate PRS condition is needed. In our view it probably is not.

Ofcom and call price transparency:

Ofcom has been exercised by the need for call price transparency to assist consumer awareness for many years and we agree that the issue needs to be addressed comprehensively by Ofcom for all calls, not just PRS

Ofcom could consider two ways in which this subject could be addressed:

1 Ofcom can set the policy and obligation on industry and companies for call price transparency, but does it have the legal powers to do this?

2 Ofcom can set the industry an obligation to work together to achieve a common call price transparency framework. There is a precedent within Number Portability; although the outcome of PortCo failed because of a CAT ruling, the principle of industry working together to achieve a regulatory outcome was set in 2008 and industry did in fact achieve a plan for a workable outcome. This collective action to address such issues would be strengthened if Ofcom were to set a General Condition on industry, the telecoms sector and the distribution chain, to work together which in the case of PRS includes broadcasters and other merchant promoters,

More generally Ofcom should also not ignore regulating the mobile network operators, who for example, are about to launch a £30 single drop charge for premium services, yet are not subject to the same scrutiny as fixed network operators and service providers.

Pre-call announcements

Ofcom removed the obligations for pre call announcements for 070 personal services in 2008 for technical and legal reasons and similar problems may arise for PRS calls. For example somebody somewhere is probably using automated dialing facilities to a premium rate number as a simple mechanism to complete micro payments or some form of monitoring service. There is a concern that such announcements may be so vague as to be meaningless and it is not clear as to which party, the originating or terminating operator, would be obliged to provide the call.

A standard message, as used in broadcast announcements will be needed, but it is very uncertain as what the maximum price would be unless each call is subject to a price cap. Since call charges can vary monthly there will be additional cost in supplying and changing the messages.

Pre call announcements appear to be an uncertain way forward and if Ofcom undertakes a study it should not be restricted to PRS, however that is defined.

Distribution chain information

Registration of all numbers by the Service Provider with PPP on a website including a customer services number for the SP will be an important step forward. The more open and informative this is, the more the public will have confidence in the use of the service.

Consultation questions

We have set out our views above and not provided answers to every question

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

As we noted above we are not sure that this is a workable concept

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

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

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

Yes but the major problem is criminal activity.

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

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

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

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

Yes self regulation by the distribution chain is under development and supported by the market players. The generality of the PRS industry is committed to complying with clear and reasonable rules. Mechanisms for whistle blowing to a regulator need to be developed

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

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

There are views on both sides; a standard price cap is clear to understand but in a competitive industry not easy for the regulator, Ofcom, to apply

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

See our answer to 6.1

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

Question 6.4: Do you consider Pre Call Announcements would improve price transparency in the PRS market?

Yes they would improve transparency but Ofcom must consider all the technical and practical issues and obstacles before imposing a solution that may have to be withdrawn again.

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

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

Ofcom proposes to deregulate BT's retail prices and so this benchmark will no longer be stable

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

This is potentially a very changeable situation- tariff changes can take place in 30 days and no long term advertising would be able to keep up with the changes; this is not a workable proposition.

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

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

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

Yes – this is a project already underway

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

Co-ordinate with Ofcom's consumer protection test

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

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

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

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

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

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

A merchant registration scheme for industry players is being proposed by [AIME](#) and we suggest that Ofcom has full regard to this proposal

The term Reputational database is unclear and not helpful

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

