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Dear Peter,

Premium Rate Services Scope Review

You will be aware of the discussions 3 had with Ofcom regarding the application of premium rate regulation to new and emerging content services some three years ago. 3 maintained then, and still does, that the application of a regulatory regime designed for voice based value added services charged to a telecommunications bill for a single service in the era of a single provider required a radical review.

3 further argued that convergence brought with it inconsistencies in the approach to the regulation of paid for content charged to the communications provider's bill. For example a music channel purchased on 3's TV service, was according to Ofcom, subject to the requirements of the ICSTIS (now PhonpayPlus) code of practice where as a music channel purchased on Sky's TV service was not.

After substantial dialogue, Ofcom agreed to review the regulatory regime for Premium Rate Services. Indeed in his letter of 23 September 2005 Kip Meek intimated that such a review was imminent, *"it has been some time since the regulator launched a full review of the scope, purpose and effectiveness of PRS regulation and, given that the market has developed significantly and given the important issues raised by H3G, we consider there is strong merit in now kicking off such a review"*.



Since September 2005 Ofcom has reconfirmed its commitment to undertake the 'scope review' on numerous occasions. In its consultation on the Premium Rate Services condition published on the 21 Nov 2005, Ofcom stated it would *"consult on a thorough policy review of the scope of the regulation of PRS to commence in 2006"*. In a statement on the Premium Rate condition on 8 June 2006 Ofcom again stated its intention to consult in 2006, *"(Ofcom) intends to review PRS regulation in the context of new services, and the need to reflect technological advances in a policy review of PRS to commence shortly in 2006"*. At the end of 2006 - when the promised review had not been forthcoming - Ofcom consulted on the terms of reference for the scope review in stating that the review would commence in "Autumn 2007". However, to date, and despite have proposed the scope review in each of its 2006, 2007 and 2008 annual plans Ofcom has yet to undertake a *"review of the scope, purpose and effectiveness of Premium Rate Services regulation"*.

Whilst 3 appreciates that Ofcom has a variety of competing issues to which it must address itself, it is worth noting that Ofcom has found time to review and amend the existing framework to try and make it fit today's market. Since first promising the 'scope review' in September 2005, Ofcom has amended General Condition 14 to require communications providers to provide information on premium rate services; approved an emergency amendment to the ICSTIS code of Practice and consulted on, reviewed and approved the 11th Code of Practice; published new requirements for the use of PRS in broadcast television; published a framework for Premium Rate Services regulation and amended the Premium Rate condition on no fewer that two occasions.

Meanwhile the fundamental question that 3 presented in 2005 remains unanswered. Indeed since 2005 convergence and consolidation in the market has made the question all the more pertinent. In today's market consumers can choose from a range of providers and offers, and increasingly consumers are choosing a bundled package of services typically comprising telephony, internet and television services, all of which are charged for on one single bill from their communications provider. In addition the consumer may also purchase on demand services directly from their communications service provider and these are charged direct to their account and appear on the same bill as their bundled services. This is in no way different from a 3 customer who may receive a single bill comprising telephony, internet, television and on demand services purchased directly from 3 via 3's own portal.



By way of illustration it is helpful to consider real case studies of how the regulation applies to two different communications providers both of whom are supplying and billing their customers directly for on demand paid for content.

A Tiscali customer receives a monthly bill for telephony, internet and television services which may include on demand charges of 99p for catch up episodes of their favourite TV show. A 3 customer also receives their monthly bill for telephony, internet and television services which may include on demand charges of 49p for their favourite comedy sketches. The consumer experience in both cases is identical. The customer chooses from a menu of content provided by their communications provider, a price is displayed next to the content item, the consumer selects their chosen content and it is charged direct to the bill they receive from their communications provider. However in the case of the 3 customer their on demand service purchased directly from 3 is deemed by Ofcom to be a premium rate service and subject to regulation by PhonepayPlus but the purchase by the Tiscali customer of the on demand service is not subject to regulation by PhonepayPlus.

As a converged regulator Ofcom has a statutory duty to regulate on a platform neutral basis, and yet in the area of paid for content charged direct to the communications provider's bill Ofcom perpetuates a two tier system of regulation.

Two and a half years ago 3 was assured that this issue would be reviewed. It has not, and I am therefore forced to seek clarification as to why Ofcom deems paid for content services purchased directly from a mobile operator and charged direct to a mobile account requires greater regulation than paid for content services charged the account of a customer of a non mobile communications services provider.

I look forwards to your response to this question.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Tim Lord', written over a light grey rectangular background.

Tim Lord
Regulatory Director